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Children's Right to Privacy in the Digital Era in Africa

PraiseGod Joseph

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PraiseGod Joseph is a dedicated human rights lawyer with an unwavering commitment to advocating for justice, the rule of law, good governance, and equality. With more than 7 years of experience in the field of Human Rights, PraiseGod has fearlessly researched, litigated, and been actively involved in cases involving Indigenous communities, business and human rights, environmental law, access to justice, discrimination, striving to protect the rights of refugees and asylum seekers, and climate justice. Her litigation expertise cuts across from National to Regional Courts, in her current role as Programme Officer - Human & Peoples Rights at the Pan African Lawyers Union she leads the litigation department in several cases before the African Court on Human and Peoples Rights (AfCHPR) and the East African Court of Justice (EACJ). Alongside her work, PraiseGod leverages her profound insights and expertise to write articles that shed light on pressing human rights issues in Africa. Through her articulate and thoughtful publications, she strives to ignite conversations and inspire action towards a more equitable and compassionate world. PraiseGod's roles as an advocate and writer exemplify her commitment to effecting meaningful change both inside and outside the courtroom. She holds a master's degree (LLM) from the University of Dar-es-Salaam, and a Post Graduate Diploma in Law from the Law School of Tanzania.

E-mail the author: millen.pj@gmail.com

Introduction

In today's digital era, children are growing up surrounded by technology and online platforms that profoundly shape their daily lives. While digital technologies offer numerous opportunities for learning, entertainment, and social interaction, they also have a drastic negative impact on children's rights, particularly the right to privacy. Africa is home to the world's youngest population and is experiencing a boom in technology, with millions of children joining online spaces for educational and social reasons. As of May 2022, there were 590 million internet users in Africa with children making up a third of these users.¹

Within this context, the right to privacy for children emerges as a critical concern in Africa's digital era. Children are increasingly exposed to online platforms, social media networks, and digital devices from a young age. This exposure shapes their interactions, identities, and perceptions of privacy. Amidst the proliferation of these digital technologies, questions surrounding the extent to which children's right to privacy is upheld remain paramount.

This paper analyses the dynamics surrounding children's right to privacy in the digital era within the African context. Particularly, it analyses existing legal frameworks, trends of violations of children's right to privacy, and the role played by the African Human Rights Institutions (AHRI) in addressing these challenges. In addition, the paper provides recommendations on initiatives the AHRI should undertake to create a safe and empowered digital space where children can enjoy their right to privacy. In this context, AHRI includes the African Commission on Human and Peoples Rights and the African Committee on the Rights and Welfare of the Child.

The AHRI are instrumental in monitoring compliance with human rights standards, advocating for reforms, and providing avenues for redress.

Children's Right to Privacy under International and Regional Frameworks

International Instruments on Children's Right to Privacy

To understand the concept of children's right to privacy, it is important to grasp the general notion of the right to privacy. The right to privacy is grounded in Article 12 of the Universal Declaration of Human Rights (UDHR) which describes the right as encompassing the freedom from non-interference or attacks on one's privacy, home, or correspondence. Apart from the UDHR, the right to privacy is embedded in Article 17 of the International Covenant on Civil and Political Rights (ICCPR).²

¹ https://www.acerwc.africa/sites/default/files/2023-02/DAC%20CONCEPT%20NOTE%202023_EN.pdf (accessed on 25/02/2024).

² Adopted by the United Nations General Assembly on 19 December 1966.

With the increased need to have a specific instrument on children's rights, the international community adopted the Convention on the Rights of Children (CRC) which provides tailored rights for children, who are defined as human beings below the age of 18 years. The CRC drew its inspiration largely from the wording of the ICCPR under Article 16.³

During the enactment of the CRC and UDHR, technology was not so advanced, and the drafters did not have in mind the privacy concerns and associated challenges that we currently experience during the digital era. As such, the UDHR and CRC lack adequate provisions to protect children from violation of the right to privacy arising from the digital space.

Acknowledging this lacuna, the Committee on the Rights of the Child adopted General Comment No. 25 (2021) on children's rights to the digital environment.⁴ This General Comment acknowledges the importance of the digital environment in children's lives such as in education and communication. It also recognises the risks associated with the digital environment and urges States to adopt legal frameworks and high standards of cyber security to protect children from digital crimes.⁵

Africa Regional Instruments on Children's Right to Privacy

In the African context, various regional instruments have been established to safeguard and promote children's rights, including their right to privacy. The principal human rights instrument is the [African Charter on Human and Peoples Rights \(Banjul Charter\)](#).⁶ However, it is crucial to note that the Banjul Charter does not expressly provide for the right to privacy.

