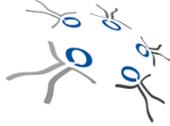




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**CHILD CENTRE**  
Expert Group for Cooperation on  
Children at Risk, EGCC



# **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

**Summary Report**

## Background

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 second Expert Meeting was convened in Riga, Latvia, on 13-14 May 2014. It focused 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, represented 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>

## **Challenges in receiving and safeguarding children in transnational situations**

Children often take dangerous routes to reach Europe and arrive, accompanied or unaccompanied, as part of mixed migration flows. Some children use the services of smugglers and many are exposed to or at risk of exploitation and abuse on the way.

Unaccompanied asylum seeking children should always be granted access to the territory. This imperative derives from the obligations of states to promptly identify unaccompanied children, to conduct a best interest assessment and determination for each child and to grant each child access to the asylum procedure.<sup>2</sup> Among the children arriving, it is important to speedily identify those in need of protection.

Through Eurostat, the European Union offers a regional overview of the official statistics on asylum seekers received within EU Member States.<sup>3</sup> Unaccompanied asylum seeking children make up for less than 3% of the total numbers of asylum applications registered in EU Member States. At the same time, children arrive as members of their families who claim asylum, and they migrate within Europe, accompanied or alone.

In the country of arrival, quite a few children leave care arrangements without informing the authorities of their whereabouts. Children may refuse to lodge an asylum application and move further afield. When moving on, the children are at risk of harm including destitution, exploitation, abuse and violence.

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. Experience shows that it is difficult to identify durable solutions in time and that these are often not based on thorough assessments of the child's situation, taking the best interests and the views of the child into account. Tracing the child's family and assessing the family situation is often a difficult and lengthy process. The requirement to take prompt decisions on the best interests of the child may then be in conflict with the scrutiny required for making thorough assessments. Effective cooperation and communication are essential to make this process work, including communication and cooperation with the child, across different agencies and disciplines and across countries of origin, transit and arrival.

While inter-agency and multi-stakeholder cooperation remains a challenge within countries, the requirement to cooperate across borders in transnational child protection cases renders this cooperation even more difficult. Cross-border cooperation in the child protection field still takes place very much ad hoc, depends on personal contacts and networks rather than officially

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

<sup>2</sup> States obligations under the UN Convention on the Rights of the Child, Articles 1, 3, 20 and 22. UN 1956 Convention Relating to the Status of Refugees. See also CRC General Comment No. 6 (2005) on the Treatment of Unaccompanied and Separated Children Outside their Country of Origin, par. 20 and Chapter VI.

<sup>3</sup> See: European Commission, Eurostat, International Migration and Asylum, available at: [http://epp.eurostat.ec.europa.eu/portal/page/portal/population/publications/migration\\_asylum](http://epp.eurostat.ec.europa.eu/portal/page/portal/population/publications/migration_asylum), accessed on 8 June 2014.

established structures. In cases of cross-border child exploitation or trafficking, there is an intersection of immigration and criminal matters with child protection concerns and the priority that child protection workers attach to the safety and well-being of the child may compete with the priorities pursued by other authorities. It would therefore be important to consolidate and integrate these different mandates and approaches with clearly defined safeguards for children.

Many children are reluctant to share information with the authorities in the country of arrival due to fears that disclosing information might lead to immediate return or reprisals. In the countries of origin, return may be associated with a perceived shame, debts incurred within the family or with smugglers that cannot be repaid and other pressure factors. The child may be instructed by family relations or others to reveal only certain parts of their story and in other cases the child may not trust that the police and local authorities will be able to protect them.

An important challenge in addressing specifically transnational cases of child exploitation and trafficking is this reluctance of child victims to cooperate with the authorities. The prosecution of exploiters and traffickers becomes then even more difficult, as well as the correct identification of child victims of exploitation and trafficking.

