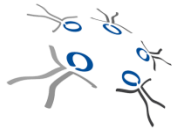




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**CHILD CENTRE**  
Expert Group for Cooperation on  
Children at Risk, EGCC



**Child Exploitation – Cross-National Child Protection in Practice**  
**‘PROTECT Children on the Move’**

**Second Expert Meeting**

**Returns and Transfers: International and European standards,  
procedures and safeguards for children exposed to exploitation,  
trafficking and children at risk**

**Riga, Latvia**  
13-14 May 2014

**Full Meeting Report**

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**Tuesday, 13 May 2014**

## **Session I: Introduction**

**Turid Heiberg, Senior Adviser and Head of Children's Unit, Council of the Baltic Sea States Secretariat, Sweden**

### **Welcome and introduction**

In 2014 and 2015, the Council of Baltic Sea States (CBSS) Children's Unit is coordinating the implementation of the project 'Child exploitation: Cross-national child protection in practice', funded by the European Return Fund. In the framework of this project, the CBSS Children's Unit, in collaboration with the Central Board of the State Border Guards in Latvia, the State Child Rights Protection and Adoption Service in Lithuania, and the Stockholm Social Emergency Authority in Sweden, is organising five Expert Meetings with partners in Europe and beyond. The aim of the meetings is to identify child rights standards and key agencies responsible for protecting children exposed to exploitation and trafficking in cross-border situations and children at risk. The outcomes will include an analytical report and an online tool outlining relevant laws, policies and procedures.

The series of expert meetings offer a platform for the networking among officials and professionals working with matters concerning transnational child protection in different sectors and disciplines. The participants in the expert meetings exchange their experience, information and contacts throughout the CBSS region and beyond. In addition, the project is reviewing and discussing solutions to the numerous and complex issues faced by child welfare and migration authorities in relation to the return of children who are victims of exploitation and trafficking or children at risk.

The first in the series of expert meetings was convened in Stockholm on 27-28 January 2014. The report and presentations from this meeting are available on the CBSS website, as also the reports and presentations from this meeting will.

The second Expert Meeting is convened in Riga, Latvia, on 13-14 May 2014. It focuses on the theme '*Returns and Transfers: International and European standards, procedures and safeguards for children exposed to exploitation, trafficking and children at risk*'. The participants, a group of almost fifty experts, represent local and national authorities, UN Agencies, national and international NGOs, service providers and practitioners from the Nordic and Baltic States, representatives from Member States of the European Union and the Council of Europe.

Within the Baltic Sea Region, the national governments have achieved important progress in promoting the safety and well-being of children on the move, with specific attention to the situation of unaccompanied asylum seeking children, child victims of exploitation and trafficking, and children at risk. Each country has promoted national law and policy reform, the development of targeted institutions and referral mechanisms. Many CBSS Member States are also members of the EU, while all are participating in the Council of Europe. Within these three regional contexts, they have worked together to advance the rights of the child and have achieved significant progress in this field, including in external cooperation with third countries.

Despite the progress made, there remain many challenges in ensuring the safety and well-being of children on the move and assessing their current situations, their family backgrounds and personal histories, their motivations for migration and the related risks, aspirations and pressures from family members, smugglers or exploiters. Many of these challenges were at the heart of the expert

meeting. The participants discussed possible solutions and open questions and noted that readymade responses to these questions are not yet available. There was a broad consensus among the participants that state authorities and other concerned actors need to work in partnership to identify tangible solutions and to generate knowledge and evidence on how to overcome implementation gaps.

This report summarises the key outcomes and conclusions that resulted from the meeting. It incorporates the contributions made by the speakers and the reflections and discussions among participants, specifically on these challenges and issues that still require further clarification. A more detailed conference report, the speakers' presentations, and meeting agenda are available from the CBSS Children's Unit website.<sup>1</sup>

## **Andrea Vonkeman, UNHCR Bureau for Europe**

### **Key note speech: A rights-based perspective on transnational protection**

#### *Setting the scene*

By end 2013, over 45 million people were forcibly displaced worldwide as a result of persecution, conflict, generalized violence and human rights violations. Among these, approximately 15.4 million people were refugees and 46 % of those who were forcibly displaced were children, including children in families.

In 2013, the EU recorded a 32% increase in asylum applications compared to 2012. Less than 3% of the applications were lodged by unaccompanied children. We know that only a fraction of them apply in the first country of arrival within the EU. Most move further afield to join relatives or communities, while others are trafficked.

The migration into the EU takes place as mixed migratory flows and the children often take dangerous routes to reach the EU. Many children arrive through smugglers and are exposed to or at risk of exploitation and abuse and among them there are also child victims of trafficking who may have an asylum claim. Unaccompanied asylum seeking children should always be granted access to the territory and it is important to speedily identify those in need of protection.

According to Eurostat data, the number of asylum applications handed in by unaccompanied children in EU Member States has remained relatively stable between 2009 and 2013 with 12,225 applications received in 2009 and 12,430 in 2013. The percentage of asylum applications handed in by unaccompanied children, compared to the total number of applications received, has however decreased markedly in the same period, from 4.6% in 2009 to 2.8% in 2013. Among these children, approximately 10% were younger than 14 years old, approximately one fourth of the children were aged between 14 and 15 years, whereas the largest group were children aged 16-17 years old (54.5% in 2009 to 68% in 2013).

There are many challenges in ensuring the safety and well-being of unaccompanied children.

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<sup>1</sup> See: <http://www.childcentre.info/protect-children-on-the-move-second-expert-meeting/>

Many children 'disappear' from care. There are various reasons and motivations for them to do so. Some children leave from the first reception centre soon after arrival, or they leave when they are rejected in the final instance on their asylum claim, when they cannot access the asylum procedure and are given leave to remain until 18, or when reception conditions, including specifically the support available to children, are inadequate.

For the authorities, it is a challenge to follow-up to these cases in a coordinated way and to ensure cooperation and information exchange between relevant authorities and other actors, nationally and transnationally, across the different systems involved, i.e. the asylum reception and immigration system as well as the child protection system. Often, there is an assumption that the child has moved on irregularly and there is no adequate follow-up.

The transnational project 'Children on the Move' led by UNHCR found that many children refuse to register and intend to move further afield. When moving on, the children are at risk to all kinds of harm including destitution, exploitation (e.g. by traffickers), abuse and violence. The project revealed that reaching out to these children through mobile teams and drop-in centres only resulted in a slight increase in registration and protection for the children who had gone missing.

There are however also many challenges in responding adequately to those children who remain within the asylum reception system. A particular challenge for policy and practice is the identification of a durable solution for each individual child, which is in line with the best interests of the child. Experience shows that durable solutions are often not identified in time. Tracing the child's family and assessing the family situation is often difficult. Some children arrive in Europe with a specific mission, for instance to find work and to make money. Many of these children are being sent by their parents or families and the pressure on them to make it in Europe, to be successful and to support the family back home is enormous. It is however important to note that the reasons for the children to leave their countries of origin may also be refugee related, and not only of economic nature, and this needs to be recognized when the child's case and asylum application are being assessed.

Many children are reluctant to share information about their families as they fear that this will lead to immediate return. Return, on the other side, is often associated with shame, debts within the family or to smugglers which cannot be repaid, and other issues.

Among all these challenges related to the assessment of the child's situation, background and family, child victims of trafficking are not always properly identified, especially those who have an asylum claim.

Considering the complexity of these cases, there is a need for comprehensive solutions. The situations of these children cannot be addressed through narrow approaches but need to be part of a comprehensive package and strategy, considering, as a minimum, the following:

- A. Tackling root causes of forced displacement including of child trafficking and strengthening child protection systems in countries of origin (COO)
- B. Ensuring well functioning child protection and asylum and migration systems in receiving countries

- C. Strengthening transnational cooperation between actors in the different child protection systems (country of arrival/asylum and countries of origin or other 3<sup>rd</sup> countries as may be appropriate)

*Tackling root causes and strengthening child protection systems in countries of origin (COO)*

Addressing the root causes in countries of origin for children's precarious and risky migration is a complex task. It involves measures of poverty reduction and combating corruption, and requires the support of bi- and multi-lateral partners, including governments of destination countries, the United Nations, international organizations and NGOs. It would be important to ensure that children and families have better access to quality services and education and, in general, to strengthen the national and local level child protection systems in COO.

As regards the prevention of child trafficking, there is also a need to coordinate actions in source and transit countries, including awareness raising with children/youth, parents, communities, and governments about the risks of overseas migration and patterns and forms of trafficking, exploitation and the risks *en route*. In addition, it would be important to get a better understanding of the motivations of parents to send their child overseas. The reasons for leaving the country of origin may be mixed and may include an asylum component. It is therefore important to recognize the diversity of reasons for which children are sent abroad, including but not limited to economic reasons. There is a forthcoming UNHCR research report on this issue specifically concerning the situation in Afghanistan.

*How can refugee children be better protected against trafficking?*

UNHCR has developed a key multi-year regional strategy specifically for the region of Ethiopia, Sudan, Yemen and Egypt. The strategy addresses secondary movement, trafficking and smuggling. It aims to enhance alternative care arrangements, especially those that are community based and involve foster care and care by the extended family. In addition, there is a focus on family reunification in the country of arrival, the first asylum country or country of origin if this is in the best interests of the child. There is also regional coordination to track and locate missing children, and family reunification where this is in the best interests of the child.

*Ensuring well-functioning child protection and asylum and immigration systems in receiving countries*

In the receiving countries, the child protection, asylum and immigration systems need to be prepared to safeguard and protect unaccompanied children. They need to respect the best interests of the child from arrival and identification through to the identification of a durable solution in line with the Convention on the Rights of the Child and the General Comments issued by the Committee on the Rights of the Child, especially General Comments No. 6, 12 and 14. This requires measures to ensure proper procedural safeguards, including guardianship and legal advice; an increase in safeguards for the determination of the child's best interests and other fundamental decision making processes; child sensitive procedures including interviewing techniques (there is a forthcoming publication by UNHCR that provides guidelines on interviewing children). In addition, the destination countries should be prepared to develop and use child-specific country of origin information (COI) and to recognize child-specific forms of persecution. There is further a need for improved quality of credibility assessments that move from a culture of disbelief around claims lodged by children, using a multi-disciplinary approach and strengthening

the trust between the child and the authorities. UNHCR is working with the CREDO II project to strengthen the quality of credibility assessments for child asylum seekers.

### *Family reunification*

Many children move along very dangerous routes, by land and sea, and some die on the way. It is important to look at the Dublin procedures more closely in order to prevent that children move on by themselves, under high risk conditions, within the EU. The family criteria under the Dublin Regulation, including the discretionary clauses, could be used more efficiently to ensure more sustainable outcomes and to reduce secondary movement within the EU.

There are also other avenues for children to reach the EU, for instance resettlement or humanitarian admissions, which the UNHCR supports in the Syrian crisis. Many people arrive in the refugee camps and are not receiving any assistance there. UNHCR is committed to get the good will from EU countries to accept more refugees, in particular families. It is important to explore avenues for legal migration as alternatives to dangerous irregular movements of children.

With regard to family reunification for persons who have been granted a refugee status in Europe, the bar is placed quite high and family reunification is often restricted to the nuclear family, whereas other relatives may have difficulties joining the child. These obstacles might cause the child to move on under high risk conditions. They might also hamper the child's integration whereas reunification with previous care givers and family members would often be in the best interests of the child. It would be important to offer facilitated access to family reunification.

Family reunification becomes difficult when the child's family cannot be traced or assessed. In many countries, children end up in orphanages, 'disappear' from there and are then at risk of trafficking. Return and family reunification or alternative care in the country of origin might be in the best interests of the child, but often the child protection system is functioning poorly in countries of origin and this needs to be taken into account when determining the best interests of the child with regard to return.

### *Strengthening transnational cooperation between actors in the different child protection systems (country of arrival/asylum and COO or other 3<sup>rd</sup> country)*

In order to safeguard child asylum seekers and children on the move in the countries of destination origin and transit, it is important to strengthen the transnational cooperation between actors in the different child protection systems (country of arrival/asylum and COO or other 3<sup>rd</sup> country).

The information exchange between authorities and across countries needs to respect confidentiality and data protection laws. In order to facilitate transnational cooperation, it would be important to develop cooperation agreements through Standard Operating Procedures or Memoranda of Understanding (MoUs), which define the framework and details for the bilateral cooperation and set out roles and responsibilities of all relevant actors at the national and transnational levels, defining which information can be shared and how.

In transnational child protection cases, the actors on the ground need to be used more effectively than is currently the case. They include IOs, NGOs, local communities monitored through IOs or NGOs. These actors on the ground have an important role for family tracing and assessment, monitoring and oversight. The cooperation with these actors still needs to be strengthened. When the child's case and situation are being assessed, there is a need for doing home studies in



countries of origin. These studies and their results have to feed into the decision making process over the child's asylum claim and best interests. For instance when social workers do a home study in the child's home community, this information should inform the decision making processes in the country of destination. At the same time, there should be attention to awareness raising and capacity building of communities and community based organisations (CBOs) in the home communities.

It is also important to look at what kind of information is fed back to the country of origin and the child's family to which a boy or a girl is being returned. There is a need for regular monitoring and oversight by IOs and NGOs and the results from the monitoring should feed back into policy making and reform processes. Overall, in the longer term, it will be important to develop and use more the country of origin information.

In order to strengthen the protection of children in cross-border situations and to safeguard their rights, it is important to strengthen the cooperation between actors in COO and COA involving also non-governmental (neutral) actors. It is important to achieve a balanced approach incorporating actors bringing in expertise in the following fields:

- *Tracing* governed by best interests principle (including verification and reunification)
- *Home studies* (feeding into decisions on durable solutions)
- *Training and capacity building* of various actors
- *Monitoring* (the protection responsibility of COA does not end when child is returned)
- *Collection and use of child specific COI* (from neutral sources)
- *Hand-over mechanisms* in case of return including handover of the child's file (with the involvement of the child's guardian)

### *Opportunities*

International and regional standards and guidelines provide an important framework for promoting the rights, safety and well-being of children in transnational situations and safeguarding their rights. In particular the following:

The EU Charter on Fundamental Human Rights provides the principal legal framework for the EU and EU Member States, especially its Article 24 on the rights of the child.

The UN Convention on the Rights of the Child provides the overall framework in international law and is complemented, for instance, by the General Comments of the Committee on the Rights of the Child, in particular General Comment No. 5 on the general measures of implementation, No. 6 on the rights of unaccompanied and separated children outside their countries of origin, No. 12 on the right to be heard, and No. 14 on the best interests of the child. The latter describes what elements need to be considered for best interests assessments and determinations. It provides also guidance on what the concept of the best interests means in practice, how it should be understood and which criteria should be looked at in order to assess and determine the best

interests of a child. Relevant guidance is provided also in the EU Action Plan on unaccompanied minors.

UNHCR and UNICEF have been working together to develop guidance on the best interests of the child, assessing what states are currently doing to promote and apply the principle and what could be done better. The guidance provides advice for those working with asylum seeking children and children on the move on a daily basis. They will soon be published.

The DG Justice initiated a mapping of child protection systems, which includes child protection guidelines and public consultations launched by the DG Justice. The emphasis is on the development of integrated child protection systems, overcoming the traditional categorization of children into different groups.

The EU Asylum acquis, including the Anti-trafficking Directive and the Return Directive contain important provisions relating to unaccompanied asylum seeking children and child victims of trafficking. The European Commission has a role in promoting the best interests of the child and the child's right to have a guardian appointed in the asylum procedure. The European Courts have to ensure that the acquis and provisions are being implemented in practice, and the EC is monitoring the transposition of new laws into national laws within Member States. As such, the European Courts and the Commission do have a role in promoting the implementation of EU law and related international and national standards.

The EU Fundamental Rights Agency (FRA) has developed a handbook on guardianship systems for child victims of trafficking. The development of the handbook is an implementation measure of the EU Anti-trafficking Strategy, which includes a child protection component. All this holds important opportunities for strengthening child protection within EU Member States and in transnational situations.

The DG Justice and Home Affairs are convening an Annual Forum on the Rights of the Child bringing together experts and Member States and recognising the need for a holistic approach to child protection along with integrated child protection systems, based on the CRC. The child protection systems should protect all children, regardless of their nationality, immigration status or other status.

The most important challenge ahead remains the proper transposition and implementation of the international, regional and national laws and policies into practice. The EC and the Court of Justice of the EU have important roles in promoting implementation and monitoring progress made, as do international organisations and NGOs.

#### *How can progress be achieved?*

The legal framework is there and so are the tools required for their implementation, including the CRC General Comments. EC funded projects could be more widely disseminated and Member States could be more strongly encouraged to participate in them together with other actors. Now it is time to act and to make the best interests of the child our joint primary consideration.

**During the discussion**, the participants noted that it remains a challenge that children often fear authorities so much, that they do not want to get in contact with them. UNHCR implemented a

project in Southern European countries to try and approach these children in areas where they were not usually reached. While most of these children did not explicitly express fear of authorities, many had their own very clear ideas and wanted to move forward. They may have had previously very bad experiences with persons in uniform or authorities. It is important to look at the child and understand their interests and situations, it is important to try and win their trust. This takes time and is simply not always possible in the asylum procedures, because it would be important to try and create that trust and to take the time needed. This would be an important investment to make the public systems work more effectively

With regard to the statistics and official data of unaccompanied children, we need to be aware of the biases that these data hold. Not all unaccompanied children arriving in EU Member States from third countries are registered as asylum seeking children. Whereas the numbers have stayed roughly consistent in the EU, we have seen a tenfold increase of unaccompanied asylum seeking children in the US. In the EU, the percentage of UAM is decreasing, while the total number of asylum seekers has increased. In addition to asylum seeking children from third countries, there are also many children moving within the EU who are EU citizens. Their situations are not usually addressed in a standardised way but very much ad hoc.

In order to promote the implementation of international and regional standards, and national laws, into practice, there is a need to train front-line staff on how to apply and operate standards and procedures in practice. Of particular importance are multi-disciplinary approaches and the input from different disciplines to case assessments and decision making processes.

## **Session II: Access to information, legal assistance for children, and the right to be heard in the host country**

### **Georgia Dimitropolou, Seconded National Expert, European Union Agency for Fundamental Rights (FRA)**

#### **Guardianship for children deprived of parental care – A handbook to reinforce guardianship systems to cater for the specific needs of child victims of trafficking**

The role of the EU Fundamental Rights Agency (FRA) is to assist European institutions in implementing European law. The FRA was requested to develop a handbook on guardianship for child victims of trafficking. The development of the handbook was based on FRA's previous work and research on child trafficking and guardianship and it was informed by a broad consultation process.

EU law and policies provide the overall framework for the handbook. The key legal reference for the handbook is the 2011 Anti-trafficking Directive (2011/36/EU), which provides for the following:

Article 14: "Members States shall appoint a guardian or a representative for a child victim of trafficking in human beings from the moment the child is identified by the authorities where, by national law, the holders of parental responsibility are, as a result of a conflict of interest between them and the child victim, precluded from ensuring the child's best interest and/or from representing the child."

Article 16: “Member States shall take the necessary measures to ensure that, where appropriate, a guardian is appointed to unaccompanied child victims of trafficking in human beings.”

In 2012, the EU launched the EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016. The Strategy calls upon FRA to develop a model for guardianship for child victims of trafficking. At present, a unified model of guardianship and/or representation of child victims of trafficking does not exist and the roles, qualifications and understanding of competences varies from one Member State to another. In 2014, the Commission is therefore developing together with the FRA a “best practice model” on the role of guardians and/or representatives of child victims of trafficking, under the Strategy *PRIORITY A / Action 3: Protection of Child Victims of Trafficking*.

Under the same Priority Action, the Strategy states further that “comprehensive child-sensitive protection systems that ensure interagency and multi-disciplinary coordination are key in catering to diverse needs of diverse groups of children, including victims of trafficking.

Against this background, Member States are held to “strengthen child protection systems for trafficking situations and ensure, where return is deemed to be the child’s best interest, the safe and sustainable return of children to the country of origin, in and outside the EU, and prevent them from being re-trafficked”.

#### *Protection of all children deprived of parental care*

There are various reasons why children are deprived of a family environment and parental care. Family separation might be related to migration, when children migrate unaccompanied or are left behind. It might be related to parental abuse and neglect, for instance when children are living in institutions for alternative care, or it may be caused by trafficking. Article 20 of the UN Convention on the Rights of the Child stipulates protection measures for children deprived of parental care and of a family environment. A key safeguard for children who are temporarily or permanently deprived of parental care and the family environment is the appointment of a guardian. Despite the diversity of their situations, many of the children who are deprived of family care have common needs, and they all enjoy the same rights under the Convention, including specifically Article 19 which provides for the right to protection from all forms of violence, abuse, exploitation and neglect. Many of the children have experienced separation from and loss of family members. They might be victims of abuse and exploitation and/or are at risk of becoming victims. They might suffer from trauma and are in need of support, protection and rehabilitation measures. The children who are already victims are at risk of further abuse and victimisation.

Considering the common needs and equal rights of children deprived of parental care and family environment, there are some fundamental principles of guardianship systems:

- Child participation
- Sustainability
- Accountability
- Quality
- Independence and impartiality
- Non-discrimination

The role of the guardian is very important in assisting child victims, ensuring the rights are respected and preventing re-trafficking. Although the handbook developed by FRA is focused on guardianship for child victims of trafficking, it has taken a more integrated approach to child

protection. It sets some fundamental principles for guardianship systems for all children deprived of parental care, including with regard to child participation, sustainability, accountability, quality, independence and impartiality, non-discrimination and ensuring the prompt appointment of a guardian.