With the adoption of the CRC, the AU also saw it prudent to adopt a specific instrument on the rights of the child within the African context. In 1990, the [African Charter on the Rights and Welfare of the Child \(ACRWC\)](#)⁷ was adopted introducing [Article 10](#) which echoes the general provision on the children's right to privacy in the CRC. [Article 10](#) further specifies the state's duty to establish laws that guarantee the protection of children's personal information.⁸ Both the CRC and the ACRWC were adopted when technology was not yet advanced, so they had not anticipated

³ Adopted by General Assembly resolution 44/25 on 1989.

⁴ https://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/UN_CRC_General%20comment%20No.%2025%20%282021%29%20on%20children's%20rights%20in%20relation%20to%20the%20digital%20environment_En.pdf (accessed on 28/02/2024).

⁵ <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-25-2021-childrens-rights-relation> (accessed on 28/02/2024).

⁶ <https://africanlii.org/akn/aa-au/act/charter/1981/human-and-peoples-rights/eng@1981-06-27> (accessed on 29/02/2024).

⁷ <https://africanlii.org/akn/aa-au/act/charter/1990/rights-and-welfare-of-the-child/eng@1990-07-01> (accessed on 29/02/2024).

⁸ *Ibid.*

the recent trends and threats posed by technology to children's right to privacy.

In commemoration of 25 years of the ACRWC, the challenges facing African children were examined with a focus on planning for an African fit for a child. This commemoration resulted in the adoption of the [African Union Agenda for Children 2040 \(the 2040 Agenda\)](#).⁹ The [2040 Agenda](#) seeks to empower African children through the implementation of the ACRWC. It also firmly establishes the need for States' commitment to providing access to affordable information, communication and technology devices, content, and connectivity.¹⁰

The existing international and regional human rights instruments provisions can be applied during this digital era. However, they are not sufficient to address all the violations associated with this era. Therefore, these laws alone are insufficient to effectively protect children's right to privacy.

As stated earlier, the limitation faced by the CRC on the right to privacy is the same hurdle faced by the ACRWC. The ACRWC was also adopted before the recent development of technology and the increase in digital use by children. Though the existing instruments provide general provisions on the right to privacy, the regional community is acknowledging the uptake in digital use and the associated challenges.

In line with the evolving landscape of digital advancements, the African Union (AU) adopted the [African Union Convention on Cybersecurity and Personal Data Protection \(Malabo Convention\)](#), in 2014.¹¹ In 2023, the [Malabo Convention](#) came into force after Mauritius became the 15th state to submit its ratification. The [Malabo Convention](#) provides a legal framework for protecting personal data and preventing cybercrime on the continent. Further, [Article 29\(3\)](#) of the Malabo Convention takes specific recognition of state duty to criminalise child pornography which is a major challenge faced by children in the digital space.

Initiatives by the AHRI on Children's Right to Privacy

The AU is composed of different institutions including human rights institutions. Against the backdrop of the above discussion, the AHRI have taken different initiatives in addressing the question of the right to privacy for children in the digital era. In this sense, the institutions have recognised that the same reasons that justify the need for protection of children's personal information offline grounds the need for the same protection online. The AHRI, discussed in this paper, are the African Committee on the Rights and Welfare of the Child (ACERWC), and the African Commission on

⁹ <https://africanlii.org/akn/aa-au/doc/policy/acerwc/2016/africas-agenda-for-children-fostering-an-africa-fit-for-children/eng@2016-11-30> (accessed on 29/02/2024).

¹⁰ <https://africanlii.org/akn/aa-au/doc/policy/acerwc/2016/africas-agenda-for-children-fostering-an-africa-fit-for-children/eng@2016-11-30> (accessed on 29/02/2024).

¹¹ <https://africanlii.org/akn/aa-au/act/convention/2014/cyber-security-and-personal-data-protection/eng@2014-06-27> (accessed on 29/02/2024).

Human and Peoples Rights (ACHPR).

The African Committee on the Rights and Welfare of the Child

The African Committee on the Rights and Welfare of the Child (ACERWC) is granted the mandate, by the ACRWC, to safeguard the rights of the African child. It interprets the provisions of the ACRWC, monitors its implementation, considers individual complaints about violations of children's rights, and investigates measures adopted by Member States to implement the [Charter](#).¹²

Since its establishment in 2001, the ACEWRC made no reference to children's rights to privacy in the digital era. Fortunately, in 2019, it held a day of General Discussion on Online Child Sexual Exploitation given the increase in the use of technology and the associated challenges posed to the African child. The ACEWRC eventually began to lean towards developing jurisprudence on children's right to privacy in the digital era. A major contributing factor for the ACEWRC to take steps was the gross sexual exploitation of children online that came with the increased use of technology.¹³

As a step towards curbing these violations on children, the ACEWRC adopted [General Comment No. 7 on sexual exploitation](#).¹⁴ The General Comment emphasises the need for States to rapidly adopt legal frameworks that reflect the current realities with developments in the digital world. The ACERWC's work in safeguarding and promoting the rights of children in cyberspace is mandated by the African Union Executive Council Decision, upon which the general comment is based.