### **Implementation of international and regional standards into practice**

International standards and guidelines provide an important framework for promoting the rights, safety and well-being of children in transnational situations. Although international and regional standards have been evolving and continue to be refined, the most important challenge remains however their transposition into national laws and policies and their effective implementation into practice. The European Commission (EC) and the Court of Justice of the EU have important roles in promoting the implementation and application of child rights standards in practice and monitoring the progress made. The Council of Europe, which embraces the wide European region including but not limited to the EU, has also developed Conventions, recommendations and guidelines on the rights of the child, with specific attention to children on the move, child victims of crime and child victims of trafficking. The Group of Experts on Action against Trafficking in Human Beings (GRETA) is monitoring the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by State Parties. The European Court of Human Rights offers important case law and jurisprudence to promote the application of child rights standards by national courts of law. The UN, international organisations and NGOs as well as independent institutions for human rights and child rights also play an important role in monitoring and informing the reform of policy and practice through strategic litigation and by generating evidence, guidance and recommendations.

The development and reform of legal regulations, and their implementation into practice, has to be based on evidence, knowledge and experience. Analysis and research are therefore fundamentally important to inform policy planning and reform processes. There are however still many gaps in knowledge and understanding of the complex matters of transnational child protection and more evidence is needed to continuously review and improve laws, policies and practice. In addition, there is a need for more consultations and exchange between policy makers at the central level, officials within the public administrations at all levels, and front-line staff applying national laws and policies in practice, in direct contact with the children and families concerned. The experience and

knowledge available at each level, among state and non-state actors, is invaluable for guiding reform processes and advancing child rights standards in practice.

In the context of transnational child protection, the challenges of achieving policy coherence poses additional obstacles to the effective implementation of child rights standards into practice. It would therefore be important to strengthen the coherence between standards, laws and policies on child protection, asylum and migration, victims of crime and, specifically, human trafficking. Where policy coherence is weak or absent, officials and professionals may need to take decisions in legal uncertainty, may struggle to reconcile conflicting laws and provisions, and the resulting margin of interpretation and discretion may leave children at risk. Child protection services therefore need to be planned, coordinated and delivered in coherence with the services and measures implemented in other policy sectors, balancing all relevant institutional mandates and interests with the human rights of the child at the centre.

### **Continuum of services: Prevention, protection and empowerment in countries of arrival and return**

Considering the complexity of transnational child protection cases and the many actors involved, there is a need for comprehensive solutions. The situations of these children cannot be addressed through isolated sector-specific approaches but need to be part of a comprehensive package and strategy embracing countries of arrival, transit and origin. In order to achieve continuity between services for prevention, protection and empowerment of children on the move, it would be important to consider the following:

***Tackling root causes and contributing factors*** for children's precarious, risky or forced migration. This calls for a coordinated approach that goes beyond child protection and involves measures for tackling social and economic exclusion and marginalisation, combating corruption, promoting development, peace, stability and the rule of law, and strengthening child protection systems within broader strategies for the implementation of the UN Convention on the Rights of the Child. All this requires bi- and multi-lateral cooperation and support among states within regions and globally.

***Ensuring well functioning and integrated systems for child protection, asylum and migration in receiving countries.*** In the receiving countries, the child protection, asylum and immigration systems need to be prepared to safeguard and protect children on the move, regardless of their immigration status. They need to take into account and respect the best interests of the child from arrival and identification through to the determination of a durable solution in line with the UN Convention on the Rights of the Child and the General Comments No. 6, 12 and 14 developed by the UN Committee on the Rights of the Child. 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 child-sensitive interviewing techniques, quality translation and interpretation.

There is a need for a ***more structured and systematic intra-European as well as international cooperation mechanism on child protection and guardianship.*** The transnational cooperation within Europe 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 or asylum seeking children as well as child victims of crime, including exploitation and trafficking. The recent EU initiative to develop guidance on integrated child protection systems offers a valuable opportunity to promote the consolidation of sector-specific policies while also strengthening the transnational communication and cooperation between national child protection systems, asylum reception and immigration systems.

The experience made with the application of the Hague Conventions, in particular the 1996 Child Protection Convention, and the Brussels II Regulation, the **establishment of central authorities** and the assistance provided to children and families under these standards could be considered a source of inspiration for managing transnational cases of child exploitation and trafficking. Cross-border cooperation has been firmly established at the European level, for instance on migration management issues. As the EU Commission is adopting a communication on integrated child protection systems, this would be an important opportunity to strengthen the cooperation in this field as well. In the Baltic Sea Region, the State Central Service for Child Protection and Adoption under the Ministry of Social Security and Labour of Lithuania offers a model of an integrated central authority that can guide and inspire also other countries.

