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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