



## Child victim of sexual exploitation and/or abuse

*This term appears to have a generally agreed meaning and/or can be used without stigmatising and/or otherwise harming the child.*

### J.1. Definitions in legally binding instruments

- i. 1989: The CRC uses, but does not define, the term ‘victim’.
- ii. 2000: The OPSC uses, but does not define, the term ‘victim’.
- iii. 2007: Article 3(c) of the Lanzarote Convention defines ‘victim’ as *“any child subject to sexual exploitation or sexual abuse”*.

### J.2. Non-binding instruments

- i. 2005: The UN Guidelines on Justice in Matters involving Child Victims or Witnesses of Crime<sup>346</sup> define “victims” as *“children and adolescents, under the age of 18, who are victims of crime [...] regardless of their role in the offence or in the prosecution of the alleged offender or groups of offenders”*.

### J.3. Terminology considerations

The term “victim” refers to a person who has been hurt, harmed, injured, or killed as a result of a crime, accident, or other event or action<sup>347</sup> or who has suffered because of the actions of someone else.<sup>348</sup> This definition does not take into account how the person in question feels about her/his situation, and is not intended to label a person as such, but merely states the fact that the person has been subjected to or experienced one of the abovementioned scenarios.

In the legal context, in particular in the framework of judicial proceedings, this definition of “victim” is necessary for a person to be identified and recognised by law or by other means in order to be eligible to access recovery and/or reintegration services and/or to claim compensation. The term “victim” thus remains an important legal term to define duty-bearers and rights-holders.

However, the term “victim” can also refer to *“a person who has come to feel helpless and passive in the face of misfortune or ill-treatment”*.<sup>349</sup> This definition is based on the more subjective element of a person’s (the “victim’s”) own feelings. The fact that “victim” can also be interpreted in this manner has sometimes made the use of the term appear disempowering and has been seen as defining a person in terms of her/his experiences of abuse or applying a “label” of weakness or helplessness, which is not helpful to the person’s recovery.<sup>350</sup>

The term “child victim” has, as mentioned above, been defined as children and adolescents, under the age of 18, who are victims of crime.<sup>351</sup> This definition, which appears to include only acts directly intended towards the child while potentially excluding forms of indirect victimisation, is very similar, if not identical, to the definition of adult victims. Yet it has been observed that *“due to [...] vulnerabilities and characteristics unique to children the definition of adult victimization is not suitable for children”*<sup>352</sup> and that an adequate definition of “child victim” must *“reflect the fact that*

*due to their unique characteristics, vulnerabilities and needs, the injurious effect of crime to children goes far beyond direct victimization*".<sup>353</sup> In this regard, it is noteworthy that the Preamble of the Istanbul Convention recognizes that "[c]hildren are victims of domestic violence, including as witnesses of violence in the family."

Lastly, it is important to recall that any notion related to the consent of the child shall be considered irrelevant in determining that she/he is a victim of sexual exploitation or sexual abuse. Moreover, the identification of someone as a "child victim" shall not depend on the identification, prosecution, or detection of an offender, nor shall it depend on his or her willingness or ability to provide the police with information or to testify against the offender.<sup>354</sup>

In the context of child sexual exploitation and sexual abuse, reference is sometimes also made to "children at risk" or "children in vulnerable situations". These terms refer to children who have not necessarily been victims of abuse or exploitation but who are at greater risk than other children owing to their situation and/or circumstances and need to be reached for prevention purposes. These terms can be used without stigmatising the child as long as it is clear children are not necessarily vulnerable *per se* but in relation to their surrounding environment (e.g. their evolving capacities and limited decisional power, but also factors such as living conditions or disabilities).<sup>355</sup> For this reason, it may be better avoiding the term "vulnerable children". It has been observed that "[p]eople who have less power have fewer choices and are therefore more vulnerable to abuse" and that, given their limited power, "[c]hildren are especially vulnerable to abuse."<sup>356</sup> In requesting that States criminalise acts of child sexual abuse, the Lanzarote Convention refers to the "*particularly vulnerable situation of the child*", for instance because of "*mental or physical disability or a situation of dependence*" (Article 18(b) third indent). ILO C182 refers to the need to identify and reach out to "children at special risk" (Article 7(2)(d)), and the OPSC mentions "particularly vulnerable groups, including girl children" and refers to the need to protect "children who are especially vulnerable" (Preamble and Article 9).

**Conclusion:** In the context of child sexual exploitation and sexual abuse, the term "victim" is a crucial legal term that serves to define children who have been subjected to harmful and/or criminal acts as rights-holders and to avoid any form of responsibility or blame being placed on the child. The term should be used in an objective manner to state the fact that the child has been subjected to or has experienced a harmful/criminal act, and not be used to label the person as weak and/or helpless.

Taking into account children's special needs and rights to protection, it is important to use an inclusive notion of the "child victim", which encompasses not only acts directly aimed at the child but also acts that indirectly cause harm to her/him.

<sup>347</sup> Oxford British and World English Dictionary; Cambridge Advanced Dictionary and Thesaurus.

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<sup>350</sup> See, for instance, The Guardian, "People Who've Been Raped Are Survivors, Not Just Victims", 22 December 2014.

<sup>351</sup> *Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime*, supra 346.

<sup>352</sup> M. Gilad, "The Young and the Helpless: Re-defining the Term 'Child Victim of Crime'", Public Law and Legal Theory Paper No. 14-23, University of Pennsylvania Law School, 2014, p. 23.