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**Comprehensive Legal Approaches to Combat Child Pornography:
An International and Regional Perspective.****Gamuchirai Tagwireyi**

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Abstract. *The Internet presents an exciting new world of information and communication. While technology offers unparalleled opportunities for children, it has an immeasurable impact on the potential for sexual exploitation. Cybercrime cuts across territorial borders, creating a new realm of illegal activity and undermining the feasible application of child protection laws worldwide. This article presents a framework of global child pornography model legislation, formulated by The International Centre for Missing and Exploited Children (ICMEC). The framework posits that proper legislative development for anti-child pornography laws is a process that encapsulates policy design and implementation. It offers a checklist of important provisions legislators can incorporate in anti-child pornography legislation, taking into account the varying cultural, religious, socio-economic, and political norms of each state. With the advent of Information and Communication Technology (ICT) development for Africa, African policymakers and regulators are encouraged to formulate comprehensive legislative strategies to protect children.*

Keywords: Africa, child protection, cybercrime, legislation, sexual exploitation, child pornography.

INTRODUCTION

The rapid growth in the use of ICTs has led to socio-economic development in Africa. Subsequently, the debate relating to e-policies is of growing importance (EAIGF 2010). With increased access to ICTs in Africa, and the continued spread of sophisticated mobile services, it has become a priority to understand and address Internet policy issues. As children are clear targets of these emerging technologies (ICMEC 2005), African countries need to engage in meaningful legislative development and policy advancement to protect children. The proliferation of cybercafés in Africa offers young people the opportunity to surf the Internet without supervision (Castels 1998). A greater number of child molesters are now using computer technology to organize, maintain, and increase the size of their child pornography collections; personally-manufactured illegal images of children are especially valuable on the Internet, and oftentimes molesters will trade images of their own sexual exploits (ICMEC 2010). When these images reach cyberspace, they are irretrievable and can circulate forever, consequently re-victimizing the child (ICMEC 2010). Children are not incidental purchasing power agents; they have continued to be targeted by the technology industry through the use of extremely savvy, fashionable marketing schemes. Sexual

offenders are equally aware of these trends and are quick to acquire the necessary skills that enable them to access, prey on, and ultimately victimize children (ICMEC 2005).

Laws are the foundation of most social policies and are central to the promotion and defense of child rights and welfare (ACPF 2007). They not only articulate a society's vision, but also the nature and limits of state action (ACPF 2007). Legislative frameworks are a requirement for state action, advocacy for nationally and universally held values, and legal protection of basic human rights, including child rights. Anti-child pornography laws should be introduced to protect children in response to rapid changes in ICTs. However, it is important to note that problems such as child labor, child sexual exploitation, and violence against children cannot be solved by legislation alone. Continuous research and training for IT personnel, financial services personnel, police officers, prosecutors, and the judiciary is needed to keep them abreast of evolving technologies and crimes against children. Furthermore, international cooperation is necessary to address the global nature of these crimes.

Scholars, legislators, and the public currently struggle with what the appropriate societal response to child pornography should be (Duncan 2010). While there has been significant focus on this issue in some regions, an African regional response is lacking. In 2006, and again in 2009, ICMEC researched international, regional, and national legal frameworks worldwide to gain a better understanding of existing anti-child pornography legislation and to gauge where the issue of child pornography stood on national political agendas. In looking at 196 countries, ICMEC's research focused on whether specific anti-child pornography legislation was in place and, if so, whether ICTs were taken into consideration. Based on the review, ICMEC proposed model legislation to assist countries in developing national legislation and policy frameworks that take a proactive approach to combating child pornography (ICMEC 2010). The model legislation puts forth a checklist of important provisions and concepts legislators should consider incorporating into anti-child pornography bills.

This paper will highlight the strides made by South Africa, and pending initiatives by Uganda, in battling child pornography. It is not intended to be an exhaustive list of African countries that have made or are making progress in adopting anti-child pornography legislation; rather, it is a sampling of how some African states have tackled child pornography in their e-polices. It is important for all states to begin an informed dialogue about the issue of child pornography and to develop a multi-faceted approach, including education and regulatory components. This article seeks to advance the dialogue around child protection legislation addressing the cybercrime of child pornography and to offer suggestions to African countries on policy implementation and legislative development.

