

***ICTS AND VIOLENCE AGAINST CHILDREN:
MINIMISING RISKS AND RELEASING POTENTIAL***

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Maud de Boer-Buquicchio

UN Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography

Dear Marta, Ladies and Gentlemen, dear friends,

At the outset, I would like to thank the organizers for inviting me to this expert consultation on ICTs and violence against children. In particular, I would like to thank my friend Marta, with whom I have shared so many battles and victories in our common endeavour to prevent and combat abuse, violence and exploitation of children, and to promote the respect of their rights as human beings, not mini human beings with mini human rights! I am looking forward to join forces with her and her office in my capacity as UN Special Rapporteur on the sale of children, child prostitution and child pornography.

In fact it is the first event that I am attending in my new capacity, and I am very happy to participate and to share with you some ideas about this important issue, which is covered by my mandate, and, most importantly, to listen to and learn from you.

Yesterday during my visit to a nearby rain forest here in Costa Rica I saw this huge spider sitting in the middle of a huge web, a dark predator waiting quietly for his prey caught in the web and it made me think of the World Wide Web where predators are targeting our children. Yet I could also see the beauty of the web, its perfect architecture.

With this in mind, I intend to develop in my intervention around three issues: (i) the case law of the ECHR and the existing normative standards, (ii) the role of my mandate and the findings of the two thematic reports of my predecessor, (iii) the identification of new trends and possible avenues to address them.

Let me introduce my first topic - the case law of the ECHR and the existing normative standards.

Just a few days ago, in the US, two 12-year-old girls inspired by Internet horror stories, were accused of luring a girl into a wooded area near Milwaukee and stabbing her 19 times. According to police Reports the girls were trying to impress a certain "Slenderman," encountered by one of the girls on a website known as Creepypasta Wiki.

This shows that there is no clear boundary between the on-line world and the real world of our children, yet our responses and tools to address the many issues that arise in this context are not apt or ready to make this mental shift which is so important when it comes to prevention and addressing the consequences of abuse.

Perhaps in addressing these issues we may be guided by the caselaw of the European Court of Human Rights. The story happened in Finland some years ago. It concerned a young boy. When he was 12 years old, he was the subject of an advertisement on an Internet dating site, referring to his age and year of birth, a detailed description of his physical characteristics, a link to the web page he had at the time, which showed his picture, as well as his telephone number. In the advertisement, it was claimed that he was looking for an intimate relationship with a boy of his age or older “to show him the way”. The boy became aware of the advertisement on the Internet when he received an email from a man, offering to meet him and “then to see what you want”. The identity of the person who had placed the advertisement could not, however, be obtained from the Internet service provider due to the legislation in place at the time, which contained no explicit legal provision in Finland authorising it to order the service provider to disclose telecommunications identification data in breach of professional secrecy. This case had a happy end as the boy had talked to his father, who talked to the police.

The case eventually ended up before the ECHR, who upheld the applicant’s claim on the ground that the respect of the applicant’s right to respect of private life outweighed the right to freedom of expression and confidentiality of communications. It relied in this respect on the concept of positive obligations, that it had developed earlier in a case against the Netherlands, which related to the impossibility to prosecute the person who had allegedly raped a handicapped young girl, in the absence of a complaint (which she was obviously not capable of formulating).

The ECHR recalled that States have a positive obligation inherent in Article 8 of the Convention to criminalise offences against the person, including attempts, and to reinforce the deterrent effect of criminalisation by applying criminal-law provisions in practice through effective investigation and prosecution. By the time the Court delivered its judgment Finland had already amended its legislation.

Happy endings to stories like this one are rare. Most children are online without sharing their experiences with adults and are discovering the benefits and enormous potential of the Internet without being aware of the risks that we are discussing here today. When things go terribly wrong, it is often too late, also for us adults, to intervene.

In a recent case against Sweden, the Court addressed again a gap in national legislation to protect a young girl against invasion of her privacy and a violation of her personal integrity by an adult. When she was 14 years old, her stepfather had attempted secretly to film her naked in their bathroom. He had hidden a video camera in the laundry basket in the bathroom, which was in recording mode and directed towards the spot where she had undressed before taking a shower. The stepfather was acquitted of the charges of sexual

molestation because there was no evidence, which was a requirement under Swedish law in force at the time, for the offence of sexual molestation to be made out that the offender intended for the victim to find out about it or that the offender was indifferent to the risk of the victim finding out, which was not the case.

