

Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse:

Terminology considerations on Trafficking of Children for sexual purposes

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Abstract

Different terms are used across the world to describe the phenomenon of human trafficking and its different variations, including trafficking of children for sexual purposes. Confusion and inconsistency in the use of language and terms as well as the existence of diverging definitions and interpretations of key issues could contribute to inaccuracy and imprecision in data collection and identification, lack of protection and potential harmful effects for the victims.

In 2016, the Interagency Working Group, established at the initiative of ECPAT International and composed of representatives from UN agencies, child rights NGOs, and law enforcement agencies, adopted and published the “Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse” (hereinafter “Luxembourg Guidelines”). The Luxembourg Guidelines are currently (2017-2018) being adapted into several other languages and will become increasingly available to child protection professionals all over the world.

The Luxembourg Guidelines represent the first attempt to broadly and systematically identify, define and analyse the terms and language that should be used in the context of sexual exploitation of children and its manifestations, including trafficking for sexual purposes.

The objective of this paper is to define the concept of trafficking of children for sexual purposes and examine the implications for the misuse and/or confusing use of terms, presenting the outcomes of the Luxembourg Guidelines and discussing the impact of a harmonised terminology on the global fight to end sexual exploitation of children in all its manifestations.

Introduction

When discussing heinous crimes such as the sexual exploitation of children in all its forms, many would argue that the use of a correct terminology is not a priority; what really matters is to prevent the illicit conducts, prosecute perpetrators and support victims in spite of the terms used to classify the criminal act and define the agent subject. In reality, an appropriate definition of what constitutes, for instance, trafficking of children for sexual purposes, and an unambiguous identification of the correct terms to use, is paramount in applying relevant legal dispositions, sentencing perpetrators and ensuring access to remedies, services and compensation to the victims.

In an attempt “to provide all individuals and agencies working for the prevention and elimination of all forms of sexual exploitation and sexual abuse of children with guidance for the understanding and use of the different terms and concepts they may encounter in their work”, in 2016, the Interagency Working Group (IWG) adopted and published the “Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse” (hereinafter “Luxembourg Guidelines”). The document, compiled by representatives from UN agencies, child rights NGOs, and law enforcement agencies, contains a large number of terms related to the different manifestations of sexual exploitation of children, including exploitation of children in prostitution, sexual exploitation of children in travel and tourism, child sexual abuse material and trafficking of children for sexual purposes. Each term has been carefully analysed and their appropriateness has been assessed by the IWG.

This paper is limited to describing terminology considerations on trafficking of children for sexual purposes and related terms such as smuggling of child migrants and sale of children. A special focus is given to presenting the outcomes of the Luxembourg Guidelines and analysing the implications for the misuse and/or confusing use of terminology.

Trafficking of children and smuggling of migrants: definitions in legally binding international instruments and legal implications of their wrong application

Although the term ‘trafficking of children’ is widely mentioned in the most relevant child rights instruments,¹ the international community had to wait for the adoption of the Protocol to

¹ UN General Assembly (1989), “Convention on the Rights of the Child” (hereinafter CRC), Res. 44/25 of 20 November 1989, entered into force on 2nd September 1990, Article 35 “*States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.*”; International Labour Organisation (1999), “Worst Forms of Child Labour Convention -No. 182” (hereinafter Convention No. 182), entered into force on 19 November 2000, Article 3(a), refers to “*the sale and trafficking of children*” as a worst form of child labour; UN General Assembly (2000), “Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography”, (hereinafter OPSC), A/RES/54/263, 25 May 2000, entered into force on 18 January 2002, Preamble expressing concern regarding the

Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the UN Convention against Transnational Organised Crime (hereinafter Trafficking Protocol) to have a complete and accurate definition of this crime as well as an international agreement specifically focusing on trafficking.

Besides providing standard definitions of ‘trafficking in persons’ and ‘child trafficking’, the Trafficking Protocol highlights the main difference between these two crimes: the irrelevance of the consent. In fact, the 2000 Trafficking Protocol, defines ‘trafficking of persons’ as follows: “[t]he recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”² When it comes to child victims, Article 3(c) further establishes that “[t]he recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered ‘trafficking in persons’ even if this does not involve any of the means set forth in subparagraph (a) of this article.” In simple terms, the Protocol recognised that children can never be willing participants in any case to their own exploitation.

