

Note on the definition of 'child trafficking'

Note: This note is based on engagements among international agencies in 2006 and 2007

Under international law, child trafficking is a crime involving the movement of children for the purpose of their exploitation. The concept of child trafficking can be unpacked further, as indicated below.

- A **child** is a person under the age of 18 years.
- **Organised movement of a child:** Trafficking implies that someone has organised the movement of a child with the immediate or ultimate aim of the child's exploitation. This could involve a transaction where someone receives payment or a benefit to agree to a child being exploited.

Child trafficking: A short definition

A child has been trafficked if he or she has been moved within a country, or across borders, whether by force or not, with the purpose of exploiting the child.

- **Purpose of the movement:** All those who have contributed to it and knew that what they did was likely to lead to the exploitation of the child – recruiters, intermediaries, document providers, transporters, corrupt officials, employers and exploiters – are traffickers. Conversely, a person moving a child without the intention, knowledge or suspicion that the child would be exploited is not likely to be a trafficker.
- **Movement that renders the child vulnerable:** The child's movement may be across international borders or within a country. Child trafficking exist especially where the movement has rendered the child vulnerable, and that the vulnerability was planned to be exploited. Children could be rendered vulnerable by the fact that they do not have close relatives at their destination, do not have money or means to return home, cannot speak the language, are disadvantaged by their legal status, suffer a lack of access to basic services (such as education and health care), or do not know the environment.
- **Movement for exploitation:** The *trafficking protocol* provides that *exploitation* includes the prostitution of others or other forms of sexual exploitation, forced labour or services,

What is 'labour exploitation'?

Labour exploitation of children includes:

- (a) all forms of slavery or practices similar to slavery, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict (Convention 182, Art. 3(a));
- (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances (C182, Art. 3(b));
- (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties (C182, Art. 3(c));
- (d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children (C182, Art. 3(d) and C138, Art. 3);
- (e) work done by children below the minimum age for admission to employment (C138, Art. 2).

slavery or practices similar to slavery, servitude or the removal of organs (Article 3(a)). By stating that exploitation 'includes' these kinds of exploitation it is clear that other kinds of exploitation are included in the definition, such as *labour exploitation*. Exploitation can occur at the beginning, middle or end of the trafficking process.

- **Movement for labour exploitation:** When read with the *Worst Forms of Child Labour Convention*, and thus in the context of child labour, *labour exploitation* of children includes all kinds of work that exploits a child. This overlaps with the forms of exploitation referred to above. It also includes work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals

of children, as well as work by children who are below the minimum age for work, as set out in the ILO's Minimum Age Convention (C138).

- **No force or deception is required:** In the case of children, child trafficking occurs whether the child was moved voluntarily or by force, provided the other elements of the definition are met. If during or soon after the child's movement there are elements of force, violence, or unreasonable restriction of the child movement at their place of work, or other harmful effects of the work on them, it would be a strong indication that trafficking may have occurred.

Migration-related child labour

Where the movement of the child was not done *with the purpose of labour exploitation*, this is not child trafficking, even where the child still ends up in labour exploitation. This is so even where the movement has led to greater vulnerability of the child and to labour exploitation.

However, national laws may provide that migration-related child labour, even where this falls outside of the definition of child trafficking, is considered a worst form of child labour.

This could be done in terms of Article 3(d) of the Worst Forms of Child Labour Convention. This Article provides that worst forms include work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of the child. These kinds of work must be determined by national laws or regulations, after consultation with the organizations of employers and workers concerned.

The above definition is drawn primarily from two international instruments.

The concept is defined in the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children of 2000, known as the **Trafficking Protocol**. It supplements the UN Convention against Transnational Organized Crime.

The International Labour Organisation's **Worst Forms of Child Labour Convention** (No. 182 of 1999, or C182) classifies trafficking among “forms of slavery or practices similar to slavery” and hence a worst form of child labour to be eliminated as a matter of urgency.

Finalised by

The programme *Towards the Elimination of the worst forms of Child Labour* (TECL) of International Labour Organisation, Pretoria, after engagement with the United Nations Office on Drugs and Crime and International Organisation for Migration.

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