

# Transnational Child Protection: Practical guide for caseworkers and case officers



**Publisher** Council of Baltic Sea States Secretariat  
Stockholm, Sweden

**ISBN** 978-91-980572-6-3

**Editor and co-author** Turid Heiberg, Council of Baltic Sea  
States Secretariat

**Author** Daja Wenke

**Contributors** Central Board of the State Border  
Guards in Latvia

State Child Rights Protection and  
Adoption Service in Lithuania

Stockholm Social Emergency  
Authority in Sweden

Speakers and participants at the  
expert meetings in the 'PROTECT  
Children on the Move' project

CBSS Expert Group for Cooperation  
on Children at Risk

**Reviewers** Christoph Braunschweig, Social and Legal  
Department, Swiss Foundation for the  
International Social Service; Nina Hannemann,  
Special Adviser, The Danish Centre against  
Human Trafficking, Denmark; Philip Ishola,  
Independent Child Protection, Human  
Trafficking, Human Rights Consultant, UK;  
Jyothi Kanics, Independent Child Rights  
Advocate; Katarina Munier, Programme  
Officer, National Board of Health and Welfare,  
Department of Evaluation and Analysis, Welfare  
Development Unit, Stockholm, Sweden; Kerry  
L. Neal, Child Protection Specialist, UNICEF  
Headquarters; Anthony Jay, Head of Media &  
Communications, CBSS Secretariat.

**Layout and design** Laura Klimaitė

**Illustrations** Raquel Benmergui

**Printing** Printing House KOPA ([www.kopa.eu](http://www.kopa.eu))

### Acknowledgements

This practical guide for caseworkers and case officers was developed on the background of a more detailed set of guidelines based upon the lessons learned from the project Child Exploitation: Cross-National Child Protection in Practice - 'PROTECT Children on the Move'.

The project has been funded with support from the European Commission. This publication reflects the views only of the authors, and the European Commission cannot be held responsible for any use, which may be made of the information contained therein.

**Copyright 2015**

**Council of the Baltic Sea States Secretariat**



# **Transnational Child Protection: Practical guide for caseworkers and case officers**

---

4 **Introducing the guide, the standards and the Convention on the Rights of the Child**



---

6 **Safeguards for children in the context of migration**



---

10 **Best interests' determinations**

11 Best interests' assessments and determinations: Two steps of a process

13 Inter-agency and multi-disciplinary cooperation for best interests' assessments and determinations

15 Balancing rights and interests in best interests' determinations

15 **Promoting the development of children on the move**

16 **Communicating with children in the process of best interests' assessments and determinations**

16 Age-sensitive communication

16 Gender considerations for the right to be heard

16 Forensic interviews

17 Hearing a child in investigations and proceedings

17 Quality interpretation and cultural mediation

---

**List of boxes**

- 12 The right to non-discrimination
- 14 Right to consular assistance
- 14 Access to information, technical assistance and specialised expertise
- 20 Quality care for children on the move
- 20 Age assessments
- 22 Basic human rights principle: Access to the territory
- 28 Durable solution
- 32 Minimum standards that states must respect in cases where migrant children are detained



---

18 **Step by step:  
Transnational  
cooperation towards  
a durable solution**

19 Identification

19 The role of guardians and representatives in promoting the best interests of non-national children

21 Data protection and confidentiality

21 Sources of information

22 Family tracing and re-establishing family links

23 Maintaining family relations and contact

23 Assessing risk factors, resiliency and sources of support

24 Missing children: Children leaving care and receptions without informing the authorities

24 Establishing jurisdiction over a non-national child

25 Establishing and transferring jurisdiction: Rules and regulations under the Brussels II bis Regulation and the Hague Conventions



---

26 **Implementation  
of a durable solution**

27 Durable solutions

27 Life projects

27 **Local integration**

27 After-care and youth support

28 Family reunification in the country of destination

29 Special safeguards for child victims of crime, including victims of trafficking and exploitation

29 **Resettlement and transfers**

29 Resettlement and integration in a third country

30 Transfers under the Dublin III Council Regulation

31 **Return**

31 The use of international and European private law for returning children on the move

32 Alternatives to immigration detention

33 Pre-return preparations

34 Transportation phase

34 Post-return and reintegration phase

34 Monitoring and evaluation



# Introducing the guide, the standards and the Convention on the Rights of the Child

---



This practical guide for caseworkers and case officers presents an overview of measures to promote the human rights and best interests of children in cross-border situations. It is an easily accessible tool for handling cases of children who are outside their country of origin or habitual residence. The guide describes standards and obligations under international and European law that ensure children's safety and well-being regardless of their national origin or immigration status.

