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Sexual violence against children in the light of analysis by the Parliamentary Assembly of the Council of Europe

Abstract

Sexual violence against children is a serious challenge for the contemporary international community. Ways of more effective counteracting this phenomenon are being sought. A special role plays in this process Council of Europe's Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention), CETS No. 201. The Parliamentary Assembly of the Council of Europe, in Resolution 2330 (2020) and Recommendation 2175 (2020) *Addressing sexual violence against children – stepping up action and co-operation in Europe*, adopted on June 26, 2020, assessed the situation in this area in Europe and presented recommendations on the issue of combating this phenomenon more effectively. The dangers in this area during the COVID-19 pandemic play a significant role in this process. The author analyzed these PACE documents in broader context of research on this subject and emphasized their importance for international efforts to combat sexual violence against children.

Keywords: children, sexual violence, Council of Europe, PACE, Lanzarote Convention.

1. Introduction

Sexual violence against children is a phenomenon that worries modern societies¹. "Every day, across all countries and levels of society, millions of girls and

¹ A. Izdebska, *Długotrwałe konsekwencje przemocy seksualnej wobec dzieci*, [in:] *Człowiek w obliczu prawa*, ed. B. Pastwa-Wojciechowska, Kraków-Sopot 2008, p. 71; K. Ling Chan, *Sexual Violence Against Women and Children in Chinese Societies*, "Trauma, Violence & Abuse", 2009,

boys face the alarmingly common childhood experience of sexual abuse and exploitation. Preventing violence and exploitation of children is everyone's business, everywhere, at all times. We must address this challenge and break the silence" – said Amina J. Mohammed, the UN Deputy Secretary-General in 2018².

In recent years, much has been done to tackle sexual violence against children. Awareness of the prevalence of such violence has been raised. Past occurrences ("historic child sexual abuse") have been disclosed in several countries and received significant media attention. International legal standards have been developed. National strategies have been put into place. Innovative approaches, such as *Barnahús* – child-friendly interdisciplinary focal points for abuse disclosure and child protection – have been promoted. Nevertheless, challenges remain. The use of information and communication technologies (ICTs) facilitates sexual violence at an unprecedented level, and the increase of child sexual abuse material on-line is exponential. In 2019 alone, the Internet Watch Foundation dealt with over a quarter of a million reports of on-line images and videos of child sexual abuse, which is twice as many as in 2016. At the same time, sexual violence against children remains largely unreported, and is often referred to as the "taboo of taboos". Balance between the best interest of the child and the need to prosecute the perpetrators is not easy to achieve. Lack of co-ordination among relevant agencies often impedes effective responses³.

In this situation, on the one hand, a precise diagnosis of this phenomenon⁴ and, on the other hand, the search for remedial measures are of particular importance⁵, including legal regulation⁶. It is not only about the efforts of national authorities, but also about involving the international public opinion. Various international organizations are making efforts to combat sexual violence against children. Among them is the Council of Europe. Therefore, it is worth getting acquainted with the way this organization perceives this problem⁷. In 2020, we

no 1, p. 69; A.B. van As, *Physical and sexual violence against children*, "South African Medical Journal", 2016, no 11, p. 1075; M. Seto, *Pedophilia and sexual offending against children: theory, assessment, and intervention*, American Psychological Association, Washington 2018, p. 34; A. Trotz, *Three Letters against Sexual Violence against Children*, "The Point is to Change the World", 20 April 2020, p. 194.

² PACE Doc. 15109, 27 May 2020.

³ Ibidem.

⁴ C. Wekerle, P.K. Kerig, *Sexual and Non-Sexual Violence Against Children and Youth: Current Issues in Gender, Trauma and Resilience*, "Journal of Child & Adolescent Trauma" 2017, no 1, p. 3–4; E.V. Nutskova, *Diagnostic and forensic assessment of the psychological consequences of sexual violence and abuse against girls*, "Psihologiâ i Pravo", 2018, no 4, p. 75.

⁵ C. Dettmeijer-Vermeulen, *PL-24 Tackling Sexual Violence Against Children*, "Journal of Sexual Medicine" 2017, no 5, p. 218; T.O. Cabral, I. Laureano, *Communication Design Against Child Sexual Violence*, "Advances in Ergonomics in Design", 2018, vol. 777, p. 473.

⁶ D. Halder, *Child sexual abuse and protection laws in India*, Sage Publication, New Delhi 2018, p. 43.

⁷ *Protecting children from sexual violence: a comprehensive approach*, Council of Europe, Strasbourg 2010, p. 4.

are celebrating the 10th anniversary of the entry into force of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention⁸). In only 10 years, this Convention has been signed by all 47 member States of the Council of Europe. Just one ratification remains outstanding (Ireland). The Convention is also open to countries which are not member States of the Council of Europe, and Tunisia became the 1st such country to join the Convention in 2019. Since 2010, the Lanzarote Convention monitoring system has been in place. The 2nd monitoring round is to be completed in 2020. It is, therefore, a good time to take stock of what has been achieved, and to encourage stronger action⁹. A significant occasion creates a fact that the Parliamentary Assembly of the Council of Europe has accepted on 26 June 2020 a resolution *Addressing sexual violence against children – stepping up action and co-operation in Europe*¹⁰ and recommendation on that same subject¹¹. In this study I will analyze these documents and its importance in the international front in the fight against sexual violence against children.

2. General characteristics of the sexual violence against children

The studies of sexual violence against children have a long tradition¹². The important questions put in an analysis are: How to identify victimized children? What are the indicators of sexual abuse in victimized children? How to identify perpetrators?¹³ How community perceived the sexual violence against children?¹⁴

The education is a most important element in the strategy to prevent sexual violence against children¹⁵. Dr Gail Dines, Founder of *Culture Reframed*, which was created to address pornography as a public-health crisis, discusses in her blistering *Ted Talk* how a child abuser had told her that much of the grooming

⁸ CETS No. 201.

⁹ PACE Doc. 15109, 27 May 2020.

