The Repression of Online Sexual Blackmail of Children in Burundian Positive Law

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Abstract

In March 2022, the government of Burundi put in place a law on the prevention and repression of cybercrime. The purpose of this study is to analyze whether this law n°1/10 of March 22, 2022, on the prevention and repression of cybercrime incriminates one of the new forms of sexual exploitation and abuse of children in this informational world: the sexual blackmail of children online. A reading of paragraph six of the seventh section of this cybercrime law, entitled “Threats, blackmail, and publication of rumors,” might lead one to believe that Burundian lawmakers have criminalized acts of online blackmail. An analysis of the provisions of articles 50, 51, and 52 of this law on cybercrime reveals that acts of online blackmail are not criminalized, much fewer acts of sexual blackmail of children online. On the contrary, only threats with racist or xenophobic motivation, attacks against the confidentiality, integrity, and availability of data and computer systems, and the publication of rumors are criminalized.

Keywords: child, sexual abuse, penal law, Burundi

1. Introduction

As Romain BOSS points out, information and communication technologies are at the origin of many social, commercial, and cultural revolutions, but they have also increased the vulnerability of our societies. This author adds that the Internet has
aggravated the vulnerability of children and has facilitated pedophilia, which increasingly threatens the physical and moral integrity of children[1, p. 91]. For this reason, these technologies have opened up a new informational space (cyberspace) in addition to land, sea, and air space.

As a result, specific offenses related to information and communication technologies have been created and are committed through this new space. This is the case of images or videos self-produced by children who are solicited for sexual purposes and the aggressor takes advantage of this, within the framework of blackmail, to extort sexual favors, money, etc. Under these conditions, the States are obliged to take all the necessary measures to adapt their regulations to repress this type of cybercrime. Thus, in March 2022, the government of Burundi put in place a law on the prevention and repression of cybercrime[2]. But then, the question that arises is whether this law incriminates the sexual blackmail of children online. In this work, it will be our duty to answer this question, which is even its objective or quintessence. In the first place, after a brief introduction, it will be a question of identifying the concept of sexual blackmail. Secondly, our work consists of analyzing whether Burundian legislation represses online sexual blackmail in general and for children in particular. This obliges us to make a comparative study of Burundian legislation with international law on the subject.

2. Methods and methodology

The study proposes to answer the problem using the documentary method which will allow us to search, identify and find documents related to this subject. The period of research is 2018 to 2021 which allows us to analyze the repression of online sexual blackmail of children in Burundian positive law.

3. Results

<table>
<thead>
<tr>
<th>Name of crime</th>
<th>It is defined by burundian law</th>
<th>It is punished in Burundi</th>
<th>Consideration in comparative law</th>
<th>The way image goes out</th>
<th>Target</th>
<th>Shape</th>
</tr>
</thead>
<tbody>
<tr>
<td>sexual blackmail</td>
<td>No</td>
<td>Yes</td>
<td>sextortion</td>
<td>1. It goes out by the will of the victim</td>
<td>money or any other benefit</td>
<td></td>
</tr>
<tr>
<td>sexual blackmail of children</td>
<td>NO</td>
<td>Yes</td>
<td>webcam blackmail</td>
<td>2. It goes out by torture from the abuser</td>
<td>exploitative content</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>sexually abusive</td>
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<td></td>
<td>Child sexual extort</td>
<td></td>
<td>1. threats, intimidation 2. coercion once the person has been persuaded to send the first sexualized images</td>
<td></td>
</tr>
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</table>
4. Discussion

1. Notion of sexual blackmail of children (extortion of sexual favors or sextortion of children)

Burundian law does not define neither sexual blackmail nor sexual blackmail of children. But it defines and punishes only the offense of blackmail[3]. According to Burundian law, blackmail is the act of obtaining, by threatening to reveal or impute facts that are likely to harm one's honor or consideration, either a signature, a commitment or renunciation, or the revelation of a secret, or the handing over of funds, securities or any other property[3, Art. 284].

In comparative law, child sexual blackmail is practiced through sexually abusive and exploitative content representing the child victim to extort sexual favors (online or offline), money, or any other benefit, by threatening to share this content without his consent[4, p. 32].