Member States take different approaches in determining who can act as a guardian and there is currently no common definition of the mandate and qualifications of a guardian. EU law recognizes the importance of the guardian, but does not define the functions. The UN guidelines on alternative care and the General Comment No. 6 of the Committee on the Rights of the Child describe the main functions of a guardian: The guardian should ensure the overall wellbeing of the child, exercise legal representation and complement the limited legal capacity of the child when necessary; and safeguard best interests of the child. The wording on the best interests of the child is often reflected as such in national law, without providing more detailed guidance and regulations.

A guardian should ensure the overall well-being of the child and safeguard the best interests of the child. The guardian provides and facilitates access to information and should exercise legal representation, support the child in legal procedures and ensure access to legal assistance and counselling. The guardian is assisting the child in the contact with the authorities and all relevant persons whom the child is interacting with. Thereby the guardian facilitates the child's participation in all matters concerning the child and the right of the child to be heard and to have his or her views taken into account. The guardian has also a key role in the identification of a durable solution for the child, according to the child's best interests. The guardians will further prepare the child emotionally and psychologically before any hearing and ensure that the child has a proper understanding of the proceedings. The guardian can accompany the child to official meetings and hearings and provide emotional support. The guardian holds also a central function in monitoring the work of professionals providing legal representation and assistance for the child and guardians might facilitate their communication with the child when necessary. This includes also ensuring that the child has access to appropriate interpretation and translation services, free of charge.

In some cases, the guardian might speak on behalf of the child when necessary, for instance when a risk assessment is done or when the best interests of the child are being assessed, in order to inform a formal decision making process. The guardian shall ensure that the child is adequately informed and has access to legal assistance, this is necessary to ensure the right of the child to fully participate in the relevant processes. The guardian shall discuss with the child the outcome of the proceedings and court decisions and explain their relevance to the child's current situation as well as future options and alternatives available.

These core tasks of a guardian are all inter-related and interlinked. They are cutting across many different areas and sectors. The guardian has therefore a potential to hold the authorities accountable for their decisions and actions in respecting and safeguarding the rights of the child. Essentially, a guardian should also be empowered to be able to intervene when the welfare, safety and interests of the child are at risk.

The child's right to information includes, as a minimum, information on the following:

- ✓ The functions, rights and duties of the guardian;
- ✓ The role, rights and duties of legal representatives;

- ✓ The child's rights, taking into consideration the particular situation of each individual child, as regards residence status, international protection needs, need for victim support, legal assistance, etc.;
- ✓ The assistance and protection measures in place, and the service providers, on the basis of the particular situation of the child;
- ✓ The various criminal, administrative and civil proceedings the child might be involved in, including access to compensation; and
- ✓ The individual complaint mechanisms available to a child to report violation of his/her rights;

In the context of trafficking, guardians as well as other professionals working with child victims, have to fully respect the right of the child to be heard. They should however also keep in mind that the child might be under the influence of the trafficker. In these cases, there is need for expert advice when the child is under psychological control of the trafficker in order to ensure effective protection

The handbook that is being developed by FRA is addressing in detail all the tasks of the guardians, including special reference to guardianship for child victims of trafficking.

The research that informed the development of the handbook identified several important challenges, which the handbook seeks to address and on which it provides guidance to professionals to strengthen guardianship and child protection systems. The challenges include the following:

It is necessary that the guardianship model in place fully applies the standards afforded to children under international, regional and national law. The normative framework and the child protection system within which guardians operate shall set the framework for their work.

In addition, as far as guardians are concerned, in the majority of member states there are no qualitative requirements for guardians and in most MS there is no induction training for guardians. Where training is available, it is not necessarily mandatory for guardians and existing training is not standardized. The independence and impartiality of the guardian is not always guaranteed by the system, in some cases for instance the guardianship system is linked to the migration authorities.

Guardianship is not yet effectively integrated into the national child protection systems. There is a general lack of human resources and training of guardians and other professionals involved, specifically with regard to the right of the child to be heard.

Guardians often have to deal with a high number of cases and are not necessarily able to develop a quality relation with the child so that they would be able to build a trusted relationship with the child. In many countries, guardians do not systematically have access to information, legal information and are struggling with a general lack of support such as access to translation and interpretation services and legal counselling. The appointment of guardians alone cannot ensure that children's rights are fully safeguarded. In order to achieve this, we need to have a system in place to make sure that the guardian is qualified and supported to fulfil his or her tasks.

With regard to return and best interests assessments and procedures, for instance, the guardian is the one who should be in a position to ensure that the child's right to be heard and to have his or her views taken into account is fully safeguarded in practice.

In most EU Member States, guardians can appeal decisions as legal representatives of the child but this may not make any change, especially when there is no formal procedure for best interests' determinations that could be appealed.

The transnational cooperation within the EU and beyond should not be limited to certain categories of children only but should involve all children in transnational situations, including missing children, unaccompanied, migrant, asylum seeking children and child victims of trafficking.

There is clearly a need for a more structured and systematic intra-EU as well as international cooperation mechanism on guardianship and child protection.

In many Eastern European countries, referral mechanisms are in place to receive children from abroad, but it has been reported that in many cases, these children are received back without appropriate protection procedures. Some might be victims of trafficking and/or involved in criminal offences or petty crime, and they might return back without the involvement of child protection authorities.

The handbook provides guidance and recommendations to Member States on how to meet these challenges and to safeguard the rights of the children. The handbook will be available in June 2014. In autumn 2014, the study on guardianship systems in EU Member States will be available.

During the discussion, participants noted that the procedures for appointing a guardian vary between EU Member States. Often, the appointment is based on a court decision. In principle, there is the identification of the need to appoint a guardian, then the child protection authorities cooperate with judicial authorities for the appointment procedures. In cases of unaccompanied children and child victims of trafficking when there are no relatives within the country, the guardianship will often be given to an institution. In some countries, it is staff members of child protection authorities who act as guardians, whereas it could be individual private persons, volunteers or professionals in other countries. In countries where volunteers are acting as guardians and where there is no mandatory training and quality standards for training and guardianship, there is certainly a problem of capacity.

## **Bente Oftedal Roli, Lawyer specialised in immigration law, The Roli Lawyers Firm, Norway**

### **Experiences as lawyer of unaccompanied minors**

In Norway, child asylum seekers are entitled to a lawyer from the moment they are registered as asylum seekers. A legal guardian is also appointed for each child after their arrival at the transit centre. When a child has to move to a different reception centre, the legal guardian is mostly dismissed and a new one will be appointed. These changes take time and can have a negative impact on the child's trust in the authorities and the persons that the child is in contact with.

There are many challenges with the qualification of the legal guardians of unaccompanied children, although their qualification has now improved. As lawyers specialised in immigration law, we have got a good cooperation with the legal guardians. The legal guardians are always present in the interviews with the child, whereas lawyers are not. They are only entitled to give legal advice and therefore the lawyers have to talk to the child and the child's legal guardian.

In Norway, the responsibility for child asylum seekers is divided between the National Child Protection Services (Barnevernet) and the Migration Board (UDI), depending on the age of the child and if they come through/from a country participating in the Dublin Regulation or not. The National Child Protection Services have the responsibility for children under 15 years of age and the immigration authorities are responsible for those between 15 and 18 years old. The National Child Protection Services are regulated by the Child Welfare Law so that the legal standards and care are the same as for Norwegians children not living with their parents.

Children aged between 15 and 18 years old have different entitlements and standards of care in the asylum reception system. The organization of the reception centres and the daily life is under the responsibility of the immigration authorities and is guided by the laws and regulations concerning the reception of asylum seekers. These standards are below the standards and norms guiding the institutions run by the National Child Protection Services, where the younger children are accommodated. The older children are staying in the reception centre on a "voluntary basis" and there is no legal standards to be applied to stop them or to look into the case when a child wants to move out. Children can only be prevented from leaving the centre when the child is considered a victim of trafficking or at risk. The centres are mostly run by private enterprises on a commercial bases.

In the reception centres, there are no legal standards with regard to the qualifications required from the staff and the number of staff per person. There are approximately 0,34 -0,56 staff members available for each child staying at the centre. There are no requirements that the staff shall have any knowledge or professional background on working with children. At the institutions run by the National Child Protection Services, it is 2,7 persons for each child. The National Child Protection Services have procedures for what to do when a child 'disappears' and this is quite different when children 'disappear' from the reception centres operated by the immigration authorities.

In 2013, 240 child asylum seekers 'disappeared' and many of them are considered to be at risk of exploitation, abuse and trafficking.

About 1,000 children applied for asylum in Norway in 2013 and 104 left the centres. 72 of these have not been located so that the authorities do not know where they are or what has happened to them. 41 children 'disappeared' before getting an answer in their cases. 35 (almost 50%) of the children 'disappeared' during the first month of their stay in Norway and another 15 children during the first 3 months. Only 5 of the children staying in the institutions operated by the National Child Protection Services were missing.

*Why do the children leave the centres?*

From my experience, many children leave the centres when they learn that they might be sent back to another EU Member State under the Dublin Regulation. Rather early in the asylum process it becomes clear that the immigration authorities (UDI) will apply the Dublin rules. These children will mostly remain in the transit centre and might from there be recruited to all kinds of abuse such as exploitation in criminal activities, sexual abuse and exploitation in prostitution.

As their lawyer, I sometimes get in touch with the children after they have been registered as 'disappeared'. They may contact me directly or through the social outreach services "Utseksjonen" in Oslo.



Another group are the children who have been given a temporary residence permit valid up to their 18<sup>th</sup> birthday. In 2013, 5 of the children who had 'disappeared' belonged to this group. Under certain circumstances, the residence permit might be renewed for a year at the time the child turns 18, but they continue staying in Norway temporarily. The permanent stress that this implicates can have a negative impact on the child's development and can increase the child's risk of abuse.

Some children leave the centres because of the difficulties they face in the centre or because they have got their first negative decision on their application and do not believe the appeal will change this. Some of the centres are overcrowded, with a mix of adults and children, which could create conflicts.

Why children go missing during the first months in Norway? This is the screening phase in which the child's age is being assessed. Some of the children are afraid of being age-assessed because they do not want to be referred to the reception centres where children aged 15 or above are being accommodated. Many of the children are referred from the first reception centre to other places up North or to another centre outside the central area, and the children might want to avoid this. Some of these children are used to being rather independent and are not used to being in the system, which, in Norway, can be very closely regulated. Among the children who are missing, 60-70% are between 16 and 18 years old and they would get a permit up to 18 and then maybe do not see a point in staying in the system when there is no perspective for the future.

#### *Non-refoulement*

Among the children who are to be transferred under the Dublin Regulation, many have provided in their asylum applications detailed statements of abuse and a lack of care that they have been exposed to in other European countries. This has often been the main reason for coming to Norway. When the child discloses this information during the appeal phase, it is very rare that the child is granted a residence permit.

For several years, there was a practice that the children coming to Norway from Greece were mostly transferred back to Greece until this practice was generally stopped in Europe. Also children coming from Italy reported experiences of abuse, inhumane conditions, and living on the street. These reports were however never looked into by Norwegian authorities and it was a common response to transfer the children back to Italy.

As an example, I was representing a 16 years old client who clearly expressed that he would kill himself if he was transferred back to Switzerland. When he got a negative response on his asylum application, he went missing. When I was contacted by the UDI that was waiting for the final appeal, I informed them again that the boy had gone missing and I could not get in touch with him. The UDI informed me that the boy was in prison. But nobody knew which prison. Eventually, I found him in a prison in Bergen. He had stayed there for 4 days and had committed two serious suicide attempts intending to hang himself in the cell, but neither a doctor nor the local child protection services nor his legal guardian or lawyer had been informed. A few days later, he was considered not to be acute suicidal anymore and he was deported accompanied by two police officers. It was not possible to find out what happened to him after that.

#### *After return*

When children between 15 and 18 years old are returned, there do not seem to be any measures to receive them when they arrive, except establishing contact with the police. In my cases, I have

seen little or no attempts to identify the family members or guardian of the child to receive him or her and there does not seem to be any effort for following-up a child after return. The child's legal guardian in Norway has little influence on the procedure and their job is finished when a child is returned.

### *Summary and recommendations*

The national Child Protection Services should be responsible for all asylum seeking children, regardless of their age. The Dublin Regulation should be suspended for child asylum seekers.

Children should not be returned to their country of origin without ensuring that a legal guardian will follow up from arrival. States should also check up after return to see if the conditions are fulfilled.

**Ann-Christin Cederborg, Professor and Head of Department of Child and Youth Studies, University of Stockholm, Sweden**

### **Vulnerable children and their right to be heard**

The development and reform of legal regulations has to be based on research, and we do not yet have all the evidence in place that we need. This presentation is based on studies conducted at the Department of Child and Youth Studies, University of Stockholm, specifically with regard to children exposed to the sex trade and children seeking asylum. The research interests of the Department concern vulnerable children, including children exposed to sexual and physical abuse, sex trade (trafficking), bullying, children seeking asylum, neglected children, children with psychological problems and children committing serious crimes.

Children exposed to sex trade is a serious problem in Sweden, and one problem related to it is the reluctance of the victims to cooperate with the authorities. When children do not cooperate and do not trust the authorities, the prosecution of perpetrators becomes even more difficult.

The first paper that I will present is the following:

Lindholm, J., Cederborg A.-C. & Alm, C. (2014), Adolescent Girls Exploited in the Sex Trade: Informativeness and Evasiveness in Investigative Interviews, *Police Practice and Research: An International Journal* (in press).

We do not know enough on how to interview children who have been exploited in the sex trade. This study investigates therefore how girls who have been exploited respond to questions about the sex trade with respect to the quality of questions asked.

In 2002, a new law was enacted in Sweden on trafficking for sexual exploitation and prostitution. As this law entered into force, the criminal provisions on procurement and trafficking became difficult to distinguish from another.

The study examined the case files of interviews conducted with girls who had been exploited in the sex trade in Sweden. The girls were questioned about their views of the interviews conducted by the police officers. The analysis focused first at the quality of questions asked, such as open questions, which are the recommended question types for conducting investigative interviews. Not recommended question types are closed and focused questions, or suggestive questions that are

introducing aspects not previously introduced by the child. The following are some examples of recommended and non-recommended question types:

### **Open questions:**

Invitations prompt children to freely recall information:

- "Tell me what happened!"

Directive questions openly focus on details already mentioned:

- "When did you leave Sweden?"

### **Focused questions**

Leading questions focus on details or aspects not previously mentioned, asking to affirm, negate or select given options:

- "Do you know anyone here in Sweden?"

Suggestive questions assume details that have not been disclosed by the child strongly communicating what response is expected:

- "What did you tell your parents before you went to Sweden?"

We assessed the child's reactions to these questions, i.e. did they disclose or not? The results showed that disclosures were five times more frequent than non-disclosures. The disclosures were most commonly request conforming, stating agreement or disagreement with the question. The disclosure was withheld by not answering the questions or by evasive responses. The study revealed also that more than 50% of the questions asked were not formulated according to the recommended style of open questions but were leading and suggestive questions. As a result, it became evident that the disclosures involved a large number of 'yes' and 'no' responses implying that few details of legal importance were elicited. The girls avoided disclosing information about crime specific details, including their own involvement in the sex trade and their relations to persons involved in the crime.

The girls were avoiding to disclose by using evasive responses, specifically when asked about details of the crimes they have been exposed to and their own involvement. The factors that made disclosures less likely are the child's low motivation to disclose, time laps between the experience and the interviews, interviews conducted together with the perpetrators and a high level of violence experienced. Those victims who have been exposed to severe abuse or who are in the traffickers' control are the least likely to disclose information.

The underlying reason for this observation might be that victims may fear reprimands. They might be under the traffickers' control, feel loyalty to traffickers and no or little loyalty to the law enforcement authority as they might not believe that the perpetrators will be prosecuted. They might have feelings of guilt and shame and feel co-responsibility for what happened.

In addition to these observations about the interview-style and its relevance for the quality of a child's disclosure, the study revealed some further new insights. It advances the knowledge about each girl's individual style of disclosure and that this needs to be kept in mind when conducting the interview. The police or the interviewer can facilitate disclosure by the way they are interviewing

the children, avoiding suggestive prompts and leading questions, and avoiding also criticism and confrontations.

The second study relevant to this theme was focused on asylum seeking children in interpreter-mediated asylum interviews. The objectives were to explore the extent to which the children's informativeness in the interviews was effected by the quality of the information seeking prompts, and to examine how accurately the interpreters managed to transmit substantial information provided by the children.

The study conducted a quantitative analysis of the following:

- the translated questions asked by the officials;
- the children's responses to them; and
- the accuracy with which the children's responses were rendered by the interpreter.

The analysis was structured according to the type of question asked:

**Open questions:**

- Invitations
- Directive questions

**Focused questions:**

- Leading questions
- Suggestive utterances

The children's responses were analysed with regard to whether or not they disclosed information and the quality of their disclosure:

**Disclosure**

- request conforming
- extended task-related
- disagreements and agreements

**Non-disclosure**

- evasive
- absence of responses

The study proceeded to first code the transcriptions of asylum interviews according to the key questions of analysis. There were a total of 26 audio recorded asylum interviews with 26 asylum seeking Russian speaking children, 6 girls and 20 boys, 14 to 18 years of age. The interviewers were assisted by one of 18 hired interpreters.

The translation of the children's responses were categorised as close approximation of what the child said, a summary or an expanded account of the child's statement, divergent, a non-rendition, or silence.

The analysis included a total of 3,547 responses, of which 3,285 were disclosures of information and 262 non-disclosures.

A further analysis revealed however that the type of disclosure varied depending on the type of question asked. Open questions (invitations and directives) elicited a higher level of request conforming responses compared to focused questions. Focused questions (leading and suggestive) elicited more of agreements, disagreements and extended responses.

As regards the renditions made by the interpreters, most of the children's responses were interpreted accurately (76%), but 16% were inaccurate and the interpreters did not translate 8% of the responses.

An analysis of the quality of disclosure in the children's responses revealed that the children were active participants in the interviews. They were cooperative in providing information and to disclose their experiences and they rarely gave no answers. The children also elaborated on their answers and tried to provide alternative accounts when disagreeing with the options given. The children elaborated on their responses when they agreed with the options provided, trying to explain why they did not provide the requested information or providing alternative information. But they were also hesitant and withheld information especially when asked to reveal information about ID papers, the location of the smuggler, their home or the orphanage they had stayed in, the parents' identities and whereabouts, the time of events that could provide information for assessing the child's age, and the smugglers' and helpers' identity.

The interpreters typically translated responses accurately, but all inaccurate translations were sources of concern. They could negatively affect the quality of information provided to the immigration authorities and therefore affect the decision making process in the child's asylum application. This might be the case, for instance, when they improved on or ignored the style and semantic choices made by the children.

Overall, the findings indicate that interpreters are powerful participants in asylum interviews who can essentially impact the fact finding process in the asylum procedure and how the child's disclosure is being made and understood. An incorrect translation can lead to a risk that incorrect decisions are made about applications for asylum. Migration authorities need to increase their awareness of how the children's disclosures can be influenced by the questions asked, and how the information gathering can be influenced by the interpreter.

The right of vulnerable children to be heard is obvious, but when the way that children are being heard in police interviews and asylum interviews varies, the interviews have to be performed in a way that the children have a possibility to build trust and to disclose their experiences, and to be heard with what they have to say. Irrespectively, the interviews have to be performed in such a way that the children are given best possible prerequisites to give their perspective.

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During the discussion, the participants discussed the need to train the interpreters as well as the police officers and case managers in the asylum reception system. Thus far, training for police officers and migration case workers is available in Sweden, but there has not been any initiative to train the interpreters. In training migration case workers, they need to be made aware of how to communicate with the interpreters in order to manage the cooperation with them. In some cases, we have seen that the interpreters talk a lot to the child but they should not be doing that and only comply with their role of interpreting.

In the Netherlands, there are very strict laws about interpreters. When an interpreter is from a small diaspora, then that might cause unease for the child being interviewed. So in the Netherlands there are also ethnic Dutch citizens acting as interpreters and it has been observed that in some cases these get very different answers than an interpreter from the same community.

## **Iara de Witte, Project Officer, Defence for Children/ECPAT, The Netherlands**

### **Protection of minor victims in criminal procedures – The right to be heard, access to information, and legal assistance**

Defence for Children is active in four main fields: youth care, juvenile justice, migration law, and the prevention of exploitation of children, which is mainly led by ECPAT.

DCI and ECPAT in the Netherlands operate a helpdesk for victims of trafficking where lawyers, parents and others can seek information and advice when children's rights are at stake, with regard to individual cases but also as a general source of information about protection gaps. The helpdesk is considered "the eyes and the ears" of the organisation as it receives information about child trafficking cases in the Netherlands. The cases of child trafficking include domestic trafficking, for instance the loverboy cases, and cross-border cases where migration law also comes into play and the residence status of the victim needs to be addressed.