Caseworkers and case officers such as social workers, immigration officials, law enforcement officers as well as lawyers, guardians and other professionals who get in contact with children on the move hold a key responsibility for ensuring that international standards are followed and respected. Best interests' assessments and determinations are critical to achieve this. A best interests' determination is also the precondition for the identification and implementation of a durable solution for each individual child.

The international framework relevant for children on the move is multi-faceted and complex. It includes Conventions on anti-trafficking, asylum and international protection, labour regulations, international standards for migrant workers, child victims of crime and the judiciary, as well as international private law for child protection and family matters. Cutting across all these standards is the UN Convention on the Rights of the Child, which provides a solid basis for promoting the best interests of children in all contexts and situations.

The Convention applies to all children within the jurisdiction of a state (Article 2). This includes children who are within the borders of a state, and those who come under the state's jurisdiction while attempting to enter the country's territory, for instance at borders or airports.<sup>1</sup> In consequence, the rights under the Convention apply to all children on the move, regardless of the purpose or conditions of their movement for travel, economic migration, asylum, family reunification or trafficking.

The Convention provides standards for care and protection, identification, case management, reporting and referral. It affords children a right to education and training, access to social services, health care and treatment and provides for the right of girls and boys to develop their evolving capacities. Children who have been exposed to acts of violence, exploitation or abuse have a right to be recognised as victims of

crime, to access assistance for recovery, rehabilitation and justice. This applies to child victims of trafficking and all other children who have been exposed to violence and exploitation in any form.

This practical guide translates these standards into step-by-step guidance for the assessment and decision making processes in transnational situations. State authorities and service providers often need to work across borders and require a good network of contacts and clear procedures for transnational case assessment, decision making, referral and service provision. There are many challenges involved, such as communicating effectively with the child, including through interpretation and cultural mediation, gathering information from the child's home community and understanding the quality of the child's relation to family members. Good practice examples of effective cooperation of caseworkers and officers across borders demonstrate that these challenges can be overcome.

This practical guide is based on a set of guidelines, which provide more elaborate and detailed information and a discussion of the key themes. In addition, a Transnational Child Protection Portal offers access online to the content of the guide as well as additional information for professionals and officials working with and for children on the move.

<sup>1</sup> Committee on the Rights of the Child, General Comment No. 6 (2005), par. 12.

# Safeguards for children in the context of migration

---





Girls and boys move within countries and across borders. They make up for a significant proportion of the international migration flows into, and within Europe, and globally. Children move accompanied or unaccompanied, with or without legal travel documents, as refugees and asylum seekers, as independent or economic migrants. When parents migrate or separate, children may move to another place or country with one or both parents. Children are also left behind by migrating parents and are then indirectly affected by migration.

The motivations for children to migrate are as diverse as the individuals who migrate. They include economic reasons, educational aspirations, gender-specific and cultural reasons, personal motivations as well as emergencies, natural disasters and climate change, persecution, armed conflict and humanitarian crises. Some children leave in search of better opportunities whereas others leave from situations of violence, exploitation, abuse or conflict. Often, different reasons coincide and are inter-related.<sup>2</sup>

Movement and migration happens within the European Union and between EU Member States and third countries. In the European area of freedom of movement, citizens of EU Member States are entitled to enter and reside in other EU Member States for a period of up to three months without registration and are granted a permit to stay when they can demonstrate an income.<sup>3</sup>

### International family matters and child protection

The Hague Conference on Private International Law (HCCH) is a global inter-governmental organisation that has developed important standards for the transnational cooperation on child protection and family matters. The key themes addressed by the Conventions of the Hague Conference include transnational child protection, inter-country adoption, parental child abduction and matters of parental responsibility and contact.

The Hague Conventions concerning matters of transnational child protection and family law have several common characteristics. They ensure the automatic mutual recognition of official decisions taken by one Contracting State in other Contracting States. They enable and facilitate the cooperation between the Contracting States, including through the estab-

lishment of central authorities and the development of unified procedures. By facilitating practical matters, such as the translation of documents, information exchange and the use of standardised model forms, the Conventions aim to simplify and expedite cross-border procedures and the enforcement of official decisions.