The Trafficking Protocol has been criticised in part for not providing clear definitions of the different types of exploitation which are the ultimate purposes of trafficking³ and in part for setting up a number of protection measures which are not mandatory for States.⁴ For instance, Article 6 starts off by recommending States to protect the identity and privacy of victims of trafficking, especially during legal proceedings, but only if this is deemed appropriate and possible under relevant national laws.

In addition, a major concern is generated by the need to read the Protocol in conjunction with another international agreement which further supplements the UN Convention against Transnational Organised Crime as well: the Protocol against the Smuggling of Migrants by Land, Sea and Air (hereinafter Smuggling Protocol). According to Article 3(a) of the

significant and increasing international traffic for the purposes of sale of children, child prostitution, and child pornography.

² UN General Assembly (2000), “United Nations Convention against Transnational Organized Crime, Annex 2: Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime”, (hereinafter Trafficking Protocol), Res. 55/25 of 15 November 2000., 3(a).

³ George, Annie, Vindhya, U and Ray, Sawmya (2010), “Sex Trafficking and Sex Work: Definitions, Debates and Dynamics – A review of Literature, *Economic & Political Weekly*, 24 April 2010, Vol. XLV No.17 citing Gallagher, Anne (2001), “Human Rights and the New UN Protocols on Trafficking and Migrant Smuggling: A Preliminary Analysis”, *Human Rights Quarterly*, 23, 4:975-1004.

⁴ Gallagher, Anne (2002), “Trafficking, Smuggling and Human Rights: Tricks and Treaties”, *Forced Migration Review*, No.12, January, 26.

abovementioned instrument, smuggling of migrants refers to “the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident”. It is easy to note that the way ‘trafficking’ and ‘smuggling’ are posited by the Protocols underlines the basic difference between the two concepts: the former entails the purpose of exploitation as well as the lack of consent of the victim and implies the resulting profit for the trafficker; whilst the latter focuses on the – often voluntary – movement of the migrant and the illegal entry into another country.

Unfortunately, it has been argued that both Protocols lack an explanation of how to correctly identify in any situation victims of trafficking and smuggled migrants.⁵ Blurring distinctions between the two categories may generate risks and lack of protection for the involved subjects. Protection measures and available services sensibly differ if the specific case falls under the scope of trafficking or smuggling.⁶ It is generally assumed that migrants act voluntarily, consequently if a child victim of trafficking is wrongly identified as a migrant, the principle of the irrelevance of consent would not apply and, as a result, the need of protection would be assessed to be less. A consequence would be, for instance that child victims of trafficking and migrants would be placed in the same reception centre which lacks specialised personnel trained to handle trafficking cases. In the specific case of trafficking for sexual purposes, different kinds of responses are required in the contexts of protection, prevention and rehabilitation.⁷ Moreover, smuggling usually ends when the migrant reaches the destination country whilst trafficking victims continue to be exploited requiring then greater protection and a different set of services. This reflection does not exclude however that who was initially a migrant becomes then a victim of trafficking. Narrowing down the discussion within the scope of this paper, unaccompanied child migrants are considered to be easy targets for exploitation, especially for sexual purposes.⁸ Members of organised crime groups are known to be proactively ‘recruiting’ child migrants into sexual exploitation with the promise of remuneration and/or easier crossing of the country’s borders.

⁵ *Ibid.*

⁶ Pace, Paola and Severance, Kristi (2016), “Migration terminology matters”, *Forced Migration Review*, No. 51, 69-70.

⁷ Interagency Working Group on Sexual Exploitation of Children (2016), “Terminology Guidelines for the protection of children from sexual exploitation and sexual abuse” (hereinafter Luxembourg Guidelines), adopted in Luxembourg on 28 January 2016, 61.

⁸ See e.g. Mitra, Arpita (2016), “The Story of ‘Missing Children’: Unaccompanied Minors in the Prevailing Refugee Crisis”, *Border Criminologies*, 12 September 2-16, accessed 14 June 2017, <https://www.law.ox.ac.uk/research-subject-groups/centre-criminology/centreborder-criminologies/blog/2016/09/story-%E2%80%98missing%98missing>; Digidiki, Vasileia and Bhabha, Jacqueline (2017), “Emergency within an Emergency. The Growing epidemic of Sexual Exploitation and Abuse of Migrant Children in Greece”, FXB Center for Health and Human Rights – Harvard University, 22, accessed 14 June 2017, <https://cdn2.sph.harvard.edu/wp-content/uploads/sites/5/2017/04/Emergency-Within-an-Emergency-FXB.pdf>; IOM (2013), “Children on the move”, accessed 14 June 2017, http://publications.iom.int/system/files/pdf/children_on_the_move_15may.pdf.

