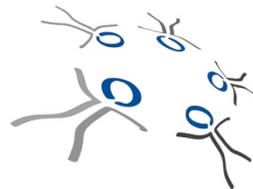


# Guidelines for promoting the human rights and best interests of the child in transnational situations

## Lessons learned from the PROTECT Children on the Move Project

Turid Heiberg and Daja Wenke  
Council of Baltic Sea States (CBSS) Secretariat



**CHILD CENTRE**

Expert Group for Cooperation on  
Children at Risk, EGCC

# The Guidelines: Background

- **Rights-based**
  - Rooted in international and regional standards
- **Knowledge-based and evidence-informed**
  - Reflect the knowledge, experience and evidence shared by participants at the PROTECT expert meeting series (2014-2015)
  - Broad and holistic perspective by combining the expertise from different professional groups, sectors and countries and the views and recommendations of children
- **Integrated**
  - Consolidate existing guidelines and recommendations from UNICEF, UNHCR, Separated Children in Europe Programme, Council of Europe, EU, HCCH and many important national guidelines
- **Up-to-date**
  - Reflect the current state of the debate

# The Guidelines: Scope and objectives

- **Transnational cooperation**
  - Focus on the transnational aspects of case management and care planning for children on the move
- **Overcome the 'categorisation' of children**
  - Embrace the diversity of situations and conditions of children's movement across borders
- **Beyond protection**
  - Consider the right of the child to be safe in relation to all the rights of the child under the CRC and other HR instruments including children's right to develop their evolving capacities, skills and resources
  - **Encourage investments in prevention of exploitation and abuse**, including in the context of trafficking, at any stage of the migration
  - Prevent children from going missing
- **Target group**
  - Policy makers and public officials, public/private service providers within the child care/protection structures, migration authorities and the asylum reception system, guardians, immigration officials and case officers, legal enforcement, border guards, and HR and child rights advocates...

# Connect

Mutual Learning

Inspire

Trust Foster

Promote Innovate

Integrate

Best Interests

Challenge

# The Guidelines: A living document

- Used and adjusted for national and cross-national training and consultation
- From professionals – for professionals
- Facilitated by the CBSS Children's Unit

# Human rights and best interests of children on the move: Key challenges in transnational situations

- **Best interests of the child as a collective principle guiding policies and programmes for children on the move – What does it mean?**
- **Discussion of CRC GC No. 14 for transnational child protection policies:**
  - The best interests as a substantive right of children on the move
  - The best interests as a rule of procedure for children on the move
  - The best interests as a fundamental, interpretive legal principle: Opportunities for safeguarding children on the move
- **Considerations for...**
  - Equity of care
  - Transnational continuity of care
  - Continuum of services for prevention, protection and empowerment

## Best interests' principle and human rights: Towards a holistic understanding of the person

- **Holistic and rights-based perspective:** The best interests of the child in relation to “all” the rights afforded under the Convention and other human rights instruments
- **Complex and challenging process of assessments** in transnational cases when authorities have to cooperate, investigate and communicate across borders
- **Consensus on importance** of “the best interest” but vague understanding in practice. Important to understand the principle in a broader human rights context.
- **Innovative practice examples** that inspire an understanding of the principle that is holistic, child-centred and rights-based

→ **It is in the best interests of the child to enjoy all the human rights afforded under the Convention**

# The right to non-discrimination in transnational child protection cases: Reflections on status, access and jurisdiction

- Principle of non-discrimination as a human rights imperative
  - Obligations of states towards non-national children
  - Practical challenges in safeguarding this right in transnational situations
  - Matters of jurisdiction, status and entitlements
  - Challenges of ensuring equal access and quality of services to children on the move
  - Language and cultural differences
  - Time factor: Prompt decisions vs. solid assessments
- **Safeguarding the right to non-discrimination requires measures for proactive prevention of discrimination and promoting inclusion**

## The right to be heard in transnational situations:

# Communicating with children

- Child-sensitive communication
  - Fostering **trust** between the child and the officials and professionals whom the child is in contact with
  - Making the child feel cared for as a person
  - Take time to speak to the child and listen
  - Provide information in a form and language that the child understands
  - Quality interpretation
  - Data protection and privacy considerations in transnational cases
- **Safeguarding the right to be heard in a meaningful way is about a lot more than interviewing children**
- **It has implications for policy and practice at all levels**