The Hague Conventions are innovative as they work primarily with the concept of 'habitual residence' of the child, rather than 'nationality', in order to determine which state has the jurisdiction over a case. Within the European Union, the Brussels II bis Regulation provides comparable standards for transnational child protection and family matters, while the Council of Europe has also developed Conventions on child protection and family matters.

### International protection

For third country nationals, the asylum reception system is one possible entry point into the EU for persons in need of international protection. Filing an asylum application is often de facto possible only within European states. It is however often difficult and sometimes life threatening for refugees to reach European countries in order to seek international protection. In the absence of legal migration channels, many migrants and refugees, including children, resort to the services of smugglers in taking these high-risk routes and are at a considerable risk of being exposed to harm on the way.<sup>4</sup>

The UN Refugee Convention and its Protocol regulate the right of persons to seek international protection. Children enjoy special safeguards and have a right to have their asylum application examined individually.

Child-specific grounds of persecution need to be considered irrespective of whether the child applies alone or together with a parent or caregiver. The European Union Member States have re-elaborated these standards for the EU context and have adopted a series of Directives regulating the qualification and reception conditions of asylum seekers in the EU as well as asylum procedures and matters of return.

<sup>2</sup> Van de Glind, Hans and Anne Kou, Migrant Children in Child Labour, A vulnerable group in need of attention, International Organisation of Migration, *Children on the Move*, 2013, pp. 27-43, p. 30. Thatun, Susu and Karin Heissler, Children's Migration: Towards a multidimen-

sional child protection perspective, International Organisation of Migration, *Children on the Move*, 2013, pp. 95-108, p. 105.

<sup>3</sup> European Parliament and Council Directive 2004/38/EC of 29 April 2004 on the right of citizens of the Union and their family members to

move and reside freely within the territory of the Member States.

<sup>4</sup> European Union Agency for Fundamental Rights, *Legal Entry Channels to the EU for Persons in Need of International Protection: A toolbox*, FRA Focus, 02/2015, 2015, <http://fra.europa.eu/en/publication/2015/>

legal-entry-channels-eu-persons-need-international-protection-toolbox. United Nations High Commissioner for Refugees, *Legal Avenues to Safety and Protection Through other Forms of Admission*, 18 November 2014, <http://www.refworld.org/docid/5594e5924.html>.

### Risks of exploitation and trafficking

Many child migrants, including asylum seekers, are exposed to harm during the journey and at destination. Children face violence, exploitation and abuse at the hands of people they encounter in transit and at destination, including employers, transporters, smugglers and traffickers. Some children might be at risk from accompanying adults, including caregivers or parents. They might experience significant levels of indifference or abuse by state officials, including police, border guards, immigration officials and staff in reception or detention facilities. Some migrants die on the journey from dehydration, malnourishment, suffocation or transportation accidents or are drowning at sea.<sup>5</sup>

Children on the move are at risk of different forms of exploitation. Risks of exploitation concern children who move with or without valid travel documents. Children can be recruited into exploitation or trafficking before their departure, during the journey, after arrival and even after having received a permit of stay in the country of destination or after return, transfer or resettlement. Children are exploited and trafficked also nationally without any border crossing involved.

Exploitation takes place in child labour, including in domestic work or as au-pairs, in factories, construction, asphalt laying, restaurants and cleaning industries, agriculture and berry picking and in begging. Children are at risk of sexual exploitation in prostitution and pornography, including by travelling sex offenders, through web-cams, child abuse images and illegal content on the internet. There are also transnational cases of early and forced marriage of children. The exploitation of children could be organised by families, small groups or large-scale criminal networks. Children are exploited in illegal and criminal activities, including in drug production and drug trafficking, pick-pocketing or burglary.<sup>6</sup> Europol reported in 2015 that victims of trafficking, including children, are increasingly used by traffickers for purposes such as begging, benefit fraud, identity fraud, credit fraud and insurance fraud.<sup>7</sup>

Child trafficking was first defined in the UN Trafficking Protocol (2000). The Protocol describes child trafficking as the recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation. The means by which a child is trafficked or the consent of the child to any of the trafficking acts is to be considered irrelevant. The definition offers a minimum list of forms of exploitation that could constitute trafficking. Child trafficking can be prosecuted even when exploitation has not yet taken place, but when it is possible to prove the intent to exploit the child. The Protocol complements the UN Convention on Transnational Organised Crime. In consequence, the Protocol's definition of trafficking in human beings needs to be read in the context of transnational organised crime.