This presentation will discuss four main areas:

1. Emancipatory developments regarding the position of victims of trafficking in the Netherlands;
2. The right to be heard, truth finding and the child's interests
3. The non-punishment principle
4. Intertwining of criminal and migration law

### *Emancipatory development regarding the position of victims of trafficking*

In the Netherlands, a victim of crime is not an independent party in the criminal procedure and only the public prosecutor can bring the case to the court. Victims do not feel sufficiently recognized and supported in the society. In 2011, a new law strengthened the position of the victim as an independent participant in the criminal proceedings. It provides that the victim should be treated in an appropriate way during the procedure and the public prosecutor is now more dedicated to also provide services to the victim. With the new law, victims have a right to be informed about all proceedings and the judgment. The new law provides also for compensation for the damage suffered, a right to add pieces to the file and to know pieces from the file, and to be represented by a lawyer. The law reflects also some of the provisions under the CRC, such as the right to be heard (Article 12) and the right to information (Article 17).

#### *The right to information and to speak*

The right to information refers to information about legal proceedings, i.e. the start, continuation, dismissal of the prosecution, the date and time of the hearing, information about the judgment and eventually about the release of the convicted perpetrator, and about the right to compensation.

The cases and testimonies of girls and young women who had been exploited in the Netherlands and who were Dutch citizens show that in practice the right to information is not necessarily guaranteed for child victims.

Sarah (18 years old) had been forced into prostitution by a pimp ('loverboy') who had used her also for taking loans for him. She was not informed when her trafficker was to be released from prison. The lawyer told her that she had not been informed because she was under curatorship.

Sarah said: "I was not informed by the court, the police or my lawyer about the proceedings. I had to read in the newspaper that my pimp was released after one month in prison. The lawyer said that she could not inform me because I am under curatorship. However, curatorship does not imply that I should not be informed."

Maia (17 years old) had been exploited in prostitution and was suspected of being a 'lovergirl'. She lives in special shelter for victims of sexual exploitation. The police did not inform her directly that she was no longer suspected of being a 'lovergirl'.

Maia said: "During the interrogations, suddenly I was identified as an accomplice rather than a victim. They said I worked for my 'loverboy' to make other girls work in prostitution. Later, my mother received a letter stating that I was not a suspect anymore. They did not inform me about that. I do not have much contact with my mother."

Else (16) had been forced into prostitution by her mother and her mother's boyfriend. She said: "I was not informed by the police that they interrogated people in my environment. Suddenly, I heard that my friends had been interrogated. I also heard from my mother that the police interrogated her. Via others I heard that my mother and her boyfriend turned themselves to the police."

In 2005, the law was reformed to establish the 'persona right' for the victim, which means that the victim speaks directly in criminal proceedings, not through a representative. In 2010/11, the provision was put in question in the context of the high-profile case of Robert M., the so-called "Amsterdam sex crime case". In this case, the victims were babies and toddlers and could not

speak for themselves. Their parents did however not have the right to speak on their behalf, so there was a public outcry followed by a legislative proposal that entered into law in 2011. This law reform afforded that child victims can be represented by their parents.

As the victim is not a party in the criminal procedure, a victim lawyer is not needed, however, a lawyer would be important to support the victim with information about the process and to represent the victims interests.

In February 2014, a new law proposal was presented that provides for special basic education for victim lawyers. They need to be competent, for instance, with regard to the victim's right to speak, liability, compensation claim and psychological problems that victims of crime might be facing.

Fatima (18) from Lebanon was brought to the Netherlands at the age of 9 in order to stay with the family of her uncle and aunt who exploited her as a domestic servant. Fatima said: "I have a lawyer but I have spoken to her only twice. She did not accompany me to the interrogations of the examining magistrate. I have asked her why she is actually my lawyer. She explained that she can only do a few things for me. Now I learned that the victim has only a limited role in the proceedings. Still I would like that she could do more for me."

#### *Financial compensation for damage*

A special fund for victims was established in the Netherlands, the Injuries Fund Violent Crimes Compensation. It is offering compensation for damage without requiring the victim to file a complaint and unconditional of any conviction. Through this fund, it is possible to claim a portion of the damage. The damage that has not been claimed in the trial may still be applied for in a civil procedure. In cases where the offender has not or not fully met his/her payment obligations, the state pays the remaining amount to the victim. This fund is important for victims of trafficking as trafficking is so hidden that investigations and prosecution are rarely successful.

#### *The right to be heard and truth finding*

The criminal investigations are conducted by investigators who are not necessarily specialized in cases involving children. The child victim and the suspect do not have to meet during the investigations. The child's testimony is taken in a special child-friendly room and is video recorded. The child is heard by the examining magistrate, with the attendance of the suspect and his/her lawyer. The presence of a parent, guardian or lawyer of the child can be requested but can also be refused. The number of interrogations is limited, but in practice there are often more than four interrogations of the child. Filing a complaint and the subsequent criminal procedures can be very stressful for child victims.

Fatima said that she had been interrogated for nine times, and some of the interrogations were very stressful for her and responding repeatedly to the same questions was upsetting her.

"I have been heard by the police for about 9 times. I am happy it was by the same police officers every time. The interrogations by the examining magistrate were difficult, truth finding was confronting. Lawyers of the suspect repeatedly asked mean questions. They did not believe me. My mentor stood up for me, which changed the attitude of the magistrate. My mentor is very important to me."



### *Non-punishment*

Under international and European law, victims of trafficking are protected from prosecution and punishment for offences they have committed in relation to their status as victims of trafficking. This is afforded, for instance, under the Council of Europe Convention on Action against Trafficking in Human Beings (Article 26) and the EU Anti-trafficking Directive (Article 8). In national law, this provision is implied in the possibility of granting judicial pardon and the possibility for excluding criminal responsibility.

### *Intertwining of migration and criminal law – protection of foreign minor victims of trafficking*

#### *Directive 2011/36/EU ‘versus’ 2004/81/EC*

The intersection of migration and criminal law is a real bottleneck in the protection of child victims of trafficking. Child victims should receive special assistance, they should be considered vulnerable victims under the EU Directive 2011, for whom the state authorities have to identify a durable solution. This provision is good, but it is made “without prejudice to the 2004 Directive”.

The 2004 Directive regulates temporary residence permits for victims of crime during criminal procedures. In the Netherlands, this temporary residence permit is granted as the so-called “B8” status. It is however difficult to foresee how long criminal procedures last. They are stressful for children. If a child does not file a criminal complaint, the child might not get a residence permit. In granting the residence permit under B8, there is no procedure for assessing and determining the best interests of the child and for identifying a durable solution. The immigration service takes the position that, when the police could not identify the trafficker, it is not proven that the person is a victim of trafficking, so the person can be returned to the country of origin. Against this background, DCI with Unicef NL have proposed the ‘BBB8’: “better protected in the B8”, as a safeguard for child victims of trafficking and a special option for granting temporary residence permits. In the context of criminal procedures, the B8 permit is granted ex officio when the complaint is filed. But filing a complaint might not always be in the best interests of the child. It would therefore be important to ensure that children are explicitly considered a special category of persons for whom filing a complaint is not possible. In cases of children who are identified as potential victims of trafficking, the B8 should be granted ex officio without the condition of cooperation in criminal procedures.

Fatima (18) from Lebanon said: “My residence permit depends on the conclusion of the criminal procedure. Until the end of the trial, I cannot live a peaceful life. I find that very difficult.”

With regard to finding a durable solution for a child victim of trafficking, we propose that after a first identification of reasonable grounds to assume that the child is a victim of trafficking, a first reflection period of 3 months should be granted. During this period, it shall be identified if the child is indeed a victim of trafficking. In cases where return is not possible, B8 should be granted for one year. During this time, the guardian together with the child should prepare a plan of action for the child. After one year, it would be important to formulate a future perspective for the child and to return the child if that is in the child’s best interests or, otherwise, apply for a residence permit on humanitarian grounds.

DCI made an official proposal on this in October 2013, which was discussed in Parliament this year and the decision is expected for June 2014.

National children can receive after care up to the age of 23 but this is not a possibility for non national children, so we have proposed that this should be changed.

### **Session III: Detention of accompanied and unaccompanied children in the host country**

**Alice Farmer, Researcher, Children's Rights Division, Human Rights Watch**

#### **Immigration Detention, Ending Child Detention**

This presentation will:

- Give information on the scope of the problem;
- Look at Human Rights Watch (HRW) research in Europe and beyond, detailing the fundamental harm of detaining children;
- Discuss examples of progress and alternatives to detention;
- Examine next steps to ending child detention.

In February 2013, the Day of General Discussion hosted by the UN Committee on the Rights of the Child resulted in the following statement: "States must expeditiously and completely cease the detention of children on the basis of their immigration status."

HRW with the International Detention Coalition estimate that approximately one million children worldwide are held in immigration detention, and approximately 1.1 million children worldwide are held in juvenile justice detention. So the two issues are about at the same scale.

Detention is a global problem and it is underappreciated. Persons are held in immigration detention at the borders of the EU and within the EU Member States, as well as in transit and middle income countries, as evidenced by HRW research in Iran, Indonesia, Thailand and others. In destination countries, such as South Africa, Australia, the US, and European countries, immigration detention is often considered a deterrent in immigration politics. At current we see a practice where immigration policies override the human rights of the child and there is a default recurrence to detention.

There are very different contexts in which immigration detention takes place. The quality of detention facilities also differs vastly, but there are obviously some fundamental problems with the assumption that it is ok to detain children for immigration reasons.

I want to speak about two stories of children that I have interviewed in the last few years. The first story is that of Reza. He was 14 years old when I met him in Greece. He had come to Greece from Afghanistan and was living in an abandoned half-built house near Patras. There was no road leading to this house. He is the oldest surviving male in his immediate family. After his father died, his mother and aunt decided that he should leave for Europe, while the family was staying in Iran in a refugee situation. He was not aiming to claim asylum in Greece. He had been travelling for a long time. The Greek police picked him up and did not identify him as a minor, although he was very much looking like a child. When he was let out of detention, he was not referred to child protection

services. His goal was to move on to other European countries. The group of migrants he was staying with was aiming to hang under a truck to cross the border from Patras onwards into the EU. They run under the truck and grab on to the axes before the truck goes onto the ferry.

He did not want to be detained again, he had an idea what the detention facility looked like and knew this was not furthering his migration project. There are many other factors as well that stopped him from identifying himself to the authorities and to avoid registration at all costs, detention is one of them.

In France, HRW conducted research into the situation of migrants held in detention facilities in the transit zones at the Charles de Gaulle airport. The HRW researchers were given access to the detention area in the airport. French law allows for people to be held detained in these transit zones for up to 26 days and children are not exempted. The French authorities claim that transit zones are not yet part of the national territory and that immigration detention under the current conditions was therefore admissible. There are also holding cells in each terminal, they are more clinical, with concrete benches moulded into the wall. People are held there for up to 18 hours before being transferred to the main detention facility in the transit zone.

A boy, 17 years old, had been smuggled by a man into France. The man had picked him up from the streets in Port Harcourt in Nigeria, took him in and gave him clothing and a ticket to France where he should have worked for the man's family. The boy had been travelling for long, was confused, had been given papers but it seemed that he had no idea what the papers said. He had not yet seen a guardian but had to sign these papers. The level of vulnerability of this boy was so high and his capacity to understand what was going on was very low. He had never travelled to Europe before and the fact that he was detained compounded the vulnerability. Children in the transit zones have fewer rights than children outside who have been admitted to the French territory. So his state of detention stripped him off the full set of rights that he would have had outside, on the French territory.

The interpreters are brought into the transit zone where the asylum interviews are done with an interpreter present. The detained migrants had however no idea whether or not this interpreter was aligned with the government of their own country. Considering the lack of information and meeting a well-dressed person from the home country, it was easy to associate this person to the authorities of the home country. So children have this compounded vulnerability that makes it difficult to make the procedure fair.

In Malta, during a rally on 30 March for Malta's Freedom Day, the Maltese Prime Minister Muscat pledged to end the detention of migrant children. This is a very positive statement and we hope to see that it will be fully applied to unaccompanied children pending age assessment.

During a rally on Sunday, March 30, for Malta's Freedom Day, which marks the country's independence from British rule, Maltese prime minister Muscat pledged to end the detention of migrant children. Malta currently detains approximately 150-200 unaccompanied children per year, pending age determination. Our research found an average detention time of 3.4 months. There are however alternatives as Malta is operating also open reception centers.

In Thailand, HRW researchers visited a detention centre for migrants. It was overcrowded and there was no privacy for the detainees. Thailand does not exempt children from immigration detention.

HRW research has evidenced and documented the toll of immigration detention on children's lives. Immigration detention is depriving the child of his/her liberty, which is inherently harmful to the child and his or her development. Immigration detention often takes place without a clear time limitation. That is increasing the mental health impact on detainees, and the effects are particularly severe for children. The children lose their hope, they lose dreams, they are affected by hopelessness and depression. Numerous studies on the impact of detention on children's mental health, particularly from the UK, evidence that immigration detention takes a toll on the children's physical health and delays the developmental process.

Article 37 of the Convention on the Rights of the Child (CRC) states that detention of any type should only be used as "a measure of last resort and for the shortest appropriate period of time." In many situations, children are deprived of their liberty as a standardized measure and not as a measure of last resort, as afforded under the CRC.

The Commissioner for Human Rights of the Council of Europe stated that "as a principle, migrant children should not be subjected to detention."

The Committee on the Rights of the Child stated in its General Comment No. 6 that "unaccompanied or separated children should not, as a general rule, be detained," and "detention cannot be justified solely on... their migratory or residence status, or lack thereof."

UNHCR specifically argues that "[c]hildren seeking asylum should not be kept in detention and that this is particularly important in the case of unaccompanied children."

Against this background, it is important to look into alternatives to detention. There are examples from Belgium, for instance, that have been described and assessed. One example is the use of so-called return houses, where families live and are accompanied by a case worker. The compliance with this programme is quite high, even when the migrants are going through deportation. For the state authorities, these return houses are also cheaper than detention. This shows that it is possible to operate alternatives to detention.

In Canada, Toronto has introduced a bail programme which allows people to leave immigration detention on bail.

The International Detention Coalition works in many countries all over the world to develop alternatives to detention. It has formulated a 5-Step Process for promoting alternatives to detention:

The International Detention Coalition (IDC), an association of over 250 NGOs and individuals in more than 50 countries working to protect the rights of migrants in immigration detention, proposes a five-step process for countries to avoid the detention of children.

- 1) Governments to adopt a presumption against the detention of children, prior to any migrants' arrivals.
- 2) When a migrant child arrives, with or without family, the authorities should screen the individual child to determine their age, allocate a case worker, and place the child (and family) into a community setting.
- 3) The case manager works with the child or family to resolve the individual migration case (an incentive to comply with the program).

- 4) The child's or family's placement in an alternative to detention is reviewed periodically, and an assessment is made of the risk of the child or family absconding prior to departure.
- 5) The child or family is granted the right to stay or are returned.

HRW would recommend that the General Assembly to commission a study on the impact of detention on children in the juvenile justice and immigration context.

During the discussion, participants noted that the UK has a similar system for alternatives to detention as in Belgium, especially for families. Belgium has now also set up family homes for families who are arriving; these families are no longer detained but placed in family homes, which are connected to the asylum reception system and the asylum procedure.

Many EU Member States have programmes in place for alternatives to detention, but in practice the numbers show that they are not applied consistently or extensively. There will be a study in Europe on alternatives to detention.

HRW has conducted research also in other European countries, with a focus mainly at the EU outer borders in Spain and France, Greece and Turkey border on both sides, as well as Ukraine and Italy. There is also a new project being initiated that will investigate the situation in South Eastern Europe.

There had been a case pending before the European Court of Human Rights but it has been withdrawn. It related to the transfer of a boy from Belgium to Morocco and one of the points that was raised was that upon return, the child would be detained for having left Morocco irregularly. The child would be detained until his relatives or somebody could pay the fee required for him to be released. So countries need to be aware that by transferring children to other jurisdictions children might be at risk of detention upon return.

One of the concerns about detention is to make sure that the children have access to guardianship. In the Netherlands, there were cases of children being detained because the authorities could not identify guardians. The guardianship programme in Charles de Gaulle is a volunteer programme. It is not funded by the Government and does not fulfil the guardianship requirements. In general, guardians have an important role to safeguard the best interests of the child. In the context of return, guardians may however not be aware that a child may be detained upon return to the country of origin.

#### **Session IV: Family tracing and risk assessment in transnational cases of children exposed to exploitation**

**Andrea Vonkeman, UNHCR Bureau for Europe**

#### **Identification and referral of, and response to, child victims of trafficking in need of international protection**

The story of Amah and her child was brought to the attention of the Stockholm Office of UNHCR. This is a real case. Amah is a Nigerian girl who claims that her father sold her in Nigeria to a woman who took her in as a foster child and used her to work in a shop. The woman was known

as Mama P., a well known trafficking ringleader who was running a prostitution ring in Nigeria and had good connections to Italy. Amah lived with her foster mother from the age of 10 and was made to work as a 'prostitute' from the age of 15. Amah said that she was beaten up when she did not earn enough money. One girl who tried to leave the prostitution ring was poisoned by Mama P. according to Amah. Amah left Nigeria in 2008 and went to the Ivory Coast where she worked as a prostitute for a few months as instructed by Mama P.

In 2009, Amah went to Tunis where she briefly worked as a street prostitute, until she met a man, (not a trafficker according to Amah) with whom she eventually came to Europe and arrived via Spain in Italy. She stayed only briefly in Italy and then applied for asylum in a Nordic country. By the time, Amah had given birth to a child.

Despite the details she disclosed about her experiences in Nigeria and the Ivory Coast, and despite the fear she expressed for the life of herself and her child at the hands of Mama P. in the event of return, her asylum request was denied.

The interview transcriptions of her case were very rudimentary. The country of origin information was very much looking at the laws in Nigeria and not so much at the status of their implementation and enforcement in practice. The existing risks of (re-)trafficking were not considered and there was no discussion of the reception that would actually be in place for Amah and her child upon return and the capacity for support after return. Issues related to stigmatisation due to the experiences that Amah had been through and ostracism were not mentioned. So the information looked more rosy than the practice on the ground. There was also no consideration given to the harm that the girl had experienced in the past, including being sold by her father, having been exposed to sexual exploitation in prostitution and trafficking and violence from a young age.

Trafficking in human beings may, however, amount to persecution, as a serious violation of human rights. Inherent in the trafficking experience and the acts of trafficking are forms of severe exploitation and violence, including abduction, incarceration, rape, sexual enslavement, forced prostitution, forced labour, removal of organs, physical beatings, starvation, the deprivation of medical treatment. Such acts constitute serious violations of human rights which will generally amount to persecution.

Victims of trafficking may face reprisals or re-trafficking, or both, upon return, which may be a consequence of having cooperated with the authorities in the criminal investigations, in the country of origin or the country of arrival. The fear is particularly founded when the trafficking has been perpetrated by international criminal networks. Reprisals could also amount to a fear of persecution, including when they are against family members, if the acts feared involve serious human rights violations or other serious harm. The related fear could give rise to a fear of persecution. Re-trafficking would usually amount to persecution.

There is also a possibility that victims of trafficking may be ostracised, discriminated against or punished upon return, at the hands of members of their families, communities or authorities. This may particularly be the case when the person has been exposed to sexual exploitation. In individual cases, we say that severe ostracism may amount to persecution. The results of it could also lead to re-trafficking and therefore also amount to persecution.

In the individual case, severe ostracism, discrimination or punishment may rise to the level of persecution, in particular if it is aggravated by trauma suffered during, and as a result of, the trafficking process.

Even if the ostracism from, or punishment by, family or community members does not rise to the level of persecution, such rejection by, and isolation from, social support networks may in fact heighten the risk of being re-trafficked or of being exposed to retaliation, which could then give rise to a well-founded fear of persecution.

In some cases, the trafficking experience of the asylum applicant may be a one-off experience that has passed and is not likely to be repeated. In that case, the person might not be considered a refugee. When there are however compelling reasons arising out of previous persecution, the person may be a refugee, for instance where the persecution suffered during the trafficking experience, even if past, was particularly atrocious and the individual is experiencing ongoing traumatic psychological effects, which would render return to the country of origin intolerable. If the return to the country of origin or the country from which the person was trafficked, is considered intolerable, then UNHCR argues that the victim is granted a residence permit in the country of arrival.

In the assessment of the asylum application, the immigration authorities need to consider and recognise also the specific situation and background of the person, for instance if the person belongs to an especially marginalised group. Nationality, religion, political opinion, belonging to an ethnic or religious group that is particularly marginalised, are all factors that need to be taken into consideration. In certain societies, particularly marginalized religious or ethnic groups may be particularly targeted by traffickers, then this may amount to a grounds of asylum.

Women, for instance, are an example of a social subset of individuals who are defined by innate and immutable characteristics and are frequently treated differently to men. As such, they may constitute a particular social group. Factors which may distinguish women as targets for traffickers are generally connected to their vulnerability in certain social settings; therefore certain social subsets of women may also constitute particular social groups.

Granting the refugee status needs to be related to one of the grounds for asylum, which include also the belonging to a particular social group. How is this being defined? The person needs to have innate personal characteristics or something they are associated with or seen as. That might relate to certain subsets of society. Men or children or certain social subsets of these groups may be considered as particular social groups. Examples of social subsets of women or children could be, for instance, single women, widows, divorced women, illiterate women, women who are victims of rape, women with children born out of wedlock, separated or unaccompanied children, orphans or street children.

