

ECPAT France – August 2020

Written contribution to the targeted consultations towards the new EU Strategy to eradicate trafficking in human beings

Member of ECPAT International, ECPAT France is a French-based NGO working both at the international and the European levels, including in France, fighting against sexual exploitation and trafficking in human beings, particularly children and young women. ECPAT France is present in Africa and the Middle East, with programmes aim at preventing child trafficking, raising awareness and building capacities of relevant stakeholders, and advocating for - and with survivors - at all levels to eradicate trafficking and protect victims' rights.

ECPAT France thanks the EU Anti-Trafficking Coordinator and its office for their ongoing work and commitment, improving coherence among actors and developing new policies to address THB. ECPAT France welcomes the consultations dynamic with all relevant stakeholders, including Civil society organizations (CSO), launched by the European Commission on its new strategy to eradicate THB.

We are convinced of the crucial importance and need for a closer cooperation between different stakeholders and CSO, including victims themselves. We would thus encourage you to continue providing space for dialogue, and strengthen the consultation and participation of THB survivors.

In response to the EU's call for inputs to feed the Strategy, our written contribution will focus on the following:

- Strengthening the EU's commitment in human trafficking within EU's human rights policies and programmes, including international cooperation and migration.
- Strengthening EU's judicial cooperation on criminal and civil matters pertaining to trafficking human beings, particularly child trafficking.
- Strengthening EU's protection of victims in the field of health, shelter and legal protection.

This contribution will make specific recommendations and observations regarding the protection of victims of THB, with a focus on children rights. It highlights priority issues where actions are needed both by EU institutions and Member States at the national level.

The outbreak of the COVID19, which has lately contributed to an increased and worryingly number of children victims of THB, reminds us the clear urgency to intensify efforts in the fight against this growing and universal scourge.

1. Strengthening the EU's commitment in human trafficking within EU's human rights policies and programmes, including international cooperation and migration

Anti-trafficking policies and legislation remain strongly rooted in the original approach of the UN Palermo Protocol, focusing on criminal justice response and organized crime, depending mainly on police operations rather than victim protection. As a result of this specific approach, victim identification and support are closely linked to criminal proceedings in most EU Member States, with **victim's cooperation in the criminal investigation as a prerequisite**. This approach is counterproductive with regard to combating human trafficking as their future cooperation with the authorities will often depend on the ability to create a safe protective environment.

Children who are forced to commit offenses are still too often casted as criminals, contrary to the principle of non-punishment of victims, due to lack of understanding and awareness of this type of trafficking. This approach reinforces the lack of trust in the authorities, and the children's perception that they can not or will not help.

One other consequence is that investigations and prosecutions mainly focus on large organized criminal organisations, **while some children are controlled by family members or micro organizations that exploit them for multiple purposes**. This is particularly true, for example, for children coming from the Balkans and Eastern Europe, including Romania, who are then forced to steal, beg or forced into prostitution, with victims often recruited through methods such as marriages of convenience, adoption or family. Identification of child victims remains a challenge when trafficking has a strong private/family dimension.

This also creates a frequent conflation of human trafficking enforcement with **anti-immigration control strategy**, leading to a lack of identification efforts for THB victims coming from third countries, and support measures adapted to their specific needs. The structural and social dynamics of inequality and discrimination, that are observed in most countries, increase the vulnerability of unaccompanied children who face serious risks of trafficking and exploitation in parts of Europe.

This is why the EU Strategy should be **drafted and implemented through a human rights lens rather than a criminal justice one**. We believe that this shift is necessary to put victims and survivors at the center of our protection systems and it is necessary to ease the early detection of cases and ensure coherence and consistency across sectors. In fact, a more comprehensive and holistic approach is needed, including **migration, labour and gender policies and programmes**. Most importantly, we strongly recommend the European Commission and all the EU institutions to adopt a **child-sensitive approach** throughout the drafting process as well as during the implementation and evaluation of its strategy. In particular:

- We recommend the European Commission to accompany the future strategy with an **action plan consisting of targeted actions and responsible stakeholders** for each of them. The action Plan should be then used as a basis for the monitoring of its implementation and progress. In this sense we promote the engagement on this topic by EU human rights bodies (such as the DROI and LIBE Committees or the COHOM).
- We strongly encourage the EU to adopt **EU guidelines on trafficking in human beings and the rights of victims** so as to give clear guidance to relevant stakeholders, including EU delegations, on how to apprehend this phenomenon. The elaboration of such guidelines should be done in close collaboration with civil society organisations and organization of survivors to make sure their voices and needs are heard.
- Finally, we strongly invite the EU to consider the appointment of **Focal Points in EU delegations** so as to ease the mainstreaming of trafficking in human beings across EU policies and programmes, both domestically and externally.

2. Strengthening EU's judicial cooperation on criminal and civil matters pertaining to trafficking human beings, particularly child trafficking.

Most of the time child victims of trafficking, particularly those exploited in forced begging but not only, can pass from one to another EU Member State, challenging their early detection and identification.

