

Law Review and Reform Processes to Address Child Trafficking:

Embracing the complexity

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Child Trafficking: Definitions

- UN Trafficking Protocol
- Regional standards
- National law
- Working definitions

□ **Caveat:**

Different concepts and interpretations

Child Trafficking: Complexity

Children exposed to violence or at risk

- Before recruitment
 - During transportation, transfer, harbouring, receipt
 - During exploitation phases
 - Risk of re- or secondary victimisation
- Continuum of violence, exploitation, abuse, neglect**

Child Trafficking: Diversity

- Child labour
- Sexual exploitation
- Exploitation in criminal activities
- Exploitation in begging
- Military service
- Organ removal
- Etc. ...

- Common prevention measures (?)**
- Common protection needs (?)**
- Common rights !**

Law Reform to Address Child Trafficking

- Criminalisation
- Victim Status
- Entitlements of victims
- Challenges of transnational cases

Law Reform: Criminalisation

- Prohibition of child trafficking
- Prohibition / Regulation of its elements (the ‘act’)
- Irrelevance of child’s consent
- Prohibition of all forms of exploitation of children
- Option: Integrate ‘trafficking’ into articles on exploitation

Law Reform: Victim Status

‘Victim of trafficking’:

- Status depends on official ‘identification’
- Broader approach: ‘Potential victim’, ‘reasonable grounds’

‘Victim of crime’:

- Same safeguards and rights
- Unconditional: Regardless of role in offence, independent of criminal proceedings, no legal capacity to consent to exploitation
- Law reform to safeguard the rights of child victims of crime: Protection and secondary / tertiary prevention**

Law Reform: Support and Protection

- No generalised statements about specific needs of children who have been trafficked
- Legislation will overlap with laws on
 - Social welfare / child protection
 - Criminal procedures law, child victims of crime
 - Immigration and asylum
 - Etc.

□ **Comparative law review to ensure consistency**

Law Reform: Transnational Cases

- Establishing jurisdiction
- Right to non-discrimination:
 - General prohibition of discrimination
 - Ensure that child protection laws apply to each child on territory
 - Proactive measures to ensure that laws are applied equally to all children
 - Ensure that child rights and protection laws are not overridden by other laws

Conclusion and Recommendations

- Comparative law review and analysis to inform law reform from a child-rights perspective
- Child impact assessment as standard practice in any law reform process
- Legislate for CRC general measures and principles
- Legislate for individual case and needs assessments and care plans (BID)
- Identify causes of vulnerability, including structural

Thank you

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