SOCIAL AND LEGAL CONTEXT OF INTERNET USAGE FOR CHILDREN IN AFRICA

Africa is one of the last continents to utilize the Internet and mobile technology (Longe et al. 2009). However, it has experienced significant growth over the past decade (Ngwa et al. 2007). According to data from the International Telecommunications Union (ITU), in 2008 five Sub-Saharan African countries had ICT penetration rates of 10% (ITU 2008). Mobile and Internet businesses have grown significantly, particularly through telephone booths and cybercafés. Public information and services that were difficult to access a decade ago are now readily available, especially to rural and marginalized communities in Africa. The advent of mobile phones, instant short messaging (SMS), and multi-media message systems (MMS) also represents an emerging trend amongst African youth (Maumbe 2007). E-mail, 3G and 4G mobile phones, personal digital assistants (PDAs), and social networking via YouTube, Twitter, MySpace, Facebook, and Hi5, among others, have extended communication frontiers and are reaching Africa and its youth. The relationship between technological change and social context offers a vantage point from which to view the Internet's impact on Africa (Maumbe 2010).

Studies have been conducted in Ghana, Nigeria, and South Africa to determine the social trends of Internet usage. During the day, most cybercafé customers are adults, young men or women in their twenties or middle-aged adult men (Eszter et al. 2007). After school and into the evening, youth take over the cafés. The general pattern seems to be adults earlier, youth mid-afternoon and later. Youth often go online in groups, with one paying customer accompanied by friends (Eszter et al. 2007). Certainly cybercafés are largely domains of the young. The cafés represent a good register of Internet users. Café managers recognize the youthfulness of their clientele, but underestimate the potential dangers posed by the Internet to them (Rathgeber et al. 2000). Cybercafé managers report that young customers go online to e-mail, browse sports and entertainment news, and search for jobs and educational opportunities. Youth go online primarily for social reasons; by far the most popular activities are e-mail and chatting. There are customers who troll for pornography (Rathgeber et al. 2000). Some managers actively discourage this, while others overlook it (Eszter et al. 2007).

According to research on Internet usage and the exposure to pornography conducted by the South African Films and Publication Board (FPB), 43% of children are exposed to disturbing, harmful, and objectionable materials on the Internet; this number would be much higher if those who have intentionally sought out these materials were taken into consideration. As mobile devices become Internet-enabled, the complexity of controlling Internet access increases. 88% of the children who participated in the FPB survey reported that they have personal cellular telephones. More than half of the children (52%) reported accessing the Internet at home; 37% have Internet access at school; and 23% access the Internet at public venues. 73% of the children felt that being exposed to pornography can be harmful. Respondents were of the opinion that pornography exposes children to something for which they are not emotionally ready and indirectly encourages them to become sexually active at an early age (FPB 2008).

Key findings of the FPB study – involving children aged 13 to 17 years who were enrolled in schools in Cape Town, Durban, and Johannesburg, in South Africa – revealed that 64% reported that they have seen pornographic images on the Internet, with 70% reporting coming across pornographic sites, mainly through “pop-ups” and typing search words while surfing the Internet (FPB 2008).

As the Internet continues to develop in Africa, so too will laws regulating its use. To what extent these legislative frameworks will encourage online child protection largely remains to be seen. However, current trends in the region show a positive movement towards protecting children in ICT development.

MODEL LEGISLATION REVIEW

Given the above statistics and social trends, the question arises: how do governments view use of the Internet and developing technologies through the lens of child protection? Ultimately, ICMEC’s model child pornography legislation project sought to provide insight into this question. The project aims to assist countries worldwide with taking the necessary steps to combat child pornography offenses.

ICMEC’s groundbreaking publication, *Child Pornography: Model Legislation & Global Review*, was first published in 2006, following 18 months of comprehensive research and analysis. The 1st edition of the report included information on the then 184 Interpol Member Countries, with subsequent editions taking into consideration new members and new legislation. In 2009, ICMEC conducted a complete review of anti-child pornography legislation around the world, this time reviewing 196 countries, regardless of their membership in Interpol. The 6th edition of the report was published in 2010 (ICMEC 2010).