In other words, sexual blackmail, also known as "sextortion" or "webcam blackmail", is defined as a form of blackmail carried out with the help of self-produced images by a person to extort sexual favors, money, or any other benefit from them, by threatening to share this material without their consent (by publishing these images on social networks, for example)[5, p. 57]. Often, the influence and manipulation exerted by the abuser typically over long periods escalate into threats, intimidation, and coercion once the person has been persuaded to send the first sexualized images of themselves[5, p. 57].

Cyber blackmail can also be carried out through hacking. Thus, hackers penetrate your computer or cell phone and take control of your camera. Then, by email, they inform you of the scam before explaining that they have in their possession images and intimate videos of you watching pornographic films, in the hope of blackmailing you. In this regard, according to the experts of the inter-institutional working group, it is important to emphasize that sexual blackmail is considered a characteristic of online solicitation, both of children and adults, and the use of this type of blackmail seems to be increasingly frequent and includes increasingly extreme, violent, sadistic or degrading demands from the aggressors[6]. When used against children, sexual blackmail usually involves a process whereby children or young people are coerced to continue producing sexual material and/or are made to participate in harmful acts under the threat of exposure to others of material representing them[5, p. 57]. As for the effects, in some cases, according to the experts of the inter-institutional working group, the vicious circle of abuse is so out of control that the victims try to self-harm or commit suicide, thinking that this is the only way to escape.

2. The repression of child sexual blackmail (extortion of sexual favors) in Burundian law

The Burundian law on the prevention and repression of cybercrime in its seventh section, sixth paragraph, provides for offenses relating to threats, blackmail, and
publication of rumors[2, Sec. 7 §6]. Thus, as this law is not explicit about the qualification of sexual blackmail or sextortion (extortion of sexual favors) or sexting, terms that are nevertheless used by international law, we will try to find this offense in those provided for in articles 50, 51 and 52 of the said law, failing which we will question the common law.

From the outset, we consider that article 52 will be of little interest to us since it deals with the publication of rumors, and we will focus instead on the provisions of articles 50 and 51, which are supposed to deal with threats and blackmail[2, Art. 50 et 51; Section 6 §.7].

Thus, Article 50 of this law provides as follows: "Anyone who threatens a person through a computer system because of his or her membership in a group, race, color, ancestry, national or ethnic origin or religion, insofar as this membership serves as a pretext for any of these pretexts, shall be punished by a criminal sentence of two to five years and a fine of ten to twenty million Burundian francs.

When the threat is made with the order or under the condition of accomplishing or allowing the accomplishment of an illicit act or an act prejudicial to others, the penalty is five to ten years of penal servitude and a fine of twenty to thirty million Burundian francs. In the case of a threat to kill, the penalty is ten to fifteen years of penal servitude and a fine of ten to twenty million Burundian francs. An analysis of the provisions of Article 50 of the law under review reveals that they do not refer to online sexual blackmail, let alone online sexual blackmail of children

On the contrary, paragraph 1 of the above-mentioned article 50 refers to a threat with racist or xenophobic motivation. This is what emerges from a comparative analysis of the provisions of Article 4 of the Additional Protocol to the Council of Europe Convention on Cybercrime, concerning the criminalization of acts of a racist and xenophobic nature committed through computer systems[7, Art. 4]. Paragraphs 2 and 3 of the aforementioned law only establish aggravating circumstances for this offense.

For the time being, we must analyze the provisions of Article 51 concerning the offense of sexual blackmail in cyberspace. Article 51 of the law under review states: "Anyone who, employing a threat, undermines the confidentiality or integrity of computer data or the functioning of a computer system shall be punished by a criminal penalty of ten to fifteen years and a fine of fifteen to twenty million euros, or one of these penalties only. A reading of the title of paragraph six of the seventh section of the law on cybercrime could lead one to believe, and with good reason, that the Burundian legislator wanted to criminalize cyber blackmail through the aforementioned article 51. In reality, this is not the case.

On the other hand, an analysis of the provisions of Article 51 of the law on cybercrime shows that the offenses in question are offenses against the confidentiality, integrity, and availability of data and computer systems, committed utilizing threats or extortion, but not acts of blackmail, as one might think from reading paragraph six of the seventh section of the law on cybercrime.

