

*Lost kids, lost futures.*

**The European Union's response to Child Trafficking**

*By Mirjam Van Reisen and Ana Stefanovic*

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Terre des Hommes was created in 1960 to provide direct help to underprivileged children who were not being helped by existing relief agencies. Today it consists of a network of organisations based in eight different countries, the International Federation Terre des Hommes (IFTDH), which has consultative status with the United Nations Economic and Social Council (ECOSOC), UNICEF, ILO and the Council of Europe. The IFTDH is founder member of CONCORD (European NGO confederation for relief and development). In 2004, members of the IFTDH support 840 development and humanitarian aid projects in 71 countries.

The countries where members of the IFTDH have their headquarters are: Canada, Denmark, France, Germany, Italy, Luxembourg, Switzerland (where there are two organisations Terre des Hommes Switzerland and Terre des Hommes Foundation in Lausanne) and Syria. The IFTDH works in partnership with Terre des Hommes organisations in Spain and in the Netherlands.

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Chapter I of the report was written by Rebecca Steel who ran a six-months internship at the Brussels office of the IFTDH in 2004. Besides writing chapter I, Rebecca Steel gave concrete support in collecting and preparing information and documentation for the conducting of that research. Rebecca Steel has a degree in Psychology and Philosophy and obtained a Masters in European Law from University of Leeds.

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## Chapter VI      Conclusions

Whilst the phenomenon itself is not new, the concept of child trafficking has been introduced relatively recently into international discourse. In the last five years a number of international legal instruments have been introduced, which together provide a strong international framework for the fight against child trafficking. Most of these have not yet been ratified by many of the member states or the EU, and this slowness in their application is also reflected in the policy of the Union.

The greatest impediment to the EU policy on child trafficking is the absence of a clear and broad definition of the phenomenon. This leads not only to an inconsistent use of terminology, but also to a lack of a clear policy area to fight child trafficking based on the best interests of the child. The most disconcerting development has been the introduction into EU discourse of the catchphrase “trafficking in human beings and the sexual exploitation of children”, and there is an additional lack of clarity in the use of the term ‘trafficking in women’ which applies to girl children but not to boys. Historically the EU has tended to focus on trafficking which occurs for the purpose of sexual exploitation, which is subsequently reflected in both the legislative, policy and implementation framework on child trafficking.

Whereas the concept of trafficking in human beings has recently been defined, it still refers only to trafficking that occurs for the purpose of labour and sexual exploitation, which may be more applicable to adult victims. Trafficking for the purpose of adoption, organ transplant, marriage or involvement in illegal activities, such as begging and drug smuggling, for which children are increasingly trafficked, is excluded from the definition.

Due to the lack of a clear definition and policy on child trafficking, most of the EU’s efforts in this area have taken place in the context of a policy to ensure freedom and security inside the EU. Whilst such an approach is presently enshrined in the primary law of the EU, the future adoption of the European Constitution will provide a legal base for a policy on child trafficking based on the rights of the child, providing a valuable opportunity to adapt the EU policy accordingly. The present approach by the EU results in particular to an insufficient attention to the prevention of child trafficking, with a consequent lack of recognition of some vital links between the elimination of child trafficking and areas such as migration and development.

The choice of internal security as the entry point of the EU approach against child trafficking reinforces the internal - external division already inherent in EU policy. Without an overall policy area of child trafficking, the various aspects of the fight against this phenomenon are spread among the existing policy areas which tend to have either internal or external orientation, providing a segregated response to the phenomenon. This is evident in and reinforced by the lack of institutional coordination amongst the various departments which relate to the fight against child trafficking.

There has been a general tendency by the European Union to focus its efforts on the fight against trafficking in human beings which has a direct effect on the member states. For that reason the policy against child trafficking is fought through criminal law enforcement inside the EU, and through a regional approach that targets source countries for the EU in external policy. This approach does not seem to take into account the shifting nature of trafficking patterns which adapt to movements in demand and supply and in response to changes in the regulatory environment. Thus the lack of a consistent international response to trafficking in children creates space for traffickers to move to where the regulatory environment is weaker and continue exploiting children in geographic areas neglected by the EU.