Global Review

Child Pornography: Model Legislation & Global Review looks at whether national legislation:

- (i) exists with specific regard to child pornography;
- (ii) provides a definition of child pornography;
- (iii) criminalizes computer-facilitated offenses;
- (iv) criminalizes the knowing possession of child pornography, regardless of the intent to distribute (“simple possession”); and
- (v) requires Internet Service Providers (ISPs) to report suspected child pornography to law enforcement or to some other mandated agency (ICMEC 2010).

Of the 196 countries reviewed, the end results continue to shock:

- only **45** have legislation deemed sufficient to combat child pornography offenses (**8** countries meet all of the criteria and **37** countries meet all but the last criteria pertaining to ISP reporting); and
- **89** have no legislation at all that specifically addresses child pornography (ICMEC 2010).

Of the remaining countries that do have legislation specifically addressing child pornography:

- **52** do not define child pornography in national legislation;
- **18** do not provide for computer-facilitated offenses; and
- **33** do not criminalize the simple possession of child pornography.

African Regional Review

Of the 52 African countries reviewed:

- only **2** have legislation deemed sufficient to combat child pornography;
- **40** do not have any legislation at all addressing child pornography;
- **49** do not define child pornography;
- **44** do not criminalize computer-facilitated offenses;
- **49** do not criminalize the simple possession of child pornography; and
- **51** do not mandate ISP reporting.

Country	Legislation Specific to Child Pornography	“Child Pornography” Defined	Computer-Facilitated Offenses	Simple Possession	ISP Reporting
Algeria	×	×	×	×	×
Angola	×	×	×	×	×
Benin	×	×	×	×	×
Botswana	✓	✓	✓	✓	×
Burkina-Faso	×	×	×	×	×
Burundi	×	×	×	×	×
Cameroon	×	×	×	×	×
Cape Verde	✓	×	×	×	×
Central African Republic	×	×	×	×	×
Chad	×	×	×	×	×

Chad	×	×	×	×	×
Comoros	×	×	×	×	×
Congo	×	×	×	×	×
Côte d'Ivoire	×	×	×	×	×
Democratic Republic of Congo	✓	✓	✓	×	×
Djibouti	×	×	×	×	×
Egypt	✓	×	✓	✓	×
Equatorial Guinea	×	×	×	×	×
Eritrea	×	×	×	×	×
Ethiopia	×	×	×	×	×
Gabon	×	×	×	×	×
Gambia	✓	×	×	×	×
Ghana	×	×	×	×	×
Guinea	×	×	×	×	×
Guinea Bissau	×	×	×	×	×
Kenya	✓	×	✓	×	×
Lesotho	×	×	×	×	×
Liberia	×	×	×	×	×
Libya	×	×	×	×	×
Madagascar	✓	×	✓	×	×
Malawi	×	×	×	×	×
Mali	✓	×	×	×	×
Mauritania	×	×	×	×	×
Mauritius	✓	×	✓	×	×
Morocco	✓	×	×	✓	×
Mozambique	×	×	×	×	×
Namibia	×	×	×	×	×
Niger	×	×	×	×	×
Nigeria	×	×	×	×	×
Rwanda	×	×	×	×	×
Sao Tome & Principe	×	×	×	×	×
Senegal	×	×	×	×	×
Sierra Leone	×	×	×	×	×
Somalia	×	×	×	×	×
South Africa	✓	✓	✓	✓	✓
Sudan	×	×	×	×	×
Swaziland	×	×	×	×	×
Tanzania	×	×	×	×	×
Togo	×	×	×	×	×
Tunisia	✓	×	✓	×	×
Uganda	×	×	×	×	×
Zambia	×	×	×	×	×
Zimbabwe	×	×	×	×	×

Figure 1: African Regional Legislative Review(Excerpt from ICMEC's *Child Pornography: Model Legislation and Global Review* (6th Edition))

SUGGESTED CHECKLIST FOR DRAFTING MODEL CHILD PORNOGRAPHY LEGISLATION

A comprehensive legislative strategy that is aimed at combating child pornography and that allows law enforcement to aggressively investigate and prosecute offenders must extend beyond the criminalization of certain actions by child sex offenders. While such is of obvious importance, of equal value are *inter alia*: adequately defining the terminology used in national penal codes; legislating corporate social responsibility; enhancing sanctions; forfeiting assets; and strengthening sentencing provisions (ICMEC 2010).

