Protocol on commissioning photographs of highly vulnerable subjects, including children

The assignment of illustrating a human rights report documenting abuses against children or other highly vulnerable groups is a delicate and difficult one for a photojournalist. Different photographers come to us with varying levels of past experience and expectations. We owe it to them to be clear about what our limitations are for images we will publish, and we owe it to HRW to ensure that any assignment we commission and pay for is no “mission impossible.”

There are two dimensions to the decision whether or not we can use photographs to illustrate a particular project. The first, and preponderant, is protection of the people we photograph and work with—both children and adults. Assessing the likelihood of danger to a subject is going to require an analysis of many variables, including the likelihood he or she will be identifiable, the person’s present situation (are they still vulnerable to a potential abuser or in safety), the proximity and foreseeability of any future risk flowing from our publication, the likelihood that the person will be assumed to have cooperated with us or be an example of an abuse we condemn.

The second issue is whether the photograph of the person presents issues of invasion of privacy or appropriation of likeness without consent. In general, we should not take pictures of children or adults who do not want their pictures taken, or take pictures of people in humiliating circumstances that would likely cause them pain or harm if published without their permission. As a legal matter, consent from a child or a mentally disabled person will not help us in these situations, or against allegations of “false light” portrayal or appropriation of someone’s image for our own benefit / profit—legally protective consent can only come from the subject’s parent.

1 In the following discussion, we will use children as the main example, keeping in mind that along with the mentally disabled, they present particular issues relating to consent. But these comments can pertain to all persons who are vulnerable to abuse should they be identified.
or legal guardian. Access to private institutions additionally will require the consent of the head of the institution, and may or may not be sufficient to cover consent to photograph the children (it would be best to ask the institution and Legal in advance). There are circumstances where asking consent may actually endanger a person (the guardian is a potential abuser), and in this case we should discuss in advance whether pictures would be feasible at all.

When the researcher and photographer discuss a potential joint project, the following topics should be explored thoroughly and reported on before a decision to support the expense of the photographer’s participation is taken.

1. How are we intending to use the images that will be produced – on the web? in advocacy (how—printed materials, slide shows)? in reports? in Council events? in event publicity/solicitations? This will affect both the expected audience that must be assessed for risk, as well as determine certain legal risks, which are higher for commercial as opposed to news uses of photography.

2. What images are needed to document or illustrate abuses? Have others taken images that might be helpful guides to what is needed?

3. Will taking the images require access to sensitive areas where permission to photograph is required – e.g. hospitals, prisons, private homes, schools, offices? Will getting that permission heighten risk to the subjects to be photographed?

4. Will local NGOs or others be helpful to us in getting photographs? Do they have concerns about working with photographers? Can we answer those concerns?

5. Are there any geographic limitations on where we can safely display the photographs? Are there any audiences to which we should not expose individuals (e.g. government officials, neighbors, employers of the subject) because of the risk of retaliation, persecution, discrimination, or unwanted
intervention? This inquiry should focus on tangible incremental risks, not hypothetical risks, keeping in mind that photographs are often the most effective way to raise public concern about human rights crises. For example, if the principal danger is that a child prostitute is portrayed as a prostitute to her community (because she is not readily identifiable outside her community), it is relevant to ask whether she is already so identified there, whether the photograph is likely to circulate in that community, and whether our depiction would likely increase any harm or discrimination she might suffer. Likewise, when we use photographs we have not taken, it is relevant to consider whether they have been or are likely to be published elsewhere.

6. Is it likely that we can use photographs in this situation where children or vulnerable adults are identifiable? What sorts of depictions might serve to prevent identification by those who might abuse? If it seems questionable we can produce effective images, what is the value in investing in a photographer for the mission? Some further issues with identifying children follow.

Particular issues involved in identifying children and other vulnerable subjects:

A. In addition to showing the face, someone may be identified by showing the location of the photograph, other physical features (silhouette, wounds, hairdo), clothing (many poor children don't have changes of clothes or may have distinctive hand-made clothing), jewelry. It is not enough that the researcher/photographer/editor might not necessarily be able to identify the person; the relevant question is whether those who might abuse the person could.

B. Where a person may be identifiable, does the context of the picture make the risk greater or lesser? There may be a difference between a report alleging poor institutional conditions (where the information does not necessarily come from the inmates) and a report that alleges abuse of specific individuals. Sometimes a photograph of people in a group or en masse is less risky to any particular child than an individual portrait, e.g. child soldiers marching on the
road, or child laborers in the fields or markets. Sometimes the photograph of the person may actually make him or her safer (but do not make blanket assumptions).

C. Be very careful with captioning in this respect. Captions (or their absence) are part of the context that carries implicit as well as explicit meaning. If you can’t use a caption that identifies the circumstances you wish to illustrate by the photograph, this may not be a useful image for us. Beware of the situation where the photograph (because of a caption or lack of a caption) may suggest the victim’s helpers are her abusers, or that bystanders or uninvolved children are victims.

Procedure
Whenever we plan to use photographers to illustrate vulnerable subjects (children, the mentally disabled, and others), this questionnaire should be reviewed with the researcher, communications team, and the photographer together before a decision is finalized to send a photographer to the field (and obviously, before tickets are purchased or other major expenses incurred). You may, if needed, call in a member of the Legal team to assist in the discussion, or refer questions arising from the discussion to Legal.