All the above factors have a clear influence on the potential of the EU to create a real impact on the international fight against child trafficking. The lack of a defined policy area of trafficking in children is reflected in the absence of a specific implementation programme on the issue. Where trafficking in human beings is included there has tended to be a clear lack of focus on children, and where children are included it is the sexual exploitation of children which is prioritised rather than child trafficking. The lack of a focus on children is compounded by a general geographical division in programming that reflects the divisions in policy. Existing programmes are for the most part applicable either to member states or specific

regions, providing a clear impediment to the execution of interventions that aim to address both the demand and supply aspects of child trafficking.

## **Chapter VII      Recommendations**

### **Defining child trafficking**

1. The European Commission should take an initiative with a view to the adoption of a Council Decision to provide a clear legal definition of child trafficking, based on internationally agreed standards enshrined in the Palermo Protocol and the CRC, that would apply to the legislative and policy framework of the EU and all the member states. This definition must reflect the special vulnerability and special needs of child victims, and cover all forms of exploitation to which trafficked children are subjected, both inside and outside of the European Union.
2. The definition of child trafficking must apply to all future legal and other non-binding documents of the Union, including where necessary amendments to outdated texts such as the Council Decision on the Europol definition on trafficking in human beings, in order to ensure a consistent use in terminology.

### **Development of a policy of child trafficking based on the rights of the child**

3. The EU must develop a specific policy area on child trafficking based on the commitments undertaken by the member states under the UN Convention on the Rights of the Child. The European Parliament has already called on the Commission to develop a common EU policy in this area. This policy must provide a comprehensive response to child trafficking with an equally strong emphasis on the prevention, protection and prosecution aspects and a geographical scope that comprises all countries in the trafficking chain. The policy must also embrace all relating areas such as migration, development, enlargement and external policy.
4. The Experts Group on trafficking in human beings should recommend the creation of a policy on child trafficking in which the rights of the child must be paramount.
5. The planned Commission Communication on trafficking in human beings scheduled for 2005 must include recognition that child trafficking is a separate phenomenon which requires carefully designed responses based on the child's best interest, and which cannot be fully guaranteed under a criminal justice approach. In light of the necessity to develop complex responses to trafficking it is recommended that this Communication be drafted with contributions from all the relevant Directorate Generals of the Commission, including in particular the child rights unit, as well as draw on the experience of NGOs active in this area.

### **Creation of an institutional framework for the fight against child trafficking in the EU which is based on the rights of the child**

6. It is imperative that a High-level Representative for Children's Rights be appointed by the Commission in order to guarantee that a child rights approach based on the CRC is integrated into all policy areas of the EU. In addition the high level representative must be called on to ensure overall coordination of all policies that affect children both inside and outside the EU, which is required to address multifaceted and transnational issues such as child trafficking. The High Representative should take every opportunity to work in close collaboration with civil society and NGOs active in the fight against child trafficking.
7. A specific Task Force for Trafficking in Children should be established to account for the particular vulnerability of children in front of trafficking networks. Under the auspices of the high-level representative on Child Rights, this Task Force should cut across the various Commission Departments that relate to the trafficking in children in order to provide the comprehensive multi-disciplinary strategy that is required as a response to child trafficking. The Task Force on Trafficking in Children would have the responsibility to investigate child trafficking and provide policy and

programming suggestions, as well as ensure that the special needs of trafficked children are included in all other related policies.