### **Transnational information gathering and exchange**

The information exchange between authorities and across countries needs to respect standards of confidentiality and data protection and there is a need for careful timing and selecting the type of information that is fed back to the country of origin, the child's family and community.<sup>4</sup> In order to facilitate transnational cooperation in this area, it would be important to develop cooperation agreements through Standard Operating Procedures or 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.

With the ERPUM programme (European Return Platform for Unaccompanied Minors), four European States launched a partnership cooperation to strengthen the transnational cooperation within Europe and with third countries to which children are being returned. The objective was specifically to develop common procedures and operations for preparing and executing returns of unaccompanied children and follow-up (*see further below for more details*).

The experience of UNHCR with transnational child protection cases revealed that the actors on the ground in countries of origin need to be used more effectively than is currently the case. They include UN, international organisations, NGOs, as well as local communities. These actors on the ground have an important role for family tracing and assessment, monitoring and oversight. 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. At the same time, there should be attention to awareness raising and capacity building of communities and community based organisations in the child's place of origin. The regional network developed by the International Social Service in

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<sup>4</sup> See for instance UN Convention on the Rights of the Child, Article 16 (1989); UN Trafficking Protocol Article 6 (2000); Council of Europe Convention on Action against Trafficking in Human Beings, Article 11 (2005); CRC General Comment No. 6 par. 29-30 (2005).

Western Africa could offer valuable experience and inspiration for developing such a system in Europe (*see further below*).

Finding a child's family can be very difficult and even the verification of basic information such as checking the child's birth registration is often even more difficult in transnational cases as the responsibilities for these checks and verifications are not clearly defined. It would be important to consider a common 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.

## **Guardianship**

At present, a unified model of guardianship and/or representation of unaccompanied children and child victims of trafficking do not exist and the roles, qualifications and understanding of competences vary significantly between European countries. Although guardianship provisions are in place throughout Europe, the national approaches to guardianship differ. In many countries, guardianship for unaccompanied children is not yet organised in a systematic way, and much remains in connecting the guardianship for children on the move to the national child protection systems. The expectations as to the qualifications of a guardian are also practiced differently as is the degree to which they are remunerated.

In 2014, the European Commission is developing with the EU Fundamental Rights Agency (FRA) a handbook on the role of guardians and/or representatives of child victims of trafficking. This model contributes to the implementation of the EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016. The role of the guardian is obviously 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.

According to the Handbook, 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 supports the child in exercising the right 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. 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, ensuring that the child has access to appropriate interpretation and translation, free of charge. The guardian can accompany the child to official meetings and hearings and provide emotional support.

These core tasks of a guardian are all inter-related and interlinked. They are cutting across many different areas and the guardian has therefore a potential to monitor and hold the authorities accountable for their decisions and actions in 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.

In some countries, guardians have to deal with a high number of cases and are not necessarily able to develop a trusted and quality relationship with the child. In many European countries, guardians do not have access to training, supervision and 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, guardianship needs to be standardised and integrated into national child protection systems, guaranteeing adequate resources, qualifications and support.

It would be optimal if there could be a handover of guardianship when a child is being returned or transferred to another country.. At present, this is however barely regulated in European countries. In the Netherlands, the transfer of guardianship is afforded under the Civil Code and in cases of Dublin transfers and returns, the guardian is ensuring that the child is received in appropriate conditions and that the child's needs are met, for instance with regard to accommodation, local guardianship and medical needs. In some cases, guardians participate in the actual returns. There is still some way to go before guardians are appointed to the child after return and thus being involved in monitoring the situation of the child.

### **Child-sensitive interviewing techniques and interpretation**

The right of the child to be heard and to have their views taken into account has been widely recognized. It is afforded under the UN Convention on the Rights of the Child Article 12 and has been reiterated by European regional standards, including the EU Directives as well as Conventions and recommendations issued by the Council of Europe. It is challenging to safeguard this right in practice, especially in cases where an interpreter and/or cultural mediator is involved. Better knowledge about interviewing asylum seeking children and children who have been exposed to exploitation, and quality training of case workers, interviewers and interpreters would increase the way children can express their views..

