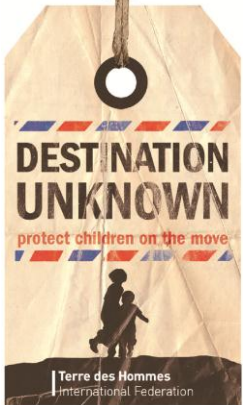


“Not for Sale – Joining Forces Against Trafficking in Human Beings”¹

**Notes for intervention at the expert Panel
« Victim Identification and Protection »
17th February - 14:30 – 16:00**

Ignacio Packer – Terre Des Hommes International Secretariat



Children are widely recognized as being particularly vulnerable to abuse and exploitation, including trafficking. By virtue of their age alone they are also particularly vulnerable when they come into contact with the State. While age of criminal responsibility can vary significantly from country to country, States have special responsibilities under international law with regard to all persons under the age of 18.

Victims of trafficking, especially children, can be better identified through...

1. ... the effective implementation of the non-punishment principle (*also related to detention*)
2. ... a better association of child protection tools to anti-trafficking efforts in relation to trafficking of children (ex. for the purpose of forced begging)
3. ... making access to services effective and non-discriminatory

1. ... the effective implementation of the non-punishment principle

A 16 year old Nigerian girl agreed to be taken to the UK to avoid an arranged marriage in her home country with a 63 year-old man. Upon arrival she was threatened, raped and forced into prostitution to a debt of EUR 60.000 for her travel that had been arranged for her. After some time she managed to escape and was caught by police with a false identity document on board a coach going to

¹ A Council of Europe - OSCE Conference on the Occasion of the Austrian Chairmanship of the Council of Europe and the Swiss OSCE Chairmanship. Organized by the Austrian Federal Ministry for European and International Affairs, the Austrian Federal Ministry of the Interior, the Council of Europe, the Organization for Security and Co-operation in Europe and the Swiss Federal Department of Foreign Affairs. 17 – 18 February 2014. Hofburg, Vienna, Austria.



France. She pleaded guilty to an offence of possessing a false identity card with the intention of using it as her own and was sentenced as an adult to 8 months' imprisonment.

- The girl was under 18. Nobody had considered the State's duty to protect her as a child and indeed even the Judge had given no thought to her age.
- She had been recently assessed as a credible victim of trafficking for sexual exploitation.

Her conviction was appealed. The Court of Appeal quashed the conviction on the basis that a fair trial had not taken place.

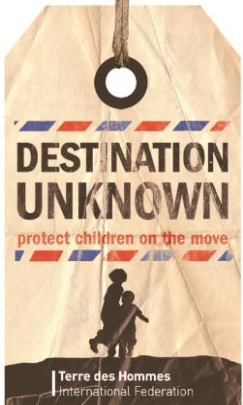
The principle of non-punishment of victims of trafficking, including child victims, is of utmost importance to protect (potential) child victims of trafficking from secondary victimisation. Still, throughout Europe, many children continue to face charges for offences they have been compelled to commit as a consequence of their being trafficked. Too often law enforcement and judicial authorities do not thoroughly assess individual cases against trafficking criteria (or are not trained or even aware of that legal avenue) and consider children as offenders rather than victims. The punishment is double: they are denied their fundamental right to protection, and sentenced for illegal acts they had no other choice but to commit.

The special vulnerabilities and status of children are recognized in the Palermo Protocol, the Council of Europe Convention on Action Against Trafficking in Human Beings and under the European Convention on Human Rights.

The UN Committee on the Rights of the Child, in its General Comment N°6 on the treatment of unaccompanied and separated children recommends that "States should ensure that children are not criminalized solely for reasons of illegal entry or presence in the country". In its Day of General Discussion 2012, the CRC reports addressed the issue of detention of children in the context of international migration concluding that "*States should expeditiously and completely cease the detention of children on the basis of their immigration status and to adopt alternatives to detention (ATD) that fulfil the best interests of the child*".