The issues described above show the need to not only properly define and classify the victims, but also to conduct follow-up interviews and activities to correctly identify child migrants who subsequently fall in the clutches of traffickers for the purpose of exploitation.

Trafficking of children, sale of children and child slavery: an overlapping categorisation

Labelling the movement of children for the purpose of exploitation encounters further difficulties when the terms ‘sale of children’ and ‘child slavery’ come into play.

Sale of children

The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography provides the most detailed definition of ‘sale of children’ which is defined as: “any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration”.⁹ Article 3 (a) further sets forth relevant conducts that should be criminalised by national laws “Offering, delivering or accepting, by whatever means, a child for the purpose of: a. Sexual exploitation of the child; b. Transfer of organs of the child for profit; c. Engagement of the child in forced labour, (ii) Improperly inducing consent, as an intermediary, for the adoption of a child in violation of applicable international legal instruments on adoption”.¹⁰

This definition of ‘sale of children’ shows similarity to the concept of ‘trafficking of children’¹¹ as described in the paragraph above and stated by the Trafficking Protocol. However, as seen below, such confusion is also caused by the fact that other relevant child rights instruments¹² use both terms without any clear distinction and almost assume that they are interchangeable.

In its *Handbook on the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography*, UNICEF noted that “States tend to identify sale of children with trafficking in children”.¹³ As a result of this overlapping categorisation, many States reportedly lacked legislation specifically addressing and criminalising the ‘sale of children’.¹⁴ Moreover, it has been noted that often States Parties provide the Committee on the Rights of the Child with

⁹ OPSC, Article 2(a).

¹⁰ *Ibid.*, Article 3(a)

¹¹ Luxembourg Guidelines, 58.

¹² CRC, Article 35 and ILO Convention 182, Article 3.

¹³ UNICEF (2009), “Handbook on the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography”, February 2009, Florence: Innocenti Research Centre, 9 accessed 25 May 2017, https://www.unicef-irc.org/publications/pdf/optional_protocol_eng.pdf.

¹⁴ *Ibid.*

information related to their counter-trafficking legislation, policies and plans when reporting in relation to their sale of children related obligations under the OPSC.¹⁵

The Interagency Working Group explored and examined the two definitions and noted that albeit similar, the two concepts are distinct in a number of aspects. First, the ultimate aim of the sale of children is to obtain some kind of remuneration from the sale; the exploitative purpose, which is one of the constituent elements of trafficking, is therefore not required to constitute the crime.¹⁶ While it doubtless is true that often the sale aims to exploit the child in, *inter alia*, the sex industry, domestic labour market, plantation and mining sectors, the Interagency Working Group highlighted that there are instances of sale of children which albeit being illegal, do not aim at harming and/or exploiting the child such as some cases of illegal adoption.¹⁷ Second, the sale of children lacks the requirement of the physical movement of the child from one place to another which is a “key element of the concept of trafficking”.¹⁸

Although the Interagency Working Group concluded its analysis by identifying subtle differences between the two phenomena (both in terms of possible purposes and means) it also recognised a further common element which is worth mentioning in this paper; both ‘sale of children’ and ‘trafficking of children’ are broad umbrella terms which can have different scopes, an important one being sexual exploitation. It should be noted, though, that not all the forms of sexual exploitation require the child to having being sold or trafficked.¹⁹

Child slavery

According to the ILO Convention No. 182, ‘child slavery’ is included among the worst forms of child labour and manifests, for instance, in “the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict”.²⁰ A detailed definition of the crime is provided by the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practice Similar to Slavery as follows: “[...] Any institution or practice whereby a child or young person under the age of 18 years is delivered by either or both of his natural parents or

¹⁵ Luxembourg Guidelines, 58.

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ UNICEF (2009), “Handbook on the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography”, 10.

¹⁹ Luxembourg Guidelines, 61. For instance, children can be exploited in prostitution or online (e.g. live streaming of child sexual abuse, sexual extortion, child sexual abuse material, etc.) without having being sold, trafficked or even moved from the country/city of origin.