Belonging to such a particular social group may be one of the factors contributing to a person's fear of persecution. Former victims of trafficking may also be considered as constituting a social group based on the unchangeable, common and historic characteristic of having been trafficked.

### *Risk profiles in EU asylum systems*

There are many scenarios of how a person may be exposed to trafficking or at risk in Europe. Some are entering Europe as refugees or as migrants, some are smuggled into the EU, and the

risk of being recruited into exploitation and trafficking exists in the country of origin, along the route, as well as within the countries of arrival in the EU.

Persons who are victims of trafficking and who are claiming asylum in an EU Member State have very diverse backgrounds. They may be forced into the asylum system by traffickers and present asylum applications that lack credibility. Victims of trafficking may not be in need of international protection but might find that their only access to support and protection is through the asylum system. Some asylum seekers who are staying at asylum reception centres in the EU, or who might be homeless, might be targeted by traffickers because they are particularly vulnerable. Among them there might be children who are going missing from reception centres or for whom the support offered is not adequate. Children who leave the reception centres for that reason may be prone to offers by traffickers. In addition, there are also victims of trafficking in need of international protection who are outside the asylum reception system and who have not been informed and are not aware of their right to apply for asylum.

### *EU Asylum acquis*

The Asylum Procedures (recast) Directive was recast last year and should be transposed into national law by the Member States by June 2015. The Directive provides the following that is relevant for considering the need of international protection of persons who have been exposed to or are at risk of exploitation and trafficking.

Recital 29: Some applicants may be in need of special procedural guarantees due to *i.a.* age, gender,... or as a consequence of torture, rape or other serious forms of psychological, physical or sexual violence.

Article 24 makes provisions with regard to applicants in need of special procedural guarantees. It obliges states to identify applicants in need of special procedural guarantees within a reasonable period of time after an application has been filed [Art 24.1]. It provides that adequate support be provided to the applicant, including sufficient time and no acceleration of the decision, to benefit from rights and to comply with obligations [Art. 24.3]. Special procedural needs have to be addressed also when the need becomes apparent at a later stage [Art. 24.4].

Article 10.3 stipulates requirements for the examination of applications. It affords that there should be a possibility for case workers to seek advice from experts on particular issues, such as medical, cultural, religious, child-related or gender issues. Under Article 15.3, a personal interview with the applicant is required that is conducted by personnel competent to take account of personal and general circumstances surrounding the application, including the applicant's vulnerability. There is a provision that Member States may prioritise vulnerable applicants which may include victims of trafficking. This does not mean shorter time lines but putting them higher on the list. It provides also for same-sex interviewers and interpreters wherever possible.

### *The Dublin III Regulation*

The recast Dublin Regulation includes some specific provisions and guarantees for children. Article 6.3 provides that Member States shall closely cooperate with each other when assessing the best interests of a child applicant and take due account of the possibilities for family reunification, the child's well-being and social development; the child's views according to his or her age and maturity; and safety and security considerations for the child, in particular in cases where there are suspicions that the child might be a victim of trafficking. After a 2013 decision by the European



Court of Justice, Member States have to assess the capability of the relative to care for the child before transferring the child to the care of that relative.

### *Reception Conditions (recast) Directive*

The recast Reception Conditions Directive includes special provisions for the reception of vulnerable persons (Chapter IV). Under Article 21, the specific situation of vulnerable persons needs to be taken into account for the reception of the person. This applies for instance to the specific situation of victims of trafficking. For victims of trafficking who file an asylum application Article 22 provides the obligation to conduct an individual assessment to identify if the person has special reception needs and what these needs are. This assessment has to be initiated within a reasonable period of time after the application has been filed. The assessment shall be without prejudice to the assessment of international protection needs. Article 23 provides that for unaccompanied asylum seeking children a special assessment needs to be conducted into the child's risk of trafficking.

When the asylum reception acquis and the victim protection regime in Europe are considered together, there are opportunities for developing more holistic and rights-based approaches to the protection of child asylum seekers.

A comparison between the EU Anti-trafficking Directive and the Asylum acquis lead to the following conclusions:

- There is an obligation to identify victims under all three directives, i.e. the Anti-trafficking Directive (ATD), the Reception Conditions Directive (RCD) and the Asylum Procedures Directive (APD)
- Under the Anti-trafficking Directive, there have to be mechanisms for early identification of victims in place
- The Anti-trafficking Directive provides also for a standard of proof that there are "reasonable grounds" to believe that the person is a victim of trafficking (Article 11)
- Under the Asylum Procedures Directive and the Anti-trafficking Directive, case workers should have access to expert advice from relevant support organisations
- Same-sex interviewer and interpreter are to be provided wherever possible
- Both Directives stipulate that the personnel shall be competent and regularly trained
- The Anti-trafficking Directive calls upon governments to prevent secondary victimization, including through detention, repeated interviews, etc.
- An individual needs assessment has to be conducted, without prejudice to the assessment of the person's international protection needs
- There are also provisions for proper reception and support, such as the appointment of a guardian, counseling services, and safety.

### *Effective identification of child victims of trafficking in the asylum procedure*

Among the children who seek asylum there may be victims of trafficking. It is therefore important to ensure that child victims are being identified effectively in the asylum procedure. To this end, there is a need for effective coordination between national and local agencies, including the asylum authorities and child protection services, with National Referral Mechanisms that support the early identification of victims and potential victims and their referral to assistance and protection, and if necessary, to asylum proceedings. Officials should be trained to identify among unaccompanied children those children who may be in need of international protection. There should also be clear and swift processes for referring (potential) child victims of trafficking by those who may first come into contact with them – border guards, police, health workers – to the child protection system, so that these children have immediate access to a guardian as well as appropriate services and protection.

### *Credibility assessments in victim identification*

#### Evidentiary matters and Victim identification

- There is a low threshold approach by providing that it suffices when there are “reasonable grounds” to believe that the person is a victim of trafficking (ATD)
- The standard of proof is NOT “beyond reasonable / any doubt” which is not appropriate for asylum adjudication
- Article 4(1) of the EU Qualification Directive provides for the “duty to substantiate” the asylum claim, which is not a matter of proof or search for truth
- There is a shared duty to substantiate the application, especially with regard to child applicants
- The applicant’s statements are considered the primary and may be only source of evidence. An oral statement by an applicant may be considered unreliable or may not be backed up by evidence, so a lot of the information is based on the credibility of the person’s statement and country of origin information.
- Lack of (reliable) documentary evidence.

#### Individual, Objective and Impartial Assessment

There are further factors that need to be taken into account for credibility assessments in victim identification. They include the following:

- The person may be impacted by feelings of shame, stigma, fear of reprisals on self-identification and disclosure
- Frailty of human memory and the effect of emotions on the person’s memory
- Interviewer/Decision-Maker’s thinking processes, assumptions, expectations, and misconceptions
- Factors span disciplinary fields of neurobiology, psychology, anthropology, sociology, cultural and gender studies and therefore it would be essential to work with a multi-disciplinary approach
- Training is important to generate knowledge, enhance skills and shape attitudes and awareness. The attitudes of the interviews and the assumptions that he or she may have about the person is of importance. There is a need to have the right attitudes and

awareness about trafficking, and that trafficking victims may have a need of international protection.

### ***Forthcoming publications:***

UNHCR “*Beyond Proof – Credibility Assessment in EU Asylum Systems*” Report & Checklists

available at: UNHCR Refworld

(ENG, FRE, GER, BUG, HUN, SLO, POL, ROM)

Forthcoming: “The heart of the matter”; CREDO II on assessing credibility in child asylum claims

UNHCR Guidelines on International Protection No. 7: The Application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees to Victims of Trafficking and Persons At Risk of Being Trafficked, 7 April 2006, HCR/GIP/06/07, available at: <http://www.refworld.org/docid/443679fa4.html>

## **Irina Todorova, Regional Migrant Assistance Specialist, International Organization for Migration, Regional Office for the EEA, EU and NATO, Belgium**

### **IOM’s role in assistance and protection of victims of trafficking, with special considerations for children**

#### *Setting the scene*

Globally, there are an estimated 33 million international migrants under 20 years of age, among these, 11 million are estimated to be between the age of 15 and 19 years old and 9 million between 10 and 14 years old. Very young children aged 5-9 and under 5 years old represent 7 and 6 million of the total migration population respectively. It is difficult to know how many of these are unaccompanied.

Many of these migrants are at risk of exploitation, violence and abuse, including in the context of trafficking. Since 1997, 35% of the 25,000 victims of trafficking assisted by IOM were children, and the majority of them were unaccompanied migrants.

IOM’s intervention for unaccompanied children involves mostly Assisted Voluntary Return and Reintegration (AVRR), counter-trafficking and resettlement programmes. Among UAMs, we deal with child soldiers, victims of trafficking, internally displaced, UAMs with no legal status in the host country, irregular migrants, UAMs whose legal status was still being determined (asylum pending or appealing), UAMs who are orphans, and UAMs who are under 16 years of age.

#### *Trafficking in human beings in Europe*

A total of 9,529 victims of trafficking have been identified in EU Members States according to Eurostat 2010. 12% of them were girls and 3% boys. Their countries of origin are within the EU and among third countries. In Europe, the main countries of origin are Bulgaria and Romania. The percentage of Roma among the identified and assisted victims of trafficking is extremely high. In Bulgaria, for instance, the Roma population amounts to less than 10% of the total population, but more than 50% of all identified victims are of Roma origin.

### *Unaccompanied migrant children in Europe*

In 2012, a total of 12,225 asylum applications were submitted by children, approximately 10,000 boys and 2,000 girls. The main countries of origin are Afghanistan (5,655), Somalia (645) and Guinea (525). The official data are however biased, as only unaccompanied asylum seeking children are recorded, whereas the Council of Europe reported that there were approximately 100,000 unaccompanied migrant children in Europe. The European Migration Network will prepare an update to the 2009 reports this autumn.

IOM's assistance to unaccompanied migrant children through the IOM Assisted Voluntary Return and Repatriation (AVRR) programmes aims primarily to unite the child with his or her family. It can only be provided upon the condition that return has been decided to be in the best interest of the child and in coordination with the legal guardians in both the host country and the country of origin. In 2012, IOM assisted 79 unaccompanied migrant children (45 boys and 34 girls) through this programme.

IOM is guided by the international legal framework on child rights, women rights, anti-trafficking and refugee law, including also regional standards of the Council of Europe and the European Union, as well as the national laws of the countries that IOM works with. IOM's constituent documents refer to the need for promoting the human rights of migrants.

Basic principles for protection and direct assistance of migrants:

- To be treated with dignity and in respect for and protection of human rights
- To receive services based on full and informed consent
- Self-determination and participation in identifying and setting service goals and plans
- Individualized treatment and care
- Comprehensive continuum of care and holistic approach
- Best interests of the child
- Non-discrimination
- Confidentiality and right to privacy
- Reasonable access to personal records

Victims of trafficking have specific rights, during the criminal proceedings and during return and reintegration.

#### *Victims' rights during the criminal proceedings*

- Special approach and attitude towards highly vulnerable persons
- Prevention of revictimisation
- Protection of victims when their life is at risk
- Legal assistance, including in soliciting compensations for damages caused
- Legal assistance and representation in the court should be free of charge, at least in cases when the victim does not possess sufficient financial resources
- Special protection measures for child victims, including with regard to the interviews held with children
- Protection from sanctions or prosecution for infringements committed during exploitation

Repatriation is a complex process but some countries have built up a good procedures. In some cases, it is however not easy to gather the required information from the country of origin, in order to prepare the repatriation.

#### *The victim's rights during return and repatriation*

The competent authorities should be responsible to offer assistance during repatriation and care. There are interstate agreements that include detailed and clear provisions on repatriation procedures, responsibilities of the parties involved at each stage of repatriation, the expected financial costs and their coverage.

Victims of trafficking have a right to safe repatriation without unjustified delays. Repatriation is voluntary and the opinion of the migrant should therefore be taken into account, including in cases of children. The migrant has a right to be informed about his/her rights. In cases of children, repatriation should take place in compliance with the best interests of the child. Victims of trafficking should not be repatriated if a risk assessment reveals that there would be a risk to the safety of the person after repatriation.

In Europe, IOM is rarely in direct contact with the child but operates mostly through partner organizations.

In cases of children, the case management and decisions have to be compliant with the general principle of the best interests of the child. In many countries, there is information that the best interest assessment has taken place. Sometimes there can be very sensitive situations in the country of origin that need to be taken into consideration for the best interest assessment. Victims of trafficking shall not be repatriated or exiled when there are risks of re-trafficking after return. It can be very difficult to build up a safe reception context in the country of origin.

IOM provides services and assistance as is necessary. How is it determined what is necessary for the victim? We have developed a list of minimum standards that are considered necessary for the victim. There may be legislative and other measures that might be necessary in order to provide assistance to victims for his/her physical, psychological and social rehabilitation. This does not depend on his/her citizenship.

Assistance should include, as a minimum:

- Adequate living accommodation, such as a safe shelter;
- Psychological and financial support;
- Access to immediate medical assistance;
- Interpretation; interpreters are just supporters and should only do what they are asked to do. Cultural mediators, as are used in Italy, can be very helpful. It can be reassuring for the migrant to meet someone from his/her country or region, but this is not considered a necessary minimum standard for criminal proceedings.
- Consultations and information on her/his rights and available services;
- Legal assistance, including representation and respect to his/her rights and interests at the respective penal proceedings;
- Access to education for children.

In addition to these minimum standards, it is important to take into consideration also the interests of the victim of trafficking. This is not always provided for in the legal framework. There are in

particular the following needs and interests of victims of trafficking in countries of destination (CoD) and countries of origin (CoO):

- To be rescued
- To be placed into a safe environment, receive protection and assistance
- To be recognized as mothers of the children born in the CoD
- To not be prohibited from re-entering the CoD after the return to the CoO
- To receive residence and work permits in the CoD
- To return to the Country of Origin (CoO)
- Not to cooperate with law enforcement
- To keep the secret, to avoid stigmatization
- To finalize court-related procedures as soon as possible
- To avoid facing the recruiter, trafficker
- To be treated with dignity
- To receive compensation
- To recover ID documents
- To receive the payment from the exploiter
- To receive vocational training
- To be employed
- To maintain good family relations (if any)

For the protection and safety of the victim, there should be a smooth process from identification, direct assistance and rehabilitation through to voluntary return and re-/integration.

The assistance process:

**1. *Victim identification and determination of victim status:***

- a. Screening for potential victims
- b. Removing potential victims from confinement, detention, etc.
- c. Treatment as victims of a crime, not as criminals
- d. Child friendly, gender sensitive procedures

**2. *Provision of protective services***

- a. Safety, security and protection for victims at specialized shelters, safe houses, or similar safe environments; protection does not necessarily mean to limit the person's freedom of movement, it creates confusion about whether this is assistance or punishment, especially in the first period
- b. Addressing immediate needs such as food, accommodation and medical needs.

Special consideration for children in service provision

The AVRR programme applies when an unaccompanied migrant child, regardless of his or her status, expresses a wish to, or agrees freely with the recommendation of a guardian, to be assisted in returning home. The 'best interests' of the child are primary consideration before AVRR can take place and during the whole process of return if this is the most suitable option for the unaccompanied migrant child. There are the following requirements:

- Role of legal guardian in host country and country of origin
- Need for written consent, which we try to obtain from the victim and then proceed to conduct the analysis of possible return models, according to what is best for the child.
- Analysis of return vs. other solutions, such as integration
- If required, IOM can assist with family reunification based on family assessment

### **3) *Risk Assessment/Family Tracing:***

Risk assessments are made in case of return in line with the best interests of the child, regardless of whether the child is a victim of trafficking or not. Then there are measures to locate the child's family and determine a best course of action for return to that family and home community in light of the trafficking victim's experience. There will further be a procedure to determine the best interest option for safe return/reintegration.

The risk assessment should be carried out as soon as possible after a trafficking victim has been identified. There follows a continuing process to ensure the safety of the person also after return. The risk assessment needs to ensure that the personnel that are providing shelter, care and protection to the victim after return and that there are no risks involved. Movements outside the shelter or attendance at court buildings when providing testimonies at the trial may be particularly risky, as well as the return to the country of origin. Sometimes, the airport reception is done jointly with the police because there could be cases where the recruiter appears at the airport when the victim arrives. There are risks that can be increased when the victim cooperates with law enforcement agencies. A risk assessment should also take into account the risks to other victims or potential victims who have not yet been identified as such by the authorities.

### **4) *Issuance of necessary travel documentation:***

The victim's nationality is verified through government authorities. The necessary travel document(s) for the victim and possibly family members (e.g. children born during the trafficking experience) are being issued or cleared. There is a need to give special consideration to the concerns of children, including by assigning an escort and the reception and handover of the child at the port of entry.

### **5) *Issuance of necessary travel documents***

Sometimes guardians are participating in the actual returns, sometimes the country assigns social assistants or IOM could receive a child at the port of entry. We ensure that there is a handover. When the family is identified, there are still the guardianship authorities involved, especially in cases of slightest doubt, the guardian would still be involved in monitoring the situation of the child after return.

### **6) *Reintegration and recovery***

The services and situation of the returned child is being monitored for up to 18 months by the IOM programme or through the involvement of national partners. Reintegration and recovery assistance

include a tailor made combination of social, psychological, legal and medical assistance. For instance, vocational training/education; support with access to employment, housing, family support, and sheltering. In this context, there are the following special considerations regarding children:

- Mandatory Reintegration Assistance
- Institutional/community support to ensure the welfare and the full development of the child in a safe environment
- Assistance in a wide range of areas provided especially in education, health and integration
- Support to the family of the child in the country of origin is also fully promoted in IOM projects
- Design of assistance in close cooperation with legal guardian and suitable NGOs

## **6) Monitoring of reintegration process in the family and the society**

The implementation and realization of the individual return plan (IRP) is being monitored in a continuous process by the case manager, whose duty is to remind each institution/person about the assumed commitments. An intervention impact assessment is done approximately once in 3 months and more often in some cases.

The execution of the individual assistance plan is monitored by the specialist responsible for the coordination of the multidisciplinary team. It is verified together with the involved team members and the monitoring is documented. The role of case manager in the execution of the individual assistance plan is to coordinate and facilitate the information flow as to obtain the best results for the beneficiary.

IOM has observed the following challenges in the country of destination:

- Defining the role of the legal guardian in EU Member States
- Identifying legal guardians in countries of origin with weak child protection systems
- Determining the age of an individual
- Reconciling international child protection obligations with state responsibilities to address irregular migration
- Best interest determination: lack of information in countries of origin or unsuccessful family tracing

Challenges from the perspective of the country of origin:

- Retain their youth
- Ensure protection of their nationals abroad and, for those migrant children that do return
- The absence of local care facilities that have the capacity to meet the basic needs of children who return.
- How best to facilitate age-appropriate reintegration that is sustainable.

Challenges from the perspective of the victim:

- Safety – for the victim and her/his family



- Status – If the victim remains in the destination country, respective status during his/her stay and cooperation with the law enforcement should be ensured. This involves the right to stay in the respective country, issuing a residence permit, or deportation and interdiction to come back to the country).
- Confidentiality – Due to the risk of being stigmatized and possible consequences it might imply for the family, confidentiality should be ensured. Personal information cannot be released to the family, press or made otherwise public during the penal procedures and/or after their completion. This aspect is particularly important in the case of trafficking for sexual exploitation.
- Fear and re-traumatization:
  - It is necessary to guarantee that the victim will not testify in front of the trafficker, and will not see the trafficker and his partners during the court procedures;
  - It is necessary to avoid aggressive and offensive questions, as well as a scornful voice tone during interrogation process on behalf of the law enforcement agents (policemen, judges, prosecutors, lawyers, etc.)
  - The victim's participation during the court procedures should be limited; repetitive interrogations should be avoided;
  - The duration of the penal procedures should be taken into consideration.

Challenges with regard to the risk of re-trafficking:

- The qualitative interview data from IOM case files provide in-depth information on the causal factors for re-trafficking:
  - Lack of family support or family rejection upon return
  - Stigmatization upon return and the inability to (re-)integrate back into host society/ community/ family
  - Deportation by law enforcement without necessary support
  - Unwillingness to accept direct assistance
    - Fear of authorities
    - Past negative experience with authorities
  - Previous childhood trafficking experience
  - Structural socio-economic inequality – push factors remain
  - Desire to migrate remains upon return
    - Yet no safe/ legal channels
  - Threats (personal and/or family) from traffickers upon return

*Recommendations:*

- To promote the full implementation of commitments and obligations;
- To develop and implement national referral mechanisms as the best victim centered coordinated assistance frameworks. A national referral mechanism can also help overcoming and addressing the numerous challenges posed by data protection standards and regulations. Authorities should be ready to transfer the required information upon request, which is necessary for the identification of the person as a victim of trafficking and for deciding about the appropriate assistance and support services for the person.

- To better identify victims of trafficking by adopting a broader understanding of trafficking cases;
- To adapt assistance programs to the needs of victims of trafficking;
- To encourage risk assessment and family assessment as the basis on which to take decisions about return and other matters, this means that a risk assessment could be started much earlier, and before a decision about return has been made; a risk assessment should always be part of the services provided, even when there is no criminal case; to this end, it would be important to detach assistance and service provision from the victim's cooperation with the authorities.
- For assessments and decisions about the best interests of a child with regard to stay or return, it is important to take into account the perspectives of the country of origin and that of the host country.
- Return should be a safe option of protection but not the only option.
- Interstate cooperation should continuously be developed in accordance with the new trends and challenges that arise and should be expanded to Social/Child Protection Authorities and including also other relevant actors.