Research conducted by the University of Stockholm has evidenced that the interview style and the type of questions asked matters for the children's readiness to disclose information and also for the type and quality of information and the level of detail shared. The interviewer can facilitate the child's disclosure through the interview style and the type of questions asked, prioritising open questions while avoiding closed and focused questions, suggestive prompts and leading questions, and avoiding also criticism and confrontations.

Interpreters are powerful participants in interviews with children. They can essentially affect the fact finding process in criminal investigations and asylum procedures and how the child's disclosure is being made and understood. Inaccurate translation might in a worst case scenario imply that incorrect decisions are made about asylum applications. This relates not only to the content translated but also to the style and semantic choices made by the children and how these are rendered by the interpreters.

These analyses conducted by the University of Stockholm is a good background for law enforcement and migration authorities to illustrate how the children's disclosures can be influenced

by the questions asked, and how the information gathering can be influenced by the interpreter. A follow up to these findings could be to mainstream training for immigration and law enforcement officers and the judiciary on how to communicate with vulnerable children, including child victims and children at risk, how to interview children, how to cooperate with an interpreter and how to build trust when taking testimonies. Existing training initiatives can also be integrated into relevant courses of academic, vocational and in-service training and extended also to interpreters.

### **The rights of non-national child victims in criminal procedures**

Experience shows that it is important to strengthen the position of the child victim in criminal investigations and proceedings. As an independent party in the criminal procedure, victims have better opportunities to exercise their right to information, to be heard, to participate in the proceedings, to access support services and to receive compensation and redress for damage suffered. Even where children enjoy these rights under national law, there might however still be challenges involved in ensuring that child victims are actually perceived and treated as independent parties in criminal proceedings.

When child victims of crime are non-nationals, the intersection of migration and criminal law may pose a challenge to the protection of the child and the identification of a durable solution that is in the best interests of the child.

Under the EU 2011 Anti-Trafficking Directive, child victims of trafficking should receive special assistance. They should be considered 'vulnerable victims' for whom the state authorities have to identify a durable solution, based on an individual assessment of the best interests of the child. The Directive reiterates thereby the concept of a durable solution, as stipulated for all unaccompanied and separated children under the Committee on the Rights of the Child General Comment No. 6 and other international and regional guidelines.<sup>5</sup>

The 2011 EU Anti-trafficking Directive applies however without prejudice to the 2004 EU Directive that regulates temporary residence permits for victims of crime during criminal procedures (2004/81/EC). These residence permits are often conditional on the child's participation in criminal investigations and proceedings, the identification, prosecution and conviction of the perpetrator. As a result, child victims who do not file a criminal complaint or children whose cases are not prosecuted successfully might not be granted a residence permit and might not have access to the process for developing a durable solution.

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<sup>5</sup> See also: United Nations Committee on the Rights of the Child, General Comment No. 6 (2005): Treatment of unaccompanied and separated children outside their country of origin, CRC/GC/2005/6, 1 September 2005, accessed from: [http://www.unhcr.ch/tbs/doc.nsf/\(symbol\)/CRC.GC.2005.6.En?OpenDocument](http://www.unhcr.ch/tbs/doc.nsf/(symbol)/CRC.GC.2005.6.En?OpenDocument), par. 79. United Nations High Commissioner for Refugees, UNHCR Guidelines on Determining the Best Interests of the Child, Geneva, May 2008, accessed from: <http://www.unhcr.org/refworld/pdfid/48480c342.pdf>, p. 30. United Nations Children's Fund, *Guidelines on the Protection of Child Victims of Trafficking*, Provisional Version, September 2006, accessed from: [http://www.unicef.org/ceecis/0610-Unicef\\_Victims\\_Guidelines\\_en.pdf](http://www.unicef.org/ceecis/0610-Unicef_Victims_Guidelines_en.pdf), p. 3. Council of Europe, Committee of Ministers, Recommendation CM/Rec(2007)9 of the Committee of Ministers to member states on life projects for unaccompanied migrant minors, Adopted by the Committee of Ministers on 12 July 2007 at the 1002nd meeting of the Ministers' Deputies, 2007, accessed from: <https://wcd.coe.int/wcd/ViewDoc.jsp?id=1164769&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383>.