¹⁰ PACE Res. 2330. *Text adopted by the Standing Committee*, acting on behalf of the Assembly, on 26 June 2020 (see Doc. 15109, report of the Committee on Social Affairs, Health and Sustainable Development, rapporteur: Ms Doreen Massey).

¹¹ PACE Rec. 2175 (2020).

¹² S.M. Robertson, *Crimes against children: sexual violence and legal culture in New York City, 1880-1960*, University of North Carolina Press, Chapel Hill – London 2005, p. 34.

¹³ Comp. *Sexual abuse: intervention, coping strategies and psychological impact*, ed. O. Persons, Nova Publishers, New York 2014.

¹⁴ M. Abeid, P. Muganyizi, P. Ollson, E. Darj, P. Axemo, *Community perceptions of rape and child sexual abuse: a qualitative study in rural Tanzania*, “BMC International Health and Human Rights”, 2014, no 1, p. 23.

¹⁵ M. Bleeker, E. Van Der Staal, *Preventing Sexual Violence Against Children – Effective Sex Education*, “Journal of Sexual Medicine”, 2017, no 5, p. 263

for his victims did not need to be done by him, as it had already been done by the culture¹⁶. Is a growing impact of social initiatives against sexual violence against children, such as *'#MeToo Movement'*¹⁷. In the Netherlands the Dutch National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children was established¹⁸.

One of the problems of modern society is child abuse, including sexual abuse. Peculiarities of the psyche of children and their behavior require a special approach in identifying and preventing violence against them. It is difficult to identify actions of a sexual nature with regard to children and ways to overcome these difficulties. Attention should be drawn to factors that may help in identifying violent acts. The problems faced by the child during the investigation and legal proceedings was identified. Criteria were proposed according to which at the level of school psychologists it is possible to form groups of minors who are at increased risk of becoming victims of sexual violence. Suggestions have been made for the timely prevention of possible sexual offenses. A scientific approach to the classification of perpetrators of violence in describing and recognizing their character traits may make it possible to identify those who are prone to violence. This will prevent crimes of a sexual nature against minors by referring such a person to a psychotherapist or psychiatrist in a timely manner to diagnose and prescribe the necessary treatment¹⁹. Since young women today receive conflicting and confusing messages about dating, sexuality, and image, it is not surprising they can find themselves wondering if they've been sexually abused. It is estimated that a sexual assault occurs once every two minutes. That means that teens need to be aware of the many forms sexual abuse can take and the best practices for trying to prevent it²⁰. A literature review regarding five extant models of dynamics of sexual violence against children was performed aiming to provide an integration of its models. Due to the complexity of the dynamics, none of the existing models provides a comprehensive understanding of both the process and product of victimization. Each extant model contributes to understanding the dynamics of sexual violence against children from slightly

¹⁶ Dr. Gail Dines is Founder & President of Culture Reframed, and Professor Emerita of Sociology and Women's Studies, Wheelock College, Boston. Having researched and written about the porn industry for more than 30 years, Dr. Dines is internationally acclaimed as the leading expert on how pornography shapes our identities, culture, and sexuality. She is a consultant to governmental agencies in the U.S. and abroad, including the UK, Norway, Iceland, and Canada.

¹⁷ N.T. Aghatis, C. Payne, J.L. Raphael, *A "#MeToo Movement" for Children: Increasing Awareness of Sexual Violence Against Children*, "Pediatrics" 2018, no 2, p. 634.

¹⁸ A.A. Aronowitz, *National Rapporteur on Trafficking in Human Beings and Sexual Violence Against Children, the Netherlands*, [in:] *The Palgrave International Handbook of Human Trafficking*, 2019, p. 1319.

¹⁹ M. Batlukov, *Questions to identify and prevent sexual violence against children*, "Criminalistics and Forensics", 7 May 2019, p. 64.

²⁰ A. Byers, *Sexual Assault and Abuse*, Rosen Publishing Group, New York 2015, p. 42.

different perspectives. In an effort to provide a more thorough, yet parsimonious, understanding of the behavioral dynamics of sexual violence against children, an integration of five extant models was proposed. This proposition is based on careful readings of the literature describing each of the five models, teaching others about the models and listening to their questions and comments, rereading the models, and writing about the models²¹.

The studies held described how societal denial around sexual violence between and against children (SVBAC), an undue reliance on the child protection system for identification and response and an outward facing lens results in limited rather than universal ownership of the problems. It explores the ways in which SVBAC can be denied and how it is perceived to be 'hidden' within a child protection system and/or within 'other' communities or families where violence is seen as 'normal'²².

Anne-Marie McAlinden critically examined socio-political constructions of risk related to sexual offending behaviour by and among children and young people and charts the rise of harmful sexual or exploitative behaviour among peers, drawing on a range of theoretical frameworks and primary research. Discussion of these behaviours is exhibited against a backdrop of the premature cultural sexualisation of contemporary childhood, which challenges traditional conceptions of childhood, victimhood and gendered sexual identities more broadly. It examines the complexities of peer-based sexual behaviours in a range of settings, including within organisational contexts such as schools and care homes, within families and peer-based relationships, as well as online contexts including sexting and cyberbullying. It draws out the myriad legal, practical and policy challenges of negotiating the boundaries between normal/experimental, risky/problematic and harmful sexual behaviour, and in particular the demarcation between coercion and consent, both for professionals as well as children and young people themselves²³.

Most criminal justice responses to address sexual violence and abuse against children are aimed at identifying and incarcerating offenders or at best, trying to prevent them from reoffending. This policy situation, primarily characterized by tertiary intervention strategies, is exacerbated by a lack of evidence-based knowledge about the circumstances in which this phenomenon occurs. This specific information can inform certain types of primary and secondary prevention strategies. In this study, we are taking the first steps to address this situation by (a) organising and reviewing for the first time the empirical knowledge on this

²¹ J. von Hohendorff, D. Nelson-Gardell, L.F. Habigzang, S.H. Koller, "Vulnerable Children and Youth in Brazil", 24 October 2017, p.77.

²² J. Pearce, H. Becket, *Private/public bodies: 'Normalised prevention' of sexual violence against children*, "Understanding and Responding to Child Sexual Exploitation", 2018, p. 24.

