

The African Union (AU) Convention on Cyber Security and Personal Data Protection

In June 2014, the African Union adopted the Convention on Cyber Security and Personal Data Protection. The goal of this Convention is to address the need for harmonized legislation in the area of cyber security in Member States of the African Union – including criminal procedural law - and to establish in each State party a mechanism capable of combating violations of privacy. It calls for the establishment of a normative framework consistent with the African legal, cultural, economic and social environment. With respect to online child sexual exploitation the Convention specifically includes child sexual abuse material.

The AU Convention & online child sexual exploitation

The Convention on Cyber Security and Personal Data Protection obligates States to take the necessary legislative and/or regulatory measures to make it a criminal offence to:

Art. 29 (3)(1) CHILD PORNOGRAPHY

- a Produce, register, offer, manufacture, make available, disseminate and transmit;
- b Procure for oneself or for another person, import or have imported, and export or have exported;
- c Possess an image or representation of child pornography in a computer system or on a computer data storage medium;
- d Facilitate or provide access to images, documents, sound or representation of a pornographic nature to a minor.

Why should your State become Party to the Convention?

> This Convention lays a progressive foundation that can encourage your State to enhance the approach to child sexual abuse material.

Caution needs to be taken to ensure protection of privacy and criminalisation of the other manifestations of online child sexual exploitation.

Definition of child sexual abuse material - Art. 1:

any visual depiction, of sexually explicit conduct, where:

- (a) the production of such visual depiction involves a minor;**
- (b) such depiction involves a minor engaging in sexually explicit conduct or when images of their sexual organs are produced or used for primarily sexual purposes and exploited with or without the child's knowledge;**
- (c) such visual depiction has been created, adapted, or modified to appear that a minor is engaging in sexually explicit conduct.**

Strengths of the Convention:

- + It criminalises all relevant conducts in relation to child sexual abuse material;
- + It criminalises digitally generated child sexual abuse material;
- + It criminalises the act of facilitating or providing access to pornographic content to a minor, which captures aspects of online grooming and sexual extortion;
- + It outlines principles that ought to be adhered to in processing personal data to protect privacy (e.g. transparency, and security of personal data);
- + It calls on mobilisation of all public and private actors, thereby promoting a holistic approach.



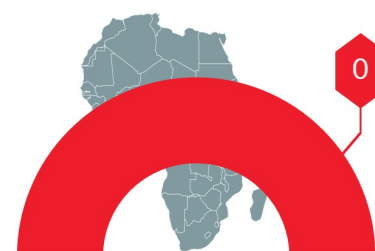
Weaknesses of the Convention

The Convention does not define and criminalise all the conducts related to online child sexual exploitation:

- online grooming;
- sexual extortion;
- live online child sexual abuse;

- It does use vague definitions that could be used to limit the freedom of speech;

- It does not specify clear minimum thresholds that national constitutions, legal frameworks and laws should meet and comply with.



No State has ratified the Convention