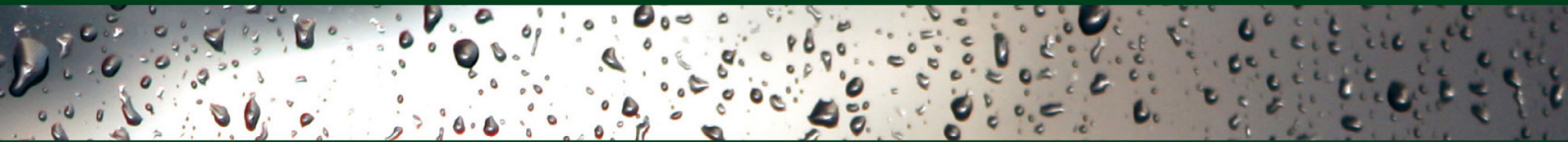




National Rapporteur on Trafficking in
Human Beings and Sexual Violence
against Children

Barriers against child sex tourism



Summary report

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Colophon

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Office of the National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children
P.O. Box 20301
2500 EH The Hague
The Netherlands
+31 (0)70 370 4514
www.nationaalrapporteur.nl / www.dutchrapporteur.nl

Realization: Studio Kers
Translation: Hugh Quigley – Effective English

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The National Rapporteur's remit includes reporting on the nature and scale of sexual violence against children, conducting research into policy and the effects of policy in this area and making recommendations to the Dutch government on improvements that can be made in efforts to address the problem. The report 'Barriers against child sex tourism' is concerned specifically with measures aimed at Dutch nationals who commit sex offences against children abroad.

Child sex tourism

The National Rapporteur defines child sex tourism as the commission of or any form of complicity in acts of sexual violence against children abroad, whether or not the victim has received or been promised money or goods in return. Child sex tourism encompasses three forms of sexual violence against children: sexual abuse of children, child pornography and child prostitution. These forms of sexual violence are criminal offences in the Netherlands by virtue of the chapter of the Dutch Criminal Code devoted to offences against public morals. Child sex tourism is an offence that can be committed by an individual who visits another country on holiday or who lives permanently or semi-permanently in another country. The production of child pornography is a fairly common element in the context of child sex tourism. Coercing children in another country to perform webcam sex is also regarded as a form of child sex tourism.

In her report 'Barriers against child sex tourism', the National Rapporteur analyses the possibilities for combating child sex tourism engaged in by Dutch nationals. The National Rapporteur found that there are actions that the government can take, particularly in terms of prevention. The key message of the report is therefore as follows:

Children have the right to protection against sexual violence. The government must endeavour to prevent Dutch nationals from committing sexual violence against children in other countries. Measures restricting the liberty of convicted paedosexuals, international cooperation and the sharing of information are important instruments for preventing, investigating and prosecuting child sex tourism.

The Netherlands has an obligation to endeavour to prevent Dutch nationals from committing sex crimes against children. That obligation extends not only to Dutch territory, but also with regard to Dutch nationals or inhabitants beyond the national borders. This obligation is formulated as follows in Article 4 of the Lanzarote Convention:

Each Party shall take the necessary legislative or other measures to prevent all forms of sexual exploitation and sexual abuse of children and to protect children.

Dutch child sex tourists and their countries of destination

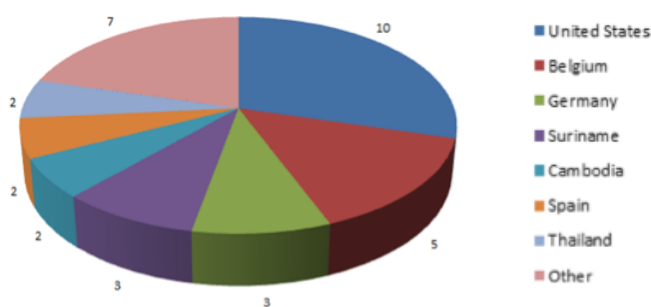
Although a recent survey has shown that little research has been conducted into the countries of destination of Dutch child sex tourists, on the basis of the information that is available, the National Rapporteur has identified 69 such countries in Europe, Asia, Africa, North America, Latin America and Oceania. If child sex tourism is to be tackled effectively, first and foremost it is necessary to compile a comprehensive list of countries where Dutch nationals have committed sexual violence against children. This is particularly important with a view to improving international cooperation in the areas of prevention, investigation and prosecution. The Department of Consular Affairs and Migration Policy of the Ministry of Foreign Affairs keeps records of Dutch nationals in other countries who are being held on remand, have been released on bail or are serving a term of imprisonment. In June 2013, 34 of the 2,340 Dutch nationals on that list were registered for a sex crime involving a minor (see Figure 1).