²³ A.M. McAlinden, *Children as 'risk': sexual exploitation and abuse by children and young people*, Cambridge University Press, Cambridge 2018, p. 31.

phenomenon according to questions asked by environmental criminologists and crime analysts, that is, the who, what, where, when, and how this phenomenon occurs, and (b) discussing directions for future research. By engaging in this exercise, they argued that environmental criminology can substantially contribute to understanding and informing prevention practices in the field of sexual violence and abuse against children.

Sexual violence against children in sports receives little research attention. The aim of this Preferred Reporting Items for Systematic Reviews and Meta-Analyses-based systematic literature review was to synthesize the up-to-date knowledge and identify the already known and the still unknown information in this area. The literature search yielded seven eligible studies for inclusion. Their key outcomes suggest that sexual violence against children in sports is prevalent. Girls are more often the victims than boys, but gender appears to mediate the disclosure. Minority groups are at higher risk for sexual violence, and athletes at higher levels of competition seem to be more vulnerable for grooming. While the coach is often seen as the perpetrator, new research suggests that peer-athletes may precede the coach. Disclosure is a problem, due to personal and interpersonal concerns, which deters scholastic research in this area. In the final section of the review, a “what we know” and “what we need to know” list of highlights is offered as the concluding summary of the review. These factual points could raise the awareness of parents and/or guardians about the vulnerability of their children to sexual abuse if they are involved in sports. They could also attract the attention of the policy makers to the urgent need of developing and implementing preventive measures to make sports and exercise environments pleasurable and safe for children²⁴.

The study was held to characterize cases of violence against children and adolescents examined at the Forensic Medicine Institute in Maceió, Alagoas State, Brazil. Three hundred and three cases from September, 2008 to March, 2009, were analyzed. Victims were interviewed and data were collected on the type of violence, victim's gender, age, schooling, and economic class, maternal schooling, characteristics of the aggressor and person reporting the case, location, and repeat offenses. Violence against children and adolescents in this sample was concentrated in lower income groups, and girls were victimized more frequently than boys. Most perpetrators were non-relatives, but known to the family. Sexual abuse was more common among younger children, while physical assault was more common against adolescents. The victim's home was the most frequent site of the violence. Further studies are needed to determine whether violence in other socioeconomic groups and against males actually does not occur, or whether it simply is not reported to the Forensic Medicine Institute and

²⁴ I. Bjørnseth, A. Szabo, *Sexual Violence Against Children in Sports and Exercise: A Systematic Literature Review*, “Journal of Child Sexual Abuse”, 2018, no 4, p. 365.

thus remains invisible²⁵. As a response to that phenomena training for the challenges of sexual violence against children was established²⁶.

In addition to participating in hostilities, girl soldiers are often raped, sexually enslaved and used as “bush wives” by their commanders and fellow soldiers. Answering the question of whether international law prohibits sexual violence by armed groups against child soldiers in their own ranks should be straightforward: it is prohibited. However, as seen in recent cases before the International Criminal Court (ICC), this is not necessarily the case. There are two approaches suggested in ICC jurisprudence, namely prosecuting sexual violence against children as constitutive of the war crime of ‘using [children] to participate actively in hostilities’ (Article 8(2)(e)(vii) of the ICC Statute), or directly as the war crime of ‘committing rape [or] sexual slavery’ (Article 8(2)(e)(vi) of the ICC Statute). The studies shown that prosecuting sexual violence under the crime of using children to participate actively in hostilities is unconvincing. Abusing children for sexual purposes does not fall under the scope of active participation in hostilities. If it did, this could have the unintended consequence of depriving children of their civilian status and protection under other provisions of the ICC Statute and international humanitarian law (IHL). It is argued that in the Ntaganda case the Pre-Trial Chamber (PTC) circumvented the question of whether and to what extent children may generally lose their civilian status and protection under IHL if they become member of a party’s armed forces. If children join armed groups or armed forces, the questions arise whether IHL addresses intra-party violence, and under what conditions such violence can be prosecuted as a war crime in non-international armed conflicts²⁷.

As this issue of sexual violence against girl soldiers has become increasingly visible in recent cases before the International Criminal Court (ICC) and Special Court for Sierra Leone (SCSL), attempts have been made to prosecute this conduct within the established framework of international criminal law. This issue has been addressed in the case of *The Prosecutor v. Bosco Ntaganda*, one of the six cases that have come before the ICC from the situation in the Democratic Republic of Congo. On 9 June 2014, the Pre-Trial Chamber confirmed the charges in the Ntaganda case, and found that the rape and sexual slavery of girl soldiers in Ntaganda’s armed group by other members of that group could constitute war crimes under Article 8(2)(e)(vi) of the Rome Statute²⁸. On 14 June

²⁵ J.A.T.L. Guimarães, *Characteristics of physical and sexual violence against children and adolescents examined at the Forensic Medicine Institute in Maceió, Alagoas State, Brazil*, “Cadernos de saúde pública” 2011, no 8, p. 1647.

²⁶ L.J.E.S. Viera, R.M. da Silva, L.F. Cavalcanti, S.F. Deslandes, *Training for the challenges of sexual violence against children and adolescents in four Brazilian capitals*, “Ciência & saúde coletiva”, 2015, no 11, p. 3407.

²⁷ T. Rodenhäuser, *Squaring the Circle?: Prosecuting Sexual Violence against Child Soldiers by their ‘Own Forces’*, “Journal of International Criminal Justice” 2016, no 1, p. 171

²⁸ R. Grey, *Sexual Violence against Child Soldiers: The limits and potential of international criminal law*, “International Feminist Journal of Politics”, 2014, no 4, p. 601.