Considering the close relation between these two Directives, their coherence could still be enhanced. More coherence would also contribute to a more strongly pronounced child rights-based approach that provides for the identification of the best interests and a durable solution for each child and access to support services, regardless of the child's participation in criminal proceedings and their outcomes.

### **Strengthening child specific asylum procedures**

Destination countries would also need to develop and use child-specific country of origin information in order to recognize child specific forms of persecution. Human trafficking may amount to a form of persecution under the international refugee definition. Victims of trafficking may face reprisals or re-trafficking upon return, which may be a consequence of having cooperated with the authorities in the criminal investigations. Reprisals, and the fear of reprisals, could amount to a fear of persecution, including when they are against family members. A multi-disciplinary approach to case assessments and strengthening the trust between the child and the authorities would further improve the quality of credibility assessments for applications lodged by children.

### **Aftercare for non-national children**

In European countries, national children in care can usually continue to receive support for a few years after they turned 18 years old. This possibility is rarely extended to non-national children. Research conducted by the UK-based Refugee Support Network revealed the challenges and harmful effects of transitioning from a looked-after child asylum seeker to a failed adult asylum seeker when children turn 18 years old.

Experience shows that many unaccompanied asylum seeking children get much more vulnerable when turning 18. Children and youth who have been living in a state of limbo, knowing that their leave to remain will be revoked when they turn 18, may experience significant mental health implications and are negatively impacted in their emotional and psychological well-being. Many children who are living in the state of limbo are affected by depression and self-harm, an inability to engage with the concept of future, and their vision of life is reduced to survival strategies. There is clearly a need for strengthening their resilience and developing perspectives and life projects for the future. Targeted support services empowering these children would constitute an important investment in the development of their resources, to the benefit of the children and young people and their communities in the home country and the hosting country.

The dichotomy between children and adults is pronounced particularly strongly in the asylum reception system. In other policy sectors, 'youth', i.e. persons aged between 15 and 24 years old, is considered as a specific category and a group that is targeted with special measures supporting their development. 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 youth also in the context of migration and asylum policies. In cases of youth who are to return to their country of origin, this could imply that they have opportunities to graduate from school, to complete vocational training and skills training, and to prepare in a meaningful way for the return, with targeted support to social and economic integration in the country of origin.

## **Immigration detention of children and families**

Persons are held in immigration detention at the borders of Europe and within European countries, as well as in transit and middle income countries, as evidenced by Human Rights Watch (HRW) research. In destination countries, immigration detention is often considered a deterrent in immigration politics. In fact, however, experiences of detention may stop children from identifying themselves to the authorities and to avoid registration in a country of transit or destination.

There are very different contexts and conditions of immigration detention. A practice of particular concern is the detention of children in airport transit zones, as documented by HRW research in the transit zones at the Charles de Gaulle airport in Paris, France. The French law allows for persons to be detained in these transit zones for up to 26 days and children are not exempted. HRW evidenced that children detained in the transit zones have fewer rights than children who have been granted access to the territory. A particular concern about unaccompanied children in detention is their limited access to guardianship, information, legal assistance and representation and the asylum procedure.

HRW research has documented that immigration detention has a toll on children's mental and physical health and delays their developmental process. The harmful impact increases when detention takes place without a clear time limitation. When children are detained for extended periods of time, they might neither have access to education nor recreation.

Under the Convention on the Rights of the Child, Article 37, detention of any type should only be used as "a measure of last resort and for the shortest appropriate period of time." 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. In February 2013, the Day of General Discussion hosted by the UN Committee on the Rights of the Child resulted in a call upon States to expeditiously and completely cease the detention of children because of their immigration status.

Against this background, it is important to look into alternatives to detention such as the use of so-called return houses, where families live and are accompanied by a case worker. Experience shows that the compliance with this programme is high, even when the migrants are awaiting deportation.<sup>6</sup> For the state authorities, these return houses are more cost-efficient than detention and they can be connected to the asylum reception system.