The ECHR held that the relevant Swedish law, as it stood when the specific act occurred, failed to ensure protection of the girl's right to respect for private life in a manner that, notwithstanding the respondent State's margin of appreciation, complied with its positive obligations under Article 8 of the Convention on the ground that the act in question violated the applicant's integrity, aggravated by the fact that she was a minor, that the incident took place in her home, where she was supposed to feel safe, and that the offender was her stepfather, a person whom she was entitled and expected to trust.

The key message stemming from the above Strasbourg Court's case law is that injunctions or any other legal means of stopping the dissemination of CAM and availability of legal action to allow for judicial redress for the victims are requirements under the ECHR, and must be implemented. These are two very important implications of the general prohibition of child pornography as enshrined in many international human rights standards in global and regional treaties relating to the protection of children's rights, such as the CRC and its OP and, at regional level, but with potential global outreach, the Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse, as well as the Council of Europe Cybercrime Convention.

Let me now turn to my second point: my mandate and the work of my predecessor in this field.

The UN mandate on the sale of children, child prostitution and child pornography was created by the UN Commission on Human Rights in 1990, "to consider matters relating to the sale of children, child prostitution and child pornography, [...] including the frequency and extent of such practices." The mandate was reinforced with the adoption in May 2000 of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

Since 2008 (with the adoption of HRC resolution 7/13), the Special Rapporteur is further mandated to analyse the root causes of the sale and sexual exploitation of children, identify new patterns, promote best practices on measures to combat it, as well as comprehensive strategies to prevent it, and make recommendations on the protection of child victims, including their rehabilitation and recovery. The work of the mandate is mainly articulated around country visits, actions on individual cases through communications sent to States bringing alleged violations to their attention, thematic studies, awareness raising activities, and advice for technical cooperation.

The fact that my mandate has been renewed since 1990, for almost 25 years, shows that the scourge of sale and sexual exploitation of children is far from been eradicated.

Let me now revert a moment to the important findings of my predecessor in two thematic reports on the issue of child pornography on the Internet

1. There is a growing availability of child pornography, including hard images of very young children, and grooming/sexting (sexual solicitations) through social networks, internet, mobile phones and other evolving technologies. This is due, among others, to an increasing global interconnectivity, a higher demand for sex with children (underpinned by social tolerance, complicity and impunity), a greater transnational criminality (sexual exploitation of children is a very lucrative industry), and the lack of implementation of an effective global legal framework (which facilitates the commission of the crimes).

2. The phenomenon is taking many forms, and types of users / predators vary; contrary to popular misconceptions, the demand for sex with children does not only come from pedophiles. Child sex exploiters are originated from all types of economic, social and professional backgrounds. The increasing expansion of social networks allows an easier contact with children in all parts of the world. And anonymity is easily preserved. Websites and criminal networks are constantly evolving, making detection and prosecution more difficult.

3. All this results in enhanced trauma for the victims because of the nature of the recording and the dissemination of images – which results in enduring humiliation and a never ending violation of the right to privacy.

4. Sexual abuse, violence and exploitation of children online gravely compromise children's dignity, health, and development, as well as the full enjoyment of their rights. The destructive effects of these crimes have long-lasting impacts on the child victims. Various studies have highlighted short-, mid- and long-term consequences on the life and development of children, such as disorders related to sexuality, anxiety, suicide attempts, stigmatization and marginalization. Yet all the physical, mental, and social consequences on children are not sufficiently known or taken into account, for instance, for recovery and rehabilitation purposes.

5. The exposition of children to pornography is also extremely detrimental to their psychosocial development since it influences negatively their sexual behaviour and facilitates the banalisation of sex.

There is no doubt that these conclusions will guide my mandate.

Let me now turn to my third and last point – the identification of new trends and a possible approach to address them.

A phenomenon which has developed substantially since these two thematic reports were written is the uploading by young people themselves of sexually explicit material, known as sexting.

According to the VGT (a network of law enforcement Agencies, NGO's and industry), 15% of 11-16 year-old teenagers say that they have received sexual messages from peers. There is

an obvious risk that this material intended for their peers overreaches their intended destination and goes “viral”.

When this happens, children or their families, who seek desperately to erase this content, are moreover likely to be subject to blackmail and extortion, the so-called sex-torsion, very often in the hands of organised crime.