# Fostering holistic and cross-sectoral approaches

- **Learn from experience made with ...**
  - Harmonising international family law, immigration law and child protection law and the related procedures and practice
  - Institutionalised inter-disciplinary and inter-agency cooperation
  - Cooperation between law enforcement and child protection / social services

# Connecting national child protection systems across borders: Opportunities for change

- Central authorities for child rights and family matters
  - Combined national and transnational mandates
- Transnational networks of judges
- Transnational cooperation mechanisms for child protection matters
  - Build **strong networks** for cross-border information gathering, case assessment, returns/transfers, and follow-up
  - **Strategies for offering continuity in care planning** and case management across borders that place the boy or girl at the centre and give due consideration to his or her rights and needs, aspirations and contexts in the countries of origin and destination

# Human rights and best interests of children on the move: Opportunities for change

- Make the best interests' concept more specific without limiting its meaning
- Introduce the '**life project**' concept in care planning and case management
- Extend national **youth policies** to unaccompanied children and youth
- **Investment perspective** to safeguard children and the resources they offer for countries of origin and arrival

# Considerations for policy makers in countries of arrival

- **General structural considerations for policy makers and officials within the public administrations**
  - The Guidelines review experience made with the development of laws, policies and procedures that are meaningful and relevant for children on the move
  - Include considerations for effective application and implementation of national laws and policies in practice

# Reflections on children's mobility from a human rights and development perspective

- **Children's perspectives** poorly reflected in the international debate on migration, human rights and development
- Discourse on immigration regime, transnational crime control and the human rights of migrants is often led predominantly in a confrontational way, balancing **apparently conflicting mandates and interests**
- International migration flows are increasingly challenging immigration regimes and cause strain on states, service providers, communities and societies **in countries of departure and arrival alike**
- Invite the migration policy and child protection sectors to position their roles and responsibilities for **promoting an empowering, assets-based understanding** that values the resources that children offer for national development in an increasingly globalised world

# Considerations for policy makers in countries of arrival and departure

- **Invite for a paradigm shift from reactive response towards proactive visions for change**
  - Move from a discourse on “integration” towards “social inclusion”
  - Foster political dialogue and cooperation between countries of origin, transit and destination
  - Influence attitudes and perception of children on the move from a “problem to be solved” towards “children as citizens” who are resourceful and competent
  - Recognise and invest in the resources that children on the move offer for development, peace and stability

# Return, transfer, resettlement

- Existing networks for cross-border information gathering, case assessment and follow-up
- Different standards and procedures for different groups of children
  - From supported repatriation of victims of trafficking to ad hoc returns of unaccompanied children in trouble with the law
  - Voluntary return and family reunification
  - Legal limbo in 'Dublin' transfers
  - Brussels Regulation used for EU-returns
  - Well functioning communication under the Hague Networks (small caseload)
- Rules and regulations might take priority over individual needs
  - Disrupted health treatment, school year or vocational education
- Inconsistent follow-up
- Unsustainable returns
  - Cases of exploitation and (re-)trafficking
  - New departure

# Transnational cooperation in different phases of the child's migration and reception towards a durable solution: Step-by-step

- Identification, referral and case management:
  - Identification of the child and his or her background, story and status
  - Regularisation of immigration status
  - Guardianship
  - Family tracing
  - Family assessment
  - Risk and security assessments
  - Care planning, including after care and access to services
- Best interests determination
  - Identification of a durable solution with regard to stay, return or transfer to a third country
- Investigation and prosecution of criminal acts (if and as applicable)
- Transfers and return:
  - Transfers under the Dublin III Regulation
  - Resettlement to third countries
  - Preparation of return
  - Executing return
  - Post-return follow-up services and monitoring

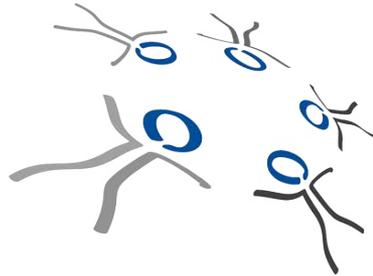
Daja Wenke

[dajawenke@gmail.com](mailto:dajawenke@gmail.com)

Turid Heiberg

[Turid.heiberg@cbss.org](mailto:Turid.heiberg@cbss.org)

[www.childcentre.info](http://www.childcentre.info)



## CHILD CENTRE

Expert Group for Cooperation on  
Children at Risk, EGCC