Recognizing the harms to children implicit in immigration detention, some governments have implemented ATD models specifically tailored to meet the protection needs of children and families. A variety of countries have legislated for at least some form of alternative to detention, such as reporting requirements, bail or designated residence. Others have piloted or implemented more comprehensive case management and community supervision models with individuals living freely in the community.

Beyond fulfilling State obligations, alternatives to detention lead to long-term social benefits. The latest research indicates that avoiding unnecessary cases of



detention are key strategies for reducing costs, and community management ATD programs have been found to be both more efficient and significantly cheaper than custodial detention models.

I take the opportunity of extending two invitations:

- The Swiss Government in collaboration with Terre des Hommes will announce in a press conference on 13th March the 2015 World Congress on Juvenile Justice. All interested governments, public actors and civil society members are invited to save the following dates of the World Congress in their calendar as of now: 26 - 30 January 2015.
- Under the leadership of IDC, a State pledging process to end the immigration detention of children will be formally announced at the Human Rights Council in June 2014.

I will finish on the effective implementation of the non-punishment principle by quoting a French prosecutor talking about children potential victims of trafficking begging and pickpocketing in the streets of Paris : « [P]aradoxically, the only way we can start to work on the case of these children is when, after they have committed several offences, we are compelled to place them in detention-like facilities where the identity of the child will be verified and where the social workers can start establishing a relation of trust with the child concerned ».

Practice, or lack of awareness as it can be, clearly hampers the identification capacity of a protection system where children are considered as accountable and perpetrators continue to hide in their impunity.

2. ... a better association of child protection tools to anti-trafficking efforts in relation to trafficking of children (ex. for the purpose of forced begging)

A narrow approach to trafficking (including identification, support for victims and prevention) is likely to have a limited impact on child victims of trafficking and appropriately address the acute problems encountered by them.

Begging children occupy a place at the lowest echelons of society and mostly treated as a nuisance by the authorities, rather than a child protection concern. Their visibility on the streets of many European cities casts doubt upon the viability of child protection frameworks and remind us of the intolerable levels of poverty, inequality, exclusion and child abuse that exist in Europe today.

Research conducted in the last 5 years by Terre des hommes and partners has contributed to better understand the phenomenon of child begging. Trafficking patterns were difficult to identify however, in most instances children begging in streets of different European cities were primarily contributing to a family-based survival strategy, organised around a female figure.

Exploitative begging of children is commonly found as linked with trafficking. The likelihood of its effective identification must go through the provision of appropriate protection services for children. Identification of child victims remains



too often perceived as a law enforcement duty and most collaborative efforts, within a country, or between countries, have occurred within the law enforcement spheres.

To be considered as one of the greatest challenges to be surmounted in Europe: Child protection services and measures are not sufficiently associated to anti-trafficking efforts in relation to trafficking of children for the purpose of forced begging. They should go hand in hand with law enforcement actions or even be at the front line of anti-child trafficking approaches.

3. ... making access to services effective and non-discriminatory:

In most OSCE countries, a child national begging in the streets would tend to be identified and his/her case be treated as an urgent child protection case.

If a child of the Roma community or from another traditionally nomadic community is identified begging in the streets of the same European city, the chance of him/her receiving services and being identified as a child in a vulnerable situation dramatically decreases. Professionals tend to disregard a certain category of children especially when they do not come from the same country. Belonging to the Roma community is considered in the existing literature as a “risk factor” when it comes to child begging.

Care should be taken to avoid biasing research or stigmatising this population further, while also placing the focus on child protection and putting the best interests of the child to the forefront, regardless of the child’s origin.

Responses and interventions should protect all children, while acknowledging the prevalence of children of Roma origin among those who beg, due to specific socio-economic vulnerabilities.

A child begging in the streets remains a child first and foremost a child and should be equally protected in line with the non-discrimination principle enshrined in the Child Right Convention. We should encourage and create the environment for police officers and social workers to work in synergy with the sensitivity of seeing these children beyond “being dirty, scruffy and in the way”.

Ignacio Packer
Secretary General TDHIF
17th February

