

Tackling child pornography: conclusions and recommendations in the Netherlands

**Judge Rapporteur
Corinne Dettmeijer-
Vermeulen**



On 6 June 2012 Corinne Dettmeijer-Vermeulen (on the right) presented her First Report on Child Pornography to the Special Representative of the Secretary-General on Violence against Children, Marta Santos Pais at UNICEF House in New York*

Abstract:

In her First Report on Child Pornography the independent Dutch National Rapporteur concludes that child abuse images, as a phenomenon, cannot be regarded separately from sexual violence against children. To separate the two in terms of policy would therefore be artificial. The findings in the report show that such a separation lessens the effect of interventions. Protection of children cannot solely be provided by a repressive approach. Protection also means: prevention of offences, identification and registration of offenders and victims, provision of assistance to victims and after-care for offenders.

This requires cooperation and partnership between government institutions, non-governmental organisations and private parties.

Tackling child pornography: conclusions and recommendations in the Netherlands

The First Report on Child Pornography of the Dutch National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children

'My core message is that children are entitled to protection from all forms of sexual violence. The approach towards tackling child pornography must form part of an integrated approach towards tackling sexual violence against children. Connection, coordination and monitoring are essential elements of that approach.'

Corinne Dettmeijer-Vermeulen

In 2009 the Dutch government mandated the independent Dutch National Rapporteur on Trafficking in Human Beings, Ms Corinne Dettmeijer-Vermeulen, to report on the existing policy and practice regarding child abuse images – or child pornography – in the Netherlands. In 2011 the results were published in her *First Report on Child Pornography*. This article provides an overview of this report. It will elaborate on the main conclusions that have been drawn with regard to the phenomenon of child pornography and on the subsequent recommendations of the Dutch National Rapporteur to the Dutch government. Finally, this article will address a couple of relevant developments having taken place in the Netherlands after the Report had been published.

Five conclusions on child pornography

The Dutch National Rapporteur drew five main conclusions after having conducted research into the phenomenon of child pornography. These conclusions have formed the guiding principles for her research into policy and practice.

Firstly, child pornography is sexual violence against children. It does not exist in isolation; it always occurs in conjunction with other (punishable) sexual conduct, ranging from child prostitution to trafficking in human beings, from abuse to grooming. The common denominator of these offences is that children are victims of sexual violence. From this perspective it can be concluded that child abuse material is sexual violence against children displayed on images or film. Child sex tourism is sexual violence committed abroad. Child sexual exploitation is sexual violence for profit. If strategies to tackle child pornography and to protect children from all forms of sexual violence are to be effective, these strategies must be interlinked with regard to policy and implementation.

The second core observation is that technology, perpetrators and victims vary. The phenomenon of child pornography can be broken down into these three elements. Technology may refer to abusive material on the one hand and the information and communications technology (ICT) which enables the production, distribution and possession of such material, on the other hand. Additionally, the nature of perpetrators, victims and material is not clear-cut. Firstly, perpetrators do not form a homogenous group in terms of behaviour; some individuals only view child abuse images, whilst others also physically abuse children themselves. Secondly, victim characteristics, the nature of child abuse material and the circumstances under which it is produced differ between various age groups of victims. Apart from this, there are considerable differences between the commercial child pornography circuit and the amateur circuit in terms of perpetrators, victims and material. If policy and implementation are to be successful, they must reflect the diversity in perpetrators, victims and child abuse material.

Thirdly, sexual violence exists in both the digital and analogue worlds. At present, child abuse material predominantly exists in digital format. Technological developments rapidly succeed one another and will almost always influence the phenomenon of child pornography. Furthermore, online aspects of sexual violence are becoming increasingly prominent, such as child sex tourism and grooming. We all use ICT intensively in our daily lives. So too do (potential) perpetrators and (potential) victims. To children, cyberspace is an extension of the 'real', physical world; the offline and online worlds smoothly converge into one.