**Igna Oomen, Lawyer, Hamerslag & van Haren, Immigration Lawyers, Amsterdam**

**Risks and Responsibilities in Family Tracing**

Hamerslag & van Haren is the biggest law firm specialised on immigration law in the Netherlands. It is funded by the state on rather low rates. The lawyers are paid on a case basis, so we are not being paid by the hour; this could be an incentive for lawyers to spend less hours on each single case.

The presentation will focus on the perspectives of the lawyers assisting children in immigration law matters. This includes the lawyers perspective in representing a child, the contact with the child's guardian and relations with the state authorities.

The children we are representing are often accommodated in group homes and supervised by young staff who rotate frequently. For us, as lawyers, the children's guardians are important contact points. In the Netherlands, the guardians are professionals working for Nidos. The guardians see the child about one hour a month and work on a case for about 20 hours a month. Against this background, the lawyer might actually be the most consistent contact person for the child during the period that the child spends in the Netherlands. The lawyer spends about 8 hours on a case.

In the Netherlands, there is a rather difficult relation between the lawyers and the immigration authorities. So we have to be aware that some of the statements we make might be held against ourselves as the lawyers and the children we represent.

The Dutch approach to the reception of asylum seekers offers very high standards. Our clients often say they have come to the Netherlands because of the high human rights standards. In practice, the situation does however not always live up to these standards.

#### *The exposed or exploited child*

Child victims of trafficking are granted a special victim status in the Netherlands. This is valid however only for the duration of the criminal investigations and procedure. When the criminal procedure concludes with a conviction or ends otherwise, the child loses that status and the related residence permit and is no longer treated as a victim. The child might then be considered as an 'illegal migrant'. The regulations are the same for adults and children, and only in cases in which the proceedings take more than three years, there are options for regularizing the residence status of the victim, but this is very rare. When the criminal procedure ends, there is a new evaluation of the child's right to stay. In practice, in many cases of trafficking there is no suspect, trial or conviction.

The child's situation changes drastically upon his/her 18<sup>th</sup> birthday. In the Netherlands, all children under 18 years of age have a right to a residence permit, housing, care and education. The right to a residence permit and accommodation is extended also to the child's parents. As of the 18<sup>th</sup> birthday, the child loses the residence permit and might be allowed to remain for some 13 weeks in the country, and then has to leave. The residence permit is revoked at 18 also for children who have been exploited.

A child who loses the residence permit, loses also the shelter. Due to this situation, a group of rejected asylum seekers decided to set up their tents in the city of Amsterdam to demonstrate that they do not have a shelter.

#### *The best interests of the child*

The best interests of the child are referenced in national laws and soft law, but these are considered only recommendations for policy makers when it comes to the situation and rights of undocumented migrants. An irregular migrant cannot claim any rights based on these standards. The Highest Administrative Court held that CRC Article 3 does not apply to migrant children. This interpretation was reconsidered slightly when the European Charter on Fundamental Human Rights came into force. Step by step, child rights are slowly being accepted but it is still hard to have a judge to apply the best interests principle in the judgements.

#### *Family tracing: Purpose, risks and responsibilities*

The purpose of family tracing is to locate the family and eventually reunite the child with the parents and that might imply some risks. Finding the family can be very difficult. The child is in the Netherlands but it is not always clear why the child is here and if the family has sent the child, if there is a trafficker involved, if the child has parents and how the relations are between the child and the family.

When we contact the Dutch Embassy in the country of origin with a request to check the birth registration registry to check if a child has been registered there, the embassy might refuse to do this and states that there are other institutions offering these kind of services. IOM is not offering this service and the Red Cross Tracing Teams also cannot always help. Checking the child's birth registration is however essential for many reasons. It would be important to consider a joint

solution for all European countries in how to handle this, possibly by establishing a common desk in countries of origin to help gathering information from countries of origin.

There are many sensitive issues and questions in family tracing. One is the timing of tracing. During the criminal investigations, the child is considered a victim and in this phase, they are very reluctant to let a child go. They rarely offer the child to leave a testimony on video and then to go home. It takes often 2.5 years before the case is closed and in this time, the child gets settled in the Netherlands. So when would be the best time to return the child home? The best might be as soon as possible if the child is willing to. If the child is not willing, then the child should probably not be sent back.

Who will the child be returned to? Children are commonly returned to 1<sup>st</sup> or 2<sup>nd</sup> grade family members. There are however some special cases. When children under 18 years old have had their own children and started their own family, they do not necessarily need their origin family anymore and it becomes very difficult to send the child to the family of origin. Children in the Netherlands do have a right to family reunification. It could also be an option therefore to invite the parents of the child to come to the Netherlands.

When the child cannot be returned to family members, another option that is being discussed in the Netherlands is the return to an institution. The follow-up services after return should guarantee that the child is allowed to come back to the Netherlands. When we work with the national rules and the rights of the child afforded under the CRC, that should guarantee the right to return when we send a child back and when the return turns out not to be in the best interests of the child and is not sustainable.

Where does family reunification take place? Children are commonly returned to their home country in order to be reunited with their families in the country of origin. They could also be reunited in the host country, which would imply a right to family reunification but that may not be the preferred solution from the perspectives of the authorities in the host country. In addition, there are sometimes possibilities for family reunification in a third country where family members can be traced.

How is the child returned? The child can return voluntarily or forced. Voluntary means that the child has a choice, but this choice is not always given in the Netherlands. In that case, it means to accept the necessary return. When a return is not the free will of the child it is not clear if it can be in the best interests of the child.

A child can be returned to the country of origin without family reunion. This is the case for children who are returned upon turning 18 years old, as well as for children who are sent back to orphanages. This is a practice with children from Angola, for instance. We know of some of these cases where children were returned to an orphanage in Angola but it was reported that they never arrived in the orphanage. They were picked up by their 'parents' at the airport and we heard that these 'parents' all drove very big and expensive cars. So it is important to ensure a safe handover of the child upon arrival.

Another option is the return to extended families. These are often very glad to accept children. In some cases though we know that children are used to reinforce the family workforce.

### *Family tracing: Who is responsible?*

The Dutch Government is reluctant to offer means and measures for family tracing. But in the Netherlands, we have the opportunity to take the child to NIDOS, a professional guardianship organization. The guardians should assess the best interests of the child, they have the means and measures to do this, but they do not have the support of embassies in this process and are not allowed to do oversee phone calls until some years ago because it was too expensive. This is all they can do and there is no way that they can make visits to assess the situation of the child's family on the ground.

We need to take into account the wishes of the child. The children regularly come to see their lawyers and share a lot of information with the lawyer who is bound by confidentiality. The lawyer cannot share this information with the guardian. The children might be afraid because the guardian is part of the state system, so they might trust the lawyer more. But as a lawyer, I cannot do much with the information that the child shares with me, because a lawyer has to respect the rules of confidentiality.

### *Risks*

There is a risk that children disappear when they have to return to their home country. We have observed that there is much more attention and action from the side of the police when national children are missing and less attention in the cases of non-national and asylum seeking children. For non-national children who go missing, there is little action taken, except for children who have been exploited and placed in group housing with very strict rules, which is supposed to be for their own good but the children usually do not like it and they are not being heard about this.

The most at risk children might be those who have not been officially identified and are not in contact with the authorities. Many of these children may have been exploited or are at risk of exploitation but this is not being recognised.

The risks concern not only the child in the host country and in the country of origin, but also the family members. There are risks of retribution for family members when a child returns home. Risks may also be within the family, when some of the family members pose risks to the child.

At risk are further children who are not recognized as refugees and whose asylum applications are being rejected. There are child specific grounds of persecution that are not necessarily being considered in asylum applications made by children. The burden of proof is with the child and there is in practice a wide spectrum of interpretation of what the best interests of the child are.

The timing and the moment of return also matters. The child should, for instance, be able to finish the school year before having to return and there should be a follow-up to see how they are doing after return. But there is not much attention to this.

### *Dublin transfers*

The Netherlands have rather high standards of human rights in the asylum system and yet children are not automatically protected. In the context of Dublin transfers, it remains therefore an important consideration whether or not to claim that a child be transferred to the Netherlands. If a child has relatives in the Netherlands, an assessment by the Dutch Child Protection services can be requested.

When the authorities receive a claim to transfer a child to another country, this will postpone the individual evaluation of an asylum application. The decision on family reunification is therefore also being postponed. It is therefore a difficult choice whether or not to use the Dublin Regulation. Dublin terms are too short to do a thorough assessment, so claims would be made before the best interest of the child can be assessed.

#### *Discussion:*

The Netherlands offer higher standards in the asylum reception system than some Southern European countries, including better opportunities for education. We have seen cases of parents bringing their children to the Netherlands and leaving them there so that they are registered as unaccompanied and might not be returned due to their young age, whereas the parents claim asylum in another EU Member State. We do want however that the families remain together and this is probably one of the unexpected effects of the Dublin procedure. There is the possibility to reunify the family later, when the case is not treated under the Dublin rules. In cases of older children and young adults in the Netherlands, once that a child turns 18, they would be out on the streets and it would not be in their best interests to stay here under these conditions.

What is the purpose of family tracing? The purpose is primarily to establish the child's family links and to locate family members. That does not necessarily mean that the child will be reunited with the family or that the child has to decide for return.

### **Christoph Braunschweig, Social Worker, Swiss Foundation of the International Social Service ISS**

#### **Family tracing and risk assessment in transnational cases of children exposed to exploitation**

At the International Social Service (ISS), we treat transnational family conflicts like a child protection agency working across borders. ISS is represented in over 120 countries worldwide and is working mainly on custody issues, contact and abduction, and international child protection with at least two countries involved.

#### **ISS activities and experiences in family tracing and risk assessments**

The Swiss Foundation of the ISS is active in two main initiatives related to family tracing and risk assessments:

- The West African Network for the protection of children (WAN)
- Separated Children in Switzerland: Tracing of their family members and assessments of their situations in the countries of origin in collaboration with the ISS network

Since 2005, the ISS has been developing a network of agencies in West African countries, the West African Network for the protection of children (WAN). The tools that we developed there could be taken into account in Europe as well, especially with regard to children who are EU citizens and migrating within Europe for whom there are no tools and procedures currently in place in Europe. In regions outside Europe, as in West Africa, it can be sometimes more realistic to develop new procedures than in Europe.

When we explored the situation in West African countries in 2001-2002, we had the impression at first that we were not very welcome as we discussed with our partners primarily the South-North migration and the North-South return. There was the impression that we were overlooking the very traditional way of migrating within and across the regions of Western Africa.

So we started to work on a mechanism to address the South-South migration, with the objective to put in place a cooperation mechanism between civil society organizations and state authorities. This network was formally established in 2005, between the ECOWAS states – (Economic Community of West African States). It links up the 15 countries of ECOWAS through a mechanisms for the transnational cooperation of civil society organisations and state authorities.

The WAN is primarily a mechanism of cooperation between countries. It aims to enable the protection and quality reintegration of vulnerable children across borders and offers a platform of exchange for professionals in the field. The principles of work are networking, complementarity, commitment for children, sustainability, and the provision of quality care. Thus far, approximately 3,500 children have been reintegrated in a family setting through the network.

We believe that more than half of the children migrating to Europe have been exposed to exploitation in any form, including in the context of trafficking. Our experience is that nearly half of the children who had integrated into a family setting re-migrated. We realised that this is a continuous process. In the meantime, we realized that hardly any child leaves again.

WAN is operated with the vision to connect the systems of child protection in West Africa to better identify, protect, reintegrate and monitor children and young migrants in vulnerable situations between the countries of the region.

The mission of WAN is to mobilize and build the capacities of actors in West Africa to support children and young people requiring transnational reintegration in a harmonized way, based on an individualized approach that respects their rights.

The objective of WAN is to strengthen the capacities to protect children on the move and to ensure their reintegration. WAN establishes networks between stakeholders at the regional and national levels. It establishes standards and procedures and safeguards and makes them operational and diffuses them throughout the region.

In order to achieve these objectives, it was considered important that WAN operates at all relevant levels and connects them: the local level, with children, families and communities, the professional level, including social workers, street workers, law enforcement officers, NGOs and other relevant professionals, and also the level of national and regional authorities.

The network is organized as follows:

- The Steering Committee is composed of the Ministries responsible for child protection in the region.
- National Coordinators, including NGOs specialised in child protection and/or migration: they act as case managers for each child supported by the region and activate the national network to mobilise resources according to the needs identified, and ensure that the transnational social work is operated.

The network operates with a broad group of partners. In addition to state authorities, ECOWAS, international organisations and NGOs, there are also communities involved as well as technical and financial partners.

ISS and the International Institute for the Rights of the Child in Sion (IDE), and all the Ministries of Social Affairs from the region have been involved from the beginning. These stakeholders and organizations act as the case managers for each child that is reintegrated in a family setting. IIS and IDE provide facilitation, training and technical expertise.

ISS is organizing all the conferences and meetings and raising funds. Since Nigeria has been integrated into the network, it has been easier to raise funding from donors as Nigeria is an important country in European migration management.

We believe strongly that this programme is quite successful because we have exactly these elements and attitudes that we talked about this morning: a methodology that is child-centred and organised according to the eight steps we have defined. Without following these eight steps, I think it would not have been possible to integrate that many children and to take care of that many children who are very vulnerable within the West African countries. When it comes to identification, it is often police officers or state officials who identify the children and refer them into this network.

The methodology of intervention that has informed the regional standards of child protection defines a process in eight steps:

- Identification of the child
- Emergency care of the child
- Alternatives for placement of children outside their families
- Assessing the child's personal situation
- Tracing and assessment of the family and environmental situation of the child
- Social and professional reintegration of the child
- Monitoring the child after his/her return to the family and/or community
- Support to strengthen parental capacities

This methodology can be applied for any situation of children in vulnerable situations.

The eight steps of the standards define a procedure to ensure that the child's best interests are given due consideration by the actors who are in direct contact with the child. In order to support and strengthen this approach, we have defined the following guiding basic principles and quality standards:

*A : Common ethics*

*B : Professional attitude*

*C : Support measures directed to the child*

*D : Support measure for the benefit of families and communities*



We conduct training to raise awareness that if they follow these steps, they will likely be much more successful in taking cases to the court and building the cases when a child has been exposed to trafficking. The police are quite good in identifying the criminals but they are not that good in treating the children and getting the information from them. But it has been understood that we need each other. The child needs a good shelter where the child is relaxed and safe and trusts to speak out and to cooperate.

In each country, our partner organization works together with the national partners, they have their own networks and local partners to go to visit the families and to find out information about the child's family. We are very reserved about cooperation with European embassies in those countries and prefer to work together with local networks of contacts and partners. It is extremely important that the moral and ethical framework is respected by each actor involved. After these years of experience within building the network within the region, we are now certain that our partner organizations in the field are ready to receive requests from the North.

One of the most important resources for tracing family members is the child him-/herself. In order to use this resource well, the child has to be in a safe place, where he/she feels safe and at home. With our partners in the West African countries, we don't have a problem in obtaining the information about the child. Why do the children who arrive in Europe not want to say anything about their background? What can we do about the child's situation in Europe when we don't know the child's history?

Our partners work with fact sheets about each aspect. Fact sheets are being transferred to partners in other countries. Personal data protection in West African countries is a bit less developed than in many European standards.

Once the child is back in the family, we have a system for two years of monitoring, this is very strictly in place and not only the child but also the family is being supported. So the parents have the chance to own money to be able to take care of the children.

#### *Tracing and assessment of the family and environmental situation of the child*

Most of the vulnerable children who are identified by the authorities provide information that helps to locate their parents or relatives. Once the family has been located, a social study is conducted to assess the child's relation to his/her family and determines the conditions under which the return of the child should be organised. The social study aims to collect information and identify the psychological and moral needs of the child. The professional conducting the assessment should be attentive to the whole family in order to understand the causes of the separation from the child and to evaluate the potential and weaknesses of the family members.

In transnational cases, the family assessment is collecting information on the following:

- Family size
- Relationship between the family members / family dynamics
- Place of life / environment of the family
- The immediate needs of the child after his/her return
- Is the family ready to welcome the child?

- The opportunities of the environment (school, training, other opportunities)
- If a foster family must be considered, is there a solution in the child's extended family?
- etc.

### *ISS activities and experiences in family tracing and risk assessments in Switzerland*

Switzerland has a similar asylum system as the Netherlands, although, as a federal state, we are dealing with different social and guardianship systems. As a non-EU state, we organized a lot of conferences on the best interests determination and the durable solution. Because Switzerland is not a member state of the EU, there is little awareness about the key Directives and concepts, only the Dublin Regulation and return policies apply for Switzerland as well.

The ISS is therefore conducting awareness raising and capacity building activities by organising conferences and seminars on the best interests determination process, durable solutions, the right of the child to maintain in contact with the parents, aged out minors, etc. ISS is also holding meetings with legal guardians, social workers and social educators in order to present the possibilities of ISS to trace and assess families in the country of origin and the ISS-methodology.

### *Steps for obtaining a social evaluation report*

When we exchange with guardians, we establish that the main interests of ISS to engage in family tracing is the right of the child to establish family contact and maintain relations. The state motivation might be a different one. Knowing the context in the country of origin, we cannot ask our partners to pass by the family many times, but of course they have to monitor the situation.

There are a few steps that need to be followed in order to obtain a social evaluation report for an unaccompanied child in Switzerland:

- The legal guardian, social worker or social educator identify separated children willing to re-establish contacts with family members.
- Meeting with the separated child, legal guardian, social educator and ISS in order to obtain all information from the child.
- Collaboration between ISS and the ISS partner in the country of origin with the objective to obtain a social and economic evaluation report on the situation of family members in the country of origin.
- The report will be given in the hand of the separated child and the legal guardian. The separated child (in line with his/her age and maturity) decides together with the legal guardian whether or how to use the report and when.

Those persons who are daily around these children know the children much better than the legal guardians. Social educators are very well placed, they live with the children and know them well, we motivated them to inform us when they have the impression that a child would like to try and trace a family member. So we meet the child. Our experience is when we try to motivate our local partner to travel to a village somewhere in Senegal, we think the direct information is very important for us, but also for the child to see with whom he/she is dealing.

Some case examples: An underage mother stated that she had escaped from her husband after her father had forced her to get married. The asylum authorities do not believe her story and she says the only person who could confirm this is the maternal uncle but she does not have the phone number, so it might be possible to trace him. Another case is that of an Afghani boy who once received a confirmation that his father is not in Afghanistan but was staying as an undocumented migrant in Iran. Confirming this information would be important, so there would be no way to repatriate the child to the father allegedly living in Afghanistan. Another child who lost contact with his brother, was describing the village where he comes from and that information enabled our local partners to identify the village.

All of these guardians, social educators, and the local partners of ISS conducting the tracing play an important role in informing the process for assessing and determining the best interests of the child and deciding about a durable solution. They have access to important information directly from the child.

In case management, case workers are therefore an important source of knowledge and experience. It is important to feed the information they provide back into policy making, as a source of inspiration for policy making. It is important to connect the different levels of public administration and practice, the local front-line level with the central level of policy planning. It is likewise essential to create effective partnerships between public and private actors and these partnerships are also important for ensuring effective monitoring and oversight over case management, the identification of durable solutions and the return of children.

**Wednesday, 14 May 2014**

### **Session V: Transfers within Europe – Implications for asylum seeking children and families (Dublin III Regulation)**

**Rebecca O'Donnell, Child Circle<sup>2</sup>**

I have been asked to set the scene on the framework and issues that are concerned by the EU Dublin rules.

A few words of introduction on my perspectives and Child Circle. I am an Irish lawyer, involved in EU law in Brussels for over 20 years; the last 7 years I have been practising in the field of child rights and child protection, with a particular focus on asylum and migration issues. I spent nearly 6 years with Save the Children EU Office and in that capacity was involved in contributing to the recast of the EU asylum instruments, including the Dublin Regulation. I am currently working on a range of EU focussed issues and projects with organisations in Brussels and nationally. In particular, one of these projects, CONNECT, looks at the actors engaged in the situation of unaccompanied children. A range of partners, including Save the Children, Nidos and UNHCR who are at this seminar today, are involved. One of the project products will be an EU Reference Document which compiles all of the relevant EU law and policy relating to unaccompanied children. It should be of interest to this project.

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<sup>2</sup> Written contribution by Rebecca O'Donnell, Child Circle, 20 May 2014.

I am a co-founder of Child Circle, which is a recently established Brussels based NGO, focussing on strengthening child protection systems in Europe, primarily through contributing to and commenting on EU law and policy and its implementation nationally.

We are looking forward to the publication by the European Commission of EU Guidance on integrated child protection systems in the autumn. One of the aims of Child Circle is to help connect national experiences to the regional agenda and vice versa.