2017, the Appeals Chamber of the International Criminal Court (ICC) ruled that rape and sexual slavery of child soldiers were war crimes under the Rome Statute, even when the perpetrators and victims belonged to the same armed group. This unanimous decision, which the Court described as ‘unprecedented’, came in the case of *Bosco Ntaganda*. He has been called ‘The Terminator’ for his role as Deputy Chief of Staff in the armed group ‘Union des Patriotes Congolais (UPC), which reaped death and destruction across the Ituri region of Democratic Republic of the Congo (DRC). The Appeals Chamber ruling was especially poignant, given the region’s notoriety as the ‘rape capital of the world’. For the first time in history’, the ICC had jurisdiction to prosecute sexual violence in conflict, regardless of whether victims were civilians or combatants²⁹.

Understandings of violence, and especially sexual violence against children, must be situated within the local context. The 2009 Violence against Children Survey in Zanzibar indicated that 6% of girls and 9% of boys reported having experienced sexual violence before the age of 18 years. The findings revealed that religious and cultural practices, which form the foundation of Swahili culture in Zanzibar, provide a moral frame for childhood development, but structural factors make children vulnerable to sexual violence. Both boys and girls are vulnerable to sexual violence in the home, neighbourhood, at school and, in particular, at madrasa or Qur’anic schools. As religion and culture are strong influences on childhood, preventing sexual violence at madrasa schools would strengthen the positive aspects of religious teachings for ensuring a safe childhood³⁰.

Researchers examine the intersections of the Responsibility to Protect (R2P) principle and the theory and practice of child protection. They consider themes including how the agency and vulnerability of children is represented and how their voices are heard in discussions of R2P and child protection, and the merits of drawing together the R2P and Children and Armed Conflict (CAAC) agendas, as well as case studies of children’s lives in conflict zones, child soldiers, and children born of conflict-related sexual violence³¹.

Researchers analyzed sexually violent predators and critiques SVP laws with the goal of fostering improvements in clinical practice and public policy. They offered a finely detailed evidence base on this problematic class of offenders, including the complex interactions of biophysiological and environmental factors that contribute to criminal sexual behavior. An important role play an assessment issues and instruments central to SVP evaluation, and the possibilities

²⁹ J. Tridgell, ‘Prosecutor v Ntaganda’: *The end of impunity for sexual violence against child soldiers?*, “Australian International Law Journal”, 2017/2018, vol. 23, p. 153.

³⁰ S. Lees, K. Devries, *Local narratives of sexual and other violence against children and young people in Zanzibar*, “Culture, health & sexuality”, 2018, no 1, p. 99.

³¹ *Comp. Children and the Responsibility to Protect*, eds. B. O’Costa, L. Glanville, Brill Nijhoff, Leiden 2019.

for developing interventions that address individual motivations and behaviors to reduce the risk of reoffending. Careful attention is paid to ongoing legal, ethical, and logical concerns regarding sexually violent offenders, their treatment and confinement, and their post-confinement placement³².

Researchers explored as well the role of socio-cultural factors in violence against women and girls, focusing on child sexual abuse (CSA) and sexual violence (SV) in British South Asian communities. Using examples from 13 in-depth interviews with survivors, the researchers examine (1) how abusers gain access to their victims, (2) family and community responses and (3) the role of cultural factors in concealing CSA/SV. The interviews demonstrate that British South Asian survivors are extremely reluctant to disclose SV/CSA due to factors that other groups of victims usually do not face, including a general taboo about discussing sex and strong cultural norms around notions of shame. These findings are contextualized in relation to a larger study that also involved community focus groups and interviews with professionals in relevant fields. Moving forward, new culturally specific support pathways for British South Asian victims must be developed that take account of the role that victims and their communities must play if CSA and SV are to be effectively combatted³³.

Sexual violence against children may be analyzed on example of South Africa³⁴. Nationally representative study was held of sexual violence against children, and its correlates, since we could identify no other such study. For this nationally representative, cross-sectional study in South Africa, households were selected by use of a multistage sampling frame, stratified by province, urban or rural setting, and race group, and schools were selected on the basis that they were closest to the area in which households were selected. Interviews and self-administered questionnaires in each location inquired into lifetime and last-year prevalence of sexual abuse, and its correlates among children aged 15–17 years, whose parents gave informed consent and they themselves gave informed assent. It was found that sexual violence is widespread among both girls and boys, and is associated with serious health problems. Associated factors require multisectoral responses to prevent sexual violence or mitigate consequences³⁵.

The Children's Institute, a research arm of the University of Cape Town, reports that 18.5 million children live in South Africa. The institute's vision is for

³² Comp. *Sexually Violent Predators: A Clinical Science Handbook*, eds. W.T. O'Donohue, D.S. Bromberg, Springer International Publishing, Cham 2019.

³³ A.K. Gill, K. Harrison, 'I Am Talking About It Because I Want to Stop It': *Child Sexual Abuse and Sexual Violence Against Women in British South Asian Communities*, "British Journal of Criminology" 2019, no 3, p. 511.

³⁴ K.M. Devires, F. Meinck, *Sexual violence against children and adolescents in South Africa: making the invisible visible*, "The Lancet Global Health", 2018, no 4, p. 367.

³⁵ C.L. Ward, L. Artz, L. Leoschut, R. Kaasanjee, P. Burton, *Sexual violence against children in South Africa: a nationally representative cross-sectional study of prevalence and correlates*, "The Lancet Global Health" 2018, no 4, p. 460.

'A society in which children are valued, nurtured and protected; their rights are realized; and where they are able to participate, develop and reach their full potential'. A quick scan of South African newspaper headlines, however, reflects numerous accounts of the abduction, rape and murder of young girls on the Cape Flats in Cape Town, South Africa, during 2016–2017. This seems to confirm the statistic that one in three children is a victim of sexual violence and physical abuse before the age of 18. Sadly, many of these instances are alleged to have been linked to a family member or close family friend. Some have even been linked to Christian church contexts. This unacceptable rise in violence against these young girls and from this vantage point continues to more specifically reflect on the role congregations can play in such instances. Such abuse takes place within an ecosystem of violence and then considers how the trauma of such an experience has affected the faith formation of these young girls³⁶.