Recommendation LIST OF DUTCH CHILD SEX TOURISTS IN COUNTRIES OF DESTINATION

It is recommended that the Minister of Foreign Affairs produce a list every month of Dutch nationals who are in custody or have been released on bail in another country in a case involving sexual violence against children. This list should be made available to the Dutch police.

In addition to the scale of the problem, it is also important to gain an insight into the categories of Dutch child sex tourists visiting each country of destination. In that context, the first question to be asked is whether child sex tourists are preferential or situational offenders. The preferential offender has a preferential or exclusive sexual preference for children. The situational offender commits an offence because the opportunity arises or because of other contextual factors. A second question that needs to be answered is to what extent child sex tourists travel temporarily to a country of destination and to what extent they settle permanently in a country for the purpose of committing sexual violence against children. The Dutch police make a distinction between four different (and overlapping) categories of offenders: the ‘tourist’ who travels to another country for a short period; the ‘emigrant’ who lives permanently in the country of destination (with or without also having a permanent address in the Netherlands); the ‘purported benefactor’ who offers help in establishing children’s homes, schools or similar institutions in the country of destination and in that way gains access to children; and the ‘webcam child sex tourist’ who orders and pays for sexual abuse of children in another country online from the Netherlands in order to participate in it as an observer.

Figure 1 Dutch nationals who are being prosecuted or have been convicted of sex offences with minors abroad, by country



Prevention

The Netherlands must not look on helplessly as convicted paedosexuals who are subject to supervision in the Netherlands leave the country and create victims abroad. Under Dutch law, it is possible to prevent convicted paedosexuals with a high risk of recidivism from committing sexual violence against children in another country.

Prevention: restrictions on liberty

The Dutch Criminal Code contains a number of provisions that allow for restrictions on the freedom of movement of convicted paedosexuals with a high risk of recidivism. The court can impose restrictions on an individual’s liberty as part of a suspended sentence, a sentence or a conditional discharge. These restrictions on their movements can include a duty to report to the police, a ban on visiting a particular location and an order to remain in a particular location. It may be possible in future to impose a travel ban, since the State Secretary for Security and Justice has included a travel ban as one of the measures in a bill providing for long-term supervision of convicted criminals. In the context of these restrictions on liberty, the National Rapporteur stresses the importance of effective supervision by the probation service.

Recommendation EFFECTIVE SUPERVISION OF COMPLIANCE WITH RESTRICTIONS ON LIBERTY

It is recommended that the Minister of Security and Justice investigate how compliance with orders restricting an individual’s liberty can be effectively supervised in order to prevent convicted paedosexuals from travelling abroad.

Prevention: refusal or cancellation of the passport

On the basis of the Dutch Passport Act, it is already possible to refuse a passport to a person convicted as a paedosexual within the previous ten years or to cancel his or her passport by entering that person’s name in the register of persons who can be denied a passport or whose passport can be cancelled (*Register paspoortsignalering*). This can be done if there is a valid reason to suspect that he or she will be guilty of sexual violence

against children. However, this is a decision to be made by the minister and not by a court. In contrast to the passport, a person may not be denied an identity card or have his or her identity card cancelled. This measure is therefore only effective for countries outside the European Union. If a Dutch national who has been refused a passport or whose passport has been cancelled is nevertheless living abroad, the Netherlands should notify the country concerned.

Recommendation REFUSAL OR CANCELLATION OF A PASSPORT

It is recommended that in appropriate cases the Minister of Security and Justice request the refusal or cancellation of the passports of convicted paedosexuals with a high risk of recidivism.