The Council of Europe Convention on Action Against Trafficking in Human Beings (2005) adopted the international definition, identical in wording, underlining however that victims shall be protected also when trafficking takes place within countries and without the involvement of large-scale organised crime groups. The Council of Europe Convention is particularly strong for the safeguards it affords to victims of trafficking, including children. The Council of Europe has promoted other important standards including for the protection of children from sexual exploitation and abuse, and for children in contact with the judiciary.

The EU Anti-Trafficking Directive (2011) broadened the notion of exploitation in the trafficking concept. It includes explicitly the purpose of exploitation in criminal activities as part of the definition of human trafficking. Article 2.3 clarifies that the "exploitation of criminal activities' should be understood as the exploitation of a person to commit, inter alia, pick-pocketing, shop-lifting, drug trafficking and other similar activities which are subject to penalties and imply financial gain". In addition, the Directive states that "the exploitation of begging, including the use of a trafficked dependent person for begging, falls within the scope of the definition of trafficking in human beings only when all the elements of forced labour or services occur".<sup>8</sup>

The evolution of the trafficking concept is important as it offers opportunities to provide more inclusive support and protection to victims. The different layers of interpretation make it however challenging to dis-

<sup>5</sup> See: United Nations Children's Fund Innocenti Research Centre, *Child Trafficking in the Nordic Countries, Rethinking strategies and national responses*, A Technical Report, 2012. CARDET, Defence for Children International - Italy et al., *IMPACT, Improving Monitoring and Protection Systems Against Child Trafficking and Exploitation, Transnational Analysis*, 2013.

<sup>6</sup> United Nations Children's Fund Innocenti Research Centre, *Child Trafficking in Europe, A broad vision to put children first, Innocenti Insight*, 2008, accessed from [http://www.unicef-irc.org/publications/pdf/ct\\_in\\_europe\\_full.pdf](http://www.unicef-irc.org/publications/pdf/ct_in_europe_full.pdf) on 25 September 2015, p. 12. Council of the Baltic Sea States, Child Centre, Expert Group for Cooperation on Children at Risk, *Children trafficked for exploitation in begging and criminality: A challenge for law enforcement*

*and child protection, A CBSS Project in Lithuania, Poland, Norway and Sweden*, 2013, [http://www.childcentre.info/public/Childtrafficking\\_begging\\_crime.pdf](http://www.childcentre.info/public/Childtrafficking_begging_crime.pdf). United Nations Children's Fund Innocenti Research Centre, *Child Trafficking in the Nordic Countries, Rethinking strategies and national responses*, A Technical Report, 2012, pp. 18-20.

<sup>7</sup> Europol, *The THB Financial Business Model, Assessing the current*

*state of knowledge*, 2015, p. 13.

<sup>8</sup> The European Parliament and Council of the European Union, Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, Official Journal of the European Union, Brussels, 15 April 2011, par. 11.

tinguish child trafficking from other forms of exploitation. It is particularly challenging to understand, which children are at risk, and to identify cases of trafficking, including proactive identification even before the exploitation begins, or at border crossing.

The international and European standards have influenced the development of national laws, policies and procedures and offer important guidance for their implementation. When national law and practice differ from the rights and standards afforded under international and European law, the European Court of Justice, the European Court of Human Rights and the United Nations Treaty Bodies offer the possibility to seek legal remedy and to promote law and policy reform.

The law and policy framework concerning children in transnational situations is strong. All relevant standards have one thing in common, they are rooted in the UN Convention on the Rights of the Child and contribute to the implementation of the Convention, including in transnational contexts.

The Convention on the Rights of the Child defines not only the human rights of children and the correlated obligations of states. It provides also for obligations of parents and caregivers, public authorities, private service providers and the private sector. These rights and obligations can guide caseworkers and case officers in all measures, decisions and considerations for children on the move. The Convention supports caseworkers and officers in navigating the complexity of international, European and national laws. It provides the overarching framework and the strongest point of reference for safeguarding children.

# Best interests' determinations

---



Article 3 of the UN Convention on the Rights of the Child stipulates that “in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration”.