The media influences the ways we perceive and deal with child sexual abuse. Jenny Kitzinger offered a fascinating insights into how the media shape the way we think. Combining in-depth analysis of media representations of child sexual abuse with focus group discussions and interviews with around 500 journalists, campaigners and a cross-section of 'the public', she reveals the media's role in contemporary society. Which stories attract attention and why? What strategies do journalists and campaigners use to persuade people and how do we respond? Answering these and other questions, Kitzinger demonstrated how media reporting can impact on people's knowledge of the 'facts', perceptions of risk, sense of appropriate policy responses and even how we interpret our own experiences. Kitzinger examined feminist initiatives to challenge sexual violence, the emergence of incest as a social problem and the development of new survivor identities. She also explores stereotyped around sex offenders, interrogates protests against 'paedophiles-in-the-community' and presents a detailed analysis of the impact of scandals about disputed abuse accusations³⁷.

3. Sexual violence against children in the light of the analysis of the Parliamentary Assembly of the Council of Europe

In the motion of resolution "Stepping up co-operation between European initiatives for better child protection against sexual violence"³⁸ in the Parliamentary Assembly of the Council of Europe (PACE) the authors have stated: "While

³⁶ S. Weber, N. Bower-DuToit, *Sexual violence against children and youth: Exploring the role of congregations in addressing the protection of young girls on the Cape Flats*, "Hervormde Teologiese Studies" 2018, no 3, p. 43.

³⁷ J. Kitzinger, *Framing Abuse: Media Influence and Public Understanding of Sexual Violence Against Children*, Pluto Press, London 2015, p. 45.

³⁸ PACE Doc. 14480, 23 January 2018.

they have been known for some time, the figures remain staggering: about 1 in 5 children in Europe are victims of some form of sexual violence by the age of 18. The Council of Europe “ONE in FIVE” Campaign (2010–2015) has been an excellent awareness-raising tool generating many national initiatives. However, combatting sexual violence effectively requires stronger co-operation between European initiatives carried by member States authorities’ and other organisations. In sports, for example, 16% of all girls and women are confronted with sexual violence where positions of trust are misused by trainers or teammates. Very often sexual violence is kept secret. Since the launch of the #metoo campaign things are changing and more and more secrets are being revealed. Most survivors of sexual violence consider recognition and compensation as very important, because it helps them to recover. But survivors do not receive equal support in all European countries. The Parliamentary Assembly should draw attention to the fact that, even 10 years after the opening for signature of the Lanzarote Convention, five member States of the Council of Europe still have to ratify it. Eventually, a European foundation preventing and combatting sexual violence could lead to stronger co-operation between current initiatives and lobby for a better recognition and compensation of survivors”.

Parliamentary Assembly of the Council of Europe’ Committee on Social Affairs, Health and Sustainable Development has nominated Baroness Dorin E. Massey (SOC, United Kingdom) as a rapporteur. The rapporteur has offered draft of the resolution and explain her proposal in explanatory memorandum³⁹.

In the preparation of this report Broness Dorin E. Massey worked in close co-operation with the Council of Europe Committee of the Parties to the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Committee), as well as the “Start to Talk” Campaign and the Children’s Rights Division. It was her great pleasure to represent the committee at the Expert Conference on Sexual Violence against Women and Children in Sports held in Helsinki, Finland, in 2019. A fact-finding visit to Germany on 6–7 May 2019 allowed her to gain insight into the policies developed at the national level. A hearing on 26 June 2019 with the participation of Ms Gioia Scappucci, Executive Secretary of the Lanzarote Committee, and Ms Tineke Sonck, Co-founder of the Belgian Voices in Sport Foundation, provided an opportunity to explore key challenges in this area. She also had the opportunity to speak on several occasions to Ms Najat Maalla M’jid, former UN Special Rapporteur on the sale of children, child prostitution and child pornography, who was appointed Special Representative of the Secretary-General on Violence Against Children on 30 May 2019, as well as with her predecessor, Ms Marta Santos Pais. In July 2019, she was part of a discussion panel organised in New York as a side-event to the UN High-level Political Forum on Sustainable Development (HLPF),

³⁹ PACE Doc. 15109, 27 May 2020.

which brought together representatives from the Assembly, the Inter-Parliamentary Union (IPU), the International Federation of Association Football (FIFA), the UN Secretary General and UNICEF, and highlighted the urgent need to protect children who face sexual abuse from those in their “circle of trust”. The event included the moving testimony of an Olympic gymnast, who had faced such abuse.⁴⁰

They were several important findings offered in the explanatory memorandum by the CoE’s rapporteur. Sexual violence against children takes place in different contexts and settings, ranging from home, school and sports clubs to orphanages and refugee camps, as well as on-line. Such violence can take different forms, from inappropriate touching to gang rape and long-lasting propagation of sexual abuse on the part of authority figures. All age groups are concerned. It is therefore a broad phenomenon, which requires both comprehensive and targeted approaches and policies, which should be developed and put into practice at different levels. For the purposes of this report, I will use the definitions mentioned below. In line with international standards and in accordance with the Lanzarote Convention, “child” means any person under the age of 18 years. When dealing with sexual violence against children, the concept of “the age of sexual consent” should also be borne in mind. The age of sexual consent means “the age below which, in accordance with national law, it is prohibited to engage in sexual activities with a child”. Consequently, an adult who engages in sexual activity with a child under the age of consent cannot claim that the sexual activity was consensual, and such sexual activity is to be considered child sexual abuse or statutory rape. In Europe, the age of consent varies between 14 and 18 years of age, also depending on the age of the older person (e.g. in cases of consensual relationships between minors or when there is only a small age difference), and on whether the older person is in a position of trust or authority, or is recognised to be abusing the younger one⁴¹.

According to the Lanzarote Convention, “sexual exploitation and sexual abuse of children” relate to a broad range of behaviours (as referred to in Articles 18 to 23) including – but not limited to – the following: engaging in sexual activities with a child (except for consensual sexual activities between minors); recruiting, coercing or having recourse to child sexual exploitation; facilitating or possessing child sexual abuse material; intentionally causing, for sexual purposes, a child to witness sexual abuse or sexual activities; and solicitation of children for sexual purposes. Today, the notion of “sexual violence” is increasingly used as an umbrella term that includes sexual exploitation and sexual abuse. Experts point out that “from a child rights perspective, what matters is that the protection granted or sought through both legislation and policies be

⁴⁰ *Explanatory memorandum by Baroness Dorren E. Massey, rapporteur*, PACE Doc. 15109, § 7–8.