This means that both worlds must be taken into account in legislation, policy and implementation. Technological, empirical and legal expertise and associated means must keep pace with developments in the digital domain. ICT sometimes presents a challenge, yet it also provides windows of opportunity for preventing and tackling child abuse images. However, much is still unknown. For example, it is not known what proportion of victims of sexual abuse are also victims of child abuse material. Furthermore, no judgments can be made with regard to the numbers of minors who have become victims of sexting and grooming. It is therefore necessary to investigate these areas in order to develop evidence-based policy and implementation.

The fourth conclusion is that child pornography is not bound by time or space. Children have always been sexually abused. Individuals have produced and viewed images of such abuse ever since the existence of photography. With current technologies, it is likely that child abuse material – even very old material – will be available for a very long time to come, possibly indefinitely. Besides, space is hardly a factor at all. As indicated in the previous section, ICT has added a new, online dimension to the phenomenon, which enables perpetrators, victims and material to come into direct contact with one another from anywhere in the world and at any time. It is highly likely that other countries are faced with similar challenges. As far as efforts in the Netherlands are concerned, it is desirable to seek international cooperation, for through this, we can learn from experiences of other countries.

Fifthly, child pornography cannot be tackled by the police alone. The extent of the phenomenon of child pornography – the number of perpetrators, victims and the quantity of child abuse material – is unknown. Nevertheless, it may be argued that the number of perpetrators and the volume of child abuse material have increased to such an extent that it cannot be tackled by criminal law alone. Put differently: there are too many perpetrators and too many images for the criminal justice system to process in a traditional manner. This means that we must seek strategies to tackle child pornography both within and beyond the criminal justice process.

Recommendations

The Dutch National Rapporteur has provided recommendations for tackling child pornography effectively. Until recently, the Dutch government regarded child pornography predominantly as a cybercrime. As a consequence, the Dutch strategy to combat it leaned heavily on repression via the justice system. While the legal framework is useful for determining the subject area, it is not the only perspective that can and should be used to address this form of sexual violence against children.

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Most importantly, if strategies to tackle child pornography and to protect children from all forms of sexual violence are to be effective, these must be interlinked with regard to policy and implementation.

The Rapporteur has made recommendations on a policy level in order to tackle child pornography effectively. An integrated approach to tackle sexual violence against children should be provided, into which the programme of measures to tackle child pornography is fully integrated. In order to give substance to this integrated approach and to implement it, clear coordination is necessary. Therefore, an independent monitoring mechanism needs to be established which will safeguard the continuity of policy attention.

On a practical level, the complexity and the variety of the phenomenon present considerable challenges for preventing and tackling child pornography. Recommendations have been formulated from the analysis of the implementation of the processes for consecutively the prevention, registration and identification, detection, prosecution and trial, aftercare and supervision of offenders, and the provision of assistance to victims. They will here shortly be enumerated.

Preventive measures should focus on (potential) victims, (potential) perpetrators and situations. Firstly, the dangers of online behaviour, including child pornography, should expressly be included in prevention projects aimed at children. Secondly, the introduction of a public health model as a basis for a public prevention strategy is needed, in which attention is devoted to the nature of all forms of sexual violence against children. Thirdly, Stop It Now!, a helpline for potential perpetrators, should be promoted, also on digital channels. Lastly, the situational prevention to include all sectors that involve working with children has to be extended.

The identification and recording of child pornography can firstly improve by investing in training for professionals in detecting digital signs of sexual violence against children. This will successively improve the registration of cases of child pornography by institutions providing assistance (including Child Abuse Counselling and Reporting Centres). Furthermore, the public awareness campaign on child abuse including digital signs of sexual violence against children should be continued. Lastly, the identification of perpetrators and material through public-private sector partnerships (for example cooperation with internet service providers) provides new opportunities and should therefore be intensified.