The Dutch government should also be able to ensure that convicted paedosexuals with a high risk of recidivism do not violate the conditions imposed on them while they are abroad. Since the Netherlands has no jurisdiction in other countries, cooperation with local authorities and organisations is essential. Various ways in which information can be shared to prevent child sex tourism are set out below.

Prevention: Certificate of Good Conduct available in English

In the Netherlands, to prevent convicted paedosexuals from occupying functions that bring them into close contact with children, people working in certain professions – such as employees of a day-care centre – are required to submit a Certificate of Good Conduct (*Verklaring Omtrent het Gedrag*). It is the view of the National Rapporteur that the Dutch government should endeavour to prevent Dutch paedosexuals with a high risk of recidivism from moving abroad to take up a position that brings them into intensive contact with children. It should therefore be made easier for organisations in other countries to discover whether a prospective employee or volunteer ought to be prevented from working with children. However, a Certificate of Good Conduct is currently only available in the Dutch language. The application form, part of which has to be completed by the foreign employer, is also currently available only in Dutch. This represents a serious obstacle for foreign employers and organisations if they ask the prospective employee or volunteer to apply for a Certificate of Good Conduct.

Recommendation CERTIFICATE OF GOOD CONDUCT AVAILABLE IN ENGLISH

It is recommended that the State Secretary for Security and Justice also make the application form and the Certificate of Good Conduct available in English so that foreign organisations can screen future employees when they apply for jobs in which they will be working with children.

Prevention: spontaneous sharing of information by police

Spontaneous sharing of information is the sharing of information without being requested to do so by the authorities or organisations in another country. Sharing information plays an important role in preventing child sex tourism. If Dutch authorities suspect that convicted paedosexuals are in a country or plan to visit that country for the purposes of child sex tourism, they should be able to share that information with the local authorities. Under certain conditions, the Dutch police may share police intelligence – i.e. non-judicial information – with foreign police authorities, for example if it relates to an investigation of a serious crime or to prevent a serious threat to public order. Requests for other information, for which coercive powers must be applied, when special investigative powers are required or when the information is required as evidence in the other country, must be forwarded to the Public Prosecution Service.

Under certain conditions, Dutch police authorities can also share information received from the police in other EU member states with individuals or agencies with a specific task. Accordingly, there seems to be a basis for sharing information received from other EU member states with local NGOs. It does not seem illogical that this would also apply by analogy to the sharing of domestic police information, although that is not explicitly stated in the Police Data Decree (*Besluit politiegegevens*).

Prevention: spontaneous sharing of information about refusal/denial of a passport

If a Dutch national has been refused a passport or his or her passport has been cancelled on the grounds of the Passport Act, the country where that person is staying should be informed by the Netherlands. If the Dutch government feels that a person should not be living outside the Netherlands, it also has a responsibility to notify the country that might face the consequences. This is all the more important since the fact that an individual is flagged in the register of persons who can be refused a passport or whose passport can be

cancelled does not directly lead to that person's passport actually being confiscated. Because there are no systematic checks at the Dutch borders of whether a person is flagged in the passport register, it is still possible for such a person to leave the Netherlands.

In theory, sharing information could be equated with veiled extradition. If a person, at the time the information is provided, is not formally suspected of a crime in the Netherlands or is not being prosecuted, however, there can be no question of veiled extradition. In that case, the Netherlands should be able to share this information with the authorities in other countries. The question of whether it constitutes veiled extradition if, at the time the information is shared, a person in the Netherlands is suspected of a crime or is being prosecuted for it is for the court to answer.

Prevention: spontaneous sharing of judicial information

The EU Convention on Mutual Legal Assistance in Criminal Matters (2000) gives judicial authorities the possibility to provide information spontaneously to authorities in other EU member states. This means that judicial authorities can share information with countries of destination in Europe. Judicial information provided spontaneously may only be used in a criminal trial after a request for mutual legal assistance has been acceded to.