⁴¹ *Ibidem*, § 9–11.

as broad and effective as possible, leaving no room for loopholes and securing all children's protection and freedom from harm"⁴².

In recent years, the terminology used in this area has been questioned. The way we frame the discussion is not neutral and is evolving over time. For example, it has been pointed out the terms "child pornography" and "child prostitution" might be understood to imply children's consent to their own exploitation and should therefore be avoided. Similarly, the use of the term "survivor" is sometimes preferred to "victim," as it implies resilience and helps to avoid continued victimisation. While both terms are used interchangeably in different contexts, it is recommended to use caution and never to label a person who does not want to be so called "victim" or "survivor." Useful advice on terminology is available in the ECPAT Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse (Luxembourg Guidelines), which have been developed by a group of specialists from all over the world and are internationally recognised as a reliable reference tool⁴³.

Sexual violence against children has been referred to as "one of the largest silent global pandemics of our time", as many victims never speak out or only do so decades after the fact. While data is difficult to obtain and should be treated with caution, the academic estimate that globally 120 million (or one in 10) girls under the age of 20 have experienced some form of forced sexual contact, is probably a gross underestimate. Even the analysis of data for 24 countries by UNICEF (primarily in high- and middle-income countries), which showed that sexual violence in childhood ranged from 8% to 31% for girls and 3% to 17% for boys, is probably still an underestimate. In Europe, it is estimated that at least 1 in 5 (both boys and girls) have experienced sexual violence. Higher awareness among health and education professionals as well as among the general public, is likely to make it easier for children to speak out about – previously hidden – abuse⁴⁴.

Most child sexual abuse happens within the "circle of trust" – within the family, amongst friends, in childcare services. Shockingly, research shows that 90% of perpetrators are known to the child. About 60% of adult perpetrators are non-relative acquaintances trusted by the family, while 30% of abusers are relatives of the child. It is precisely for this reason that the Lanzarote Committee decided to address the issue of sexual abuse in the "circle of trust" in its 1st monitoring round held in 2015–2018. Too often, it is the very people who have the responsibility to act in the best interest of the child who abuse their position of authority. Multiple scandals have been revealed in the past, such as wide spread child abuse in Irish Catholic-run institutions for children, hundreds of children in council care in Nottinghamshire, United Kingdom, being exposed to sexual abuse by staff in 1960–1990s Note; the Casa Pia affair in Portugal involving

⁴² Ibidem, § 12.

⁴³ Ibidem, § 13.

⁴⁴ Ibidem, § 14.

a State-run orphanage, as well as the existence of the Dutch Party for Neighbourly Love, Freedom, and Diversity, which was founded by self-described paedophiles (2006–2010). While much has been done to address such abuse, it has not been eradicated. In 2019, a Vatican ex-diplomat was sentenced to five years in prison on child pornography charges. In France, a preliminary investigation is currently underway with respect to a surgeon who is suspected of having committed sexual assaults against hundreds of children hospitalised in the dozen establishments where the doctor had operated for more than 30 years. Scandals related to child abuse in sport are being revealed, as more athletes come forward to describe their own experiences with coaches⁴⁵.

Although all social groups are concerned, children in vulnerable situations, such as disabled children, children in migration or children in armed conflict, run a higher risk of becoming victims of sexual violence. In 2020, a staggering 168 million people will need humanitarian assistance and protection. This is 1 in 45 people in the world, which is the highest figure in decades. This makes it particularly difficult to address sexual violence against children, with increased risks of child trafficking, commercial sexual exploitation and “survival sex”. A US Justice Department report released in 2019, said that there were 4 500 complaints in four years concerning child sexual abuse in US immigration detention centers. As many as 40% of children who are sexually abused are abused by older, or more powerful children. Juveniles who commit sex offenses against other children are more likely than adult sex offenders to offend in groups and to have younger victims⁴⁶.

The rapid development of information and communication technologies takes sexual violence against children to an entirely new level. “Sexting”, “revenge porn”, “sex-chatting”, “sextortion” and “on-line grooming” are just some examples of possible ways of abuse. While it is estimated that about 175 000 children go on-line for the first time every day, not enough is done to make them aware of possible dangers, and children often mistakenly feel safer sharing private and sensitive information on-line, rather than in other contexts. Sexually explicit self-produced images often end up in open access and can be used for cyber-bullying and “sextortion”, with highly traumatic consequences for the children concerned. It is to address this concern that the Lanzarote Committee decided to focus on the issue of sexually explicit self-produced images in its 2nd monitoring round (2017-2020). The oversexualisation of our societies in general and children in particular, combined with the normalisation of pornography, creates fertile ground for abuse. “Pornified culture”, transmitted daily through teen magazines, apps and music channels, leaves children “porn prepared”, in other words – willing to comply with expectations in terms of their physical appearance and sexual behaviour. Today, the average age of first exposure to pornography is

⁴⁵ Ibidem, § 17–18.

⁴⁶ Ibidem, § 19–20.

between 9 and 11 years old. Sexually suggestive images are used to sell all sorts of products. They can be seen on buses and on-street advertising, and many no longer find this shocking. World-famous singers have produced viral hits using “soft porn” imagery, which is presented as an expression of emancipation, success and “girl-power” and promoted by the mainstream media. An online magazine has promoted the idea that prostitution is a legitimate profession like any other. Children’s perceptions of sexuality are thus being distorted and leave them vulnerable to risky sexual behaviour and to sexual abuse and exploitation⁴⁷.

