

## "I MIGHT BE A PERVERT BUT I AM NOT A RAPIST"<sup>1</sup> PUBLIC PERCEPTIONS OF CHILD PORNOGRAPHY

*"The global community has no excuse for saying that 'we didn't know' or 'we couldn't foresee' the exponentially increasing violence caused to children in relation to new information and communication technologies." Professor Paulo Pinheiro, UN study on violence against children*

### Introduction

1 Recent incidents have convinced me that the South African public may be grossly misinformed and disturbingly ignorant of the real nature of child pornography. The paradox is that this ignorance of the increasing sexual abuse and exploitation of children exists side by side with the expanding growth and reach of information technology – the very technology that facilitates the exploitation of, and profiteering from, the sexual abuse of children. More disturbing is the contribution of South African courts in the trivialisation of one of the most heinous crimes against children by the “slap-on-the-wrist” sentences handed down in child pornography cases.

- In June 2005, Rawlinson<sup>2</sup> was arrested on charges of the rape and indecent assault of a 12-year-old girl. At his trial, he admitted to accessing, viewing and downloading child pornography from the Internet. Rawlinson was convicted for unlawful possession of

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<sup>1</sup> Statement by accused to arresting officers at time of arrest – *The State v Rawlinson, Case 041/3019/05*

<sup>2</sup> *The State v Rawlinson, Case 041/3019/05*

almost one thousand images of child pornography and was sentenced to 8 years imprisonment, with 5 years suspended for 5 years. Effectively, he faces a maximum of 3 years in prison. Good behaviour will reduce that time. But the children who were sexually abused and brutalised to satisfy his sexual perversion are not so lucky. It will take a lifetime, if at all, for them to recover from the emotional, psychological and physical trauma that was suffered upon them in the creation of child pornography. And it will, in all probability, take as long for the families of these children to recover from the trauma that they too suffer when their children are so abused. This would seem an exaggeration only to those who have had the good fortune neither to have had their children sexually abused and brutalised nor been exposed to child abuse images.

- At the end of a presentation on child pornography to parents and teachers in Pietermaritzburg, I was confronted by a none-too happy parent who accused me of “irresponsibility and religious fanaticism” and that my presentation was an “exaggeration of the nature, extent and risk to children of child pornography and sexual abuse”<sup>3</sup>. I was taken aback by what appeared to me to be a defence not only of child pornography but of intergenerational sex. “*Children are naturally sensual, sexual and curious*”, she said, in a tone which suggested an aggressive disbelief in anything that was said about the subject. Had she completely missed the point that children are the coerced victims and not willing participants in their sexual abuse and brutalisation? I will never know for I responded that there were many perverts who shared the opinion that consensual sex between an adult and a child was acceptable but that an opinion is neither fact nor objective truth. The fact is that children

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<sup>3</sup> The official response from the organisers of the seminar, *Childhood Under Threat*, was that my presentation was “*awesome.....disturbing to some.....but necessary and timely....*”

are sexually abused, brutalised and even murdered on camera for the sexual gratification of the depraved.

- On 5 April 2007, a newspaper report<sup>4</sup> of a child pornography case confirmed my disquiet about the contribution of courts in South Africa to the trivialisation of one of the most despicable crimes against children and society. According to the report, two Newlands East men picked up a 15-year-old girl, took her to a park, drank alcohol and smoked marijuana. They then indecently assaulted the girl, with the one using a mobile cellular phone to film the indecent assault by the other, and then being filmed by another friend while he indecently assaulted the girl. Both men entered into a plea bargain and were given 5-year sentences, *wholly* suspended for five years, and a R10 000 fine each, for indecent assault and the creation, production and possession of child pornography. The newspaper also reported that the 20-second video clip of the girl, dressed only in her school shirt, was widely distributed among school children. The two men said they were “deeply remorseful” and realised the seriousness of the offences. *But why had the court not realised the seriousness of their offences? And why was no person charged with the distribution of that video clip? And why was the third person who filmed one of the two perverts not charged with the creation, production and possession of child pornography?*
- The case of *Brett Stevens and The State*<sup>5</sup> is another example of the trivialisation of child pornography by South African courts. Stevens was convicted on 2 counts of the indecent assault of a minor and 8 counts of the creation and possession of child pornography. He was sentenced to 8 years imprisonment, with 3 years conditionally

suspended for 5 years, which was, in my opinion, another example of the “slap-on-the-wrist” sentences typically handed down by our courts in child pornography cases. I was, sadly, proved wrong. The “slap-on-the-wrist” sentence came from the High Court to which Stevens appealed against the sentence and the Learned Judge found that “*there was no evidence that the girls suffered any physical harm, nor is there any evidence that either of the girls showed any serious signs of psychological harm until the time of the trial*” and reduced the sentence to 6 years, with 2 years conditionally suspended for 5 years!

2 Why is the sexual abuse and brutalisation of children, and the exploitation of that abuse and brutalisation through the creation and distribution of child pornography, regarded as so trivial an offence that not only are sentences for convicted child pornographers mere “naughty-naughty-slaps-on-the-wrists” but there is hardly a whisper of outrage from the public? Does this deafening silence – this betrayal of all children - suggest that the public agrees with the leniency with which paedophiles and child pornographers are treated by our courts? If that is the case, then consider this : even as you are reading this, somewhere a child, probably about six months old, is being sexually penetrated by a brute of a “man”, while another brute is photographing the crime for distribution over the Internet. That picture is, in fact, sitting on your computer in the sense that all it will take is a simple search and a click of a button for it to appear on your computer screen.

