Child sexual abuse and exploitation:
A suggested human rights approach

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Introduction

The sexual abuse and exploitation of children, albeit in different guises, is universal, in part because of the subordinate status of children. Despite this sexual abuse within the family is not regarded as a human rights issue. Even where protection against sexual exploitation is conceptualised as an aspect of human rights, it is classified as a health or economic issue requiring only progressive implementation. It is assumed that a petitioning system would have no relevance for abused children, and that the Convention on the Rights of the Child 1989, which was established to work on a cooperative basis, would not operate as effectively if it incorporated a child petitioning system. In addition, because of the lack of gravity attributed generally by international lawyers to the sexual exploitation of children, such exploitation has not been included in a draft international criminal code. In an attempt to raise the level of protection of children at their most vulnerable, this article argues that the prevention of child sexual abuse and exploitation, and the protection of those subjected to it, ought to be conceptualised within a framework of international human rights law.

Child sexual abuse

The sexual abuse and exploitation of children violates the inherent dignity and worth of the child and usually involves cumulative breaches of several rights, the most common being unlawful interference with family life, breaches of privacy rights, health and leisure,¹ all of which are equally essential for the healthy development and survival of the child. The two concepts of child sexual abuse and exploitation are expressly set out side by side in the Convention on the Rights of the Child.² Yet no clear distinction was made

* This article is based upon a paper presented to the University of Tromso, Seminar on Children, Sexuality and Abuse.
² Art. 34.
during the drafting of the treaty, probably because both are broad and overlapping concepts which risk being limited if defined. Nevertheless, a distinction ought to be made, since the causation may sometimes be different and states need to adopt different strategies both to prevent sexual abuse and exploitation and to reintegrate child victims.

Child sexual abuse has been defined as ‘involvement of dependent, developmentally immature children and adolescents in sexual activities they do not fully comprehend, to which they are unable to give informed consent, or that violates the social taboos of family roles’.\(^3\) It includes paedophilia, incest and any intra-familial relationship of a sexual nature which risks damaging the healthy sexual development of a child. The Convention on the Rights of the Child does not limit the responsibility of the state only in regard to parents but obliges States Parties to take measures to prevent sexual abuse by any person responsible for the care of the child.\(^4\)

In contrast with the sexual exploitation of children, child sexual abuse was not expressly prohibited by international law until the adoption of the Convention on the Rights of the Child, partly because the sexual abuse of children, particularly within the family, raises the dichotomy of the public and private sphere. It is the public sphere which is regarded as the province of international law. Yet the creation of new rights for children has raised issues as to the limits of state responsibility. State responsibility defines the limits of government accountability in international law which arises only when acts by individuals can be attributed to the state.\(^5\) Hence actions of private individuals lie beyond the traditional nexus. Where the state does not commit the principal abuse, however, it may still be held responsible if it fails to prosecute or detect the abuse carried out by those acting in their private capacities.\(^6\)

There is sometimes resistance to using international human rights law because it is perceived as being confrontational, pitting the child against the state. Yet in specific cases there is simply no alternative; unless child sexual abuse is regarded as a human rights issue, the child would be without a remedy. \(X\) and \(Y\) v. Netherlands\(^7\) arose because a father was unable to prosecute an institution for the mentally disabled in which, he alleged, his daughter had been sexually assaulted. His proposed action failed because, under Dutch law at the time, only his daughter had the locus standi to bring the action. The European Court of Human Rights having previously established that Article 8 of the European Convention on Human Rights imposed positive obliga-

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\(^4\) Art. 19(1).


\(^7\) Series A, Judgement of the European Court of Human Rights, 26 March 1985.