²⁰ ILO, Convention No. 182, Article 3.

by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person of his labour'.²¹

It is easy to note that the term can and is used to gather a large number of situations in which children are exploited for different purposes and by different means. Exploitation of children in prostitution, child labour, children in armed conflicts and child domestic workers are just a few examples.²²

For the purposes of the Luxembourg Guidelines, the Interagency Working Group focused its analysis on sexual slavery which included sale of children and trafficking of children for sexual purposes although recognising the extent of the crime and the number of human rights violations that it encompasses.²³

The Working Group noted, without condemning, the tendency worldwide to use the 'term' slavery as a substitute for child trafficking and various forms of child labour including exploitation in prostitution leveraging on its breadth of meaning. Others, instead, have argued that the use of the term 'slavery' – or 'modern day slavery' – may lead to an oversimplification of the root causes, consequences and experiences of trafficking as well as a difficulty in the application of relevant international standards such as the Trafficking Protocol.²⁴

The Interagency Working Group concluded its analysis of the term with arguments quite similar to the ones presented above in relation to the sale of children. The overlap between trafficking of children and child slavery does not imply an absence of differences between the two phenomena. As noted above, children can be subjected to a situation of –sexual- slavery without being trafficked or sold, for instance within the family or community of belonging.²⁵

²¹ Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, adopted by a Conference of Plenipotentiaries convened by Economic and Social Council resolution 608(XXI) of 30 April 1956 in Geneva, 7 September 1956, accessed 7 June 2017,

<http://www.ohchr.org/EN/ProfessionalInterest/Pages/SupplementaryConventionAbolitionOfSlavery.aspx>.

²² Luxembourg Guidelines, 72 citing Anti-Slavery International, "Child Slavery,"

<https://www.antislavery.org/slavery-today/child-slavery/>.

²³ Luxembourg Guidelines, 73.

²⁴ Hoyle, Carolyn, Bosworth, Mary and Dempsey, Michelle (2011), "Labelling the Victims of Sex Trafficking: exploring the Borderland between Rhetoric and Reality", *Social & Legal Studies*, 20(3). See also Global Alliance against Trafficking in Women (2017), "Anti-Trafficking Review-Where's the evidence", Issue 8, April 2017, accessed 7 June 2017,

http://gaatw.org/ATR/AntiTraffickingReview_issue8.pdf.

²⁵ Luxembourg Guidelines, 73.

Final considerations on the implications for the misuse and/or confusing use of relevant terminology

As stated by the Interagency Working Group in the introduction to the Luxembourg Guidelines, “[d]espite the existence of legal definitions for a number of sexual crimes against children, there is still considerable confusion surrounding the use of different terminology related to the sexual exploitation and sexual abuse of children.”

The implications related to the misuse and/or confusing use of relevant terminology are several and may occur in a number of different areas. First, from a legal perspective, the use of an accurate terminology ensures victims’ access to the appropriate level of protection established by international and national legislation. For instance, following what was presented in the previous sections of this paper, the mislabelling of child victims of trafficking as child migrants may lead to the detention of these children in light of their unlawful migration status. Similarly, the use of harmful terms such as ‘child prostitute’ or ‘child sex worker’ instead of the more appropriate ‘child victim of sale or trafficking’ can provoke legal sanctions for the child instead of guaranteeing access to the services he/she should be entitled to.²⁶

Besides the legal implications, clear definitions and a correct use of terminology are necessary for Governments, researchers and NGOs to collect meaningful and useful data and information on the victims and the type of exploitation they experienced. Such data is needed to shape national efforts to address the different crimes mentioned in this paper and to inform future efforts towards the ending of child exploitation for any purpose.

Finally, from a social point of view, it is undoubtedly beneficial that people use the appropriate terminology to refer to specific crimes in order to fully understand the gravity of the illicit conduct and the severity of the harm caused to child victims.²⁷ It should be noted that confusion over labels may be triggered not only by a lack of knowledge but also by the media and politicians deliberately using terms which are intended to generate a moral outrage and lead to a bigger impact on audiences, for example ‘child slavery’ instead of ‘trafficking of children’ or ‘exploitation for the purpose of prostitution’.

To conclude, the hope is that the implementation and global adoption of the Luxembourg Guidelines will play an effective role in achieving greater clarity and a common understanding on terminology in order to provide increased, more targeted and more effective protection of

²⁶ Graw Leary, Mary (2016), “The Language of Child Sexual Abuse and Exploitation”, in “Refining child pornography law: Crime, language and social consequences”, University of Michigan Press, 115.

²⁷ *Ibid.* 113.

children from sexual exploitation and abuse in all their manifestations, including trafficking for sexual purposes.