With respect to investigation, prosecution and trials, offender-oriented and victim-oriented detection within a single national police unit should be combined. The integration of the investigation and prosecution can further be improved by making child pornography part of the remit of the National Public Prosecutor's Office. Additionally, networks of offenders should always be investigated and data storage media of sexual abuse suspects should at all times be seized. Besides, the possibility of making arrangements in relation to limiting the international influx of proposals for police investigations has to be explored; the efficacy of detection should be made transparent by registering identified victims; and the possibility of extending the legal provisions for (in)direct victims, such as the right to speak, compensation and anonymity, should be investigated.

Regarding the after-care for and supervision of sex offenders, the possibilities of central control for supervision on a case level, as exists in the United Kingdom, should be investigated in the Netherlands. The same holds for the possibility of a national policy framework and expertise centre for the supervision and after-care of convicted sex offenders. Accordingly, risk assessment instruments (e.g. distinction between those who view child abuse material and hands-on offenders; record digital data) should be improved. Low-intensity interventions for low-risk viewers of child abuse material have to be developed.

The Rapporteur's main recommendation on victim assistance contains the development of expertise with regard to victimhood of child pornography and the provision of an assistance package which addresses the consequences of the existence, distribution and possession of visual material of the sexual abuse.

Last but not least, public-private sector partnerships should be safeguarded within a platform and direction to these partnerships should be given, which includes optimisation of the notice and take-down regulation.

Recent developments in the Netherlands

In the Netherlands, the Rapporteur presented these findings and recommendations to the Dutch Minister of Security and Justice and the State Secretary for Health, Welfare and Sport, after which the report was discussed in Parliament. Partly as a result of her findings, various positive developments have since been set in motion as matters of priority. The most important of these developments that took place in the first half of 2012 are singled out below.

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By far the most important measure is the taking up of the Rapporteur's recommendation to develop an integrated programme of measures to tackle child pornography. The Ministry of Security and Justice and the Ministry of Health, Welfare and Sport are assuming joint responsibility for this. By doing so, the government demonstrates its commitment to the obligations arising from the Convention on the Rights of the Child and its Optional Protocol, and the Lanzarote Convention. A Child Abuse and Sexual Abuse Task Force, which is yet to be established, will coordinate the implementation of the policy.

The most significant changes have taken place with respect to the understanding of this issue among those responsible for providing assistance to victims, with the increasing realisation that cyberspace is a relatively new arena in which sexual abuse is taking place, and one that adds a new dimension to victimhood. Moreover, the understanding that the Internet presents an opportunity to combat sexual violence is also growing. In February 2012, an online reporting button was launched, where children can find help and advice in the event of negative experiences on the Internet.

Efforts have not only been made in terms of identifying (potential) victims, but also in terms of identifying potential perpetrators. In this way, the offender-oriented 'Stop it Now!' programme, which was launched in April 2012, will help prevent children from being subjected to sexual violence. As far as detecting perpetrators is concerned, the capacity that has been deployed to combat child pornography has increased substantially. The Programme of Improvements in Tackling Child Pornography of the National Police Services Agency that had already been set in motion has enabled a more effectively integrated working method to be developed within a short span of time.

A new, large-scale and national child pornography unit will not only work in collaboration with the national High Tech Crime Unit, but also with regional police units, which attend to types of analogue sexual violence against children. Detection will be aimed at rescuing victims and locating perpetrators who produce material. The results of a project to employ non-judicial interventions for low-risk offenders – those who view child pornography sporadically – have been positive. This project will therefore also be implemented on a national scale.

When prosecuting suspects, the ability to ensure that victims remain anonymous in criminal proceedings is a positive development, as is the extension of the right to speak to include parents in cases in which (very young) children are not able to speak for themselves. Developments are also underway right at the very end of the judicial process – which involves the reintegration of convicted perpetrators, including the expansion of COSA, a probation and after-care project, and the investigation of the possibilities of long-term or life-long supervision of convicted high-risk sex offenders.

Corinne Dettmeijer-Vermeulen*, National Rapporteur, Netherlands