Introduction to this presentation

My approach today will be to explore some key issues that we, together as practitioners, lawyers, policymakers, need to think about – and act upon – in relation to the Dublin Regulation. This presentation will not involve a detailed technical description of the Dublin rules. In a nutshell, the Dublin rules establish which Member State should examine the asylum claim of an applicant who has arrived in Europe, and who may indeed have moved within Europe. The Dublin rules take the approach of setting out criteria which identify a national jurisdiction responsible for taking a decision. They involve transferring the asylum seeker to that jurisdiction. We know that transferring children from one country to another country can entail real risks to the child, whether they are separated from their family or within families. So the key question is: are these risks properly identified and addressed in the Dublin rules and what else needs to be done? That's what we should think about today. As a side note, let us remember that there is an ongoing broader debate on how to construct the common European asylum systems. Some suggest that to avoid asylum seekers having to “shop between jurisdictions”, what is needed is joint EU-level processing of asylum claims, or, in the alternative, mutual recognition of refugee status which would allow a refugee to travel around Europe once he or she has received a positive decision from a Member State. These might lead to dramatic alternatives to the Dublin system. But let's here focus on the Dublin system as it works today.

Again as a preliminary word, let me emphasise that we should think about both unaccompanied children and children within families. Both can be in very precarious positions and risk exploitation. Both can have been trafficked or be vulnerable to traffickers.

Let me start with the state of play in the evolution of this Dublin system (Part I), followed by consideration of key features of the Dublin system (Part II), and an examination of central provisions of the new Dublin III (Part III).

#### PART I: State of Play

The Dublin system involves a complex set of rules which are currently evolving; more work lies ahead. They take the form of an EU regulation which contain the general rule, as well as an implementing regulation which contains more detailed “operational” provisions on implementing the rules. It sometimes seems that the Dublin legislation created a labyrinth, rather than a clear system. And indeed it can in particular be the case in relation to child asylum seekers; the original rules were not very clear and sometimes created difficulties, rather than solutions. But these measures are currently under renegotiation: where are we now?

A so-called recast Regulation (Dublin III) and amended implementing regulation have recently been renegotiated. Some major improvements were introduced in the new measures as regards children and we will come back to these. In short they include the fact that:

- Dublin III is now much clearer that the best interests of children are taken into account across all actions under the rules;

- There are improved provisions on informing and assisting unaccompanied children in relation to the rules; and
- It enhances the possibilities for transfers of children for reunification with family members or being transferred to the care of relatives.

So things are moving forward.

As negotiations were taking place on the recast provision, a case was heard before the European Court of Justice in Luxembourg on the application of one of the most sensitive and contested provisions under negotiation, Article 8, the rule concerning which Member State should hear the case of an unaccompanied child for whom no family member or relative within Europe has been identified.

The judgement in Case C-648/11, *MA and Others v UK* was delivered in June 2013, just before the scheduled adoption of the Dublin III Regulation, and not only the adoption of the Dublin III Regulation but also the recast Asylum Procedures Directive. Rather than take the risk of reopening difficult negotiations on this package, the European Parliament and Council agreed basically to go ahead with the adoption of the rules already on the table and take any necessary action to amend the specific provisions on unaccompanied children without family members in line with the judgement of the European Court of Justice afterwards.

We can expect the Commission to publish a proposal to amend the recast Dublin III Regulation and in particular Article 8 shortly. It will need to be agreed by the European Parliament and the Council. In fact, we have seen countries have interpreted the ECJ judgment in a variety of different ways, so care will be needed in negotiations. In the meantime, the Dublin III implementing rules have also been amended and they set out an information leaflet for unaccompanied minors and standard forms which can be drawn on by Member States when identifying whether family or relatives are in other countries and indicating means of proving, and the degree to which such means are reliable.

The next step is the adoption of so-called delegated rules by the Commission, in close consultation with the European Parliament and Council. These will be obligatory rules and address the arrangements by which countries should identify family members and relatives, the proof they should accept, how they will address whether relatives can take care of the child. The Commission has begun consultations on these issues, but the process will take some time. So there is still an opportunity to shape the rules and their application.

## PART II. Key features of the Dublin system which affect how it works

There are some important features to consider in relation to the Dublin system, namely the fact that it concerns both asylum and child protection laws, its transnational character and the fact that it involves difficult and sometimes “hidden” issues for children.

1. Dublin III rules for unaccompanied children involved the intersection of asylum and migration control and child protection laws: How to reconcile a range of responsibilities and goals?

The rules on who should decide on the asylum claim are there to enhance clarity, ensure efficient administrative action. The rules also clearly need to ensure that children are not exposed to risks. And being at an intersection of these different responsibilities means that it is not always clear how the various priorities are reconciled, what guiding principles apply, who has the right of way.

For example, different actors may be responsible for different goals, with immigration officials concerned with the asylum regime and child services involved in protecting children. So when two

responsibilities “meet”, which actors take the lead in deciding what needs to happen and have they the right mandates to do so? Or how do these actors cooperate in this field? The recast Dublin III rules bring some progress in this regard, requiring the involvement of trained officials and giving a stronger role to guardians of unaccompanied children. Let’s build on this progress.

2. The transnational character of these rules: Dublin III involves cross border arrangements which of their nature raise the risk of significant differences in approach: so are the necessary forms of cooperation in place and understandable?

Dublin III requires countries to examine and reach decisions on the situation of a child that may be of concern to a number of countries either because the child is or has been in that country, or they have family members or relatives in that country. Consequently, different pieces of the puzzle are in different countries and they should be brought together. More specifically, this involves countries working together on issues such as:

- Identifying where a child or their family has been;
- Identifying where family members or relatives are located;
- Establishing ability to take care of child;
- Establishing best interests of child;
- Establishing arrangements for transfers.

We need to be sure that is clear which tasks are for each Member State, and which actors are involved. It needs to be clear who is responsible for gathering information, who is responsible for assessing the information. These decisions may be influenced by different approaches and cost concerns.

3. Particularly sensitive and difficult issues when children are involved but they are not always really identified when countries are applying the rules, let alone addressed. We need to avoid potential “black holes” in the rules or their application. Here are just some of them:

- Invisible children: Children are often treated almost like passive objects attached to adults. Will the circumstances of the child within a family be examined before a transfer decision is taken?
- Case closed: what happens when a child is in one country and a decision has been made already in another country when they moved, even where a decision on his or her application has been made in his or her absence? In some cases, the child might not even know an application was made on their behalf when they entered Europe.
- Child or adult: Should a child be transferred back to a country without a firm agreement on the child’s age between Member States? It has happened that a person considered and supported as a child crosses a border between two Member States, only to “transform” into an adult who is not entitled to any special protection or assistance.
- Assumptions: although decisions may refer to the best interests of the child, decision makers sometimes seem simply play lip service to this principle of best interests, acting on assumptions rather than examining individual circumstances. Failing to investigate may mean that risks are ignored, including the risk of someone being in the hands of traffickers.

### PART III: Principles and procedures

A word on the central changes in the Dublin III regulation for children.

#### *Best interests’ principle*

It is now clear that the best interests' principle applies in relation to all actions under the Regulation and must be considered by reference to a list of factors, inspired by General Comment No. 6 of the UN Committee on the Rights of the Child on unaccompanied and separated children outside their country of origin. However, there is not yet a clear indication of what process leads to decision making on the best interests, nor who is involved. The principle should also guide decision-making in relation to the transfers of children within families. This should be considered more systematically.

#### *More options under Dublin III for unaccompanied children*

There is now an enhanced opportunity for reunification with family members as well as with relatives, subject to an individual examination.

#### *Improved Engagement with, and support for, the child*

Engagement with and support for the child is enhanced by information requirements, and the development of a specific information leaflet for children. There is also provision made for the involvement of a representative in the interview with the child and in the examination of the situation of the child. The Dublin III representation provisions also provide clearer indications of the role of the representative to safeguard the best interests of the child and the qualifications needed to act as a representative. More generally, actors addressing children are subject to training requirements.

#### *Ongoing challenges in focus*

We need to think carefully about the real challenge of efficient decision making and the more complex process of examining the circumstances of individual children, or the safeguards in how to do it. It is very welcome that the European Court of Justice clearly acknowledged that the best interests' principle is central to decision-making in relation to children. However, it also appeared to establish a general rule which equates the best interests of the child with staying in the Member State in which they were found. In this regard, it can be contrasted with the earlier opinion of the Advocate General which posited a similar ruling but specifically noted the need in exceptional circumstances to allow for the transfer of a child to another country if her/his best interests so required.

In the new rules, there need to be safeguards that the individual circumstances of the child will be considered. One possibility is involving guardians more closely in the process, which would require ensuring that the guardians are adequately equipped to do so and acknowledging that timing under Dublin is quite tight. Assessing the care of the child by a relative in another country is another sensitive issue and we need to think carefully about it. What does care mean? Is it clearly defined? Who and how is the capacity assessed?

Take one concrete question: Does care concern day to day care? Or does it involve playing the role that a guardian does? This is relevant to whether a guardian is appointed to an unaccompanied child transferred to Sweden to the care of an aunt. If the aunt is considered to be the adult responsible for the child, the child may not be entitled to the assistance of a guardian. So when the care by the aunt is assessed it needs to take into account these factors.

As a more general point on the application of the Dublin III rules, we must remember that they are one part of the overall picture. From a child protection perspective, arguably, we should never be applying these asylum rules in isolation. The broader obligation for Member States when addressing the situation of an unaccompanied child is finding a durable solution for the child,

asylum is a part of this picture. We must consider the application of other relevant measures. For example, the interaction of the EU Trafficking Directive with the Dublin III rules may require consideration of how much time should be allowed for decisions on transfers.

### *Looking to the Future*

From these reflections on Dublin III, which are by no means comprehensive, let's turn to the future. What avenues are open to addressing these issues? These include contributing to the negotiations of new amending Regulation and delegated rules. It should be recalled that this is not just a Brussels advocacy exercise before the Brussels based actors, it involves national advocacy before Member States. Secondly, is the important exercise of contributing to how member states implement the rules. The Commission hosts so-called "contact committees" of national representatives on the implementation of the rules and these meetings sometimes include the contributions of experts in the field. Some organisations here today may have particular expertise on cross border assessment of care for example.

There are also a number of ongoing practical projects that can be undertaken to create better approaches. Some projects are already underway, including one led by the Dutch guardianship authority, Nidos and another led by IOM with the involvement of Save the Children. Further EU measures of support could be adopted, including development of training, guidance on promoting a multi-disciplinary approach, promoting inter-agency cooperation.

In conclusion, the challenge (and opportunity) before actors is how best to play a role in the collective work of effective and efficient cross border cooperation on child protection. Thank you to the Council of the Baltic Sea States for the opportunity to contribute through this seminar.

### *Discussion with participants*

The question of how to define and qualify 'care' and if or how to transfer guardianship in the context of transfers under Dublin has not been clarified. There needs to be an individual examination of whether the relatives whom the child is transferred to can take care of the child. How can this to be done? It would be good to assess the care person according to the same procedures as assessments are made within the national child protection system. But in practice, the transfers under Dublin are not clearly connected to national child protection procedures. It depends on how the specific state interprets the regulations; they might decide that the person is also taking on the guardianship and/or legal representation of the child. When we are setting up rules to guide the examination of adults to be responsible to care for the child, we need to specify exactly what all of that entails.

When a child does not have a family member or relative, do they stay and make an application or are they transferred back to the first state they entered? That is not clearly regulated. The court took the view that in general it would be in the best interests of the child to stay in the country where they currently are, to prevent prolonged procedures and delays. There are however also other opinions of this. This shows how difficult it is to combine the perspective of the decision making bodies and making an individual assessment of the child's situation, but these do not necessarily need to be in conflict. Now is the opportunity to renegotiate this, because the rules will be before the Parliament and Council again.

So the only issue that is to be renegotiated is what will happen if the child does not have any family members or relatives within the country.



Considering the inconsistencies of the guardianship provisions and quality of guardianship in EU MS, it would be very important to clarify not only the transfer of guardianship, but to also provide for quality standards of guardianship and legal representation and, in particular, to ensure that the child has a lawyer appointed before and after transfer.

How does Dublin III refer to the Hague Conventions? Can the central authorities be involved to assess the situation of the aunt in Sweden? Yes but a process involving the central authorities takes a lot of time, and under Dublin, the assessment has to be taken in three months. The transfer of jurisdiction, and the conditions and procedures for this transfer, are not formally established under the Dublin III Regulation. There are also no specific regulations on how the child's situation will be monitored after transfer, this depends on the rules and procedures in place in the receiving country. It appears that it would be important to pay more attention to the coherence between the different EU Regulations and Directives, including how Dublin Regulations relate to the Brussels II Regulation and the Trafficking Directive. Under the letter, for instance, MS have an obligation to look for a durable solution for the child. How does the Dublin III Regulation relate to this?

## **Germa Lourens, Guardian and Dublin Official at NIDOS**

### **Nidos, Independent guardianship and (family) supervision agency, The Netherlands**

#### **The work of NIDOS – Working process in relation to UMA's and Dublin**

The presentation will address the following issues:

- Nidos as the legal guardian for unaccompanied asylum seeking children in the Netherlands;
- Nidos' role in Dublin cases;
- Concrete case examples; and
- Conclusions and recommendations

NIDOS acts as a legal guardian for unaccompanied children in the Netherlands. It is the one organization for guardianship for unaccompanied asylum seeking children in the Netherlands, and is appointed as guardian by the Juvenile Court. In the Netherlands, the guardianship for unaccompanied children is immediately organized upon arrival of the child in the country. Nidos is a professional organization and all guardians have a University degree in social work. Nidos does not work with volunteer guardians, as is common in some other European countries.

Nidos is composed of a Head Office in Utrecht, seven regional offices throughout the country, and in addition, there are five special teams that focus on specific thematic issues. One special team is located at the airport, for instance, and one is tasked to find foster families for the children. Currently, there are approx. 50-70% of children living in foster families in the Netherlands.

There are several types of guardianship measures that Nidos arranges for. The most common form is temporary guardianship for unaccompanied children who have a care taker in their country of origin. In addition, Nidos arranges also for guardians for children whose parents have died, provisional guardianship for children who arrive with parents but whose parents are deprived of this role, as for instance in cases where the parents smuggled drugs and are in prison. In addition,

family guardianship is provided in situations where the child's well-being within the family is being monitored. All these guardianship measures are regulated under the Dutch Civil Code.

The duties of the guardian include primarily to consider the best interests of the child the highest priority. A guardian is also assisting a child in growing up and becoming independent, and has to intervene when the child is at risk or threatened in any way in his or her development.

There are different forms of accommodation for unaccompanied children. Children under 14 years of age are usually accommodated in foster families. Older children are more commonly referred to a Process Reception Location, whereas child victims of trafficking are staying at a specialised protected shelter.

Nidos is giving special attention to guardianship in Dublin cases. The reason is that guardians have heard that children have had bad experiences in some Southern European countries, as for instance Italy or Malta. Some children said that they had lived on the streets, were abused, or got sick. A second reason is that when the child leaves the Netherlands in order to be transferred under the Dublin Regulation, this does not necessarily mean that the guardianship role of NIDOS ends. NIDOS has to find a new guardian for the child and the judge has to formally transfer the guardianship to the country of transfer. This is provided for under the Civil Code.

#### *NIDOS role in Dublin cases*

Nidos has the obligation to transfer the guardianship to the country of transfer or return, based on the Civil Code. So we look for a new guardian in Italy for instance, and investigate the situation after transfer to ensure that accommodation is available and the child's needs are met, with regard to guardianship, accommodation and other needs, for instance medical care. When it seems that the child is coming into a bad situation, we work with a lawyer to state that Nidos does not agree with the transfer. For that purpose, we have a special "Dublin-pool" of lawyers and psychologists. As it is very difficult to have a psychologists look at the child before a decision is made on the procedure, it is important to ensure this is done fast.

#### *Family reunification under the Dublin Regulation*

Nidos works very closely with the 'Dublin unit' of the Dutch authorities (IND, unit Dublin). So in practice if a guardian calls Nidos and says that the child has an aunt in Sweden, we have a very short line with the authorities to discuss what we should do and if a transfer to that person is possible. The family situation of the child in the country of transfer is discussed. Our role is to transfer the relevant information about the development of a child. We would prefer to give it directly to the new guardian. But sometimes we do not find a guardian so we transfer the info to the relevant authorities or the new guardian.

#### *European project: "Dublin support for guardians"*

The project is implemented together with Terre D'Asile in France and Caritas Belgium. It aims to provide concrete information for guardians of unaccompanied children in these countries. Nidos operates a helpdesk for guardians from other EU MS.

Thus far, the experience with the project and the contact with guardians in other EU Member States has shown that Member States interpret and handle European Court of Justice decisions in different ways. This was noted, for instance with regard to the ECJ judgment in the case M.A. et al.

vs. UK. Following the judgment, the Dutch authorities have ceased to transfer children. In Sweden they are transferred still after the judgment. Norway and Denmark tend to follow the practice in Sweden, whereas Germany and Belgium tend to follow the practice in the Netherlands.

The state authorities are obliged to trace and find the child's family members in other Member States (Dublin III Regulation Article 6.4). In the Netherlands, this obligation was introduced into the national policy and now there are three criteria for family tracing that have been defined as part of the national policy and guide the practice. I am not aware of any good practice in EU Member States with regard to the tracing obligations.

There is also an obligation to assess the case of each child individually. In the Netherlands, there are procedures for individual case assessments. I am however not aware of any good practice in how other Member States deal with individual assessments. This creates a lot of difficulties in practice as many cases are handled ad hoc and not according to standard procedures. If a child wants to go to an uncle in Austria, for instance, there are no standardized procedures in place for Member States to assess the situation in Austria as a basis for taking the decision about the transfer.

*There are many challenges inherent within the Dublin Regulation:*

There is little time available for assessing the child's best interests. Under the Dublin III Regulation, this assessment has to be done in only three months and that is not realistic. You need more time, especially when it is not clear who is the child's guardian or will be the child's guardian after transfer and what area of the country the child needs to go to.

There are no provisions to ensure that decisions taken can be subject to judicial review. We had the example of an Afghan boy; we found out that the parents were in Italy but the boy said that he did not want to go there because he had been abused by the father. So it is difficult to assess and verify the situation and in that case, we would not identify anyone in Italy to verify the family situation. In that case, we decided to choose the safer option and to say that it is not safe for the boy to go to Italy. But that is a very heavy procedure for a court to take, to remove parental responsibility. We made an agreement with the Dutch authorities, that they automatically send a request to another Member State and if we do not agree with the transfer of the child, we still can go to the judge.

There seems to be no legal remedy to a rejection of a request based on 8-1 or 8-2 Dublin III. We had a girl who was very depressed and psychotic, she had an aunt in the UK and there was an assessment that concluded that it was in the best interests of the child to stay with the aunt but the aunt would need support to take care of the child. So we sent that information to the Dutch authorities and they forwarded it to the UK. The UK authorities declined however to receive the girl because they said that the aunt was not fully capable to take care of the child. In these cases, there is no way of seeking legal remedy. This shows also that it would be important to have a clear definition of care and what it really means in the context of Dublin cases.

There are many dilemmas in cases of children who shall be reunified with their family members in other EU Member States. When we have cases of children who have to go to Italy, for instance, we always write a statement that we do not agree with the transfer. But now when we have cases of children with family members in Italy or Malta, it is difficult, because you know that there could be a situation that is contrary to the Article 3 of the European Convention on human rights.

During the discussion, the participants questioned what happens when the three month period for filing a claim under the Dublin rules expires and the necessary assessment has not yet been made? If the request has not been sent to another Member State yet, then it has expired and the country where the child is currently staying is responsible. The procedure of transfer cannot be reopened under the Dublin Regulation. It is however not clear, how such a case could be handled under other international and regional instruments on family law, such as the Hague Conventions or the Brussels II Regulation.

What does care really mean? It does not need to be perfect care, but ensuring basic care that enables the child to be safe, to thrive and to develop.

There are many dilemmas when it comes to determining what is in the best interests of the child. What is the role of the child's views in this? If the child says "I want to go" and we say that we want to investigate the situation at least before the child leaves, and if the child then gets upset about this, that can happen, but it still means to take the child's views into consideration and that is in the child's best interests, and it is our obligation to assess the situation before a decision is taken.

Family tracing is conducted usually with regard to return but not with regard to Dublin cases. This constitutes a discrepancy between standards and regulations in place for different groups of children.

The question of family reunification and the child's rights in this regard have not yet been entirely clarified. We have cases of asylum seeking parents in one Member State and their unaccompanied child in another Member State. When they are all asylum seekers, it is not always very clear who does what. In particular in cases involving Greece, it remains often unclear which authorities need to take certain decisions and when. The assessments might conclude that it is in the best interests of the child to be reunited with the family and when this would imply being transferred to Greece, we would usually agree that the family comes to the Netherlands and not the other way around.

When the three months for taking a decision on the child's best interests are not enough, we might make the claim for transfer so then we will have some more time for the assessment while it does not necessarily mean that the child has to be transferred.

Transfer of guardianship to the country of transfer: Under the Dutch Civil Code (art. 1:322 lid 1 sub c), there is an obligation to transfer guardianship when an unaccompanied child is leaving the Netherlands. The responsibility of a guardian does therefore not end at the border. Nidos has to find a new guardian who gives a written consent to take over the guardianship and the Juvenile Judge has to decide that this is in the best interest of the child. The Brussel II-bis Regulation regulates that guardianship measures from one EU Member States are recognized in another EU Member State. In practice, it is however not always clear what this means exactly. For instance in immigration procedures, if the state decides to transfer a child while there is no guardian who is prepared to take over the guardianship – is this a reason to cancel a transfer? This is a question about different law fields (asylum law and family law) and what comes first? In the Netherlands this is not clear at this moment.