In this context the recent judgment by the ECJ in Luxemburg obliging Google to remove links to information about people from its search engines (the right to be forgotten) in some cases where they demand it, in the interest of the protection of privacy, offers some positive perspectives.

The **prevention of** dissemination of CAM through blocking access is an important issue in the EU Directive 2011/93. The issue of mandatory blocking has been the subject of heated debates, both at national and EU level. Arguments include that blocking would not be effective, can be circumvented, is sometimes really difficult if ISP's are located in uncooperative jurisdictions, the risk of overreach and mission creep, and that take down rather than blocking is the solution.

The compromise reached in the Directive leaves the matter to the discretion of Member States with a number of safeguards and conditions. In at least 5 MS of the EU no blocking 'provision regarding access to CAM has been enacted at national legislative level. This shows that in Europe, the discussion on how we deal with harmful content, deleting at its source or blocking access, is far from closed.

The jurisprudence of the ECHR concerning this particular issue, in an on-line context, is so far quite limited. Also, it should be remembered that the Court decides on a case-by-case basis, in which the outcome of the balancing exercise of different competing interests very much depends on the circumstances of each case.

Worth mentioning however, though in an off-line context, is another case against Finland, which concerned the prosecution and conviction of an artist for exhibiting hundreds of photographs of teenage girls in sexual poses or acts, and the seizure of her computer. Even if her alleged intention was not to commit a criminal act (distributing sexually obscene pictures depicting children) but on the contrary, to criticise easy access to child pornography, the Finnish Courts based their decision on the need to protect children against sexual abuse as well as violation of their privacy but also on moral considerations. The ECHR considered that the interference with the applicant's right to artistic freedom covered by Article 10 was “necessary in a democratic society, having regard to the opinions relied on by the domestic courts.

As the use of ICT for communication and information sharing increases and CAM is dramatically on the rise, we can expect a further fine-tuning of this case-law.

To those who hide behind freedom of expression, let me say one thing. Freedom of expression is not a license to hurt or destroy the integrity and well-being of children. Sexual violence against girls and boys is not a new phenomenon. It has always existed. It does not

originate with the new media or with the internet. However, new means of abuse, or new means instrumental to perpetrating abuse, need new robust responses.

Even if “self induced” CAM is on the rise, predators do not need children to “volunteer”. They find their way to the homes, to day care centers, to hotels and brothels to wing their web around innocent victims, to abuse them and to increase their benefit by sharing the images of their heinous crimes with others. The amount of video material depicting child sexual abuse available on line has grown substantially.

Live streaming of sexual abuse is also on the rise. Not only is this offense insufficiently criminalised, where it is, it is difficult to investigate and prosecute, as there is little evidence stored on computer systems, and even if evidence is found, sanctions are low.

It is clear that criminalisation is not the only answer. However I would like to look at the issue of criminalisation not so much as a form of retribution but as a deterrent. For that to happen law enforcement is absolutely crucial. Time is too short however to dwell on this issue today. I would be keen to elaborate on this on another occasion in the future.

But let me insist above all on what I regard as absolutely crucial in combating this scourge: prevention through empowerment.

Empowering children, teachers and parents in the new media environment is essential. This is about prevention through a learning process and not the hard way, by a bad experience.

Prevention is a key element of a comprehensive, rights-based child protection strategy. Preventive measures are effective if they tackle the multiple facets of child vulnerability, building in a sustainable manner on the full range of policy instruments, including legislation, social policy, international cooperation and capacity-building.

Examples of preventive measures include the organization of education and awareness campaigns focusing on how children can protect themselves, receive help and report child pornography and sexual exploitation; and making filtering technologies accessible, affordable and user-friendly. Sexual education should be part of this process. Children should not be left to discover their sexuality on the Net!

We need to guide our children to become responsible, informed and critical participants – users, creators and distributors of content – on the Internet and in the information society in general. Several initiatives have been adopted and child friendly learning materials have been developed in many parts of the world. They should be translated and shared, on line and off line!

The recent Council of Europe Recommendation of the Council of Ministers recommending to its Member States the active promotion of a Guide to human rights for internet users, with a specific chapter addressed to « Children and young people » is particularly welcome and could be a global inspiration.

The other point I would like to stress is that it is clear that on-line sexual abuse and violence is not a phenomenon that can be solved by one actor alone. The fourth P therefore that I want to add is the P of partnership.