Definitions in Anti-Child Pornography Legislation

Defining “child,” for the purposes of child pornography, as “anyone under the age of 18,” regardless of the age of sexual consent.

The legal age at which a person can consent to sexual activity varies from country to country, a challenging obstacle to the consistent and harmonized protection of children from sexual exploitation on the international level (ICMEC 2010). The UN Convention on the Rights of the Child (CRC) and the African Charter on the Rights and Welfare of the Child (ACRWC) universally set the age of a minor as 18 years. For these reasons, “child,” for purposes of child pornography legislation, should be defined as “anyone under the age of 18 years.”

Define “child pornography” to include computer- and Internet-specific terminology.

So that there can be no question in the mind of the offender or on the part of law enforcement, a judge, or a jury, child pornography should be adequately defined in national legislation. The definition should include, at a minimum, the visual representation or depiction of a child engaged in a (real or simulated) sexual display, act, or performance. There may also be words or phrases within the definition of “child pornography” that require further explanation. Moreover, it is imperative that, with the advent of the Internet and new technology, mention be made of all the forms child pornography can take including film, DVD, CD-Rom, via the Internet, and other electronic media (ICMEC 2010).

Offenses

Incorporate child pornography offenses into national penal codes.

Labor legislation that bans the worst forms of child labor, including child pornography, without detailing specific criminal offenses, criminal sanctions, and criminal punishments is insufficient (ICMEC 2010). Further, countries in which there is a general ban on pornography, regardless of the age of the individuals being depicted, are not considered to have “legislation specific to child pornography.”

Criminalize the knowing possession of child pornography, regardless of the intent to distribute.

Every image of child pornography that is acquired encourages the further growth of this illicit industry. Evidence suggests that victims portrayed in the images are getting younger and younger and the images are becoming more graphic and more violent (Duncan 2010).

The Internet Watch Foundation (IWF) in the United Kingdom reported that, out of all reports of child pornography received by IWF in 2009, 72% of the victims appeared to be children 10 years of age or younger (IWF 2009). Similar findings in the United States demonstrate that 83% of arrested child

pornography possessors had images of children ages 6 to 12; 39% had images of children ages 3 to 5; and 19% had images of infants and toddlers under age 3 (Wolak et al. 2005).

Criminalize knowingly downloading, or knowingly viewing, child pornography images on the Internet and using the Internet to distribute child pornography.

Offenders use the Internet to view, download, distribute, acquire, and trade child pornography on a daily basis. It is imperative that specific mention be made as to the *modus operandi* of making, viewing, and possessing child pornography (ICMEC 2010).

Penalize those who make known to others where to find child pornography.

Offering information on where to find child pornography by providing a website address, for example, should be criminalized. An individual who assists in the commission of a crime (*i.e.*, knowingly possessing or knowingly downloading child pornography) through offering advice or taking actions that facilitate knowingly possessing or knowingly downloading illegal content should be penalized (ICMEC 2010).

Criminalize the actions of parents or legal guardians who acquiesce to their child's participation in child pornography.

Similar to aiding and abetting in the commission of a crime, a parent or legal guardian who acquiesces to his/her child's participation in pornography must be prosecuted (ICMEC 2010).

Criminalize grooming offenses.

Grooming represents the initial actions taken by an offender to "prepare" a child for a sexual relationship. Grooming includes online enticement and/or showing pornography (adult or child) to a child to lure, invite, or persuade the child to meet for sexual acts. Offenders may use email, instant messaging, bulletin boards, chat rooms, or other means to first gain a child's trust and then arrange a face-to-face meeting (ICMEC 2010).

Punish attempt crimes.

Attempt crimes should be criminalized in order to punish an individual who has demonstrated an inclination to commit a crime against a child without having to wait for the completion of the crime (ICMEC 2010).

Mandatory Reporting

There are three classes of individuals and organizations that should be required to report suspected child pornography to law enforcement or some other mandated agency:

- Individuals who, in their everyday, professional capacity, come into contact with children and owe a certain duty of care to those children (e.g., healthcare and social services professionals, teachers, school counselors, and law enforcement officers);
- Individuals who, in their everyday, professional capacity, do not come into contact with children, but may potentially be exposed to child pornography as a result of their job responsibilities (e.g., photo developers and IT professionals); and
- Organizations or corporations whose services are being used to proliferate child pornography activities and who, as a result, should exercise a certain amount of industry responsibility (e.g., ISPs, credit card companies, and banks) (ICMEC 2010).