Once, I accompanied a child to Italy and the boy was simply sent to the street while I was there. Through an NGO, we got to a judge who stated that the child was not unaccompanied because I was there with the child. The practice in the Netherlands to transfer guardianship to the country that the child is transferred or returned to is unique in Europe, other Member States do not

commonly offer this service. The report that Nidos made of this experience has had an impact in the Netherlands and some transfers to Italy were cancelled by the Juvenile Court because the report provided a concrete evidence that the transfer to Italy can lead to a situation that is contrary to Article 3 ECHR.

**Odeta Tarvydienė, Director**

### **State Central Child Protection and Adoption Service under the Ministry of Social Security and Labour**

The presentation is focused on the 1996 and 1980 Hague Conventions as well as the Brussels II Regulation and the Dublin III Regulation of the European Union.

The Dublin III Regulation addresses not only on procedural matters but also social matters. The Government of Lithuania decided therefore to extend the mandate of the State Central Child Protection and Adoption Service also to unaccompanied children and the assessment of their situations.

Article 6 of the Dublin III Regulation states the following:

The best interests of the child shall be a primary consideration for Member States with respect to all procedures provided for. In assessing the best interest of the child the following factors are important:

- Family reunification possibilities;
- The child's well-being and social development;
- Safety and security considerations, in particular where there is a risk that the child might be a victim of human trafficking;
- The child's views, in accordance with his or her age and maturity, including his or her background.

Under the Dublin III Regulation, the EU Member States have the following duties:

To respect family life and to take appropriate action to identify the family members. This means that all necessary actions have to be taken to identify the child's family members. Under the Regulation, a child can also be placed with members of the extended family, i.e. uncles and aunts or other family members. This is conditional to a test ensuring that the person is the real family member. A DNA test is however costly and might take more time than the three months allocated for the decision making process under the Regulation. During all procedures, the state has to ensure that the child is provided a representative, with the required qualification and expertise, to represent and assist the child.

When the applicant is an unaccompanied child, the presence of a family member or relative on the territory of another MS who can take care of him or her should become a binding responsibility criterion. If a family member is identified in another MS, that state has to provide the relevant information.

Dublin III makes some procedures clearer and better than before but there are also many open questions.

How are we determining the child's best interests in the context of the Dublin III Regulation? The most important factor that we are starting from is the identification of facts – facts about the child, his or her identity, the specific situation and circumstances of the child, matters of safety and security, the child's family situation, social development and particular vulnerability. Then we can go further to find and search for the best decision for this child. This includes also to hear the child's views and to take them into consideration. In some cases, it is possible that the child's wishes are not what we consider to be in the best interests of the child, for instance when the child wants to be with family but the family abused the child before or was involved in trafficking and exploiting the child.

When we are assessing the best interests of the child, we are seeking to assess the influence of our decisions on the child's future. Qualified specialists are very important, they have to be aware of the child's needs. The immigration authorities need the help of child protection specialists to assess the needs and situation of the child because immigration authorities have not been trained specifically to do these kind of assessments. It is also important that the decisions taken can be reviewed afterwards, if this was in the best interests of the child. These assessments take time. They also require a legal representation of the child.

The identification of information and gathering of facts is critical for assessing the child's situation and background and determining the best interests of the child: We work with a network of institutions that might have information about the child. They include the EU Member States' competent authorities, social workers, child protection services, health care services, legal representatives, guardians, the child's family and extended family, and others. It is not always easy to get information from these institutions, and these institutions are also cooperating with NGOs so we have more and more actors involved.

An important element of these assessments is the family assessment. These assessments need to look at the best interests of the child and the child's views; the ability and wish of the family to take care of the child; finding a permanent solution as soon as possible; allowing the child to maintain the cultural identity and connections with the family and community of origin; and assessing the supportive services available to the family.

When an unaccompanied child is identified in Lithuania, the Border Service or police inform the Central Child Protection and Adoption Service about the child. The child is interviewed, with a translator, a legal advisor and a child rights specialist. For children under 14 years of age or those who have a valid ID document, the Service decides to place the child in a central refugee reception centre, which acts as the guardian for the child. The decision about the child's age is taken by the Service. In other cases, there needs to be a court order about the referral of the child. The Migration Department seeks to locate the child's family. When the family is found, it is the responsibility of the Service to conduct the individual assessment of the best interests of the child and the possibility to return and reunify the child with the family and how to arrange and prepare for the meeting between the child and the family, especially in cases where they have been separated for many years.

#### *Transfer under the Dublin III Regulation*

In January, the Border Services identified a 16 year old boy from Tajikistan. He was unaccompanied and – upon decision by the Court – was placed in the reception centre operated by the Red Cross. The boy did however not apply for asylum. With the assistance of the Red Cross, it was identified that his parents lived in Germany and had applied for asylum there. So the Migration Department send a request to Germany and the authorities agreed to send the child

there. The boy agreed to be reunited with his family and was transferred to Germany under the Dublin III Regulation.

A challenge under the Dublin III Regulation is the procedure for family assessment. In other international and regional standards, we think that there are very different standards provided for the family assessment. The same is true for the assessment and determination of the best interests of the child. As we are talking not only about unaccompanied asylum seeking children from third countries, but there are different case scenarios and one of the cases that we have at the moment could be a possible child trafficking case. The differences lie particularly in the standards for the assessments, the qualification of the specialists conducting the assessments, the standards for the assessments and the use of a uniform form.

The potential child trafficking case was not as straightforward as the case of other Dublin transfers. On 19 February, we received information from the Embassy of Lithuania in Switzerland that a 17 year old boy was detained in Switzerland. According to the information, the boy was part of a group of adult men and had participated in robberies. In interviews with the authorities, he had stated that he had come to Switzerland to visit the zoo. When we received this first information from the embassy, we started gathering information about the boy's family to find out if he could be returned to the family. On 25 February, the Service found out that the boy's mother had reported to the police that the boy was missing. On the same day, the Service informed the Lithuanian police that this might be a case of child trafficking. On 5 March we got a call from the Embassy that the boy will be in Lithuania in 2 hours because he was already on the plane when they called. So we can see from this case that there had not been any assessments or preparations made before the boy was returned. That is a common situation. The host countries do not always identify the children as possible victims of trafficking.

The 2007 Directive provides that the law enforcement authorities of Member States should continue to cooperate to strengthen their fight against human trafficking, in particular through close cross-border cooperation, including sharing of information, sharing good practices and an open dialogue between the police, the judicial and financial authorities. From our practice, we can see that this the information exchange about child trafficking cases is difficult and not always happening.

In order to protect child victims of trafficking from further victimization and re-trafficking, it is however essential that host countries and countries of origin cooperate in the planning of assistance, support, return and reintegration. The numerous authorities, institutions and organisations involved in a case, and the inconsistency by which they cooperate and communicate across borders, is however making this cross-border cooperation very difficult. In some cases, the communication flows directly between the various actors, in other cases, it is channelled through the embassy.

Other cross-border cases involving children are regulated by the following international and regional standards:

- Child abduction regulated by the 1980 Hague Convention on the civil aspects of international child abduction;
- International adoption regulated by the 1993 Hague Convention on protection of children and cooperation in respect of international adoption;

- Parental rights regulated by the 1996 Hague Convention on jurisdiction applicable law, recognition, enforcement and cooperation in respect of parental responsibility and measures for the protection of children;
- Child maintenance regulated by the 2007 Hague Convention on the international recovery of child support and other forms of family maintenance:
- Member States of the EU have the special Regulation Brussels II bis (2003) on jurisdiction on parental rights, a regulation on jurisdiction and cooperation on maintenance.

Under these instruments, the States Parties and Member States have established central authorities. It is their task to assist with the application of these treaties or Regulations and they shall specify the geographical or functional jurisdiction of each.

Functions of central authorities (CA):

1. *General functions:*

- Communicate information on national laws and procedures;
- Take measures to improve the application of the Convention or Regulation;
- Strengthening their cooperation and meet regularly.

2. *Cooperation on concrete cases:*

The CA shall, upon request from a CA of another Member State, cooperate on specific cases and take steps to:

- Collect and exchange information on the situation of the child, on any procedures under way; or on decisions taken concerning the child;
- Provide information and assistance;
- Facilitate communications between courts.

The experience made with the application of the Hague Conventions and the Brussels II Regulation and the assistance provided to children and families under these standards could be seen as a good examples of how cases of child trafficking could be managed. The same standard of cross-border regulations and procedures have thus far not yet been established for child trafficking cases.

During the discussion, participants elaborated further on the added values and advantages offered by the central authority as it has been conceived in Lithuania. The State Central Service for Child Protection and Adoption is part of an agreement between the police, prosecutor and social security that all cases involving children always have to be reported to the social security institutions. The Central Service has established very good cooperation with the Ministry of Foreign Affairs, it offers training for newly appointed ambassadors and provides them with information. Usually, embassies know whom to refer these cases to.

It is a gap that the Trafficking Directive does not specify that Member States have to appoint a central authority to take care of child trafficking cases. The Anti-trafficking Coordinator or Rapporteur is responsible more for statistics but is not necessarily involved in the coordination of concrete cases. The Lithuanian Central Services has however established successful cooperation at the EU level. It cooperates on migration management issues but not yet to the same degree on



child protection. As the Commission is adopting a communication on integrated child protection systems, this would be a good opportunity to strengthen our cooperation in this field.

## **Session VI: Returning, reception services and follow-up – Prevention of re-trafficking**

**Jan Murk, Advocacy Officer UNICEF, The Netherlands**

### **Return of unaccompanied and separated children to institutional reception or families**

#### **Cooperative project with Unicef Offices in Belgium, Denmark, Sweden, Norway, the UK and the Netherlands in cooperation with Unicef Headquarters, Geneva and Brussels**

The presentation will address the following issues:

- The current state of affairs
- The perspective of states
- The perspective of children
- Return to family
- Return to institutional reception
- UNICEF approach
- Recommendations

The return of children has been a very sensitive topic for many years. Different options are being explored, with slightly different outcomes and ambitions at different moments of history. There are different goals, to assist an individual, the goals of the state and the perceived interests of the public, which are sometimes in conflict. Unicef's approach to the topic is rooted in the UN Convention on the Rights of the Child.

#### *The current state of affairs*

There is a significant number of unaccompanied children in EU Member States and states invest in increasing the number of returns. Return is an issue that comes up frequently in the public debate, in different contexts. Despite the high investments in this area, there are hardly any returns of children before the age of 18. Asylum is however not granted in many cases. In consequence, there are long periods of uncertainty for the children and some choose to remain with an undocumented status when approaching 18 rather than return, others are ageing out and then return, whereas some choose voluntary return.

#### *The perspectives of states*

From the state perspective, the return of rejected asylum seekers is the preferred option. Children whose asylum application has been rejected can be returned to family members or to an alternative 'adequate reception'. The state authorities adopt this position and are exploring how to stimulate a high number of returns while using one of these two options.

### *The perspective of children*

Children whose asylum application has been rejected are facing pressure from the state to return. When they do not return voluntarily as children, they are facing to be returned once they turn 18 years old. The children come from very different backgrounds, from different countries and have migrated for different reasons. For some children, the migration was influenced by the families.

The children need care, support and assistance and they face many pressures, for instance from the side of the state, from within the family, or pressure from smugglers, exploiters or traffickers. Pressure may arise also from the perspective of returning to the country of origin and what this will mean for the child. This might cause fear of the consequences of returning.

There are two ways in which separated children might return: to their family or to an institution.

### *Return to families*

States should attempt to trace and locate the child's family, to re-establish contact and reunite the child with the family if this is in the best interests of the child. So there is an obligation to explore this option, but this does also cause a tension when a child arrives unaccompanied. Many children do not disclose details about their family members and their situation back home. They might be doing this on purpose for numerous reasons.

States are investing in family tracing and there is a tension in that as well. While states are obliged to assess the child's family situation, they also have an interest to find out about the situation and possibilities of return to the family. The methodologies and actors involved in family tracing differ according to the specific country and context. The methodology and safeguards in family tracing have not yet been clearly defined but are rather emerging from practice. The state authorities might use state authorities from their own country or the origin country, or non-state partners. In some cases, they use the embassies, local actors and in some cases also the government in the country of origin. So it has to be very clear at what time and for what purpose the tracing is done and how the information gathered is being used.

There are currently no clear regulations with regard to the child's consent to family tracing and the right to be informed. Some countries seek the child's consent and keep the child informed, others do not.

Safeguards in family tracing have not yet been clearly defined. There are no unified regulations of how to establish whether there is a family or not and how to establish contact, and how to assess the family relations.

There are also different objectives involved in family tracing. One objective could be simply to affirm that the child is unaccompanied, another might be to re-establish contact and to gather information to inform the decision making process for identifying a durable solution for the child.

At which moment does the family tracing take place? It could be once that the asylum procedure has been concluded or while it is still ongoing. The safeguards that need to be considered, including with regard to confidentiality, differ according to the timing chosen, as do the procedures.

### *Return to institutional reception*

Return to institutional reception is also referred to as return to 'orphan houses' or 'return houses'. The issue has been debated several times over the past 10-12 years and has been considered again more intensively in the recent years. Does it actually happen? There are many differing statements about it and according to the information we have collected, it is hardly happening in practice. The only larger scale example is the set-up of return houses in Angola and the DRC. These institutions are still being financed but are not active in the sense that there are returnees. There is no information that children have actually been received at these return houses. A few cases were reported, approximately 3-6 children, who were to be returned to these houses between 2003 and 2005. According to the information we gathered, the children were told that they were to return to an institution in their home country because they did not have a family they could return to. Many of these children, slightly over 100, returned home voluntarily, and a couple of hundred children went missing. The exact numbers are cited in the forthcoming Unicef report. So the option of return to an institution increased voluntary return as well as children choosing to remain in Europe with an undocumented status. It can be assumed that the return to institutions has an intimidating effect on the children but there is no evidence to support this assumption. In fact, there is no monitoring of the situation in the return houses and only incidental information on the well-being of the children.

As the possibility of returning children to institutional reception is being debated again and is being looked into by some European states, it is important to address the open questions. Among them the following:

Is return to institutional reception a choice as a result of a best interest determination? It is difficult to assess the best interests of a child with regard to return to an institution, and yet it might not be impossible. There is need for more guidance and clarity on this matter.

When is reception adequate? It would be important to define the standards required to consider the reception in the institution adequate for each individual child.

What are 'local standards' and how are those defined? It may mean that the quality of the services and opportunities available for the child at the institution of return are lower than in the host country, for instance with regard to education.

What is the long-term perspective upon return? How long will the institutional reception last for and what kind of follow-up measures and support will be offered to the child?

Are the effects monitored? Where does the responsibility of the returning state end? This question is relevant in cases of voluntary return to a family member and it may be even more relevant in relation to returns to an institution.

### *UNICEF approach*

The present situation shows that the current practice of returns is not leading to an actual increase of returns. Children are often granted leave to remain in the Netherlands until they turn 18 and living in this state of limbo does not appear to be in the child's best interests. So ensuring better safeguards for children in return procedures could be in the interests of the children concerned and in the interests of the state. In order to achieve this, international obligations should be at the centre of the approach to return. It would be important to prioritise the identification of a durable

solution and the best interests of the child first before a decision is being taken on the child's return. The objective should be to succeed in identifying a viable durable solution for each child. This should be considered a priority over measuring the number of returns.

### *Recommendations*

It would be important to carefully assess the security situation in countries of return, on a national and local basis and specifically for children. The assessments on the local basis are still not being conducted consistently.

For each separated child, a best interest determination needs to be carried out to identify a durable solution on an individual basis. This should start by arranging a proper identification of a durable solution as the starting point rather than the decision over return. Putting pressure on children to return has proven not to be fruitful, not for the child's development and not for increasing return numbers, and it is important to establish family contacts and conduct all relevant assessments to inform the decision making process.

Child rights based procedures should be developed and used consistently for tracing and contacting families.

The best interests of children need to be given the primary consideration and be fully respected when a child is being returned to his or her family.

Possibilities for long-term development and durable solutions need to be elaborated and planned for.

Public consultations should be held to discuss the policy provisions needed to accompany emerging practices.

Returns to institutions should be the last resort. Children should not be returned to institutional reception unless the recommended safeguards are in place.

Forthcoming report: *Children's rights in return policy and practice, The return of separated and unaccompanied children to institutional reception or family*, UNICEF & UNICEF National Committees.

During the discussion, it was noted that UNHCR considers that return into alternative care is a viable option, for instance return to foster families. In the Netherlands, for instance, alternative care is considered a form of adequate reception. In cases where it is not possible to return a child to a foster family, then return into institutions could be considered. The University of Groningen developed a tool for best interests assessment, which is guiding the assessment of the impact of decisions on the child's right to development. It would be important to develop clearer guidance on what local standards should actually be for children.

## **Emily Bowerman, Senior Programmes Officer, Refugee Support Network, UK**

### **Youth on the move: Former unaccompanied minors removed to Afghanistan**

The Refugee Support Network is a small NGO based in the UK that offers support to unaccompanied asylum seeking children. The RSN conducted research into the situation of young Afghan asylum seekers in the UK and their country of origin (“Broken Futures”). The study was initiated against the background that the NGO was receiving text messages from the young returnees asking for contacts who could help them in Afghanistan. The objective of the study was to make the voices of the young returnees heard. A total of 51 interviews were conducted with the young people and with practitioners in the UK and in Afghanistan. Some of the statements from the young Afghans are included in this presentation.

The research revealed the challenges of transitioning from a looked-after child asylum seeker to a failed adult asylum seeker fairly quickly, basically overnight. It raised the question on how to empower young people in these situations. The study was also exploring the concept of safe return and revealed how complex the issue is. A lot of issues emerged that are intersecting but remain unresolved and unaddressed. One of them is the literacy level of the young returnees in their mother tongues and many other issues that had an impact on them being safe after return. Targeted support to the young people is essential to ensure their safety and well-being after return.

The research revealed that it would be important to consider youth as a distinct category. The dichotomy between children and adults that is currently upheld in the asylum reception system is unhelpful and unrealistic. In other policy sectors, ‘youth’ is considered as a specific category and group that is targeted with specific measures in support of the development of youth. As this period of life is essential for the cognitive and emotional development of the child and young person and for the process of social integration and economic independence, it would be important to address the specific needs of this group also in the context of migration and asylum policies. The displacement and the return of young adults to their countries of origin can have a strongly disrupting effect on the person’s transition into adulthood.

Many practitioners who were interviewed in the context of the RSN study noted that the children got much more vulnerable when turning 18. In addition, the study noted also the significant mental health implications of living in the state of limbo. This had a severe long-term impact on the children and young adults. They were affected by negative impacts on their emotional and psychological wellbeing. The research evidenced that children living in the state of limbo were affected by depression and self-harm, an inability to engage with the concept of future, and their vision of life was reduced to survival strategies.

*“We are in a prison even if we look free... I don’t know what I can do. I don’t know. Where can I go where they will let me have plans? Nothing is easy anymore, especially not the future. At the moment I can’t do anything, I just walk around... there is nothing to do. Really I have no hope.”*

There are however also certain stereotypes attached to the group of ‘youth’ just as to ‘unaccompanied asylum seeking children’. The stereotypes attached to ‘youth’ range from their perceived vulnerability to potential threats they might pose when not involved in any education or professional programme and are not socially included. It is important to be aware of these stereotypes and to ensure that the decisions and measures taken for these children and young people do not reduce them to a stereotype but consider their individual situations and needs.

*“I feel so angry because there is nothing I can do... one friend told me I should just go back and fight a jihad there because this country has given me nothing in the end. I don't want to do this, but you start to see why people feel so hopeless, and also people do anything when they need to survive.”*

The research revealed also an acceptance of over-simplified paradigms when children and young people are perceived more according to the group they are associated with than according to an individual case and needs assessment. There is clearly a risk that the different political agendas and different approaches from the various sectors involved can lead to simplistic responses.

One extreme is the Home Office stating that it was completely safe to return and the refugee sector states that everyone who is being returned will die and be killed. There are rarely well-informed positions and differentiated views of the complex reality, which is often no less compelling. Eventually, it is the youth who pay the price for the acceptance of these over-simplified paradigms.

We are still trying to get the most up-to-date figures. During 2013, approximately 100 young persons were returned to Afghanistan. Our research revealed that they returned mostly as empty handed outsiders, only very few managed to find their families. Many were reluctant to contact their families because of the debts incurred and the perceived shame of returning. There had been high expectations in them to return wealthy.

While the young persons were staying in the UK, education was one of the most important things in their lives. After return, there are however very few opportunities to continue education. A particular challenge was that they could not produce certificates of the education they have had in the UK, because such certificates had not been handed out to them by the relevant institutions, or had remained within the files of the immigration authorities, or the education they had been through in the UK did not meet the requirements of the labour market and employment options after return. There was clearly a mismatch of skills and opportunities and administrative, bureaucratic hurdles for the young returnees to capitalise on the skills and knowledge they had gained while away.

The young returnees were also perceived as ‘westernised’ which made their reintegration in Afghanistan difficult, not only because of the way they were seen and perceived by the communities but also due to their own perception and understanding of their preferred way of life. Overall, the stark contrast between the living reality in the UK and in Afghanistan had a strong psychosocial impact on the young returnees. They were struggling to make a living under the conditions of poverty and insecurity. Many were considering to leave again, and this would imply a high risk of exploitation.