## **Family tracing**

The purpose of family tracing is to locate the family, enable the child to re-establish and maintain contact and possibly reunite the child with the parents if that is in the best interests of the child. States are investing in family tracing, whereas the methodologies, interests 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 in a unified way throughout Europe but are often ad hoc and emerging from practice. There are no unified regulations of how to

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<sup>6</sup> See for instance: Sampson, Robyn, Thinking outside the fence, University of Oxford, Refugee Study Centre, *Forced Migration Review, Detention, alternatives to detention and deportation*, Issue 44, September 2013, pp. 42-43, p. 43.

establish whether the child has a family or not, how to establish contact and how to assess the family relations.

Family tracing might be conducted through the state authorities of the host country or the country of origin, or involving non-state partners. In some cases, embassies or local actors are involved. There is a need to define the institutional responsibilities and partnerships more clearly and to establish standards for the timing and purpose of family tracing and how the information gathered is being used. There are currently no unified regulations in Europe 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.

### **Transfers under the Dublin III Regulation**

The Dublin Regulation establishes which EU Member State<sup>7</sup> is responsible to examine the asylum claim of an applicant and sets out criteria for transferring the asylum seeker to the responsible jurisdiction. Transferring children from one country to another can entail risks to the child, where they are separated from their family or within families. It requires therefore a thorough assessment process of the child's family situation and best interests. Considering the scope of the Dublin Regulation, these assessments are transnational in nature. A key question is therefore how these assessments are conducted and how possible risks are identified and addressed in Dublin transfers. These questions need to be considered also within the ongoing debate on how to construct the common European asylum system.

The recast Dublin III Regulation is now much clearer that the best interests of children are to be 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 they enhance the possibilities to transfer children for family reunification. The Dublin rules concern therefore asylum law as well as child protection law and social matters in transnational situations. Being at the intersection of these different areas of law and institutional responsibilities, it is however not always clear how the various priorities are reconciled and what guiding principles apply.

When assessing and managing the cases of children under the Dublin III Regulation, authorities have to communicate and cooperate across borders on issues such as family tracing and family assessment, best interests assessments and arrangements of safe transfers. Family tracing and the assessments required to determine the child's best interests and a durable solution are routinely conducted in return cases but not with regard to Dublin transfers. This constitutes a discrepancy between the standards and procedures in place for different groups of children. Many cases of Dublin transfers are handled ad hoc and not according to standard procedures. If a child wants to join a family member in another EU Member State, for instance, there are no standardized procedures in place for Member States to assess the situation in that country as a

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<sup>7</sup> Including Iceland, Norway and Switzerland, who participate in the Dublin Regulations, the Schengen agreement and other EU policies as members of the European Economic Area (EEA) and the European Free Trade Association (EFTA). See: European Union External Action, European Economic Area (EEA), undated, available at: <<http://eeas.europa.eu/eea/>>, accessed on 22 February 2014. EFTA, The European Free Trade Association, 2011, available at: <<http://www.efta.int/>>, accessed on 22 February 2014. Europa, Summaries of EU legislation, The Schengen area and cooperation, 3 August 2009, available at: <[http://europa.eu/legislation\\_summaries/justice\\_freedom\\_security/free\\_movement\\_of\\_persons\\_asylum\\_immigration/l33020\\_en.htm](http://europa.eu/legislation_summaries/justice_freedom_security/free_movement_of_persons_asylum_immigration/l33020_en.htm)>, accessed on 7 February 2014.

basis for taking the decision about the transfer. There are also no provisions to ensure that decisions taken can be subject to judicial review.

When determining the child's best interests in the context of the Dublin III Regulation, the immigration authorities need the support of child protection specialists to assess the needs and situation of the child. These assessments take time, which can be challenging considering that the Dublin Regulation provides for a limited period of three months, within which the decision about transfer has to be taken.

When family reunification is not achieved under the Dublin III Regulation, there may still be other opportunities to pursue this option under other international and regional standards, such as the 1996 Hague Convention No. 34 (the 'Child Protection Convention'), and the Brussels II Regulation. These options have however not yet been systematically studied and discussed in Europe. The coherence of the Dublin III Regulation with international and regional standards of civil law therefore still need to be looked into, from a legal analytical perspective and in practice.

Assessing the ability of a relative in another country to care for the child is a sensitive issue. It has thus far not yet been clearly defined how adequate care can be qualified, how the capacity of the carer is assessed and by whom, and how guardianship is transferred in Dublin cases. It would be important to assess the care person according to the same procedures in place within the national child protection system. But in practice, the transfers under Dublin are not clearly connected to national child protection procedures.