Investigation and prosecution of Dutch child sex tourists

As described above, the Netherlands has the obligation and possesses the legal instruments to erect barriers to prevent Dutch nationals from engaging in child sex tourism in other countries. If, despite these efforts, Dutch nationals commit acts of sexual violence against children in another country, the Netherlands still has a responsibility. The Netherlands has the obligation to help in the investigation and prosecution of Dutch child sex tourists, both in the country concerned and in the Netherlands.

Investigation in countries of destination: Dutch liaison officers

The Netherlands cannot carry out investigations in other countries on its own initiative, but it can offer help to the local authorities in the investigation of Dutch child sex tourists. Western countries collaborate with countries of destination for child sex tourism to investigate their nationals who are suspected of sexual violence against children in those countries. To promote cooperation with the investigative services of other countries, the Netherlands stations liaison officers from the police or the Royal Marechaussee in those countries. They maintain contact with the foreign investigative and immigration services, exchange operational information between the Dutch investigative services and their counterparts in the other country in order to tackle serious, organised cross-border crime, and advise the Dutch government on the cooperation. The presence of liaison officers in countries of destination for child sex tourism can help to increase the effectiveness of the investigation and prosecution of Dutch nationals suspected of sexual violence against children in other countries. Liaison officers from the police or the Royal Marechaussee are stationed in 43 of the 69 countries identified as destinations for child sex tourism. The National Rapporteur feels it is very important for the presence of liaison officers in countries of destination of Dutch child sex tourists to be permanently maintained.

Recommendation ASSIGNMENT OF LIAISON OFFICERS TO COUNTRIES OF DESTINATION

To provide all possible assistance in the investigation of Dutch child tourists in other countries, it is recommended that the Minister of Security and Justice arrange for liaison officers to be assigned to countries of destination for child sex tourism.

Investigation and prosecution in countries of destination: mutual legal assistance

The Netherlands can provide the authorities in another country with 'legal assistance' for an investigation involving a Dutch national in that country. Dutch law defines requests for mutual legal assistance as 'requests to perform, jointly or otherwise, acts of investigation or to provide cooperation in them, to transmit information, files or articles to be produced in evidence or to provide information or serve or hand over documents or to make commitments or statements to third parties.' In certain cases, a request for mutual legal assistance can only be acceded to if there is a treaty with the country making the request. If there is no treaty on mutual legal assistance, the Dutch authorities are prevented from providing assistance to the authorities of another country for the investigation and prosecution of Dutch child sex tourists. In the absence of a treaty on mutual legal assistance, for example, it is not possible to search a house and gather evidence. In the

preamble to the EU Directive on combatting the sexual abuse and sexual exploitation of children and child pornography, the EU member states are encouraged to intensify their cooperation with countries of destination, for example by concluding treaties on mutual legal assistance. The Netherlands is party to the Convention on mutual legal assistance in criminal matters between the member states of the EU (2000). Outside the EU, however, the Netherlands has only concluded treaties with a few countries of destination for child sex tourism and has no treaty with three-quarters of the countries of destination for child sex tourism identified by the National Rapporteur.

Recommendation BILATERAL TREATIES FOR MUTUAL LEGAL ASSISTANCE WITH COUNTRIES OF DESTINATION

It is recommended that the Minister of Security and Justice conclude bilateral treaties for mutual legal assistance with the countries of destination where Dutch nationals commit acts of sexual violence against children.

Prosecution in countries of destination: refusal of passports to Dutch nationals who have been prosecuted

Primary responsibility for the prosecution of persons who are suspected of sexual violence against children in other countries rests with the country where the offence is committed. That applies even when the suspects are not nationals of that country. However, the Netherlands also has a responsibility for Dutch nationals who commit these offences abroad. From that perspective, the Netherlands can be expected to offer assistance in the prosecution of Dutch nationals suspected of child sex tourism.

In addition to providing legal assistance, the Netherlands could assist in the prosecution of child sex tourists in other countries by guaranteeing that the Dutch suspect will not leave the country of destination during the trial. Since 2010, it has been possible for the Netherlands to refuse to issue a passport to Dutch nationals who are living in another country and who are being prosecuted or have been convicted there. On the basis of the Passport Act, the competent minister can refuse or cancel a passport as soon as he or she learns through official channels that a Dutch national suspected of a sex crime is trying to flee the country where the crime was committed. If the suspect whose passport has been confiscated is released on bail and succeeds in leaving the country, however, he or she can apply to a Dutch embassy in another country for an emergency passport. The Passport Act provides that, in that case, the suspect may not be refused an emergency passport.