One of the biggest fears that the young Afghans had been struggling with was the fear to be forcibly returned and the fear to be targeted by anti-government groups after their return. In the small sample that was involved in the research, and which cannot be considered representative, about one fourth of the young returnees had been contacted by anti-government groups. But we recognise that this is a controversial issue that needs to be looked into more in-depth.

Against this background, the RSN decided to launch the ‘Youth on the move programme’ as a UK-based support programme for young people turning 18 and facing return. Thus far, the organisation has been contacted by approximately 64 persons requesting support. The requests are mainly concerning questions about the procedures and how to get connected to lawyers. The

programmes foresees a mapping of organisations in Afghanistan and a Kabul-based Monitoring Officer.

In Kabul, the RSN met with young people who had been forcibly removed from the UK. They were all aged-out unaccompanied minors returned from the UK to Afghanistan whom the RSN had been in contact with before their return and who had stayed in touch also after their return. What we learned from these 10 young people is rather anecdotal and yet shows some of the issues that come up and the factors that render these young people vulnerable.

Most of the young people said that they were not feeling well and that everything was very difficult, they were suffering from stress and were unable to sleep, feeling dislocated. We also spoke to four young people who had chosen voluntary return and they said that they had wished they had not done that. The young people did all kinds of petty jobs to survive. They spoke about a general lack of working opportunities, a lack of connections, and a lack of understanding of how to find work, without the relevant contacts. One boy had studied IT in the UK and was realizing that he could not find employment in this sector in Afghanistan.

It was difficult for them to build up a support network and to establish contact with their families, one was in prison because his uncle had reported him to the police as he had not paid back the loan taken for his travel. The following quotes illustrate the social isolation and worries that many of the young returnees are struggling with:

“I don’t want to make friends because if I make friends I will have to sometime tell them my story and I can’t do that.”

“People think that you’re bad that you’ve been, come back, what have you been doing.”

“I think it [*the current expensive accommodation*] is the safest place I can be because I trust the person. This is important when you don’t know no one.”

“I don’t want people to find out about my story or get to know me too well.”

The issues that made it hard for them to find work is the fact that they had left their communities, they had lost their social support networks and they did not have a completed education, because they did not complete the education in Afghanistan before they left. People did not understand why the young people got back without money and without experience.

Among the 10 young returnees RSN met with in Afghanistan, four had rented a room somewhere, one of them had borrowed money to pay the rent for a place where he felt secure, some were living with friends or were hosted by other contacts, and paid for their accommodation when they managed to make some money, some had travelled quite a lot to find places to stay and some were sleeping on the streets for interim periods. So their living conditions were very precarious. Three young people had been in contact with their families, could speak over the phone but could not travel there for safety reasons.

The following are statements from one of the young returnees whom the RSN met with in Afghanistan:

“I’ve been thinking about my life and the future – it’s just empty.”

“Good things [*about the UK*] are that I was able to study. The bad thing was just being deported. I miss the UK now. Everyone there is friendly and good. Also I feel angry at the UK because I went on such a bad journey – I only came to the UK because of the problem with my father and I am angry because they sent me back here.”

8 of the 10 young people that RSN met with said that they wanted to leave again. On the other hand, staying was connected to working. Many said, if I had a job, I would decide to stay, without money or work it is very hard to stay there. Making a living is very difficult for the young returnees, as expressed in the following quotes:

“It’s not like in England... I am spending all my money just to rent the room and pay for buses.”

“But this [*construction work*] is not really a job...I am an IT man.”

“It’s difficult to continue studying because I don’t have money and any money I have to spend to rent my room. I wish I could continue because I like studying.”

“I want to go back to London, I can’t live here anymore. I can only stay if I find a good job, otherwise I will try to leave again.”

In Afghanistan, RSN met with Rahim. Rahim had tried out many different jobs and ways of making money, he had done bits of work here and there and really wanted to continue with his education but had not got his certificates in the UK. When he had been forcibly removed, he had still the braces on his teeth and had tried to go to a dentist in Afghanistan to have them removed, but the dentist would charge him a huge amount of money so that Rahim could not have them removed. Rahim’s story shows that it can be the most basic, day-to-day matters that might not even be considered in the UK but cause major problems for the young returnees. It would be important to strengthen the individual care and support for each young returnee, before and after return, to resolve those issues.

### **Susanne Bäckstedt, Program Manager, Swedish Migration Board**

#### **European Return Platform for Unaccompanied Minors (ERPUM II)**

ERPUM was conceived against the background of high numbers of unaccompanied asylum seeking children registered within the participating countries and in follow-up to the EU Action Plan on Unaccompanied Minors. It was created with the objective to develop new methods for organising family tracing, family reunification and return for unaccompanied children who have received a final rejection of their asylum applications. ERPUM deals with cases of children aged 15 years and above. The project was implemented through a cooperation of four countries: the Netherlands, Norway, Sweden and the UK. It was funded by the European Commission Return Fund. The partners in the programme were the Swedish Migration Board, the Ministry of Security and Justice in the Netherlands, the Norwegian Directorate of Immigration and the UK Home Office. A first phase of ERPUM has been implemented in 2011-2012 and a second phase is now being implemented until July 2014.

Within the framework of ERPUM, the partners involved developed methods for family tracing and engaged in technical dialogues with their counterparts in Afghanistan, Iraq and Morocco on the



legal and practical framework for unaccompanied children who are to return to these countries. The project also aimed to identify areas that still need to be strengthened and to develop recommendations for the way forward with regard to responses to the return and reintegration of unaccompanied children in their countries of origin.

The implementation of the ERPUM project has resulted in the achievement of the following milestones and outcomes:

- Strengthening of the ERPUM platform for cooperation between authorities in all the countries involved, including through field visits, negotiations and dialogues with the relevant departments and ministries in Afghanistan, Iraq and Morocco.
- Identification and development of methods for family tracing and identity verification in cooperation with these three countries of origin, which included also a component of awareness raising on the child's right to seek and locate his or her parents and family.
- Addressing the development of an adequate system for legal guardianship in the country of origin for returning unaccompanied children whose parents cannot be located, and enter into a formal agreement on the cooperation for family tracing and organised reception upon return with the countries of origin.
- Identification of and collaboration with local partners and case workers in the countries of origin, engaging them in family tracing and reintegration processes and enhancing their knowledge on matters concerning the return and reception of unaccompanied children.

ERPUM was implemented with a structure of partners involved at all levels, in countries of arrival and countries of return. The project management and administration team was based at the Swedish Migration Board. In addition, a Third Countries Relation Team was set up, made up of senior representatives from each ERPUM partner country, i.e. the Netherlands, Norway, Sweden and the UK. Together with the project manager, these teams conducted technical dialogues and negotiations with the counterparts in Afghanistan, Iraq and Morocco. A Tracing Contact Points Team was established with case officers from each of the four partner countries. This team was to develop best practices in family tracing and return, to exchange experience and develop direct cooperation on family tracing between the partner countries.

The Third Country Relations Team is responsible for holding negotiations with governments and organizations in third countries, for the implementation of agreements with third countries and contributes with contacts from their own networks.

The meetings with authorities and civil society in the countries of return were important for discussing the cooperation with the counterparts in those countries. Several meetings were arranged in order to discuss child rights issues, legal guardianship, responsibilities in operational processes for return and reintegration of unaccompanied children, and how the authorities can work together on returning minors, giving due consideration to the principle of the best interests of the child. Information was also provided on how the EU asylum system works, as knowledge of the EU asylum system is not always common in countries of origin.

The Government of Afghanistan accepted the ERPUM project in 2012 and the UK built a centre for adults returned to Afghanistan. Children who are returned can stay at the centre for several days while they are waiting for their parents. The centre is guarded so that persons cannot easily enter.

Together with IOM in Kabul, the ERPUM project team has drawn up a proposal in which every child should be treated individually. When a child is in contact with the family and has agreed to

return, the minor should come with a package of education and support, provided by the host country, and health care services need to be available. Through ERPUM, the host countries can offer support for the family to establish a business. There has been a lot of pressure for the child to come back with something and we should offer something for the child to come back with. So this was agreed in December 2012 with the Ministry of Social Affairs in Kabul and IOM.

Due to the difficult security situation, the negotiations in Afghanistan could however not be continued during most of 2013.

The ERPUM team has also been to Iraq. There is a very difficult situation right now. We have done tracing in Kurdistan and are in dialogue with different NGOs on the ground. We have found some families so some children were returned and reunited with their families. There were also delegations visiting Morocco, as Morocco is considered a safe country of return, and significant numbers of asylum seeking children from Morocco arrive in Sweden, the children usually do not get a permanent residence permit and have to return. The negotiations with the authorities and partners in Morocco are ongoing and are based also on the EU-Morocco Mobility Partnership (6139/13 ADD 1 REV 3. 2013-06-03).

#### *Tracing Contact Points Team*

The Tracing Contact Points Team are case workers meeting migrants on a daily basis. Within the ERPUM partnership, there have been good discussions in how we are dealing with minors, what kind of support they need, and how to work together.

The case workers have requested more training on what to do, more clarity on the procedures and we should give them that, that is also a general obligation of employers to provide for training for their staff. In the case of immigration officials and case workers, training is particularly important to qualify them to respond adequately to the complex cases they are handling.

In Sweden, we have a particular way of registering unaccompanied minors. All children who are arriving without their parents are considered unaccompanied and have a legal guardian appointed, even when they arrive with an aunt or another relative.

There have been the following developments within the different migration offices of the ERPUM partner countries:

- Mapping of the asylum and return processes
- Country contacts for family tracing and developing a network of contacts
- Workshops on 'best practice' in family tracing in each partner country, i.e. the Netherlands, Norway, Sweden and the UK
- Review upon the arrival of the unaccompanied child
- Reports and studies
- Statistics

#### *Summary: How can we go forward, what has come out of the project?*

The transnational cooperation has been very important within the ERPUM project. The experiences led us to question why we do not cooperate more within Europe. They also underline the fundamental importance of transnational cooperation on returns within Europe and with countries of origin, developing longer term programmes and perspectives.

We have to use the urban project, start with family tracing, help each other, cooperate with colleagues in other authorities. Of course the case has to be processed according to all relevant procedures and safeguards. We are initiating the family tracing when the final decision and rejection of the child's asylum claim has been communicated. We should not endanger anything before. We are obliged to check about the return and reception facilities how the minors are treated upon return.

The process under the ERPUM cooperation has revealed that there is currently no unified definition in place within Europe or internationally on who is an "unaccompanied minor". The concepts and terms that are in use at the national level within the four countries differ and there is a general division between unaccompanied asylum seeking children and children migrating unaccompanied within Europe. In addition, there has been an intense dialogue and discussion among the partners in ERPUM on the best interests determination process and how this is being conducted in practice. It was discussed how the concept of the best interests of the child should be interpreted and which indicators need to be considered for its assessment and determination. The interpretations and understanding of the concept and the related procedures differ between countries and stakeholders. In particular, there is still need for further clarification of what exactly constitutes the best interests of the child in relation to family tracing and return, and how different standards of living, health services and education should be evaluated when determining the best interests of a child. A particular challenge is to ensure effective communication with the child, and an open and trusted dialogue, for the purpose of the best interests assessment and determination and to ensure that the child is exercising the right to have his or her views heard and taken into account and to be informed about all measures taken on behalf of the child. There is still a need to continue this dialogue and to develop more concrete guidance and indicators.

Another issue of debate that requires still further clarification is the question of how to define and assess the "family" to which a child is being returned and how to define what constitutes "acceptable standards" of care to which the child is being returned.

The following observations and reflections are important for consideration for future cooperation on return and repatriation:

- Use the ERPUM model to make family tracing steps routinely available in many of the countries from which high numbers of asylum claims are received
- Develop the cooperation between authorities and stakeholders working with unaccompanied minors within the respective countries social services, legal guardians and healthcare institutions
- Build national and international networks that facilitate communication and cooperation between departments and authorities and the civil society
- Continue to discuss the legal guardianship system and promote improvements together with the countries of origin
- Maintain and develop joint cooperation among the EU Member States and the countries of origin through regular field visits, negotiations and dialogues with departments and ministries.

The return of unaccompanied children to their countries of origin is a politically sensitive issue and is related to high costs for the countries involved. Return programmes for unaccompanied children are therefore not very common. At the same time, it is also being questioned if the practice of

granting children leave to remain until they turn 18 years old is in the best interests of the child and if there are possible alternatives through return. The ERPUM project started from the point that the asylum application of an unaccompanied child has been assessed and rejected in one of the four partner countries. From that point on, the return of the child has to be looked into. An initial family tracing is conducted and if the family cannot be identified by the authorities in the host country, the counterparts in the child's country of origin are involved to conduct the tracing. Once that the family has been traced, an assessment of the family situation will be made.

ERPUM foresees that a detailed reintegration plan is developed for the child prior to return. The plan includes measures and sources of support such as training opportunities, access to health care, family support and job counselling. In some cases, cash grants are available to support the family setting up a business. Local facilitators are responsible for the reception of the child and for providing reintegration support based on the individual reintegration plan. When the parents have been traced, the child is reunified with the parents immediately after arrival. If this is not possible, the local facilitators offer short and longer-term accommodation for the child after return. The tracing continues with the support of tracing organizations and local facilitators.

In the discussion, participants elaborated on the difficult situation when a child's family has been traced but when the assessment reveals that the family is not able to care for the child. In these cases, the local facilitators in the country of origin are getting involved, or IOM. They have to assess the situation of the family in the country and contribute to promote the best interests of the child.

In some cases, where children have had their asylum applications rejected and were up for return, the ERPUM project team found out that there was no possibility to return the child and then revised the decision because there was no safe place for the child to stay in the country of origin. Although in general, the decision on return is taken by the immigration authorities and not by the ERPUM cooperation team. The project group's task is to ensure that the child is returned in a safe, orderly and humane manner. That means also establishing family contact and ensuring adequate reception in the home country.

Through the ERPUM programme, the participating countries ensure accommodation for the child upon return. Some children and young people are returned into reception houses and stay there for a night or for a few days until they are reunited with their families. There was one young person who was afraid of staying at the centre though because he was scared to be identified as a returnee, which is perceived to be associated to shame and failure. The longer term accommodation is still being discussed and there are still many issues to be resolved.

There is a lot of critique from civil society about returning children to their countries of origin. It would be good to get constructive proposals and suggestions from the civil society on how the current practice can be strengthened and how the child can be safeguarded, giving due consideration to the child's best interests.

The ERPUM project has brought out messages to European countries that we have to cooperate, we have to deal with the return. Negotiating with third countries about return programmes takes a long time, it could be up to ten years. So it is important to get the process started and to continue the momentum.

## Reflections from participants

**Tõnu Poopuu, Director Children's Rights, Department of Children and Families, Ministry of Social Affairs, Estonia.** It is important to offer support to children on the move and it would be useful to have assessment tools to identify children's needs. States should develop these assessment tools. They should build upon the international and regional standards, including the standards developed by the EU and the Council of Europe, and the recommendations and guidance issued by the Committee on the Rights of the Child. The cooperation between different levels is also very important, between the national and regional levels and also at the transnational level. First of all, we should work together with the child.

**Jari Kähkönen, Director, National Assistance System for Victims of Trafficking, Joutseno Reception Centre, Finland.** The Joutseno Reception Centre is acting as a governmental body for the identification of victims of trafficking. The meeting has offered a very good opportunity to learn from experts on these transnational child protection matters. The speeches have been very exciting and we need to discuss and reflect about these important matters. There have been presentations and a few conclusions that I would like to share with you. Rebecca mentioned that there are 'invisible' children and we have talked here about the unaccompanied children but we need to bear in mind that there are also families and nuclear families who are victims of trafficking or single parents with children who are all in the asylum process and we need to bear in mind that these children all have special needs. So I am afraid that we might lose out the attention to these children who are accompanied and migrating with their parents or family members, and who are also vulnerable. It was interesting to hear about the ERPUM project. Our statistics in Finland on unaccompanied asylum seeking children are very low. We have quite a similar system as other Nordic countries but only about 100 unaccompanied children per year in the asylum system. My conclusion is that of course when you are looking at these minors who are turning 18 years old, our legislation considers them as adults, but I think that they are also in a vulnerable position because they may not have the tools to face the reality when they are turning adults. That is quite a difficult situation for those persons who are turning 18 and challenging also for the decision making body that need to take a decision on their return. This platform has been very interesting and I wish that we carry on this open discussion on these delicate matters also in the future.

**Iluta Lāce, Board Member, Centre Marta, Resource Centre for Women, Latvia.** It was a rich two-day meeting. We have learned a lot that we would like to integrate in our work, as for instance the child's best interests. Usually we work from gender and human rights perspective. Listening to the presentations, I was reflecting about our work. We work mostly with persons who are adults when they turn to us, but often they have just turned 18 and they have been exploited or were victims as teenagers. They may have been exploited sexually in Latvia or also in other EU Member States. How capable are we to identify these persons? We are missing them and our institutions have missed them as we have not succeeded to provide the best services when they were children. We have to work properly to identify victims of trafficking. During breaks with colleagues from Latvia, we discussed how the situation is in Latvia, how we cooperate and how we can strengthen the cooperation of different sectors, especially between immigration authorities and others. For adults, we have already clarified these questions but for children many institutions still work quite separately and many institutions do not cooperate. About third countries, we would like to share the point of view that was discussed last week in the EC civil society anti-trafficking platform. We discussed the possibilities for NGOs to be involved in reporting about the implementation of the EU Anti-trafficking Directive. We need to gather information also from third

countries and strengthen those linkages with partners there. This is a concern that we can take into account with this platform.

**Laura Celmale, Lawyer, Centre Against Abuse “Dardedze”, Latvia.** In the Centre Against Abuse, we work with children. When we were invited to participate and to give a presentation at this meeting, we refused because child trafficking and return cases are not quite our issues, although we work with child abuse cases. We have not been involved in child trafficking and asylum cases thus far. What we are dealing with are cross border civil law cases like custody. Our situation here, the social and economic conditions, are the main reason why Latvia is still mainly a country of origin of trafficking victims and less a destination country. But if we dig a little bit deeper, these two days made me change my view and made me see things more realistically. The legal framework in Latvia is quite good and offers protection for victims of trafficking. There is however no single organization in Latvia that deals with cross-border cases of child protection and child trafficking specifically. The Centre Marta is operating a helpline, but trafficking in human beings is not yet fully recognized. There is a stereotype that trafficking exists somewhere else and we need to be conscious that we might become some kind of gate entry point for people to move on to other EU Member States. We are only at the beginning of the road. Thank you also for showing not only the law, which is in place, but showing also what is under the cover, the reality and the practice. So that gives us good chances for dealing with child trafficking in future

**Nina Hannemann, Special Consultant, Danish Centre Against Human Trafficking, Denmark.** The Danish Centre Against Human Trafficking is operating under the Board of Social Services under the Ministry of Children and Social Affairs. These have been two interesting days and very interesting discussions. When Turid asked us to give a presentation, we also refused because we do not have any experience with returning child victims of trafficking. But in the centre we are often the ones coordinating the cases of child victims of trafficking and adults. We have only identified 8 child victims of trafficking in Denmark since 2008. I agree very much with what was said that we have to work together more. What is clear is that we really need to have more training and education for the officials and professionals who are dealing with these children. Yet, we could do much better and we have the need to clarify the roles and responsibilities even more. It is not always clear who is responsible to make these assessments and determinations of the best interests of the child. I was wondering yesterday that we still talk about the children who ‘disappear’ from reception centres and go missing. There have been so many discussions around this issue and still there does not seem to be an effective response.

**Daphné Bouteillet-Paquet, Senior Advocacy Officer, Save the Children EU Office, Belgium.** It is very important to feed all this expertise into the EU process. A first thought that I had after these two days of conversation is that the European Council will adopt guidelines in June to pave the way for the future of the European asylum policy. Child rights are hardly represented in these future guidelines, and we have to advocate hard for that as it is very important. With regard to the technical discussions, two points about Dublin and one about return. About Dublin, Italy was mentioned repeatedly and the EHCR has an interesting case pending on the transfer of a family to Italy, which is in the public hearing. The concept of the best interests of the child has been discussed in light of the gaps in the reception system in Italy, so we will receive a judgment on that soon and that might be important. With regard to ‘invisible’ children, in the context of Dublin transfers, I can only echo that, in the context of adopting the Dublin Regulation, it would be important that all actors are communicating with the EC and identify the problems of how do we prove the family links and how do we assess that this family reunification is in the best interests of

the child. Through our work and projects, we see children so desperate to see their families that they just leave the asylum reception system to move to their families. With regard to the concept of care, we have seen very interesting presentations of the FRA and NIDOS. We need a very thorough work on the concept of guardianship, we need to have better standards on guardianship and care. With regard to return, Save the Children has been constructive in offering a toolkit for decision makers. Return can be in the best interests of the child but the safeguards and procedures need to be in place to ensure it is indeed in the best interests and that it is sustainable. In response to the presentation given by Unicef Netherlands, I would be very much interested in the concept of reintegration and what can we realistically offer as a reintegration package? What if the monitoring does not go that well, what can we do about that?

**Ida Hellrup, Child Rights Legal Advisor, The Children's Rights Bureau, Sweden.** This meeting has been very interesting and the speakers have shared important knowledge and experience, some of that is new and has not yet been discussed in-depth at the national or regional European level. After the reflections from the other participants, I do not have much to add. I would like to emphasise that it is important to work together with children in order to identify durable solutions. We would love to see more of the work on monitoring and evaluations of returns and what happens to the child after the return.