Considering the inconsistencies of the guardianship provisions and quality of guardianship in the European countries, 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.

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 the Dublin Regulations relate to the Brussels II Regulation and the Trafficking Directive. Under the latter, for instance, Member States have an obligation to identify a durable solution for the child. The Dublin III Regulation does not clearly regulate this.

The central authorities under the Hague Conventions could be more closely involved to assess the care takers in other EU Member States. But experience tells that this process might require more time than the three months available for the assessment under the Dublin rules. Considering the many unresolved questions and issues, the Government of Lithuania decided to extend the mandate of the State Central Child Protection and Adoption Service under the Ministry of Social Security and Labour to include also transfer cases under the Dublin III Regulation. This integrated approach constitutes a good practice example that responds adequately to the complexity of Dublin transfers involving children. It promises to generate important experience with handling these cases by applying existing standards and procedures also to the transfers within Europe.

## **Practical matters in returning children**

A significant number of unaccompanied children are being registered in Europe each year and governments invest in returns. Nonetheless, there are hardly any returns of children before the age of 18. Asylum is however not always granted. In consequence, there are long periods of uncertainty for the children. Some choose to remain with an undocumented status when approaching 18 rather than returning, others are ageing out and then return, whereas some choose voluntary return..

The timing of return matters. It would be important to allow children to complete the school year, their education or training programme, or an ongoing medical treatment before having to return. Children should also be equipped with the relevant documentation and certificates prior to return. By returning with their school or training certificates, for instance, the chances of reintegration are increased and the children and young people have the potential to succeed to become economically independent.

Children can be returned to their nuclear or extended family, to alternative care in foster families or institutional reception. The possibility of returning children to institutional reception is currently being debated again in some European states. It is therefore important to address the unresolved questions with regard to this form of return. There is a need for more guidance and clarity on how to assess the best interests of a child with regard to return to an institution. The key questions in this context include the following: How do we define the minimum local standards required to consider the reception in the institution adequate for an individual child? What is the medium- and long-term perspective after return, i.e. how long will the reception last for and what kind of follow-up measures and support will be offered to the child? Are the effects of return to institutional reception monitored and how? It is currently not clearly established when exactly the responsibility of the returning state ends and if there should be the option for a child to be readmitted to the host country when the return does not turn out to be in the child's best interests. In general, it would be important to prioritise first the identification of a durable solution and the best interests' determination in each individual case before the focus is placed on the child's actual return.

## **Follow-up and monitoring after return**

There are currently no standardised procedures for receiving children upon return and ensuring that they are safely reunited with their families. The returning states however have a responsibility to ensure that children have a legal guardian appointed upon return who will ensure due follow-up. Returns will be more rights-based and sustainable when they are conducted as part of a well-planned package of support services. Monitoring the situation of children after return is critical to ensure that the return was actually the right decision and in the child's best interests, that the child is safe and cared for and has opportunities to develop his or her evolving capacities and potential. The standards for support, monitoring and follow-up differ however not only between countries, they also differ according to the child's status. Children who have been officially recognised as victims of trafficking abroad and children who participate in programmes for the 'voluntary assisted return' often have access to more clearly defined, assisted repatriation procedures than others.

For some children, education and vocational training are key elements of their lives while they are staying in the host country but they might lose the access and continuity of education after return.

In some cases, children experience that the education they had been through in the host country did not meet the requirements of the labour market and employment options after return. Language skills are also essential in this regard as children do not always have the opportunity to advance their literacy and eloquence in the language of their home country while abroad. There might be a mismatch of skills and opportunities and administrative, bureaucratic hurdles for the young returnees to capitalise on the skills and knowledge they have gained overseas. It would therefore be important to carefully consider the longer-term perspective in the children's reception and targeted support in host countries and return countries.

Another key factor for making returns more sustainable and rights-based is the training, supervision and support for professionals and officials in countries of origin who receive children upon return and provide follow-up services to children and families, including social workers, legal guardians and healthcare institutions. Countries of destination have an important role in supporting this type of training in countries to which they return children. Training is further essential to qualify national and local child protection systems and other competent actors for effective monitoring and oversight of returns. The results and lessons learned from the monitoring provide valuable information that can guide and inspire the continuous process of law and policy reform.