The increase in the use of technology has left children vulnerable to being exposed to sexual offenders who possess materials depicting children engaging in sexual conduct. These activities have become rampant giving room to offenders and users to store, transmit and access children's pornography.¹⁵

It has been reported that 3 in 10 children are being affected by sexual content from internet use such as sexual images and solicitation of sexual content.¹⁶ In an effort to address this harmful practice, Principle 35 of [General Comment 7](#) obligates States to regulate media production and delivery. This regulation ought to protect children

¹² O.M. Sibanda, *Towards a more Effective and Coordinated Response by the African Union on Children's Privacy Online in Africa*, African Human Rights Yearbook, 6, 2022, 167.

¹³ https://www.ohchr.org/sites/default/files/Documents/HRBodies/CRC/Discussions/2014/DGD_report.pdf (accessed on 29/02/2024).

¹⁴ <https://africanlii.org/akn/aa-au/doc/general-comment/acerwc/2021-07/general-comment-no-7-on-article-27-of-the-acrwc-sexual-exploitation/eng@2020-07-01> (accessed on 29/02/2024).

¹⁵ UNICEF, *Online Risk and Harm for Children in Eastern and Southern Africa*, 2023, 11.

¹⁶ UNICEF, *Online Risk and Harm for Children in Eastern and Southern Africa*, 2023, 5.



from exposure to any inappropriate and offensive material where they are variety and accessible technologies.¹⁷

In addition to [General Comment No. 7](#), in 2020, the ACERWC established a Working group on Children's Rights and Business with the mandate to promote the integration of a child rights-based approach to business practices in order to address threats against children's rights posed by certain business practices in Africa. In 2022, the working group adopted a resolution on the protection and promotion of children's rights in the digital sphere.¹⁸ The resolution noted that technological innovations contribute to children's increased access to information but also increases their vulnerability to perpetrators of exploitation and abuse. The resolution requested that member States: ratify the Malabo Convention, enact laws on cyber security and data protection, and report to the ACERWC on the precautionary measures that they have taken to protect children online.¹⁹ Through reporting, by the member States, on the precautionary measures they have taken, the ACERWC will be better placed to guide them on areas of improvement.

In the digital era, children leave behind traces of their personal information such as biometric data, images, name, date of birth, and place of residence while accessing different internet-based platforms. In paragraph 18 of its concluding observations and recommendations to Ghana, the ACERWC expressed its concerns about the insufficiency of the existing framework in protecting the identity of children from disclosure to the public through media. With this, the ACERWC recommended that Ghana should take necessary initiatives towards protecting the identity of children.²⁰

Similarly, in paragraph 34 of its concluding observations and recommendations to Kenya, the ACERWC expressed concern about the limited awareness among law enforcement officers regarding children's right to privacy. This led to inadequate measures to safely collect and protect data, including information related to children.²¹

African Commission on Human and Peoples Rights

The African Commission on Human and Peoples Rights (ACHPR) on numerous occasions²² has acknowledged the

¹⁷ <https://africanlii.org/akn/aa-au/doc/general-comment/acerwc/2021-07/general-comment-no-7-on-article-27-of-the-acerwc-sexual-exploitation/eng@2020-07-01> (accessed on 29/02/2024).

¹⁸ <https://africanlii.org/akn/aa-au/doc/resolution/2022-03-15/resolution-no-172022-of-the-acerwc-working-group-on-childrens-rights-and-business-on-the-protection-and-promotion-of-childrens-rights-in-the-digital-sphere-in-africa/eng@2022-03-15> (accessed on 29/02/2024).

¹⁹ <https://africanlii.org/akn/aa-au/doc/resolution/2022-03-15/resolution-no-172022-of-the-acerwc-working-group-on-childrens-rights-and-business-on-the-protection-and-promotion-of-childrens-rights-in-the-digital-sphere-in-africa/eng@2022-03-15> (accessed on 29/02/2024).

²⁰ http://www.acerwc.africa/sites/default/files/2022-06/Concluding_observations_Ghana.pdf (accessed on 29/02/2024).

²¹ http://www.acerwc.africa/sites/default/files/2022-06/Concluding_Observation_on_kenya_2nd_Periodic_Report_to_the_ACHPR.pdf (accessed on 29/02/2024).

