

A Matter of Shared Responsibility: How Practitioners, Policy Makers, and Media shape Sex Offender Risk Assessment in Flanders (Belgium)

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Abstract

In the last decades the appraisal of risk in sex offenders has seen significant advances through the development of structured risk assessment tools. Not only have several tools been developed to improve the predictive validity of risk evaluations in sex offenders, but these assessments are also expected to be advantageous to treatment providers and policy. Now the question arises to what extent these risk assessment tools are being embraced in practice. The current article will zoom in on current risk assessment practice in Flanders. The main aim is to unravel the role of important players within this field. It will be argued that despite several recent important developments within Flemish sex offender risk assessment practice, a wide range of factors on the level of media, policy makers, and practitioners threaten to hamper further progress in developing a transparent and evidence-based risk assessment policy. To illustrate this precarious situation in Flanders, three issues will be addressed. First, the impact of a high-profile child sexual abuse case, the Dutroux case, on Belgian policy and public opinion will be discussed. Second, the lack of a consistent risk assessment policy across various settings will be illustrated. Finally, critical issues arising from media, policy and practice will be identified.

Keywords: risk assessment, sex offenders, Flanders, Belgium, media, policy, practitioners

Introduction

Notwithstanding its small country's size, Belgium exhibits a complex judicial and political system. To illustrate, Belgium contains five judicial areas, which are in turn divided in 27 judicial districts. These districts are further divided into 187 judicial cantons. In addition, Justice is considered as a Federal Public Service in Belgium, whereas Flanders is responsible for the Department of Welfare, Public Health, and Family. This complex structure often hinders a smooth and efficient collaboration regarding topics that are relevant for both departments, among which the treatment of offenders. This complex system also translates into a lack of consistency in the approach to (sex) offenders. Different approaches can for instance be found between the northern part of Belgium (i.e., the Flemish region) and the southern part (i.e., the Walloon region). A comparison of these differences falls beyond the scope of the current paper. Given the authors' extensive experience with primarily the Flemish judicial and societal structures, and with the Flemish mental health care system, the current paper will primarily focus on the attitudes and policies regarding sex offenders and risk assessment in Flanders. But we will first start describing a notorious sexual offence case that has led to a public outcry throughout the entire country and eventually to significant policy changes throughout the nation: the Dutroux-case.

Dutroux: How one case managed to stir public opinion and policy towards sex offenders

On the 9th of August 1996 Laetitia Delhez, 14 years old, is walking home from a public swimming pool when she suddenly disappears. Information provided by several eyewitnesses leads to the arrest of Marc Dutroux, his wife, Michelle Martin, and his accomplice, Michel Lelièvre on the 13th of August. After having made confessions two days later, Dutroux leads the police to the basement where two girls, Laetitia Delhez and Sabine Dardenne, are found alive in a soundproof concrete dungeon in the basement. The 12-year-old Dardenne was kidnapped by Dutroux and his accomplices as she was walking home from school on the 28th of May 1996. After further investigation the mortal remains of Julie Lejeune and Mélissa Russo (both 8 years old), the 17-year-old An Marchal and the 19-year-old Eefje Lambrecks, as well as an accomplice, Bernard Weinstein, are found. In 2004, Dutroux is convicted for the abduction, torture, and rape of six girls, four of whom have died, as well as for having killed Weinstein. During his widely publicized trial several shortcomings in the Dutroux investigation and the Belgian criminal justice system came to light. First of all, it revealed shortcomings in the follow-up of known sex offenders. Dutroux and Martin had been arrested before, in 1986, for the abduction and rape of five young girls. Both were released on parole in 1992. Hence, they managed to commit six other kidnappings while under supervision. Second, the case pointed out a lack of a structured (police) approach to children's kidnapping, as well as a lack of support for victims of such crimes. Thanks in part to the public outcry for a safer society, which translated into a demonstration in Brussels attended by approximately 300,000 people, the so-called White March, the Dutroux case has sparked important policy change towards sex offenders. For instance, it led to the modification of criminal law giving victims more rights and a bigger role in the judicial procedures, a reform of the early release scheme for convicted criminals (Walgrave & Varone, 2008), and more stringent punitive measures for sex offenders (Tubex, 2002).