While the Burundian legislator does not specify the scope of what is meant by breaches of confidentiality, the integrity of computer data, or the functioning of the
computer system, the Council of Europe has specified the offenses that may fall within this scope.
Under a title entitled Offences against the confidentiality, integrity, and availability of computer data and systems [8, Ch. II section 1, title II], the Budapest Convention on Cybercrime provides for offenses such as illegal access, illegal interception, data interference, system interference, and abuse of devices [8, Arts. 2–6].
Thus, it appears from the above that Burundian cybercrime law does not criminalize online extortion or blackmail committed using sexualized images or videos produced by the victim. In other words, the sexual blackmail of children in this case.
For the moment, it is important to analyze what the common law provides to find out if the general law (penal code) says anything about it. Indeed, Article 284 of the Burundian penal code, which incriminates blackmail, is worded as follows: “Blackmail is the fact of obtaining, by threatening to reveal or impute facts likely to harm honor or consideration, either a signature, a commitment or a renunciation, or the revelation of a secret, or the handing over of funds, values or any other property”. Blackmail is punishable by penal servitude of one to five years and a fine of fifty to one hundred thousand Burundian francs. The penalty may be doubled when the perpetrator has carried out the threat.
Recall that online child sexual blackmail is defined as a form of blackmail carried out with the help of self-produced images by a person to extort sexual favors, money, or any other benefit, by threatening to share this material without his consent (by publishing these images on social networks, for example)[5, p. 57] as we have highlighted.
It follows from this definition that the offense of child sexual blackmail would be committed in two movements:
In the first step, the offender goes through the offense of soliciting children for sexual purposes to obtain pornographic or sexualized images or videos self-produced by the child. In the second step, once the abuser has already received these images or videos, he starts to extort sexual favors, money, or any other benefit, threatening to share these videos or images without her consent (by publishing them on social networks, for example).
Indeed, it is known that the criminal provisions must be interpreted strictly under the principle that the criminal law is of strict interpretation [3, Art. 3]. Therefore, because of the above, by comparing the provisions of the offense of blackmail as defined by the provisions of article 284 of the Burundian penal code with the notion of the offense of sexual blackmail of children as defined by international human rights law, it is clear that the offense of sexual blackmail of children online would not fall within the scope of the offense of blackmail as defined by article 284 of the Burundian penal code.
In the final analysis, to ascertain the intention of the Burundian legislator, we have taken into consideration the seriousness of the penalties imposed on the perpetrators of cybercrime. Indeed, an analysis of the penalties for cybercrime as set out in the Burundian law of 2022 on cybercrime leads us to the conclusion that these offenses are severely punished in comparison with traditional or common law offenses.
However, blackmail as provided for and punished by the penal code is not punished with the same severity as the "blackmail" that the legislator wanted to provide for and punish in section seven of the law on cybercrime in paragraph six on the offenses of threats, blackmail and publication of rumors. This also leads us to conclude that the Burundian legislator did not intend to imply that the blackmail provided for and sanctioned in Article 284 of the penal code would also cover cyber sexual blackmail as well as cyber sexual blackmail of children online.

5. Conclusion

Our study focused on the repression of online sexual blackmail of children in Burundian positive law. The objective was to analyze the new cybercrime law enacted by the Burundian legislature in March 2022 that criminalizes online child sexual blackmail.

While paragraph six of the seventh section of the cybercrime law stipulates the repression of three offenses, namely threats, blackmail, and the publication of rumors, an analysis of the incriminated facts reveals a different reality.

Instead of punishing blackmail, the law on cybercrime incriminates only acts that undermine confidentiality, the integrity of computer data, or the functioning of the computer system. As a result, the cybercrime law has not criminalized online blackmail, let alone online child sexual blackmail. The same is true for general criminal law. Under these conditions, the legislator should intervene and first remove the ambiguity that reigns in the provisions of Article 51 of the law on cybercrime to finally criminalize cyber blackmail as it already has the will. In addition, to better protect the privacy of individuals in general and children in particular, we invite him to put special emphasis on the repression of cyber sexual blackmail of children. By doing so, it will have contributed to the fight against sexual abuse and exploitation of children through the digital medium.

References


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