Assessing the best interests of a child means to evaluate and balance “all the elements necessary to make a decision in a specific situation for a specific individual child or group of children”.<sup>9</sup> The following aspects need to be considered:

- The child’s views and aspirations;
- The identity of the child, including age and gender, personal history and background;
- The care, protection and safety of the child;
- The child’s well-being;
- The family environment, family relations and contact;
- Social contacts of the child with peers and adults;
- Situations of vulnerability, i.e. the risks that the child is facing and the sources of protection, resiliency and empowerment;
- The child’s skills and evolving capacities;
- The rights and needs with regard to health and education;
- The development of the child and her or his gradual transition into adulthood and an independent life;
- Any other specific needs of the child.<sup>10</sup>

### Best interests’ assessments and determinations: Two steps of a process

Best interests’ assessments and determinations are two steps of a process: They aim to identify the elements and facts relevant for a specific child.<sup>11</sup>

**Best interests’ assessments** can be conducted informally and ad hoc or as formalised processes. Assessments concern everyday matters and decisions with more or less severe implications for the child. The best interests of a child may change significantly over time as children grow and their situations and capacities evolve. In that sense, the best interests’ may need to be reassessed periodically together with the child.

**Best interests’ determinations** are formal processes conducted with the involvement of public authorities and professional decision makers. The objective of the best interests’ determination is to reach a decision based on national law that safeguards the rights

of the child and promotes her or his well-being, safety and development. It requires from the decision-maker to weigh and balance all the relevant factors of the case, giving due consideration to all the rights of the child and the obligations of public authorities and service providers towards the child. The objective of the best interests’ determination process is the identification of a durable solution. Best interests’ determinations are carried out when the issues at stake are expected to have significant implications on the child’s present and future life.<sup>12</sup>

#### Elements of a best interests’ determination in transnational cases

Best interests’ assessments aim to gather all the facts needed to arrive at a conclusion about the impact of any action, measure or decision on the child and her or his future. A best interests’ assessment needs to address the following elements:

- Establishing the child’s identity and the identity of any accompanying persons and the quality of their relations;
- Case assessment, including the following components:
  - Hearing the child;
  - Assessment of the child’s situation, background and needs;
  - Social situation and family assessment;
  - Gathering evidence including through forensic examinations and interviews with the child;
  - Risk and security assessments;
  - Mapping sources of support, skills, potentials and resources for empowerment;
- Developing a life project;
- Comprehensive child impact assessment of any potential decisions;
- Identification of a durable solution;
- Continued assessments during the implementation of the durable solution with due follow-up, review and monitoring, and adjustments to the durable solution arrangements, if and as required, according to the best interests of the child.

The central perspective for the assessment is that of the girl or boy concerned. It is therefore important to establish a trust-based relationship with the child and to communicate effectively in a language that the girl or boy understands. The assessments should ideally involve a multi-disciplinary team of qualified professionals.

<sup>9</sup> Committee on the Rights of the Child, General Comment No. 14 (2013), par. 47.

<sup>10</sup> Committee on the Rights of the Child, General Comment No. 14 (2013), Chapter V.A.1 and par. 44.

<sup>11</sup> Committee on the Rights of the Child, General Comment No. 14 (2013), par. 46.

<sup>12</sup> Committee on the Rights of the Child, General Comment No. 14 (2013), par. 47.

## The right to non-discrimination

---

The Convention on the Rights of the Child affords a broad protection from discrimination. It stipulates that States Parties shall respect and ensure the rights set forth in the Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. (Article 2.1)

The rights afforded under the Convention apply therefore to non-national children, regardless of their immigration status or the migration status of their parents and including children who are visiting, refugees, children of migrant workers and undocumented children.<sup>1</sup>

The right to non-discrimination entitles each child to immediate assistance and support while the situation of the child and her or his best interests' are being assessed. In relation to best interests' determinations, this means that there is a need to apply the same or comparable standards to national and non-national children. In order to ensure

that non-national children enjoy these standards in practice, there may be a need to put in place proactive measures, as for instance quality interpretation and cultural mediation, to ensure effective communication with a child who does not master the national language.

Non-discrimination does not imply that a child is granted an automatic permit of stay, but that a decision is taken, on the basis of the best interests' determination, whether a child shall be returned to the state that holds jurisdiction or whether the country of destination assumes jurisdiction over the child.

The degree to which the child's right to non-discrimination is being respected in a country of origin can also be decisive for the determination of the best interests of the child and the identification of a durable solution. In this context, it is important to assess possible grounds of discrimination in the child's place of origin, including due to minority status, gender or gender identity, religion, disability or the national origin of the child or the parents or statelessness.