Public-private partnership and international cooperation are essential in order to effectively prevent and combat child sexual abuse, violence and exploitation online. There is a great need to further involve NGOs, schools, social sector but also the private and business sector, including the telecommunications sector, ISPs, mobile phone operators, financial institutions, credit card companies, payment system providers, and the travel and tourism sectors. This will require building trust between the different stakeholders and clearly defining the roles of the different partners.

There are a series of promising initiatives and good practices that are worth mentioning here, as they represent an increasingly mobilized private sector involved in fighting child sexual exploitation online. A number of enterprises have adopted codes of conduct in an attempt at self-regulation and to adhere to international standards. By doing so, they have committed themselves to steps to combat child pornography online (e.g. installing filters on certain sites, classifying sites according to their content, reporting sites with illegal content to the police, etc.).

Examples in this regard include:

- the European Framework for Safer Mobile Use by Younger Teenagers and Children signed by leading mobile telephone operators and content providers in the EU;
- the Financial Coalition against Child Pornography created in the US to combat child pornography; and
- the European Financial Coalition (EFC) to fight child abused images distribution on the Internet. The objective of EFC is to erode the profitability of child pornography by tracking the origin of funds and closing the accounts used by illegal enterprises.

Another good example of private and public sector partnership is the programme developed by Google to assist the National Center for Missing & Exploited Children in the US in identifying and analysing abuse images. Since 2008, Google has used technology to identify duplicates of abuse images online and has recently developed additional tools towards ending online child pornography.

The Virtual Global Taskforce, established in 2003, is an excellent example of international cooperation. Its objectives are to identify children, ascertain the whereabouts of and assist children at risk, and identify predators for accountability. The Virtual Global Task Force is an alliance of twelve law enforcement agencies that seek to build partnerships with NGOs and the private sector to help protect children from online child abuse. Since its creation in 2003, it has helped rescue hundreds of children from sexual abuse, prompted investigations, and identified hundreds of offenders around the world.

Thanks to international cooperation, there are increased training opportunities (e.g. for police officers), exchange of information, creation of image banks, victim identification

programmes, development of child exploitation tracking systems, cooperation with private sector and NGOs, harmonization of practices, development of expertise, funding of programmes, expansion to countries not members of different cooperation mechanisms . However, the many activities undertaken by numerous stakeholders in various countries have been adversely affected by lack of coordination and harmonization.

Managed by INTERPOL and funded by the European Commission, the International Child Sexual Exploitation image database is a powerful intelligence and investigative tool. It was launched in 2001, revamped in 2009, and is regularly updated with the latest technology, which allows specialist investigators to share data with colleagues across the world. It uses sophisticated image comparison software to make connections between victims, abusers and places. Police forces in almost 40 countries are currently connected to the database and cooperate in the identification of child sexual exploitation victims and their abusers. By the beginning of 2013, the database had enabled identification of 3,000 victims and 1,500 offenders from more than 40 countries, as well as data related to numerous unidentified victims whose cases are yet to be investigated.

Good practices exist all around the world. We are here to learn about them and to share them, so that we can reach out to the children in the digital world.

So let me round off with a number of concrete recommendations, which we could discuss later:

- In order to efficiently combat child pornography online, it is necessary to:
- Improve prevention, addressing, among others, the demand factor
- Increase the participation of children in prevention and victim assistance
- More engagement and effective social responsibility from the private sector
- Enhance international cooperation, due to the transnational character of the phenomenon
- Identification and protection of children, as well as provision of the necessary support and care
- Ratification of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography
- Criminalization of child pornography as a grave violation of children's rights that seriously affects their dignity, physical and psychological integrity. We do not need to wait until all this suffering inflicted upon our children is qualified as equivalent to torture or even crimes against humanity, as defined by Article 7 of the Rome Statute. Even though the International Criminal Court has not rendered yet a decision in a case of sexual or gender-based violence, horrendous ongoing cases like the abduction of the Chibok schoolgirls by Boko Haram could certainly make a test case for crimes against humanity before the ICC.

Protecting children on line is possible, provided we invest in children as rights holders and actors. An informed child, with the necessary means, who fully participates in this process, will result in a child connected and able to protect himself/herself and his/her peers.

If we manage to agree on all that and if our recommendations are endorsed by all stakeholders, I believe that we will have made a major step forward in our fight to end sexual abuse and exploitation on-line.

And I come back to the cob web in the rainforest. Let's concentrate on its beauty in its perfect design and accept that it contains risks, but risks that can be avoided.

Thank you for your attention.