Apart from these policy changes, the Dutroux case seems to have incited the public's fear and disdain for sex offenders, and to have fueled misconceptions regarding sex offenders and sexual offenses. Despite the fact that sex offences are most often committed by someone known to the victim, the public seems to be mainly concerned about strangers kidnapping and sexually abusing their children: In the immediate aftermath of Dutroux, children were prohibited to play outside or walk to school without any supervision, and they were not allowed to talk to strangers (Huyghebaert, 2016). The general public also tends to believe that each sex offender, no matter which sex offence he has committed, is highly likely to re-offend. Moreover, sex offenders are believed to be at much higher risk of re-offending compared to non-sex offenders. Many assume that these sex crimes will become more gruesome and cruel over time and will in the end result in serial sexual homicide. The public, but also several policy makers, consider severe punishment like obligatory castration, and whenever possible a lifelong confinement, as the only righteous and proper measure to protect the society of future sex crimes (see e.g., HLN.be, 2018). Every media coverage on often rare yet extremely tragic sex crimes appears to worsen these public's fear and punitive attitudes towards sex offenders.

The Dutroux case has led to an enormous increase of public and media attention; no other issue over the 1990-2000 decade in Belgium has drawn so much attention (Walgrave & Varone, 2008). In their review Walgrave and Varone critically analyzed policy changes after the Dutroux crisis. The mass media seemed to have had a strong impact on the 'symbolic' parliamentary agenda. To illustrate, in 1997 bills proposing adjustments to the judicial and police system almost doubled compared to the pre-Dutroux period. Nevertheless, notable policy change happened only two years later with the most substantial budget increases for crime, justice, and police noted in the years

1997, 1998 and 2000. The materialization and implementation of a major legislative reform of police and justice also happened two years after Dutroux's arrest in 1996. Even the parliamentary Commission Dutroux, established shortly after Dutroux's arrest, was not able to realize major policy change. This was mainly due to conflicts among political parties, among government parties and among opposition parties. Consequently, the value of the Commission Dutroux was primarily of symbolic nature: Its main goal was to diminish the tension between the public and government. It was only with the so-called Octopus negotiations group, another government policy established in 1998, that a significant reform of police and justice was made possible. Politicians who later testified about what happened behind the scenes of these negotiations, emphasized the important role that speculations and expectations after the 1999 elections had played in this reform. This case shows that, in spite of issues demanding immediate actions, massive media coverage and public pressure via mass mobilization, changes on sex offender policy are often obstructed or significantly delayed due to political fencing.

Notwithstanding the aforementioned political obstacles, several new policies have been installed in the post-Dutroux period. One of the most important achievements is the so-called cooperation agreement. The basic assumption of this agreement is that supervision and /or treatment are obligated for sex offenders who want to make use of any specific early release modality (e.g., conditional release) (Ceulemans & Lemmens, 2005). The agreement allocated more resources to outpatient centers specialized in the treatment of sex offenders, as well as to the installation of professional teams in Belgian prisons specialized in the assessment and treatment of sex offenders (Behandeling en begeleiding van seksuele delinquenten, 1998). Following this agreement, three overarching support centers were established: a Flemish, Walloon and Brussels center. The main task of these centers is to support the different partners in the cooperation agreement by providing them scientific knowledge, research, training courses, consultancy, and advice. In addition, efforts have been made to expand the network of specialized outpatient centers for sex offenders. For instance, in Flanders, five centers for general welfare, and eight centers for mental health care were specialized in the treatment of sex offenders. The agreement has also clarified the exchange of information between the judicial system and the treatment centers, with respect to the professional secrecy. To facilitate and strengthen the collaboration between justice and mental healthcare, a so-called performance agreement was introduced (Ceulemans & Lemmens, 2005). All parties involved in each sex offender dossier (i.e., the client, the justice assistant, and the counselor) have to sign such an agreement, in which the parties' specific commitments are described. Apart from the cooperation agreement, various policy measures including the mandatory extensive conditional release evaluation in sex offenders and the extension of the period of limitation for sex crimes, have been implemented (Kloeck, 2009). Although several other sexual abuse scandals (e.g., sexual abuse in the Catholic Church, and more recently, sexual abuse in sports) have also led to policy reforms, the Dutroux case is still considered as the main turning point within the Belgian Justice System (Daems, 2014).

Sex offender risk assessment in Belgium: A myriad of different policies and practices