---

<sup>1</sup> United Nations Children's Fund, *Implementation Handbook for the Convention on the Rights of the Child, Fully Revised Edition*, Rachel Hodgkin and Peter Newell, 2002, p. 26.

### Procedural safeguards in best interests' determinations

As a formal process, the best interests' determination requires specific procedural safeguards and documentation:

- Child-friendly information in a language that the child understands, enabling the child to form an opinion and to express her or his views.
- The right of the child to express her or his views and to have them taken into account: In any judicial or administrative procedure, children have the right to be heard and to have their views taken into account. The process of hearing the child needs to be doc-

umented, with clear description of how the child's views are balanced against other views and other information sources. The communication with the child has to be effective and child-sensitive and might require quality interpretation and cultural mediation. In cases of unaccompanied or separated children, the role of the guardian or representative is essential to facilitate the communication between the child and the authorities.<sup>13</sup> The right to be heard entails also the right to a hearing wherever the decision making body is a court. The hearing should be held without delay in a child-sensitive way and prevent secondary victimisation of child victims and witnesses in judicial proceedings.<sup>14</sup>

<sup>13</sup> Committee on the Rights of the Child, General Comment No. 14 (2013), par. 90.

<sup>14</sup> Committee on the Rights of the Child, *The Rights of All Children in the Context of International Migration*,

*Background Paper, Day of General Discussion, 2012*, pp. 22-23.

Safeguarding children's right to speak and to have their views taken into account requires due consideration for the child's age, gender and background, the child's level of development and evolving capacities.

- **Quality interpretation:** Children who do not speak the language of the country of destination have a right to translation and interpretation. Interpretation should be made available free of charge and with a neutral bearing when interpreters are directly involved.
- **Guardianship and representation:** Unaccompanied children have a right to an independent representative or guardian who is competent and equipped to represent and promote the best interests of the child.<sup>15</sup>
- **Legal representation:** In cases where the best interests of a child are to be formally determined by a court or other competent bodies, the child is entitled to competent legal representation, legal information and defence. Legal counselling, assistance and representation are of fundamental importance in judicial or administrative proceedings, including for children applying for asylum or special protection as victims of crime.<sup>16</sup>
- **Legal reasoning:** Any decision taken needs to be documented, motivated in detail, justified and explained. It needs to be explained how the decision is considered to relate to the best interests of the child and how the underlying considerations have been balanced to arrive at the decision.<sup>17</sup>
- **Mechanisms to review or revise decisions:** Formal mechanisms have to be in place to reopen or review decisions on the best interests of a child. Children need to be supported in accessing and using these mechanisms. It has to be clearly established when a case or decision can be reopened or reviewed, as for instance when there is new evidence or when the authorities have not been able to implement the first decision.<sup>18</sup>
- **Right to appeal:** Best interests' determinations have to be subject to legal remedies. Children need to have access to appeal to a superior authority or court, with the necessary support, such as legal assistance and representation. The execution of decisions needs to be suspended for the duration of the appeal procedure.<sup>19</sup> For decisions concerning transfer or return of a child to another county, sufficient time must be available between

the decision and the execution of the decision, to enable the child to hand in an appeal or request a review of the decision.

### Inter-agency and multi-disciplinary cooperation for best interests' assessments and determinations

Best interests' assessments and determination processes require the knowledge and perspectives from different professional groups in order to achieve a holistic understanding of the child's situation and background. Fostering trusted partnership, multi-stakeholder and inter-disciplinary cooperation within countries and across borders is an imperative.

Strengthening and institutionalising the cooperation and consultation among the different actors is essential for ensuring that all the human rights of the child are given due weight in the process and that they are considered as inter-related and indivisible.

#### Inter-agency and multi-disciplinary cooperation:

- **Means** that officials and professionals from different backgrounds work together – with the child at the centre – to assess, plan and manage a specific case and feed information into the decision making process;
- **Involves** communication, information exchange and case discussions between different professionals and officials – and possibly volunteers or caregivers – who are in direct contact with the child concerned;
- **Requires** a basis of trusted professional partnership and time, a common understanding of key concepts, terms and definitions, familiarity with the mandates of each partner, clear regulations of working routines, including clear regulation of data protection and confidentiality, and rules for the division of tasks and leadership, ideally in an institutionalised context;
- **Is important** as it holds the key to reaching a better understanding of the different laws and regulations concerning the child as well as the child's situation, experiences, needs and aspirations;
- **Is a precondition** for ensuring a balanced and holistic approach to the assessment and determination of the child's best interests;

<sup>15</sup> Committee on the Rights of the Child, *The Rights of All Children in the Context of International Migration, Background Paper*, Day of General Discussion, 2012, pp. 22-23.