Sanctions and Sentencing

Address the criminal liability of children involved in pornography.

There should be no criminal liability for children involved in pornography, and such should be clearly stated in national legislation. Regardless of whether a child is a compliant victim or a non-cooperative witness, the fact remains that he/she is a child victim. Legal provisions should be enacted that would allow for protections of the child victim as a witness in any judicial proceeding that may occur, including closed-circuit testimony in certain circumstances and establishing guidelines for the presence of victim advocates in the courtroom (ICMEC 2010).

Enhance penalties for repeat offenders, organized crime participants, and other factors that may be considered upon sentencing.

All violations of enacted anti-child pornography legislation should carry strict sentences that will be enforced, thereby guaranteeing a true deterrent effect. Mere fines and misdemeanor classifications are insufficient. Sentencing provisions should consider aggravating factors (ICMEC 2010).

Forfeiture of assets must be a requirement.

Convicted defendants should be subject to provisions that allow for the confiscation of property, proceeds, or assets that resulted from child pornography activities. Confiscated funds could, in turn, be used to support programs for formerly sexually exploited children, children at risk of sexual exploitation, and child victims in need of special care (ICMEC 2010).

ANTI-CHILD PORNOGRAPHY POLICY INITIATIVES IN AFRICA

Country-specific examples from South Africa and Uganda, as well as several regional initiatives, demonstrate the importance and impact of comprehensive law and policy responses to child pornography. They also serve as functional examples for other developing countries with similar multi-cultural societies and similar ICT diffusion trends.

South Africa

South Africa is the largest Internet market in sub-Saharan Africa, providing researchers with an ideal case study on the demographic patterns of Internet use in developing countries and legislative approaches to child protection in ICTs. In 2010, the number of Internet users exceeded 5 million in South Africa for the first time, surpassing 10% Internet penetration for the country (SouthAfrica.Info 2010). While the true extent of child pornography is unknown, 2010 has seen the pervasive nature of the crime with the arrests of six child pornography rings in South Africa (News24 2010).

South African child protection legislation provides a comprehensive framework to combat child pornography offenses. For example, the Films and Publication Act No 3. of 2009 specifically defines the crime of child pornography according to international legal standards and gives effect to other child protection legislation, including the Children's Act of 2005 and the Criminal Law Sexual Offences and Related Matters Amendment Act of 2007, which contain provisions that criminalize computer-facilitated child pornography offenses. The Films and Publication Act mandates the FPB to classify and regulate media content, whilst protecting the public, especially children, from sexual exploitation in media content.

In October 2010, the FPB established a South African Internet hotline – www.fpbprochild.org.za – that provides the public with the secure, confidential, and online means to report child pornography images discovered accidentally on the Internet. This may also include child grooming activities hosted in chat rooms (FPB ProChild 2008). Internet Content Analysts on the hotline team assess the reported content

and take appropriate action (e.g., where content is verified as containing child pornography, by removing or blocking the website). The work of the FPB has recently received international recognition from INHOPE, the International Association of Internet Hotlines, and is now a member of the INHOPE network (INHOPE 2010). The 2010 World Cup, which was held in South Africa, created an opportunity for the FPB, the Department of Home Affairs, and a plethora of NGOs, to conduct widespread campaigns on the potential increase of crimes against children, especially child pornography and child trafficking, during the World Cup. These robust awareness campaigns have increased knowledge of, and South Africa has gained momentum in, its efforts to fight child pornography.