Sexual violence is a grave violation of human dignity. It results in serious damage to the victims’ self-esteem, affects their future relationships and their chances of success in life. In the United Kingdom, a parliamentary inquiry showed that the abuse had a devastating lifelong impact on their: intimate relationships (90% of respondents), family life (81%), career (72%) and education (65%). Furthermore, sexual violence has consequences on both the mental and physical health of victims and often results in anxiety disorders, depression, obsessive-compulsive disorders, sleep disorders and post-traumatic stress disorder. In extreme cases, sexual abuse may lead to suicide. One survey, which looked at a sample of 147 sexually abused adolescent girls between 14 and 18 years of age, found that 66% of girls reached a clinical score for posttraumatic stress disorder and 53% reached a clinical score for depressive symptoms. Close to half (46%) reported suicidal thoughts in the past three months. Other long-term effects, which are less known and underestimated, were identified in relation to sexual abuse, such as eating disorders or alcohol or drug dependence, as well as chronic pain, and gastrointestinal, musculoskeletal, neurological, metabolic, cardiovascular, gynaecological and allergic dermatological disorders⁴⁸.

4. Resolution and recommendation of the Parliamentary Assembly of the Council of Europe to deal with the sexual violation of children

Upon the report of the PACE’s Committee on Social Affairs, Health and Sustainable Development, prepared by the Baroness Doreen E. Massey, the Parliamentary Assembly of the Council of Europe has accepted a resolution *Addressing sexual violence against children – stepping up action and co-operation in Europe*⁴⁹ and recommendation on that same subject⁵⁰.

⁴⁷ Ibidem, § 21–22.

⁴⁸ Ibidem, § 24–25

⁴⁹ PACE Res. 2330 (2020). *Text adopted by the Standing Committee, acting on behalf of the Assembly, on 26 June 2020* (see Doc. 15109, report of the Committee on Social Affairs, Health and Sustainable Development, rapporteur: Ms Doreen Massey).

⁵⁰ PACE Rec. 2175 (2020).

The Parliamentary Assembly, being a main deliberative body of Council of Europe and often called as a “soul of Europe”⁵¹, was deeply concerned by the spread of sexual violence against children, and the fact that increasingly younger children are victimised. Millions of girls and boys are concerned globally. While it is estimated that in Europe at least one child in five has suffered from sexual violence, such violence remains largely unreported due to shame, unbalanced power relations between victims and perpetrators, fear of disclosing intimate information and the fact that disclosure could result in further victimisation rather than an improvement of the situation. Today, as Europe is fighting the Covid-19 pandemic and many countries are in lockdown, the risk of child sexual abuse is even higher. Many children are confined with their actual or potential abusers, out of sight of others who could normally detect, prevent or report the potential abuse. Children who live in poverty are increasingly exposed to sexual exploitation. With more time spent by children on gaming, social media and education platforms, online risks have also grown. Child protection systems are not well equipped to fulfil their mission during a global health crisis. Sexual violence against children has serious adverse consequences on their well-being, including later in life. It is an offence against human dignity and a serious violation of human rights, including children’s rights. The Assembly notes that sexual violence against children takes place in different settings, ranging from the home, school and sports clubs, to orphanages and refugee camps, as well as online. Such violence can take different forms, from inappropriate touching to gang rape, and child sexual abuse by adults in positions of authority. It is therefore a broad phenomenon that requires both comprehensive and targeted approaches and policies, which should be developed and put into practice at different levels⁵².

With respect to policy, PACE has offered following recommendations:

- “1. develop and improve existing laws to protect children against sexual violence, with the focus on the best interests of the child, and in line with the United Nations Convention on the Rights of the Child, the United Nations Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (the Lanzarote Convention, CETS No. 201), the recommendations of the Lanzarote Committee, and the 2018 Committee of Ministers Guidelines to respect, protect and fulfil the rights of the child in the digital environment;
2. set minimum standards and lay down preventive measures to be adopted by educational, cultural, sports, religious and other institutions or organisations where organised activities with children take place, and to implement

⁵¹ J. Jaskiernia, *Parliamentary Assembly of the Council of Europe*, University of Warsaw, Council of Europe Information Centre, Warsaw 2003, p. 45.

⁵² PACE Res. 2330, § 1–4.

their legal liability if these requirements are not met, including an obligation to report sexual violence, access to free legal advice for children of any age, protection for whistle-blowers, appropriate recruitment procedures for people in contact with children, and adequate transparency and accountability;

3. ensure that the age of sexual consent is not lower than 18, except in the case of consensual relationships between minors or when there is only a small age difference (up to two years), in which case it should not be lower than 15;
4. abolish the statute of limitations for sexual violence against children, or to at least ensure that the prescription periods for sexual violence against children in civil and criminal law are proportionate to the gravity of the alleged abuse and, in any case, no shorter than thirty years after the victim has reached the age of 18;
5. consider all possible options to ensure adequate financial compensation for individuals who are victims of sexual violence as children, commensurate with the harm suffered, including by the setting up of national funds for victims who are not compensated by the perpetrator, or the liable institution or legal entity;
6. ensure that international and national frameworks and legislation are effectively translated into action at local level and that systematic monitoring of implementation takes place; make full use of parliamentary oversight in relevant monitoring procedures;
7. support the creation of “ombudspersons for children” and the strengthening of their role in protecting children from sexual violence;
8. align policy and practice with the results of research into sexual abuse against children;
9. develop policy guidelines on the protection of children against sexual abuse and sexual exploitation during national emergency situations”⁵³.

With respect to protection and support, the Parliamentary Assembly of the Council of Europe has offered following recommendations:

- “1. ensure that adequate and appropriate support to the victims of sexual violence against children is available and accessible, free of charge, including specialised support for both children and adults who were victimised as children;
2. promote interdisciplinary co-operation and co-ordination, including by means of setting up child-friendly structures and services for abuse disclosure and child protection, based on the Icelandic model of *Barnahús*, with a view to reducing trauma and re-victimisation of child victims;
3. promote training for professionals and volunteers in contact with children, including coaches, health or education professionals and confidential coun-

⁵³ Ibidem, § 6.1.

sellors; such training should include the skills required to identify signs of abuse and to take appropriate action;

4. ensure that steps to deal with sexual violence against children are included in the mandates of all establishments that run organised activities with the participation of children; these should include high-level organisations, such as National Olympic Committees and international and national sports federations, and also local organisations such as clubs, schools or associations; such mandates should be translated into codes of conduct, rules and regulations; such measures should be required at each level as a condition for receiving public funding;
5. ensure that adequate financial and other resources are available, in order to sustain such action, including in times of pandemics or other emergency situations⁵⁴.