<sup>16</sup> Committee on the Rights of the Child, General Comment No. 14

(2013), par. 96. See also: European Council of Refugees and Exiles, *Right to Justice: Quality Legal Assistance for Unaccompanied Children, Annex 1: Guiding principles for quality legal assistance for unaccompanied children*, 2014.

<sup>17</sup> Committee on the Rights of the Child, General Comment No. 14 (2013), par. 97.

<sup>18</sup> Committee on the Rights of the Child, General Comment No. 14 (2013), par. 98. United Nations High Commissioner for Refugees, *UNHCR*

*Guidelines on Determining the Best Interests of the Child*, 2008, p. 79.

<sup>19</sup> Committee on the Rights of the Child, General Comment No. 14 (2013), par. 98.

## Right to consular assistance

---

Children who are outside of their country of residence have a right to assistance by embassies and consular offices representing their countries. Consular staff can play an important role in supporting and assisting children abroad, establishing supportive contacts and referral, and mobilising help. Consular staff can contact central authorities or national contact points to seek technical advice in cases involving children and need to be informed and trained in this regard.

The Council of the Baltic Sea States Task Force Against Trafficking in Human Beings jointly with the International Organisation for Migration developed a Handbook for diplomatic and consular personnel on how to assist and protect victims of human trafficking. The handbook provides an overview and easy-to-access information on how to strengthen the protective capacities of consular staff.

## Access to information, technical assistance and specialised expertise

---

Many transnational child protection cases are complex and difficult to assess, especially when criminal acts are involved, such as exploitation and trafficking, and when the child's identity, relations and aspirations are not entirely clear. In order to address such cases effectively, it is important that expertise in child protection, social affairs, family mediation, criminal law and security matters, migration issues, interpretation and cultural mediation is available.

Specialised knowledge and experience with complex cases may however not be available in each municipality, especially in small towns and in rural areas. For officials and professionals working with and for children, it is therefore important to know whom to contact in order to seek information, technical assistance and specialised expertise.

The following are some key contact points to approach:

- National institutes, commissions or Ombuds Offices for human rights or specifically for children's rights
  - Central authorities for child protection, which are in place for different themes and are usually connected to the Hague Conventions on child protection and international family law and to the Brussels II bis Regulation
  - The national migration authorities
  - National Rapporteurs or observatories on human trafficking
  - The national branches of the International Social Service in the countries involved in the case
  - NGOs and child rights advocates focusing on matters concerning children on the move and/or child victims of crime
  - National institutions supporting victims of crime
  - National or regional offices of UNICEF, the United Nations High Commissioner for Refugees (UNHCR) or the International Organisation for Migration
-



- **Helps to ensure** that the views of the child inform the action of each professional or official while reducing the number of interviews or formal hearings with the child to a minimum;
- **Offers opportunities** to work more effectively and efficiently, especially when approaches are child-sensitive and child-centred, giving the child meaningful opportunities to be informed and heard, reducing risks of secondary victimisation during investigations and procedures, while also reducing the strain on individual professionals or agencies;
- **Is essential** to ensure that decision making processes are safe and sound and lead to rights-based and sustainable outcomes.

### Balancing rights and interests in best interests' determinations

The assessment and determination of the best interests of a child involves a process of assessing and balancing all the elements necessary to make a decision for an individual child. In this process, there may be different elements to consider and some of them may appear to be competing or in contradiction.

Potential conflicts have to be solved on a case-by-case basis. Authorities and decision makers need to bear in mind that the right of the child to have her or his best interests taken as a primary consideration means that the child's interests have high priority and are not just one of several considerations. Therefore, a larger weight must be attached to what serves the child best:

- The possibility of harm outweighs other factors;
- The child's right to be brought up by her or his parents is a fundamental principle;
- A child's best interests can generally best be met with her or his family, except where there are safety concerns;
- The survival and development of the child are generally ensured the best by remaining in or maintaining close contacts with the family and the child's social and cultural networks;
- Matters related to health, education and vulnerability need to be assigned weight; and
- Continuity and stability of the child's situation are considered important.<sup>20</sup>