²² ACHPR during the 77th Ordinary session passed [Resolution 573 \(LXXVII\) on the deployment of mass and unlawful targeted communication surveillance and its impact on human rights in Africa](#) and in the 72nd Ordinary session the ACHPR passed

need to protect the right to privacy as a right that guarantees the enjoyment of other rights. Accordingly, as initially stated, children are protected, though not fully, by all international and regional instruments, policies, resolutions, and declarations.²³

Considering the digital developments, the ACHPR has taken an interest in addressing the challenges and emerging threats against children's right to privacy. The most recent trends and challenges associated with digital technology have been the issue of biometric and facial recognition technology.²⁴

While these technologies have enhanced the security of communities and their protection from crime, they also have their negative impacts. The collection of personal data and information without proper protection framework, and the lack of informed consent from individuals when providing their personal information, is a risk to data being stolen or copied.

Children are amongst groups of internet users that are most vulnerable to the intrusion of privacy as they generally cannot make informed decisions as they use technology. For example, they are requested to provide face ID and biometric data, to access certain sites and they consent without understanding the associated risks to their privacy.²⁵

In acknowledging technological challenges, the ACHPR passed a resolution to revise the [2002 Declaration of Principles on Freedom of Expression and Access to Information in Africa](#) in its 65th Ordinary session.²⁶ The Declaration serves as a non-binding instrument, offering an interpretation of [Article 9](#) of the Banjul Charter, which focuses on the right to information and freedom of expression. Notably, Principles 26-36 within the Declaration substantially enhance the responsibilities of States in establishing a comprehensive legal framework for privacy and personal data protection. This marks a landmark development in the protection of the right to privacy including for children.²⁷

The Declaration calls upon States to adopt appropriate legal frameworks that protect children from online harmful practices and safeguard their privacy and identity. Additionally, it mandates States to adopt laws that obligate internet providers to expeditiously remove any online content that is harmful to children and criminalise child sexual abuse and the sharing of intimate images.

[Resolution 522 \(LXXII\) on the protection of women against digital violence in Africa.](#)

²³ A. Singh & T. Power, *Understanding the Privacy Rights of the African Child in the Digital Era*, African Human Rights Law Journal, 2021, 99-125.

²⁴ <https://www.unicef.org/globalinsight/media/1101/file/UNICEF-Global-Insight-data-governance-surveillance-issue-brief-2020.pdf> (accessed on 03/03/2024).

²⁵ M. V. Cunha, *Child Privacy in the Age of Web 2.0 and 3.0: Challenges and Opportunities for Policy*, UNICEF, Italy, 2017, 8.

²⁶ <https://africanlii.org/akn/aa-au/statement/resolution/achpr/2016/350/eng@2016-06-18> (accessed on 03/03/2024).

²⁷ <https://africanlii.org/akn/aa-au/statement/declaration/achpr/2019/principles-on-freedom-of-expression-and-access-to-information/eng@2019-11-10> (accessed on 03/03/2024).

Conclusion and Recommendations

The proactive initiatives undertaken by the ACERWC and ACHPR in protecting children's rights in the digital era are noteworthy. Through various resolutions, comments, and declarations discussed above, these institutions have endeavoured to advocate for policy reforms in order to protect children's right to privacy. As a result, more than half of African States have enacted privacy and data protection laws. Importantly, many of these laws now include provisions addressing online child exploitation and abuse, as seen in countries which include Kenya²⁸, Cameroon²⁹, and South Africa.³⁰

In addition to these progressive initiatives, AHRIs should formulate and develop a General Comment that is specific to children's right to privacy in Africa. Such a General Comment would provide guidance to Member States on their obligations with respect to protecting children's right to privacy, including in the digital era.

Secondly, AHRIs should establish a dedicated working group focused on promoting children's right to privacy. Comprising specialized experts in children's digital privacy rights, this group would be entrusted with monitoring ongoing violations and compiling reports on States' compliance. This would ensure continuous monitoring and engagements with Members States to rectify violations and address threats against the children's right to privacy. With a clear mandate, the working group will undertake comprehensive investigations in close collaboration with civil society organizations, National Human Rights Institutions, and other key stakeholders. Drawing on their specialized expertise, the group will formulate evidence-based recommendations.

In conclusion, the efforts made by AHRIs have undeniably contributed significantly to advancing the right to privacy for African children. However, there are still ever-evolving digital trends and ongoing challenges that demand continued and strengthened protection of the African child's right to privacy. As technology continues to shape our world, AHRIs must remain vigilant and proactive in safeguarding the fundamental rights of children in the digital age.

END

²⁸ The Children Act, 2022 http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/2022/TheChildrenAct_2022.pdf (accessed on 03/03/2024).

²⁹ The Charter on Child Online Protection in Cameroon, 2023 <https://www.prc.cm/en/news/the-acts/laws/6653-law-no-2023-009-of-25-july-2023-to-institute-the-charter-on-child-online-protection-in-cameroon#:~:text=Law%20No.,child%20online%20protection%20in%20Cameroon> (accessed on 03/03/2024).

³⁰ The Cyber Crimes Act, 2020 https://www.gov.za/sites/default/files/gcis_document/202106/44651gon324.pdf (accessed on 03/03/2024).



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