The Repression of the Solicitation of Children for Sexual Purposes Online (Grooming) in Burundian Positive Law

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Abstract

This study aims to analyze whether the law n°1/10 of March 22, 2022, on the prevention and repression of cybercrime, incriminates one of the new forms of exploitation and sexual abuse of children in this informational world: the solicitation of children for sexual purposes. A comparative analysis has allowed us to identify that the acts of soliciting children for sexual purposes are incriminated in article 44 of this law, but that they are poorly qualified. They are qualified as the publication of indecent information in electronic form. This, in our opinion, is wrong in its very substance as we have noted in our study. This being said, the current state of the literature in information and communication technology law uses appropriate terminology to qualify these types of facts which is the solicitation of children for sexual purposes. This is the case with some international legal instruments, as well as the Terminology Guide of the Intra-institutional Working Group, as we have noted. We conclude by inviting the Burundian legislator to remedy this situation. In this way, it would have contributed to more effective protection of children against all forms of sexual exploitation and abuse, if we use
the words of Jaap E. Doek, Chair of the Interagency Working Group. In these circumstances, it would be necessary to replace the expression of publication of indecent information in electronic form with that of solicitation of children for sexual purposes. This would make the work easier for all the organizations and people working for the prevention and elimination of all forms of sexual exploitation and abuse of children.

**Keywords:** child, Burundi, penal law, child pornography, sexual exploitation

1. **Introduction**

The evolution of information and communication technologies and the growing vulnerability of children in this informational world have allowed us to research "the protection of children on the Internet in Burundian positive law: the case of sexual abuse and exploitation of children online"[1]. To this end, we noted that there is a legal vacuum in Burundian law regarding the protection of children against the solicitation of children for sexual purposes, also known as grooming or pedophilia. Thus, we have, on this occasion, invited the Burundian government to criminalize the facts of this new form of sexual abuse and exploitation of children online to better protect the integrity and privacy of the child in cyberspace. Since March 2022, the Burundian government has put in place Law No. 1/10 of March 22, 2022, on the prevention and repression of cybercrime[2]. Therefore, the question that came to mind was whether the Burundian legislator has criminalized acts of sexual solicitation of children for sexual purposes through this new law on cybercrime and whether it has taken into account the current state of the literature and the current momentum in the fight against online child sexual abuse and exploitation.

In other words, this article proposes, from a purely legal point of view, a comparative study of the protection of children against acts of pedophilia or solicitation of children for sexual purposes conferred by Burundian law concerning that conferred by other more or less advanced legal systems, such as the European system.

In these conditions, this study will identify the shortcomings or advances in Burundian law, if any, on this point to allow legal professionals to have a common vision with the aim of ensuring the proper application of this law and to encourage the Burundian government to take appropriate measures if necessary. We will begin by defining the concept of solicitation of children for sexual purposes, and then we will examine its applicability to the facts incriminated by the Burundian law on cybercrime.

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 the
solicitation of children for sexual purposes online (grooming) in Burundian positive law.

3. Results

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4. Discussion

1. The notion of solicitation of children for sexual purposes (grooming)

Grooming is the "process of establishing and/or building a relationship with a child, either in person or through the use of the Internet or other computer technologies, to facilitate sexual contact with the child, whether online or offline[3, p. 29]. At the international level, the Lanzarote Convention is the first international legal instrument to define "grooming" and, in article 23, requires States Parties to "criminalize the intentional offer by an adult, through communication and information technologies, of a meeting to a child under the age of majority established following Article 18, paragraph 2, to commit an offense established under Articles 18, paragraph 1. a, or 20, paragraph 1. a, when this proposal has been followed by material acts leading to the said meeting"[4, p. 53].

Thus, according to the provisions of Article 23 of the Lanzarote Convention, the offense of soliciting children for sexual purposes must include the following elements: (i) the solicitation of a child for sexual purposes (the "exchange of sexual words with a child") ; (ii) intentionally offering to meet a child to commit a sexual offense against that child; and (iii) the "physical acts leading to the encounter".