## The reality of child pornography

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<sup>4</sup> Monica Laganparsad, IOL, 5 April 2007

<sup>5</sup> Case No. CA & R 54/07, 22 June 2007

3 The problem, in understanding what child pornography is all about, is the failure to separate rhetoric from reality, a problem exacerbated by the expression itself. The reality is that images of the abuse, brutalisation and torture of children has nothing to do with pornography. "Pornography", as is commonly understood and defined in jurisprudence, is an image of sexual conduct, involving consenting adults, that stimulates sexual (erotic) rather than aesthetic feelings. Pornography is a "freedom of expression" issue and a legitimate subject for debate. Child pornography is not a freedom of expression issue. An image of the sexual abuse of a child is, in fact, a crime scene – it is evidence of a serious crime against a child. Twinning the meanings of "child" and "pornography" to define "child pornography" makes about as much sense as twinning the meanings of "baby" and "shower" to define a "baby shower"<sup>6</sup>. There is as much a connection between "baby", "shower" and "baby shower" as there is between "child", "pornography" and "child pornography". The production and use of child pornography must be seen and understood as *".....one practice within a repertoire of child sexual abuse"*.<sup>7</sup>

No matter how cynical they are, few, except those who have to endure the trauma of having to deal with such deeply upsetting materials, know the reality of child pornography. It is not just about naked children. And it is not just about adults having sex with children, even babies. It is the rape, brutalisation and torture of children, including toddlers. As Michael Malone of ABC News reports: *"This is the very heart of darkness. These are images that are more than shocking and repulsive. They kill your soul because you know that every poor child you see on those sites is dead. If not now at the hands of a sadist, then decades from now from alcoholism, drugs or suicide....The pictures first make you sick, then angry and finally homicidal."*

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<sup>6</sup> See *Tasco Luc de Reuck v Director of Public Prosecutions and Others, Case CCT 5/03*

<sup>7</sup> *Rhetoric and Realities: Sexual Exploitation of Children in Europe (2000)*, Professors Liz Kelly and Linda Regan

The expression "child pornography" is used in this paper for the sake of convenience but it should be appreciated that the more appropriate term, and the term preferred and used by international law enforcement agencies, is "child abuse materials", which *"unambiguously expresses the nature of child pornography, and places it firmly outside the range of acceptable innuendo and smutty jokes...."*<sup>8</sup>

### The scope and extent of child pornography

Given the clandestine nature of child pornography, estimates of its extent and scope can only be speculative and based on information gleaned from cases which have been investigated and prosecuted or reported to agencies and organisations involved with child protection issues. However, the sexual abuse and exploitation of even one child is one too many.

According to a press release from the American National Centre for Missing and Exploited Children (NCMEC), released on 18 August 2005, child pornography has become, within a few years, a multi-billion commercial enterprise *"and is among the fastest growing business on the Internet"*. Advances in information technology has facilitated instant access *"by thousands and possibly millions<sup>9</sup> of individuals throughout the world. The ability to use credit cards to purchase child pornography has made it easier than ever to obtain."* NCMEC also reported that, according to investigators in the United States, the majority of those arrested were in possession of images of children who had not yet reached puberty. "

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<sup>8</sup> Max Taylor and Ethel Quayle, *Child Pornography: An Internet Crime*, Brunner-Routledge (2003). See, also, Julian Sher, *One Child At a Time: The Global Fight to Rescue Children from Online Predators*, Random House (Canada, 2007)

<sup>9</sup> British Telecom reported, in 2006, that it blocks, an average of 35 000 attempts to access child pornography on the Internet, every day of the week

*Specifically, 83% had pornographic material that involved children between ages 6 and 12; 39% had materials involving children between ages 3 and 5; and 19% had images of infants or toddlers under age 3.”* NCMEC also refers to a 2002 report by ECPAT International, which estimated that over 100 000 child pornography web sites (not images) existed on the Internet in 2001. (Even if these 100 000 web sites hosted just a 100 images, and the numbers usually run into many hundreds and thousands, the total number of child abuse images available on the Internet in 2001 was in excess of 1 million.) Both the NCMEC and the Internet Watch Foundation<sup>10</sup> (IWF) estimate that the number of child abuse images on the Internet to have since increased by 1500%. NCMEC’s Cybertipline itself recorded an increase in reports of child pornography from 21 603 in 2001 to 106 176 in 2004 – an increase of 491% over a four-year period. *“It is estimated that 20% of all pornography on the Internet involves children.....Traditionally, we have paedophiles as the users and distributors of child pornography.....However, we are shocked to learn that the consumer market for child pornography is growing and becoming much broader. Younger and younger children are being victimised, and the content is becoming more graphic and more violent”* concludes NCMEC. The IWF came to similar conclusions, as reported in its 2006 Annual Report.

The findings and estimates of international organisations about the extent and scope of child pornography is not irrelevant to South Africa for a very simple reason. Images of child abuse are traded and exchanged mainly, and almost exclusively, through the Internet<sup>11</sup>. The reasons for the Internet as the preferred medium of paedophiles is not important for the purpose of this paper. What is important is to understand that the Internet does not exist in a particular country or geographical location. Simply put, in so far as access to it and all that it contains is concerned, is that it exists

on every computer no matter where located. All that is needed to access whatever information is available on the Internet, from any part of the world, is a computer, a modem and a telephone. Even the skills needed to access the Internet have been made so basic that even very young children are able to access the Internet. Given this nature of the Internet, an increase in the availability of child abuse images on the Internet is an increase in such availability in every part of the world.

Iyavar (2007)

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<sup>10</sup> See *Annual Report (2006)* at [www.iwf.org.uk](http://www.iwf.org.uk)

<sup>11</sup> Mobile cellular phones are now being increasingly used as a medium for the distribution of such images