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

The ERPUM programme was conceived as a follow-up to the EU Action Plan on Unaccompanied Minors. It was responding to a need as the participating countries were receiving high numbers of unaccompanied asylum seeking children. ERPUM aimed to develop new methods for organising family tracing, reunification and return for unaccompanied children who have received a final rejection of their asylum applications. The target group are children aged 15 years and above. The project was implemented through a cooperation of four countries: the Netherlands, Norway, Sweden and the UK, with funding from the European Commission Return Fund.

In the context of ERPUM, the partners developed methods for family tracing and engaged in technical dialogues with their counterparts in Afghanistan, Iraq and Morocco on the legal and practical frameworks in place for unaccompanied children who return. The project aimed to identify areas that still need to be strengthened and to develop recommendations on how to continue strengthening the responses to the return and reintegration of unaccompanied children.

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

- Strengthening 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 good practices in family tracing and return, to exchange experience and develop direct cooperation on family tracing between the partner countries.

The experiences made with the ERPUM project underline the fundamental importance of transnational cooperation on returns among European states and with countries of origin, developing longer term programmes and perspectives. 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. In particular, 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 in countries of arrival and return should be evaluated when determining the best interests of a child.

It remains a particular challenge 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. Another issue of debate that requires still further clarification is the question of how to define and assess the “family” and “acceptable standards” of care to which the child is being returned.

The cooperation under the ERPUM project has led to achievements while it has also revealed remaining challenges and open questions in need of further clarification. ERPUM does therefore not offer readymade solutions but has developed a pilot model that can be considered part of an evolving process to develop the best approaches for finding solutions. Countries of arrival and origin can elaborate on these models further, working together and in partnership with other relevant actors.

### **A regional network for family tracing, risk assessment and return of children**

Since 2005, the International Social Service (ISS) has been developing a network of social welfare and child protection agencies in West African countries, the West African Network for the protection of children (WAN). The tools that were developed in the region could be taken into consideration in Europe, including for children who are EU citizens and migrating within Europe for whom there are currently no effective tools and procedures of return.

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. WAN mobilizes and strengthens the capacities of actors in West Africa to support children and young people requiring transnational reintegration, based on an individualized approach that respects the child's rights. The WAN is primarily a mechanism of cooperation between the countries participating in the Economic Community of West African States (ECOWAS). It aims to enable the protection and quality reintegration of vulnerable children across borders and offers a platform for exchange among 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.

The objective of WAN is to strengthen the capacities to protect children on the move and to ensure their reintegration. In order to achieve these objectives, it was considered important that WAN operates at all 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 the level of national and regional authorities.

The methodology of intervention that has informed the regional standards of child protection defines a process in eight steps, which ensure that the best interests of the child are given due consideration. These eight steps provide for a continuum of services and support from the initial identification of the child, emergency care and placement, case assessment and family tracing, social and professional reintegration of the child, through to monitoring the child after return and support to strengthen parental capacities. This methodology can be applied for any situation of children in vulnerable situation.

### **The risk of re-trafficking**

When return is not thoroughly planned and conducted with the required safeguards, there may be risks involved for children to be exposed to exploitation and trafficking, possibly re-trafficking, after return. The qualitative interview data from IOM case files of victims of trafficking provide information on some of the factors that may increase the risk of re-trafficking. The risk appears to be higher when returnees do not enjoy support within the family, community or from authorities and service providers after return, for instance in cases of stigmatisation, rejection or social exclusion after return, or when returns are executed without the necessary support, such as deportation.

In addition, previous experiences of trafficking seem to increase the risk of re-trafficking after return. When the returnee wishes to migrate again but has no access to safe or legal channels of migration, they might accept high risk and irregular migration channels which could increase their risk of experiencing exploitation or trafficking, especially in cases where the structural socio-economic inequality and push factors for migration remain strong.

Many children who are returned to their country of origin may be confronted with one or more of these factors. Targeted and effective measures to minimise and monitor these risks would therefore be an essential component in all return policies, programmes and procedures.