Organised crime groups (OCGs) are extremely mobile and they usually adapt the forms of exploitation according to the country of exploitation, the weaknesses of national systems and on-going police investigations. They develop complex strategies that request time and expertise to understand. We thus recommend :

- to boost the **cross-border cooperation**, through joint investigation teams for example;
- to explore **good practices in investigating trafficking cases at the preliminary phase** of investigation in bordering countries. Investigation and prosecution of OCGs involved in the child trafficking, and subsequently identification and protection of victims, will be improved thanks to a **deeper knowledge of their profile and modus operandi**. Human traffickers have shown their flexibility, shifting their operations to other countries upon detection by law enforcement; facilitating the exchanges of best practices and knowledge is crucial to not lose the race.

Cross-border cooperation on civil matters, among EU Members States but also with third States, is equally crucial. In a context of increasing mobility among MS and due to OCGs' strategies, they are some challenges of Private International Law (PIL) that need to be addressed in order to better protect child victims of THB (**determination of the competent jurisdiction, the applicable law**, etc). Cooperation mechanisms exist under civil law, but

neither the Brussels IIb Regulation, its recast, nor the 1996 Hague Convention pay specific attention to issues regarding children victims of THB and migrant children. As a result, private international tools are not activated whereas they may serve the child's best interest.

For instance, where national/European children or unaccompanied minors have become victim in another EU Member State, cooperation is needed with the authorities from that in order to obtain information on the child's background, assist in transferring court jurisdiction or arranging corresponding protection in another State, and ensure the safe return/placement. It may be in the child's best interest to be placed in another State, when a secure and adapted shelter is not possible or available at the national level.

Therefore, ECPAT France recommend to :

- promote the use of rules and PIL mechanisms, and the **cooperation between national authorities under civil law**, which is of crucial importance for the protection of children victims on the move;
- explore opportunities of **cross-border placement**.

3. Strengthening EU's identification and protection of victims in the field of health, shelter and legal protection

Many children in Europe are left without little or any protection nor adequate support. From a legal point of view, despite many efforts, there is a poor understanding of the THB offence itself by competent authorities. They often tend to use other offences (such as pimping, forced prostitution, substandard housing or working conditions) that are perceived easier to prove, though wrong, and consider the existence of a network as a material element. It is crucial to use the THB qualification as only this qualification will allow the child to be recognized as a victim of trafficking, which means a specific status ensuring an adequate protection. This is particularly important as children involved in trafficking often experience a high rate of secondary and repeated victimization.

Moreover, as stated above, victim support remains conditional on victims' cooperation in criminal proceedings. This approach hampers identification and protection as many victims are not in a position to share their experience with the authorities.

In this regard, ECPAT France would like to strongly recommend:

- to **protect presumed victims before they are formally recognized as such** ;
- the establishment or improvement of a **referral mechanism**, based on a stakeholder approach, including the participation of survivors themselves, which will improve the report of cases of THB.

Furthermore, shelters are not always equipped to cater for the victims of trafficking's needs, and many children disappear from shelters that do not provide adequate care. We thus recommend the following:

- to **increase the quality of accommodation services and multiple appropriate shelter** with professionals trained in all forms of exploitation (including THB victims forced to commit crimes) and their specific features, so as to ensure that child victims are lent suitable assistance;
- to ensure **their protection by putting them in shelters far** from the criminal networks in which they were caught up and avoid situations of re-trafficking.

There are still obstacles and challenges preventing child victims to enjoy their full rights (for example, lack of psychological assistance, late/lack of appointment of a guardian and legal representative, no individual assessment of specific needs in practice). Gender and age-specific assistance and support are still inadequate, and many victims of trafficking do not have equal and effective access to adequate assistance. This is particularly true in EU Member States with decentralized child protection system. Therefore, special attention should be paid to **monitoring the implementation of the minimum standards established by the 2012/29 Directive and the other EU victim-protection instruments** (EU Anti-trafficking Directive 2011/36 EU and Directive 2011/93/EU combating the sexual abuse and sexual exploitation of children). ECPAT France would recommend a **peer to peer mechanism to enable mutual peer learning** between practitioners and all relevant stakeholders from different Member States, for an effective implementation of the EU instruments. The overall idea is to use the successful experience of some countries in improving the protection of child victims of THB.

It is also important that the new Strategy promotes existing **good practices**, such as Barnahus models, Esperanto Center in Belgium, or other pilot mechanisms such as the one in Paris that facilitates the cooperation across actors accompanying child victims of trafficking and offers secure placement. Evaluation of all these existing specific mechanisms that encourage an holistic and child-victim approach - a prerequisite for the recovery and social integration of children - is essential before being replicated in other regions and Member States.

Finally, we would like to emphasize the significance of the children and young people's participation, which is essential to identify gaps in the EU and national legislations, in our social services, and to improve those gaps that affect many children who are invisible and afraid to seek help.