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Terminology Considerations on Trafficking of Children for Sexual Purposes based on the Luxembourg Guidelines

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ARTICLE INFO	ABSTRACT
<p>Article History:</p> <p>Received: 13 May 2019</p> <p>Revised: 17 June 2019</p> <p>Accepted: 28 June 2019</p>	<p>As knowledge developed on trafficking of children for sexual purposes, a range of different terms emerged around the world to describe the phenomenon. Confusion and inconsistency in the use of terms, as well as the existence of diverging definitions and interpretations of key issues has contributed to inaccuracy and imprecision in data. This hinders actions to generate clear evidence and reduce the harmful effects for the victims.</p>
<p>Keywords:</p> <p>Sexual exploitation of children</p> <p>Trafficking of children for sexual purpose</p> <p>Terminology guidelines</p>	<p>In 2016, a global Interagency Working Group, established at the initiative of ECPAT International and composed of representatives from UN agencies, child rights NGOs, and law enforcement agencies, developed and endorsed the “Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse” (hereinafter “Luxembourg Guidelines”). The Luxembourg Guidelines are available online in English, French, Spanish, German, and Turkish and continue to be adapted into further languages to become increasingly available to child protection professionals all over the world.</p> <p>Although the Luxembourg Guidelines broadly and systematically identify, analyse and define a wide range of best/common terms that should be used to describe sexual exploitation of children and its manifestations, this paper only discusses terminology considerations on trafficking of children for sexual purposes.</p>

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The objective of this paper is to examine the implications for the misuse and/or confusing use of terms related to trafficking of children for sexual purposes, present the outcomes of the Luxembourg Guidelines and discuss the impact of a harmonised terminology on the global fight to end this crime and other manifestations of sexual exploitation of children.

Introduction

When discussing serious crimes such as the sexual exploitation of children, correct terminology may not seem a high priority; with the focus instead being on prevention, prosecuting perpetrators and supporting victims in spite of the terms used to classify the criminal act and define the concepts. 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. Moreover, the use of correct and consistent terminology across sectors has the potential to ease and strengthen the work of those collecting information on issues related to the sexual exploitation of children by enabling them to, *inter alia*, do cross comparisons of different data sets and use data wisely.

With the aim of fostering consensus among key stakeholders on terminology to be used in programming, legislation, policy, and advocacy regarding the sexual exploitation of children, in September 2014, ECPAT International and ECPAT Luxembourg launched the Interagency Terminology and Semantics Project and established an Interagency Working Group (IWG). The project was composed of representatives from key international agencies and organisations and chaired by Professor Jaap Doek, senior legal advisor to ECPAT International and former Chair of the Committee on the Rights of the Child (Greijer & Doek, 2016).

In January 2016, the IWG adopted the “Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse” (hereinafter “Luxembourg Guidelines”), which were officially launched at a side event during the 32nd session of the Human Rights Council (14 June 2016). The document, compiled by representatives from United Nations agencies, child rights non-governmental organisations, 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, online child sexual exploitation and trafficking of children for sexual purposes. Each term has been carefully analysed and assessed for appropriateness. Clear guidance towards preferred terms are made - endorsed by the global experts of the working group (Greijer & Doek, 2016).

French and Spanish conceptual translations of the Luxembourg Guidelines were released shortly after the official launch of the English version. As of June 2019, the Luxembourg Guidelines are also available in German and Turkish and are currently being translated and adapted in further languages. In order to facilitate this process, in September 2017, ECPAT International published a *Handbook for the translation and adaptation of the Terminology Guidelines for the protection of children from sexual exploitation and sexual abuse*, providing practical advices and suggesting a “step-by-step work methodology” for organisations and/or governments interested in translating the Luxembourg Guidelines in their local languages (Greijer, 2017, p.6).

While the guidelines cover all terminology related to sexual exploitation and abuse of children, this paper will name three of the key questions that existed with varying terminology. Specifically, 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 wrongful application

The term ‘trafficking of children’ is widely mentioned in the most relevant child rights instruments, including the United Nations Convention on the Rights of the Child, which at its Article 35 establishes that “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.” (CRC, 1989, Art. 35). Similarly, the Worst Form of Child Labour Convention – No.182 adopted in 1999 by the International Labour Organization (ILO), refers in its Article 3(a), to “the sale and trafficking of children” as a worst form of child labour (ILO C182, 1999, Art. 3(a)). The preamble of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, entered into force on 18 January 2002, expresses concern regarding the “significant and increasing

international traffic for the purposes of sale of children, child prostitution, and child pornography.” (CRC, 1989, Preamble).

Besides these mentions and references to the trafficking of children, the international community had to wait for the adoption of the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the UN Convention against Transnational Organised Crime (hereinafter Trafficking Protocol), adopted on 15 November 2000, to have a complete and accurate definition of this crime as well as an international agreement specifically focused 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 in 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.” (Trafficking Protocol, 2000, Art. 3(a)). The definition provided by the Protocol makes it clear that trafficking in persons has three constituent elements: the act, the means and the purpose. 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.” (Trafficking Protocol, 2000, Art. 3(c)). Therefore, the definition of trafficking of children is wider than that of trafficking of persons, not requiring the use of specific means (e.g. threat, use of force, coercion, abduction, etc.) for the conduct to be considered a crime. In simple terms, the Protocol recognises that children can never be willing participants in any case to their own exploitation.

