

THE ROLE OF CHILD-SPECIFIC DATA PROTECTION REGULATION IN SAFEGUARDING CHILDREN'S PRIVACY RIGHTS IN AFRICA: THE WHY, THE WHAT AND THE HOW(?)

The right to privacy in Africa is most definitively expressed through article 10 of the African Charter on the Rights and Welfare of the Child ("ACERWC"). It both concretises the privacy rights of children as intrinsic to the regional human rights system, together with the right of parents or guardians to exercise supervision in this regard. This brings to the fore the critical challenge in realising children's privacy rights: the need to strike an appropriate balance between children's agency in line with their evolving maturities while protecting against the risks of their data being misused – framed by the dictate of the best interests of the child being of paramount importance.¹

There is no gainsaying that children's privacy is complex and multi-faceted, ranging across the spectrum of physical, communication and decisional privacy.² While there is no silver bullet, this paper will explore the role of regulation specifically in responding to the competing rights and interests. This is all the more pertinent in the light of the recent Child Online Safety and Empowerment Policy, a significant but relatively under-publicised development adopted by the African Union in 2024, which identifies the need to "[d]evelop a harmonised legal framework for children's online privacy and safety" as a core goal within its implementation plan.³

Grounded in a rights-based approach, the paper approaches this through three overarching questions. The first, *the why*, sets the cotextual imperative for child-specific data protection frameworks in circumstances where children's privacy rights are exploited by a range of different role-players. This is exacerbated by the asymmetry of power between African states and global technology companies, African children's privacy more vulnerable than elsewhere.⁴ Amid the plethora of data protection frameworks enacted of late, little to no focused attention has been paid to children specifically and even the African Union Convention of Cyber Security and Personal Data Protection has laid silent on the matter, creating a real need for this vacuum to be addressed.

The second question, *the what*, looks at what central tenets such regulation should entail. It is intended that four aspects in particular will be explored: (i) what basic principles should be enforced through regulation; (ii) what distinction, if any, should be made for different age categories of children; (iii) what threshold should be applied for consent to be deemed to be valid; and (iv) to what extent such framework can be applied extra-territorially beyond African borders.

Finally, *the how* will explore the form that such regulation might take situated in regional, sub-regional and domestic mechanisms. A review of child-specific frameworks in other jurisdictions reveals three broad approaches that have been taken: (i) binding federal or state legislation;⁵ (ii) guidance frameworks geared at the conduct of online platforms targeted at children;⁶ and (iii) sector-specific frameworks such as data privacy in schools.⁷ Drawing on international human rights standards, emerging regional best practice and comparative guidance, this paper will ultimately seek to posit in practical terms a proposed regulatory approach relevant to the African context specifically that can meaningfully and effectively safeguard the privacy rights of the child.

¹ Article 4(1) of the ACERWC.

² UNICEF, 'Children's online privacy and freedom of expression', 2018 ([here](#)).

³ African Union, 'Child Online Safety and Empowerment Policy', February 2024 at p 13 ([here](#)).

⁴ Media Monitoring Africa, 'Child-led technical research study: Outline and findings', November 2024 ([here](#)).

⁵ Children's Online Privacy Protection Act (United States), 1998 ([here](#)); Age-Appropriate Design Code Act (California), 2022 ([here](#)).

⁶ Information Commissioner's Office (United Kingdom), 'Age Appropriate Design Code', 2020 ([here](#)).

⁷ Council of Europe, 'Guidelines on Children's Data Protection in an Education Setting', 2021 ([here](#)).