When Dutch suspects are being prosecuted abroad but are living in the Netherlands, the country concerned can make a request for their extradition. However, the Netherlands only extradites Dutch nationals under strict conditions. The Constitution provides that a person can only be extradited on the basis of an extradition treaty.

Investigation in the Netherlands

Dutch investigative services (the police, the Royal Marechaussee and customs) use investigative methods in the Netherlands to identify child sex tourists. There is also a reporting centre for child sex tourism. The centre passes on the reports it receives to the police, who study every report and if there are sufficient leads, the Dutch police can start an investigation. Information about the prosecution of a Dutch suspect in another country can also prompt an investigation into related offences in the Netherlands. Finally, investigations into sexual violence against children can also produce evidence of child sex tourism, for example evidence (such as stamps and visas in the suspect's passport and photos of him or her with foreign children) that the suspect has repeatedly visited countries of destination for child sex tourism. During an investigation of child pornography, images that portray children who appear to be from other countries could be evidence of child sex tourism.

Prosecution in the Netherlands: extraterritorial legislation

Sexual violence against children in other countries is punishable on the basis of so-called extraterritorial legislation. If a Dutch national has been tracked down, but not prosecuted, in another country, if a Dutch national flees the country in which he or she has been convicted or if a Dutch national is tracked down in the Netherlands, he or she can also be prosecuted in this country. The number of Dutch nationals prosecuted for child sex tourism in the Netherlands is very small, however. If the suspect has already returned to the Netherlands, prosecution in the Netherlands is often the only option, since the Netherlands does not have extradition treaties with the majority of countries of destination for child sex tourism.

Key message and recommendations

Children have the right to protection against sexual violence. The government must endeavour to prevent Dutch nationals from committing sexual violence against children in other countries. Measures restricting the liberty of convicted paedosexuals, international cooperation and the sharing of information are important instruments for preventing, investigating and prosecuting child sex tourism. To that end, the National Rapporteur makes the six following recommendations:

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| <p>OVERVIEW OF DUTCH CHILD SEX TOURISTS IN COUNTRIES OF DESTINATION</p> <p>It is recommended that the Minister of Foreign Affairs produce a list every month of Dutch nationals who are in custody or have been released on bail in another country in a case involving sexual violence against children. This list should be made available to the Dutch police.</p> |
| <p>EFFECTIVE SUPERVISION OF COMPLIANCE WITH RESTRICTIONS ON LIBERTY</p> <p>It is recommended that the Minister of Security and Justice investigate how compliance with orders restricting an individual's liberty can be effectively supervised in order to prevent convicted paedosexuals from travelling abroad.</p> |
| <p>REFUSAL OR CANCELLATION OF A PASSPORT</p> <p>It is recommended that in appropriate cases the Minister of Security and Justice request the refusal or cancellation of the passports of convicted paedosexuals with a high risk of recidivism.</p> |
| <p>CERTIFICATE OF GOOD CONDUCT AVAILABLE IN ENGLISH</p> <p>It is recommended that the State Secretary for Security and Justice also make the application form and the Certificate of Good Conduct available in English so that foreign organisations can screen future employees when they apply for jobs in which they will be working with children.</p> |
| <p>ASSIGNMENT OF LIAISON OFFICERS TO COUNTRIES OF DESTINATION</p> <p>To provide all possible assistance in the investigation of Dutch child tourists in other countries, it is recommended that the Minister of Security and Justice arrange for liaison officers to be assigned to countries of destination for child sex tourism.</p> |
| <p>BILATERAL TREATIES FOR MUTUAL LEGAL ASSISTANCE WITH COUNTRIES OF DESTINATION</p> <p>It is recommended that the Minister of Security and Justice conclude bilateral treaties for mutual legal assistance with the countries of destination where Dutch nationals commit acts of sexual violence against children.</p> |