The focus of various policy measures implemented in the post-Dutroux period, clearly lies on enhanced control and supervision of sex offenders in order to diminish the recidivism risk (see e.g., Kloeck, 2009). Within this context, risk assessment in sex offenders becomes of vital importance. However, it is most startling to see that the utilization of risk assessment tools is still insufficiently common practice in our country. Attitudes towards and the use of risk assessment methods strongly vary across settings (i.e., the out- and inpatient settings, prison settings, and court assessors). Practitioners often have negative attitudes towards risk assessment due to misconceptions. One

important misconception regards the aim of risk assessment. Risk assessment tools are far too often seen as 'just' a list of risk factors that only focus on the negative characteristics of the patient; the relation between risk assessment, risk management, and treatment, as clearly described in the Risk Needs Responsivity Model (RNR; Andrews & Bonta, 2010), is rarely acknowledged. Such attitudes are for instance obvious in numerous practitioners employed in outpatient centers. Also, practicalities like lack of time, resources, and access to sufficient file information, hamper the use of risk assessment in these centers. Consequently, *if* the risk in sex offenders is being assessed, it still often relies on unstructured clinical judgement. Nevertheless, steps are being taken to enhance evidence-based risk assessment in different outpatient centers. The support center in Flanders, the University Forensic Center, is one of the few centers to systematically use validated actuarial and structured clinical assessment tools in sex offenders. Recently the University Forensic Center also deployed, in collaboration with two other forensic institutions, a Risk Assessment Team to assist professionals in the use of risk assessment instruments in interned offenders (Risk Assessment Team, n.d.).

In inpatient treatment centers for sex offenders there is an increased interest in and use of risk assessment tools. So far, the risk assessments in these centers have been mainly relying on the evaluation of static risk factors. As these factors are not changeable through treatment, these evaluations often remain 'isolated' and unconnected to the treatment programs. A few inpatient treatment centers aim to change these protocols by including dynamic risk assessment tools. This would allow an individualization of the treatment programs with the relevant dynamic risk assessment. However, due to the limited availability of risk assessment training courses in Belgium, the implementation of these measures is proceeding very slowly.

Prison settings are the only settings in Belgium that are obligated by the law to conduct risk assessment in sex offenders (Vandenbroucke, 2005). These risk assessments have been mandatory since the Dutroux case. Practitioners working at the prisons' psychosocial services have to answer two questions in their psychosocial evaluation: (1) 'Does the prisoner exhibit a risk of re-offense?', and (2) 'Should a treatment program be advised, and if so, which treatment program?'. However, no standard procedures on the decision-making process have been established yet. The risk assessment procedure is highly dependent on the choices made by the coordinators of the psychosocial prison services. The current coordinators exhibit extensive knowledge on risk assessment, and hence, impose very rigorous risk assessment procedures. But one should take into consideration that these procedures might change for the better or the worse when other coordinators will take office. Risk assessments in prison settings are also hampered by practical issues. So far, most practitioners in these settings have relied on static risk factors. Although the added value of assessing dynamic risk factors is acknowledged in these settings, especially in the light of rehabilitation, the implementation of dynamic risk assessment tools is at present contained due to limited resources. For instance, the training in the use of dynamic risk measures is postponed until further notice, because most available (financial) resources are currently being allocated to terrorists and radicalized prisoners (see e.g., Beyens, 2016).

Finally, several mental health professionals are called on by the legal system to conduct evaluations to address psycho-legal issues and to provide information to attorneys and judges. This task is most often allocated to psychiatrists. The latter is mandatory when the question arises whether the suspect should be acquitted as not guilty by reason of insanity, and hence should be committed to a psychiatric hospital for treatment (Hanouille, 2017). These psychiatrists are requested to answer a couple of key questions: 'Can the suspect be diagnosed with a mental disorder in relation to the offense?', 'If so, is a risk of re-offense present?', 'Should a treatment program be advised?', and 'If so, which specific program should be advised?'. To answer these questions, the psychiatrist may ask a psychologist to assist him for the psychological assessment of the suspect. In contrast to