8. The European Parliament should establish a sub-committee on Human Right under the current Committee on Foreign Affairs, Human Rights and Common Foreign and Security Policy to ensure that human rights issues are not subjected to foreign policy interests. The mandate of this sub-committee must have the promotion of child right's as a priority area of focus. The establishment of the sub-committee should also be used as an opportunity to improve the interface between internal and external policy dimensions and it is thus recommended that a presidium of the sub-committee should comprise selected representatives from all the Committees dealing with human rights.
9. In addition to the sub-committee on human rights, it is necessary that an informal working group be set up by the Parliament to deal specifically with children's rights. This group must ensure that child trafficking is given enough emphasis in its activities as a particularly brutal form of child exploitation and a priority area of intervention. The informal working group on child rights would have the responsibility to ensure that child rights are adequately included in all policy areas of the EU by providing an interface between internal and external dimensions, and ensure that within the EU approach to child trafficking appropriate weight is given to related policy areas such as development and migration.
10. The Council of the European Union should establish a Task Force on trafficking in human beings with a special focus on child trafficking. The Task Force would be responsible for the coordination and monitoring of all developments in EU policy on trafficking in human beings including child trafficking, in order to ensure that all actions are in the best interest of the child. Such a position is of particular importance in the Council, in order to ensure that special measures on child trafficking which guarantee the rights of the child are included in the EU's efforts to curb illegal immigration which is a particular priority of the member states.

### **Preventing child trafficking**

11. It is crucial that the increase in protection measures for victims of child trafficking be balanced by equally strong prevention and deterrence measures, in order to ensure that an increase in the protection does not serve as a pull factor and augment the supply side of the trafficking equation.
12. The EU must recognise and explore what specific measures are necessary to prevent child trafficking both in the long and short term. It cannot simply be assumed that policies aimed at development or at curbing illegal immigration will themselves be enough to prevent children from being trafficked. Poverty eradication for example is itself not enough to address the root causes of child trafficking since not all poor children are trafficked. The EU needs to explore and implement innovative responses to prevent children from falling victim to this heinous crime.
13. It is vital that any response on the prevention of child trafficking be applied both internally and externally in a consistent manner. The lack of a uniform prevention strategy gives traffickers the opportunity to exploit differences across the globe thus contributing to shifts in trafficking patterns rather than their eradication.
14. Development policy in third countries can be used to make a particular contribution to the prevention of child trafficking through targeted measures. When the Development Policy Statement is revised it will be vital that a strong commitment is made to focus on children's rights in development policy. In addition a specific priority must be given to actions to prevent child trafficking as well as to promote basic education which can be seen as a vital tool to safeguard child welfare.
15. Basic education should be considered as a particularly important strategy to prevent and combat child trafficking. By going to school children are placed in a public space and their welfare therefore open to public scrutiny. School registers can be used to alert authorities in countries of origin to a possible case of exploitation when children are not in school. It is also vital that the EU supports measures for the

registration of all births in order to be able to monitor children as they develop. The EU should furthermore explore how in the future school registration certificates can be used as a useful tool for authorities of member states to identify trafficked children once in the EU.

16. The EU must ensure that the fight against child trafficking be included as one of the priorities of the new Neighbourhood Policy which is still being developed as well as in the New Neighbourhood Instrument that will apply to all neighbouring countries including the Balkans which is an areas both of origin and transit of trafficked children.
17. The complicated but crucial link between trafficking in children and immigration must be addressed in all community policies that deal with either of these issues. As a first priority a clear distinction must be maintained between trafficking in human beings and smuggling, so that these terms can never be used interchangeably. Furthermore it must be clear that the present emphasis by the EU on measures to curb illegal immigration in particular, must not act as a spur to trafficking activity concerning minors.
18. Specific focus on prevention of child trafficking must be included in the EU policy on humanitarian interventions. The EU has recognised that children in emergency situations are increasingly vulnerable to exploitation. Nonetheless there is also a need to introduce specific measures that will protect children against trafficking networks both in emergency and post-conflict situations. The EU will in particular need to support activities orientated towards increasing the sensitivity of peace-keeping troops deployed by the member states, in order to ensure that they do not create an increase in the demand for child trafficking.