Thus, a sexual offense through physical activity doesn't need to be committed. It is sufficient that concrete steps have been taken for the said encounter to take place (the fact that the offender goes to the place of rendezvous for example).

According to the experts of the Inter-institutional Group, given the rapid evolution of new information and communication technologies and online forms of crime, the requirement that a physical meeting takes place, or at least that material acts leading to such a meeting be carried out, is worrying. This is because, according to these same experts, in many cases of sexual solicitation, children are sexually abused and exploited online without a physical encounter, but only an online "encounter"[3, p. 54].

Thus, the Lanzarote Committee, in its June 2015 opinion on Article 23 of the Lanzarote Convention related to online child solicitation, argues that "the solicitation of children through information and communication technologies does not necessarily result in a face-to-face meeting. It can remain online and still be
very harmful to the child"[5], [6]. Thus, the solicitation of children for sexual purposes can take place online or offline (or both) and remains harmful to the child even when it does not extend beyond the digital environment.

Directive 2011/93/EU aligns with the Lanzarote Convention and also defines grooming: Member States shall take the necessary measures to ensure that the following intentional conduct is punishable: the proposal by an adult, using information and communication technologies, to meet a child who has not reached sexual majority, to commit one of the offenses referred to in Articles 3(4) and 5(6), where this proposal was followed by material acts leading to the said meeting[7, Art. 5 §.6].

Member States shall take the necessary measures to ensure that any attempt to commit, using information and communication technologies, the offenses referred to in Article 5(2) and (3) by an adult who solicits a child who has not reached the age of sexual consent to provide him or her with child pornography depicting him or her is punishable[7, Para. 2 et 3].

In Burundian law, in a paragraph on offenses relating to the publication of indecent information in electronic form[2, Sec. 7 §.4], the law on the prevention and repression of cybercrime provides in its article 44 a definition that refers to child pornography or soliciting children for sexual purposes. Thus, it is stipulated as follows: "Is punished by a criminal servitude of ten to twenty years and a fine of five to ten million Burundian francs, whoever proposes, prepares or solicits through a computer, a computer system, any network, meetings to engage in sexual activities with the minor[2, Art. 44].

Under these provisions of Article 44 of the Law on the Prevention and Punishment of Cybercrime, it could be assumed that the publication of indecent information in electronic form can mean the fact of proposing, preparing, or offering through a computer, computer system. This, in our opinion, is not correct, as we will underline in the following lines.

Quite simply, by comparing the Burundian law on cybercrime with the doctrine and European law, it emerges from the provisions of article 44 of this law that soliciting children for sexual purposes would mean proposing, preparing, or offering through a computer, a computer system, or any other network, meetings to engage in sexual activities with the minor. A definition is almost similar to the one used by European law. However, there is a nuance to be made concerning their scope of application. On the one hand, both the European Directive and the Lanzarote Convention require the performance of "material acts" or concrete measures with the aim that a physical encounter takes place to constitute an offense. On the other hand, the Lanzarote Convention also makes the act of soliciting a child to provide sexualized images of him/her punishable in its own right[8, Art. 6.2].

It is exactly this last position that has been adopted by the Burundian legislator despite the erroneous qualification of these facts as it comes under the provisions of article 44 of the Burundian law on cybercrime[2, Art. 44]. Burundian law punishes the simple use of ICT to solicit meetings to commit a sexual offense against children. It is therefore not necessary that the goal of engaging in sexual activities with the minor be achieved.
Consequently, any act of soliciting a child under the age of 18 to provide his/her sexual images is punishable.

II. Problem of qualification of the offense of solicitation of children for sexual purposes (pedophilia or grooming) by the Burundian law on cybercrime

As it appears in paragraph 4 of section 7 of the law on the prevention and repression of cybercrime, the Burundian legislator qualifies as the publication of indecent information in electronic form the fact of proposing, preparing, or soliciting utilizing a computer, a computer system, or any other network, meetings to engage in sexual activities with a minor.