other countries (e.g., the Netherlands), there are no established guidelines nor standards to which mental health professionals should adhere when conducting these evaluations. Consequently, the mental health professionals may choose their own criteria and procedures when evaluating the aforementioned questions (De Clercq & Vander Laenen, 2013). One would expect that proper risk assessment procedures would be installed in order to substantiate the answers to the aforementioned questions. Unfortunately, this is not the case. The use of risk assessment tools is highly dependent on the experience and knowledge of the mental health professionals involved. De Clercq and Vander Laenen evaluated the use of psychometric tools in 87 insanity defense cases of 2010. They found that psychometric assessment tools were used in 63% of these cases; in 37% of the cases the psychiatrist did not use any tool to evaluate the psychiatric condition of the suspect. Only in 31% of the cases a risk assessment tool was used. The Historical Clinical Risk Management-20 (HCR-20; Douglas, Hart, Webster, & Belfrage, 2013), the Sexual Violence Risk-20 (SVR-20; Boer, Hart, Kropp, & Webster, 1997), and the STATIC-99 (Hanson & Thornton, 2000) were the most commonly used tools. Interestingly, in seven cases no additional psychological assessment instruments were used; the psychiatrists in these cases only relied on the risk assessment when answering the above-mentioned questions regarding for instance the presence of a psychiatric problem or treatment needs. Based on these results, no conclusions can be drawn regarding the use of risk assessment tools in sex offense cases. It is unclear whether risk assessment tools were more often used in sex offense cases compared to non-sex offense cases, and which tools were most often applied to assess risk in suspects of sex offenses. Also, the authors only evaluated the files of one judicial district (Ghent), thus the question remains whether similar patterns can be found in other parts of the country. Notwithstanding, these findings reconfirm the deep concern regarding the lack of guidelines for court evaluations. In 2016 the Ministerial Order of 28 October 2015 came into effect. In this Order criteria for the forensic psychiatrists are described, including a required training in risk assessment for forensic psychiatrists (Hanouille, 2017). However, the only training program for forensic psychiatrists that is acknowledged by this Order, still needs to be launched. Consequently, this situation stalemates those who want to obtain a proper training and leads to a rather Kafkaesque situation, given that these psychiatrists will not officially merit from other available, relevant training courses in for instance risk assessment. Following this Ministerial Order, a forensic research team has been requested by the Minister of Justice to develop detailed guidelines for court assessments, including guidelines for risk assessment. But to the best of our knowledge, the final report has not been published yet.

Where we are in Belgium and where we should be heading

To ensure valid risk evaluations in sex offenders and suspects in sex offense cases, several relevant measures have been taken in the last few years, including the establishment of risk assessment teams in various settings, the inclusion of mandatory risk assessment training in the Ministerial Order, and the efforts to develop guidelines for forensic psychiatric/psychological (risk) assessment. Nevertheless, Belgium still faces several major obstacles on the level of media, policy, research, and practice that need to be overcome.

Similar to media worldwide, the Belgian media tend to focus on sensational, yet very exceptional, sex crimes, fueling extremely negative attitudes towards sex offenders. Intense media coverage of such extreme cases also contributes to the myths that all sex offenders are recidivistic, incurable predators, and that the number of sex crimes have reached epidemic proportions (Malinen, Willis, & Johnston, 2014). These inaccurate representations may severely hamper the resocialization of sex offenders, since it might for instance lead to problems finding work (Levenson, D'Amora, & Hern, 2007) and a place to live (Willis, Malinen, & Johnston, 2013). Moreover, such hostile and exclusionist reactions might become self-fulfilling prophecies, since these negative reactions increase the risk of sexual offending by causing distress in sex offenders and their families (Jeglic,

Mercado, & Levenson, 2012). They might also hamper the success of community-based prevention and rehabilitation programmes which have steadily proliferated in Flanders (i.e., Stop it Now! Flanders, and the Circles of Support and Accountability Antwerp and Brussels). A major challenge is thus to encourage Belgian media to inform the public in a balanced and unbiased way about sex crimes, since this might influence public attitudes towards sex offenders.

The intense media coverage of relatively rare high-profile cases as well as the subsequent public outcries to protect society from sexual predators influence sex offender management policies. Unfortunately, such media cases are often needed to spur substantive policy change, as we have clearly observed in the Dutroux-case and its aftermath. There is however a risk that when the attention of media and the community dwindles, the political attention to these issues declines as well. The other side of the same coin is that they might also promote ill-informed 'community protection' legislation (Willis, Levenson, & Ward, 2010) and might fuel the political stance of appearing 'tough on crime', preventing well-thought, and evidence-based policies (see e.g., Kloeck, 2009). In the last two decades, Belgian policy makers have made progress with the cooperation agreement and the specialized risk assessment teams to name but a few. Nevertheless, policy still needs to tackle several urgent matters regarding risk assessment. First, current policies are primarily focused on child sexual abusers; policies regarding the risk assessment and treatment of violent sex offenders against adult victims are lacking behind. Second, proper risk assessment guidelines should be developed and implemented, facilitating transparent evidence-based decision-making in the various settings for sex offenders. It is worrisome to conclude that in many settings unstructured clinical judgment is still common practice. This leaves the door wide open to questionable practices as for instance the use of dream analysis to evaluate future risk of offending, as was the case in a recent court evaluation. In order to overcome this problem, policy makers should invest in education. Currently, the training courses in sex offender risk assessment are too few and the financial resources for training are far too limited. Practitioners also express the need for training courses on risk assessment in specific sex offender populations like offenders with intellectual disabilities and minority ethnic offenders. Moreover, organized training courses in risk assessment are mostly attended by practitioners who already exhibit some knowledge about and, thus, positive attitudes towards risk assessment. Consequently, these efforts do not reach the 'non-believers' and as a result tend to be mainly preaching to the choir. To circumvent these obstacles, the training courses should be made available and mandatory to all practitioners from all relevant settings and future clinicians should already be informed about risk assessment in their basic training. And third, policy makers should intensify their focus on well-informed, pro-active, long-term strategies, rather than on reactive, ill-informed, short-term policies that are highly dependent on high-profile cases. But this requires politicians who dare to let go of the possible outcome of the next elections, and instead are committed to scientifically supported practices and who are willing to mobilize sufficient funds for education, research, and development.