Uganda

Uganda was one of the first countries in sub-Saharan Africa to achieve Internet connectivity. According to 2004 research on cybercrime in Uganda, 90% of respondents had been victims of identity theft, whereas at least 25% confessed to having been involved in activities related to cybercrime (Tushabe et al. 2005). Realizing the potential harm inherent in ICTs, between September and October 2010, the Ugandan Parliament passed three anti-cybercrime bills – Electronic Signatures Bill, Electronic Transactions Bill, and Computer Misuse Bill – which are now awaiting signature by the President. The Computer Misuse Bill provides a legislative framework for child pornography. It prohibits several types of computer crimes – unauthorized access, modification of contents, theft of computer services – and punishes those who use computers to disseminate child pornography. Furthermore, law enforcement is empowered to conduct search and seizure operations if there are reasonable grounds to believe that a crime has been or is about to be committed. ICMEC's reading of the Computer Misuse Bill indicates that it would satisfy the five essential elements for effective child pornography legislation when it becomes law.

The value placed on child participation in Uganda is also of importance. In October 2010, children in Uganda called on the government to enact laws to restrict access to the Internet and exposure to child pornography (Kwesiga 2010). A petition was presented by children to the Minister of Children's Affairs at the launch of Plan International's "Because I am Girl" project, aimed at empowering girls in ICT development. The petition, written by 30 children (most of whom are girls) listed several challenges including the use of social networking sites to lure girls into sex, trafficking, and pornography.

Within the Ugandan Police Force, the Cybercrime Unit of the Criminal Investigation Department was established in 2009 to address cybercrime (Migusha 2009). Law enforcement still faces difficulties when investigating and prosecuting cybercrime due to the lack of comprehensive legislation, capacity, and expertise. While anti-child pornography legislation is a crucial component for combating such crimes, of equal importance is capacity building for law enforcement so that they adequately understand the elements and dynamics of cybercrime, including child pornography.

Uganda is also a member of the East Africa Internet Governance Forum (see below).

Regional Initiatives

The African Cyber Crime Prevention Centre (ACCP) was launched in August 2010 in Kampala, Uganda. The ACCP is an initiative of the UN's African Institute for the Prevention of Crime and the Treatment of Offenders, which works with civil society and governmental bodies in Africa to combat cybercrime.

The Kenyan government, Microsoft East Africa, and Cradle Children's Foundation embarked on a public-private partnership in February 2010 to launch the "Child Internet Safety and Security Awareness Program" (CISSA) to enhance child online protection and to educate parents about possible Internet hazards (Majtenyi 2010).

The East Africa Internet Governance Forum (EAIGF) is a proactive Forum that seeks to address a wide range of ICT elements, including cybercrime and child pornography. The EAIGF Member Countries, Burundi, Kenya, Rwanda, Uganda and Tanzania, strive to create awareness, develop a common understanding of East Africa Internet governance issues, and build capacity to allow for meaningful participation in the development and governance of global Internet policy.

CONCLUSIONS AND RECOMMENDATIONS

The results of ICMEC's model child pornography legislation project are expected to draw the attention of policymakers to the need to consider the negative aspects of Internet use when developing information and communication policies. Beyond the purely technological aspects, policies should also consider the socio-cultural dimensions of the Internet and the phenomenon of sexual exploitation in its many forms which undermine social values, human rights tenets, and national and international laws. It is now increasingly recognised internationally that social protection policy frameworks and programmes need to be informed by the diversity of vulnerabilities and risks at different stages. In the African discourse, one area that has been neglected in social protection strategies and policy frameworks is the need to address children's vulnerability to the risks of violence, sexual exploitation, abuse, and neglect. ICT development in Africa may encounter these vulnerabilities; therefore adequate legislative provisions must be developed to protect children from sexual predators on the Internet.

Over the past six years, ICMEC's research regarding the status of child pornography legislation globally has demonstrated that progress is slow and steady. Various international legal instruments are in place, which have helped raise awareness and attach new urgency to this cause. It remains clear, however, that more countries need to take action now in order to secure a safer future for the world's children. While combating child pornography at home and abroad is daunting, harmonization of laws is essential to effectively address this growing, international phenomenon.

There is a need for greater knowledge of ICT-related sexual exploitation and violence against children within the arena of ICT development. There should be greater emphasis on preventative strategies through legislative frameworks that meet international standards. Hence the importance of raising public awareness, by warning young people and parents of the risks inherent in Internet use is crucial. Holistic victim support services must also be established to offer children psychological assistance and legal recourse. The results of ICMEC's investigation will be useful to governments, associations, non-governmental organizations, law enforcement bodies, and African citizens as they begin to address the potential hazards of the Internet to the young people of Africa.

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