Indeed, the expression "publication of indecent information" used by the Burundian legislator to designate the fact of proposing, preparing, or offering through a computer, a computer system, or any other network, meetings to engage in sexual activities with a minor would confuse several respects:

On the one hand, the verb to publish from the Latin "publicare" used by the legislator would not be appropriate in this case. Indeed, according to the dictionary LAROUSSE, this verb designates the act of making information known to the public or the fact of making something public, to make it known officially, in particular by posting, or printing.

However, the solicitations or proposals of meetings of the child by the aggressor are not published or made public on the contrary, they are made in private through the communication networks. This leads us to affirm without ambiguity that the terminology of "publication" used by the legislator is inappropriate in this case.

On the other hand, to say that the proposals or solicitations of meetings of the aggressor towards the child to engage in sexual activities constitute a publication of indecent information would be wrong. On the contrary, the abuser is attempting to use a romantic device to lure the child as if it were the language of a con artist.

Thus, given the above-mentioned challenges regarding the qualification of these facts as outlined in Article 44 of the Law on the Prevention and Punishment of Cybercrime, we have opted to resort to doctrine and comparative law to be able to identify an internationally recognized qualification for the incriminated facts.

As stated in the definitions, the offense of soliciting children for sexual purposes or grooming refers to the fact that an adult intentionally offers a meeting to a child who has not reached the age of sexual majority to sexually abuse or exploit him/her. That is to say, to engage in sexual activities or the production of child pornography[4, p. 18 §.1.a or 20 and preprint3 §.4], [7, Art. 5 §.6].

Thus, the Lanzarote Convention qualifies as a solicitation of children for sexual purposes the fact that an adult intentionally proposes, through communication and information technologies, a meeting with a child under the legal age of majority to commit an offense established under Articles 18, paragraph 1. a, or 20, paragraph 1. b, of the Convention 1. a, or 20, paragraph 1. a, when this proposal was followed by material acts leading to the said meeting[3, p. 53].

In turn, Directive 2011/93/EU goes along the same lines and qualifies as a solicitation of children for sexual purposes the fact that an adult proposes, using information and communication technologies, to meet a child who has not reached
sexual majority, to commit one of the offenses referred to in Articles 3(4) and 5(6) when this proposal was followed by material acts leading to the said meeting. This is the qualification suggested by the inter-institutional working group[3, p. 23].

Thus, it follows from the above that the qualification of publication of indecent information given by the Burundian legislator to designate the facts defined in article 44 of the law on the prevention and repression of cybercrime is erroneous. Not only is this qualification inaccurate and does not coincide with internationally recognized terminology in the fight against online sexual abuse and exploitation of children, but it also risks complicating the work of organizations and individuals working to prevent and eliminate all forms of sexual exploitation and abuse of children.

Consequently, we propose to the government to rectify the qualification to be given to the acts incriminated in article 44 of the law on the prevention and repression of cybercrime and to retain the one universally recognized in terms of protection of children's rights against online sexual abuse and exploitation in this case: the solicitation of children for sexual purposes or pedophilia or grooming.

**Conclusion**

At the end of our contribution to the repression of the online solicitation of children for sexual purposes (grooming) in Burundian positive law, it is important to recall that the objective of our work was to analyze whether Burundian law incriminates acts of solicitation of children for sexual purposes and whether they are qualified as such in the same dynamic of terminologies used in the fight against sexual abuse and exploitation of children online. In our analysis, it is clear that solicitation of children for sexual purposes is criminalized by Burundian law on cybercrime, but that it is poorly qualified, as we have pointed out in our study. This has consequences for the applicability of the cybercrime law. It may cause practical problems for organizations and individuals working to prevent and eliminate all forms of child sexual exploitation and abuse. Thus, as a recommendation, we ask the Burundian government to close this loophole while re-characterizing the facts. In this respect, the qualification of "publication of indecent information in electronic form" should be substituted for that of solicitation of children for sexual purposes.

**References**


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