The Trafficking Protocol has been criticised for not providing clear definitions of the different types of exploitation which are the ultimate purposes of trafficking (George, Vindhya, & Ray, 2010, p.66) and for designating a number of protection measures optional for States (Gallagher, 2002, p.26). For instance, Article 6 recommends States to protect the identity and

privacy of victims of trafficking, especially during legal proceedings, but then allows non-compliance with this by stating that States should do so “in appropriate cases and to the extent possible under its domestic law” (Trafficking Protocol, 2000, Art. 6(1)).

A major concern is generated by the need to read the Protocol in conjunction with a second international agreement also intended to supplement the UN Convention against Transnational Organised Crime: the Protocol against the Smuggling of Migrants by Land, Sea and Air (hereinafter Smuggling Protocol), adopted on 15 November 2000. According to Article 3(a) of the 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” (Smuggling Protocol, 2000, Article 3(a)). 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 a required purpose of exploitation, a lack of consent from the victim; and implies the resulting profit for the trafficker. The latter focuses on the – often voluntary – movement of the migrants and the illegal entry into a country.

Unfortunately, it has been argued that both the Trafficking and Smuggling Protocols lack an explanation of how to correctly identify victims of trafficking and smuggled migrants. (Gallagher, 2002). Blurring distinctions between the two categories may engender 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 (Pace & Severance, 2016, p.69). 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 therefore be that child victims of trafficking and migrants would be placed in the same reception centres which may lack specialised personnel trained to respond to the specific trauma and circumstances of child trafficking victims. In the specific case of trafficking for sexual purposes, different kinds of responses are required in the contexts of protection, prevention and rehabilitation (Greijer & Doek, 2016, p.61). Moreover, smuggling usually ends when the migrant reaches the destination country whilst trafficking victims typically continue to be exploited, requiring greater protection and a different set of services. This reflection does not exclude the fact that children who were initially migrants may later become victims of trafficking as unaccompanied child migrants are considered easy targets for exploitation, especially for sexual purposes. Members of organised crime groups

are known to be proactively ‘recruiting’ child migrants into sexual exploitation using various methods, including elusive promises of remuneration and/or easier crossing of borders.

The issues described above show the need for common terms 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 victim to traffickers for the purposes of exploitation. It is worth noting, that this issue has been recently addressed by the United Nations Global Compact for Safe, Orderly and Regular Migration, adopted by the UN General Assembly on 19 December 2019. Indeed, in Objective 10 of the document (“Prevent, combat and eradicate trafficking in persons in the context of international migration”) it includes the States’ necessary commitment to “enhance the identification and protection of, and assistance to, migrants who have become victims of trafficking, paying particular attention to women and children.” (United Nations General Assembly (U.N.G.A.), 2019, para. 26).

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” (OPSC, 2000, Art. 2(a)). 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” (OPSC, 2000, Art. 3(a)).

This definition of ‘sale of children’ shows similarity to the concept of ‘trafficking of children’ (Greijer & Doek, 2016, p.58) as described in the paragraph above and stated by the Trafficking Protocol. However, as seen below, such confusion arises from the differences between them, exacerbated the fact that different child rights instruments (Convention on

the Rights of the Child, Article 35 and ILO Convention No. 182, Article 3) use both these terms without clear distinction, and almost assuming 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” [emphasis added] (UNICEF Innocenti Research Centre, 2009, p.9). As a result of this overlapping categorisation, many States reportedly lack legislation specifically addressing and criminalising the ‘sale of children’ (UNICEF Innocenti Research Centre, 2009, p.9). Moreover, it has been noted that often States Parties provide the Committee on the Rights of the Child with information related to their counter-trafficking legislation, policies and plans when reporting in relation to their obligations regarding the sale of children under the OPSC (Greijer & Doek, 2016, p.58).

The Interagency Working Group for the Luxembourg Guidelines closely analysed the use of 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 (Greijer & Doek, 2016, p.58). While it is doubtless 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 although being illegal, do not aim at harming and/or exploiting the child - such as illegal adoption (Greijer & Doek, 2016, p.58). 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 (UNICEF Innocenti Research Centre, 2009, p.10).

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 motivations, 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. 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 (Greijer & Doek, 2016, p.61).

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" (ILO C182, 1999, Art, 3(a)). 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, adopted on 30 April 1956, 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 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" (United Nations Economic and Social Council (ECOSOC), 1957, Art 1(d)).

It is easy to note that the term can and is used to describe a range 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 (Greijer & Doek, 2016, p.73).

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.

The Interagency Working Group noted, without criticising, 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 (Greijer & Doek, 2016, pp. 72-73). Others 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 (Hoyle, Bosworth, & Dempsey, 2011; Global Alliance Against Trafficking in Women, 2017).

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 (Greijer & Doek, 2016, p.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.” (Greijer & Doek, 2016, p.1).

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, as argued in this paper, the mislabelling of child victims of trafficking instead as child migrants may lead to their detention in light of their unlawful migration status and the absence of access to specialised support services. 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 (Leary, 2016, p.115).

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 the sexual exploitation of children 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 (Leary, 2016, p.113). 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 use of common and correct terminology around sexual exploitation of children through the implementation and global adoption of the Luxembourg Guidelines will play an effective role in achieving greater clarity and a common understanding on terminology. This is essential in order to provide increased, more targeted and more effective protection of children from sexual exploitation and abuse in all their manifestations, including trafficking for sexual purposes.

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