



## EU Asylum Policy: position paper 1

Position Paper on the European Commission Green Paper on the future Common European Asylum System COM(2007) 301 final, 6.6.2007

September 2007

Terre des Hommes International Federation

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### General comments

Terre des Hommes highly welcomes the Commission's commitment in pursuing the establishment of a Common European Asylum System. The main aim behind this process as identified also in the Commission Green Paper should be to equally enhance the standards of protection across EU. Terre des Hommes is convinced that pursuing this aim requires a broad and in depth consultation process involving all stakeholders including civil society and representatives of asylum seekers and refugee groups/organizations. In this context, the organization supports the launching of the Commission Green Paper as a progressive initial step, on which ongoing consultations remains necessary.

In Terre des Hommes view, the Green Paper presents a rapid but realistic assessment of some of the critical points facing the harmonization of asylum policy from the perspective of the enhancement of the protection standards. Terre des Hommes supports the Green Paper conclusion in that it remains necessary to improve the conditions under which persons can effectively seek protection in the EU and receive an adequate response to their individual needs. To achieve this aim, Terre des Hommes agrees with the Green Paper position that enhancement of the capacities of all stakeholders involved in the process remains necessary. In Terre des Hommes view reference in this context should be done to the necessity of enhancing the identification of and response to the needs of most vulnerable groups of asylum seekers and refugees, including

children. Providing adequate responses to the needs of children should strongly be emphasized throughout the Green Paper as one of the main issues to be addressed across Europe.

### **Ensuring that every child has access to an asylum procedure which duly considers his/her needs as a child**

Based on its experience in refugee projects and studies, Terre des hommes has identified various failures and problems in national asylum systems when accessed by children. In conformity with the Convention on the Rights of the Child, every person under 18 years old should have access to an asylum children. (S)he should also be provided with the required support throughout the procedure. Practices as the one followed in Germany where children above 16 years are considered as adults for the purpose of asylum and refugee qualification and protection go against the spirit of the harmonization of the asylum procedure and constitute a breach of the United Nations Convention on the Rights of the Child.

### **Reconsidering concepts behind asylum grounds when claimed by children**

Terre des hommes welcomes the Green Paper suggestion for a re-consideration on determining asylum concepts such as safe country and forms of persecution. In Terre des hommes view when considering a child asylum claim due attention should be paid to potential persecution of the child by non-State actors, such as often the case with child soldiers. Moreover, attention should also be paid to the protective environment for the child within the country of origin. **In absence of such a protective environment, the child would be seriously exposed not only to potential persecutions by individuals or groups, but also to other grave forms of child rights violations such as trafficking, abuse and exploitation.** In order to proper access the existence and efficiency of such child protective environment, the collaboration with specialized agencies with a child rights mandate should be further endorsed. Together with these agencies, specific guidelines should be developed and applied in providing guidance during the asylum decision when children are involved.

Moreover, the evidences submitted on behalf of a child and the process of assessing such evidence should duly take into account the many restrictions faced by children. In this context, particular attention should be paid to children coming traumatized from war zones and they should be able to benefit from additional assistance and support from the very first moment they reach one of the EU Member States.

### **The guardianship system and its role in enhancing access to rights and improved services**

The Green Paper already identifies some inadequacies existing in the present system (see: 2.4.1). However, not all the existing problems are duly reflected.

The Green Paper fails in identifying inadequacies related to the right of the child to housing, education and social welfare. It also fails in addressing the problem that at present very often the access to services by the child is gravely hindered by complicated asylum regulations and that the child does not receive sufficient assistance in how to address such obstacles.

Terre des Hommes strongly advocates for a clear reference to the right of the child to a guardian, who assists the child throughout the procedure and later on in accessing the various services available. The guardianship system should be of high professional quality and its role as watchdog of the best interest of the child fully recognized.

**In order to duly cover the existing problems, Terre des Hommes encourages the Commission to continue the debate with child rights organizations and to include in the process also consultations with children on their experience and needs with asylum system and protection.**

From the children concerned, Terre des Hommes has received complains on the fact that their views are not considered during the process, that they are not duly assisted in accessing professional training or that they are totally banned to work. A serious concern for most of the children remains family reunification. **Broader opportunities should be provided for family reunification, always in full conformity with the best interest of the child.** Return to the country of origin without any assessment or without reflecting on the assessment's results and the consequences for the child might lead to family reunification, but it does not always serve the best interest of the child.

### **Unaccompanied and separated children outside their country of origin**

Terre des Hommes considers the Green Paper as a positive step in seeking to address the large discrepancies existing at present across EU in the protection of the rights of child asylum seekers and child refugees. Terre des Hommes would also like to point out that these gaps become even more substantial where consideration is taken of unaccompanied and separated children outside their country of origin, but who do not apply for asylum or receive a negative decision. The latest constitute in Terre des Hommes view an increasing group, whose rights violation should be brought to an end. As stated by the Committee on the Rights of the Child, in its General Comment No.6 *“in application of article 37 of the Convention and the principle of the best interests of the child, unaccompanied or separated children should not, as a general rule, be detained. Detention cannot be justified solely on the basis of the child being unaccompanied or separated, or on their migratory or residence status, or lack thereof”*<sup>1</sup>.

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<sup>1</sup> Committee on the Rights of the Child, general Comment No.6 on the treatment of unaccompanied and separated children outside their country of origin, CRC/GC/2005/6

**Terre des Hommes supports the proposal of one single uniform status applicable to all unaccompanied and separated children outside their country of origin, including asylum seekers and refugee children at the condition that this status offers the highest level of protection, as required by the United Nations Convention on the Rights of the Child.** Regardless of the nature of the procedure, the best interest of the child should be the prevailing consideration and the procedure should result in a durable solution at the child's best interest. Terre des Hommes considers necessary that in addition to the European Court of Human Rights and its jurisprudence, the Green Paper also refers to the Convention on the Rights of the Child as well as the Committee on the Rights of the Child General Comment No 6.

Expressing once again its support for the Commission's ongoing efforts towards enhanced child protection standards across the European Union, Terre des Hommes remains committed to further contribute through its direct experience in assistance to trafficked children and children in migration and by following the language and spirit of the United Nations Convention on the Rights of the Child.

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Septembre 2007

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**Terre des Hommes at a glance**

The mission of Terre des Hommes is to provide active support to children without racial, religious, political, cultural or gender-based discrimination. Terre des Hommes develops and implements projects designed to improve the living conditions of disadvantaged children, families and communities in their own environment and advocate for the implementation of children's rights. The International Bill on Human Rights and the Convention on the Rights of the Child are guiding Terre des Hommes work. Terre des Hommes is a family network of 11 national organisations with headquarters in Canada, Denmark, France, Germany, Italy, Luxembourg, the Netherlands, Spain, Switzerland (comprising two organisations, Terre des Hommes Switzerland and the Terre des Hommes Foundation in Lausanne, Switzerland), and Syria. Terre des Hommes supports or runs 1207 development and humanitarian aid projects in 75 countries. Projects are run in close collaboration with the beneficiaries, who are the primary participants in their own development. Terre des Hommes acts directly or works with about 1'000 local and national civil society organizations. Terre des Hommes also enables children to participate in the life of their community and in decisions affecting them in accordance with their age and maturity. In Europe, Terre des Hommes has been focusing its fields operation, expertise and advocacy work in the fight against child trafficking and for the promotion of child protection systems for children in migration through Europe.