With respect to prosecution, to ensure that the requirements of the Lanzarote Convention and of the Council of Europe Guidelines on child-friendly justice are fully respected, and:

1. when children are perpetrators of sexual violence, that alternative measures and restorative justice procedures are applied; criminal prosecution should be used as a last resort;
2. when children are victims or witnesses, that they are properly supported throughout investigations and court proceedings;
3. that in all cases, the best interests of the child are paramount, as recommended in the United Nations Convention on the Rights of the Child⁵⁵.

With respect to prevention Parliamentary Assembly of the Council of Europe recommended:

- “1. raise public awareness of sexual violence against children by means of campaigns, materials and programmes, including the use of media and social networks; make full use of the European Day for the Protection of Children against Sexual Exploitation and Sexual Abuse – 18 November – as an opportunity for raising awareness of sexual violence against children;
2. support comprehensive and appropriate sexuality and relationship education in schools from an early age and as part of lifelong learning programmes, including respectful relationship building and practical guidance on how individuals may protect themselves against and report sexual violence;
3. provide guidance for the general public on how to respond to suspected child sexual abuse;
4. promote a culture of openness in all institutions, in order to ensure that victims of violence receive the support that they need.

⁵⁴ Ibidem, § 6.2.

⁵⁵ Ibidem, § 6.3.

To develop and strengthen the social responsibility and accountability of businesses and media, including social media, in preventing the over-sexualisation of children and the “pornification” of youth culture, and in addressing child sexual abuse; build alliances with trade unions and civil society organisations and seek their advice in developing strategies, legislation, guidelines and good practice”⁵⁶.

With respect to participation and co-operation, Parliamentary Assembly of the Council of Europe recommended to:

- “1. involve survivors of child sexual abuse in the promotion of children’s rights and in developing legislation, good practice and monitoring systems, while paying due attention to safeguarding their integrity and well-being;
2. support regional, national, European and international co-operation in the area of protecting children from sexual violence”⁵⁷.

Additionally, the Parliamentary Assembly of the Council of Europe:

- “1) called on the Council of Europe member States that have not yet ratified the Lanzarote Convention and the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention, CETS No. 210) to do so as a matter of priority, as a contribution to the United Nations Sustainable Development Goals Target 16.2: “End abuse, exploitation, trafficking and all forms of violence against and torture of children”;
- 2) called on the countries that are not member States of the Council of Europe to sign and ratify the Lanzarote Convention;
- 3) support the continuation and further development of the Start to Talk campaign and the design and promotion of Council of Europe materials on addressing sexual violence against children;
- 4) further support the European Day for the Protection of Children against Sexual Exploitation and Sexual Abuse – 18 November – as an opportunity for raising awareness of sexual violence against children;
- 5) called on the UN Committee on the Rights of the Child to support the creation of an observer seat for a Council of Europe representative”⁵⁸.

5. Final observations

In the light of the analysis carried out, there is no doubt that the resolution and recommendations developed by the Parliamentary Assembly of the Council of Europe are important for the broad front in the fight against sexual violence against children. The Council of Europe is a highly specialized organization on

⁵⁶ Ibidem, § 6.4.

⁵⁷ Ibidem, § 6.5.

⁵⁸ PACE Rec. 2175 (2020), § 5.1-5.

democracy, the rule of law and the protection of human rights. So it is not a coincidence that this organization took up the problem of effectively opposing sexual violence against children. The Lanzarote Convention, created in the system of the Council of Europe, is, after all, of key importance among European standards. The Council of Europe therefore has a special title to examine the effectiveness of this instrument after 10 years of its operation. Of original significance in the documents adopted by the Parliamentary Assembly of the Council of Europe is the recognition that the Covid-19 pandemic brings new threats to the issue of sexual violence against children. The recommendations developed by the PACE are therefore the organization's contribution to the search for remedial instruments. Even though such a recommendation represents so called *soft law*, which is not legally binding, they represent *de minimis* a know how do deal more effectively with sexual violence of children. The governments of CoE's member states should analyze them and implement wherever it is possible in country's circumstances. At the same time, the Council of Europe is aware that its activities are only part of the international effort to counteract sexual violence against children. What is needed here is coordination of the actions of state authorities and international organizations, as well as continuous verification of the usefulness of instruments that have been included in the solutions adopted so far, especially in the Lanzarote Convention.

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Przemoc seksualna wobec dzieci w świetle analiz Zgromadzenia Parlamentarnego Rady Europy

Streszczenie

Przemoc seksualna wobec dzieci jest poważnym wyzwaniem dla współczesnej społeczności międzynarodowej. Poszukiwane są sposoby bardziej skutecznego przeciwdziałania temu zjawisku. Szczególną rolę odgrywa Konwencja Rady Europy o ochronie dzieci przed seksualnym wykorzystaniem i niegodziwym traktowaniem w celach seksualnych, CETS nr 201. Zgromadzenie Parlamentarne Rady Europy w uchwale 2330 (2020) oraz zaleceniu 2175 *Przeciwdziałanie przemocy seksualnej wobec dzieci – intensyfikacja działań i współpracy w Europie*, przyjętych w dniu 26 czerwca 2020 r., dokonało oceny sytuacji w tej dziedzinie w Europie i przedstawiło zalecenia w kwestii bardziej skutecznego zwalczania tego zjawiska. Szczególne zaniepokojenie wiąże się z niebezpieczeństwami w tej dziedzinie w dobie pandemii COVID-19. Autor dokonał analizy tych dokumentów ZPRE w szerszym kontekście badań nad tym zjawiskiem i podkreślił ich znaczenie dla wysiłków międzynarodowych w celu zwalczania przemocy seksualnej wobec dzieci.

Słowa kluczowe: dzieci, przemoc seksualna, Rada Europy, ZPRE, konwencja z Lanzarote.