### **Protection and rehabilitation of child victims of trafficking**

19. It is imperative that a Council Framework Decision be adopted on the protection of child victims of trafficking. Special measures need to be designed that will provide for the particular vulnerability and special needs of children in the context of trafficking which must apply to all children regardless of whether they are party to criminal proceedings or not. These should include amongst others:
  - A clear set of guidelines for the identification of child victims of trafficking to be used by all state authorities, including the presumption of age. Identification of victims is vital to insure that these children are given access to adequate protection measures to ensure their rehabilitation and safeguard them from falling back into the hands of trafficking networks. In this context it is particularly important to ensure that victims of child trafficking are not simply mistaken for illegal immigrants and subsequently criminalised.
  - Free 24 hour help-lines should be established in all member states of the EU to help identify victims of child trafficking.
  - Particular attention will need to be given to all unaccompanied or trafficked minors arriving into the EU. Deportation is never to be considered an automatic response and proper care and time needs to be taken to identify the context in which these children find themselves.
  - All victims of child trafficking must be given a residence permit for the entire duration of their stay.
  - Once identified as victims of child trafficking, these children must be appointed a legal guardian who will be responsible to ensure that all decisions taken are in the child's best interest and that the child is given the proper care required.
  - Children must be given access to information concerning their rights and the possibilities available to them in their own language and explained in a way that is comprehensible to them.
  - It is of particular importance that accommodation be provided to victims of child trafficking which is both conducive to their recovery and where they will be safe from falling back into the hands of trafficking networks.

- It is unacceptable that hundreds of children who are victims of trafficking or unaccompanied minors go missing each year from institutions in the member states which have been designed to protect them. Children must not disappear from the institutions they are entrusted to and a system must be implemented whereby these children are closely monitored. Information on missing children in the European Union should be computerised and coordinated by a European Centre on missing children to help find these minors and identify where they might be in danger of exploitation. In addition adequate training must be provided to staff who are in charge of these institutions to ensure that victims of trafficking are given the right care.
- During their stay in a member state, victims of child trafficking must be able to benefit fully from the support measures available in their country of residence including access to social services and education.
- Where children decide to cooperate, the interviews and criminal proceedings must be adapted not only to the age and maturity of the child but also to the context of testifying in a trafficking case where the danger is much higher both for the victim and for his/her family, to whom adequate protection must be provided.
- Authorities in the member states must ensure that adequate protection exists in the country of origin of the trafficked child before he/ she is returned home. Countless cases have been highlighted where return to the country of origin has simply led to the reinsertion of these children back into trafficking networks due to inadequate protection upon arrival. These instances must be avoided and it is the responsibility of the state where the child has been resident to ensure the child is not sent back into a potentially dangerous situation. Terre des Hommes insists on the need for implementation of the VAR model – Voluntary Assisted Return, which must be safe, legal, quick and prepared together with the child and his or her family.

### **Implementation of a policy on child trafficking**

20. The EU and the member states must take immediate measures to ratify and fully implement the measures envisaged in the UN Convention on the Rights of the Child, the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, the Optional Protocol to the CRC on the sale of children, child prostitution and child pornography, the ILO Convention 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour and Hague Convention on the Protection of Children and Cooperation in Respect of Intercountry Adoption.
21. Policy dialogue with third countries must be used to combat the trafficking of children. Since 2002 policy dialogue is to include policies for the prevention of trafficking in human beings in the context of incorporation of migration issues into EU relations with third countries. This political dialogue must be extended to incorporate a special focus on child trafficking including the ratification of all the international instruments outlined above.
22. A specific budgetline should be introduced for measures relating to the fight against child trafficking. This would include financial support for a range of measures to prevent child trafficking, protect its victims and contribute to the prosecution of the perpetrators of this hideous crime. Such a programme must be of an unlimited geographical scope in order to provide an opportunity for the EU to implement a consistent international policy to combat child trafficking.
23. Where implementation programmes include the fight against trafficking in human beings children must be considered as a specific target group.