The limited research on sex offenders and their risk to re-offend is indeed a sore point, not only in Flanders, but in the entire country. To illustrate, knowledge on the sex offenders' recidivism rates in Belgium is very restricted. Only earlier this year, the findings of a first nation-wide study on the sex offenders' recidivism rates were described during a conference presentation (Maes, Telle, & Pham, 2018). They followed up the re-incarceration rates of 14,754 prisoners who were released between 2003 and 2005 until 2017. A limited subgroup (11%) regarded sex offenders. Their findings show that non-sexual offenders were re-incarcerated more often and faster compared to sexual offenders. Over a follow-up period of 10 years, 37.6% of the sex offenders were re-sentenced to prison compared to 48.6% of the non-sexual offenders. Several issues however remain unclear regarding the type of re-offenses (sexual versus non-sexual) for instance. Since the final report has not been published yet, it is too early to appreciate the value and meaning of these preliminary results. This study also highlighted another problem: Belgium still lacks a systematic, comprehensive registration

system regarding re-offences in (sex) offenders. Because of this scarcity in scientific and numeric insights, policy makers, practitioners, and media have little Belgian information to rely on.

Notwithstanding the aforementioned issues, practitioners also have their role to play. Too many practitioners exhibit resistance towards risk assessment in (sex) offenders. This resistance seems to mainly come down to two issues: a resistance towards the RNR-model and a lack of scientific knowledge on risk assessment. The resistance towards the RNR-model is mostly apparent in strong proponents of the Good Lives Model (GLM; Ward & Gannon, 2006). This strengths-based rehabilitation model states that offenders should be mainly equipped with internal and external resources in order to start living a socially acceptable and personally meaningful life. Fueled by criticisms on the GLM- and RNR-model in the literature (Andrews, Bonta, & Wormith, 2011; Ward, Yates, & Willis, 2012), Flemish treatment providers tend to see these models as opposing views on offender rehabilitation. Those adherent to the GLM argue that the RNR-model focuses too much on risk factors and not enough on the factors that might promote the well-being of the offenders. Nevertheless, several scholars emphasize the merits of integrating both models (Willis, Prescott, & Yates, 2013). This brings us to the second issue, the limited knowledge on recent developments in risk assessment studies. As mentioned above, risk assessment is still far too often seen as a list of risk factors that is not linked to treatment, let alone an individualized treatment program. But risk assessment is more than a simple documentation of risk factors; it should be used to inform clinicians which factors should be taken into account in the treatment program and which offenders should receive more intensive treatment services (Andrews & Bonta, 2010). Hence, risk assessment should not be considered as an isolated action, but rather as an essential part of the treatment program. Also, practitioners who cling on to an unstructured clinical approach, ignore the bulk of research showing that such an approach lacks reliability, validity, and accountability (see for a review, Tully, Chou, & Browne, 2013). Hence, practitioners should dare to critically question their own work, opinions, and knowledge. One way to achieve this, is by regularly attending training in e.g. risk assessment.

But it is not only about risk assessment. Improvements regarding the administration of risk assessment tools in Flanders will also lead to a more transparent, univocal evidence-based risk communication strategy and to treatment programs that pay more attention to the criminogenic needs of the sex offenders. A recently published report of the National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children (Dettmeijer-Vermeulen & Menenti, 2017) urges policy makers and practitioners in the Netherlands to properly implement evidence-based risk assessment tools in relevant decision-making processes and treatment programs. Whether Belgium will strive to follow its neighbor's example remains to be seen.

Conclusions

It is fair to say that, especially since the Dutroux-case, Flanders has made several important advances with regard to sex offender risk assessment. But despite these developments, Flemish practice and policy might be heading towards a standstill: Evidence-based guidelines for a consistent and transparent risk assessment policy across the various settings are still pending, and negative or indifferent attitudes towards risk assessment in practitioners hamper progress from the bottom-up. Hence, both policy and practice should be urged to take a pro-active role in developing an evidence-based risk assessment policy in Flanders and more broadly, in Belgium. Otherwise another new high-profile sex offense case might change policy again and this for the better or for worse.

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