### Promoting the development of children on the move

The rights of the child to life, survival and development is afforded under Article 6 of the Convention on the Rights of the Child. These rights are related to survival, security and health as a precondition for physical development as well as the mental, spiritual, moral, intellectual, cognitive, emotional and socio-cultural development of the child.<sup>21</sup>

The following factors need to be taken into account when assessing the development needs of a child (with reference to the relevant articles under the UN Convention on the Rights of the Child):

- The right to preserve her or his identity, including nationality, name and family relations (Article 8);
- The continuity in the child's care and upbringing, with due regard to the child's ethnic, religious, cultural and linguistic background (Article 20);
- The right of the child to enjoy the highest attainable standard of health (Article 24);
- The right of every child to a standard of living adequate to the child's physical, mental, spiritual, moral and social development (Article 27);
- Access to education (Articles 28 and 29);
- The right of the child to rest and leisure, to engage in play and recreational activities appropriate to her or his age (Article 31).

The quality of care for a child has a direct impact on her or his development. Promoting the child's developmental rights and needs means therefore also to enable the child to grow up in her or his family of origin or in a family-based or family-like alternative care placement, wherever this is in the best interests of the child. When assessing the child's developmental needs, due attention needs to be given to the care arrangements as well as access to quality services for health and education.

<sup>20</sup> United Nations High Commissioner for Refugees, United Nations Children's Fund, *Safe and Sound, What States can do to ensure respect for the best inter-*

*ests of unaccompanied and separated children in Europe*, 2014, p. 43.

<sup>21</sup> This section draws significantly on the UNHCR Guidelines on the Formal Determination of the Best Interests of the Child, p. 36.

## Communicating with children in the process of best interests' assessments and determinations

Under the Convention on the Rights of the Child, children have the right to express their views in all matters affecting them and their views have to be given due weight in accordance with the age and maturity of the child (Article 12). This right applies equally to children's participation in social and political matters as well as in judicial and administrative proceedings. As a general principle, the child's right to be heard reflects the concept of children's 'agency', viewing children not only as vulnerable persons in need of special protection, but also as informed decision makers, rights holders and active members of society.

Recommendations for creating trust and for ensuring that children have meaningful opportunities to express their views and to be heard:

- Demonstrate that you care for and respect the child as a person.
- Ask the girl or boy how she or he is, how she or he feels at the accommodation and if there is anything she or he needs.
- Engage in a gentle conversation with the child about day-to-day matters.
- Show empathy and express positive feelings and talk to the child about things that are important to the child and that interest her or him.
- Sense if the child is comfortable talking with you, reassure the child and give the child a feeling of control of what is happening.
- Make the meeting room child-friendly, even with minor accessories and gestures.
- Introduce yourself and explain your professional role.
- Explain the purpose of your meeting and what the meeting is about, why you are there to talk to the child and what will happen afterwards.
- Allocate sufficient time to speak to the child and to listen.
- Make available quality interpretation and cultural mediation wherever required.
- Give the child time to reflect about the information you shared, to digest it and to come back for a second or third meeting, if and as required and appropriate.
- Ask the child if she or he has understood the information and to explain what they understood, and take time to ask the questions you need to ask.

## Age-sensitive communication

In the cases of younger children or children with impaired cognitive skills, the child's participation can be encouraged through adequate communication methods such as drawing or play, observation of the child's behaviour in interaction with family members, care staff and the environment. Adapting the language to the age and development of the child is imperative to ensure that the child can understand the issues at stake and express her or his feelings and views.

## Gender considerations for the right to be heard

For some girls and boys, it can make a difference whether they are interviewed by a man or a woman. The same is true for the role of the interpreter, cultural mediator, guardian or care staff. The relevance of gender depends on the experiences that children have previously made with men and women in their homes and communities, during the journey or in places of destination. Traditional gender roles and relations can also play a role. The gender identity of the child should be respected.

## Forensic interviews

The interviewer can facilitate the child's disclosure by prioritising open questions while avoiding closed and focused questions, suggestive prompts and leading questions. It is particularly important that interviewers take on a neutral bearing, that they are open and empathic, while avoiding criticism and confrontations. The same applies to interpreters who need to be aware of these details in order to transmit the interview style and bearing accordingly.

## Hearing a child in investigations and proceedings

As a general rule, child victims of crime have a right to be protected from harm and secondary victimisation during criminal investigations and proceedings:

- Child victims of crime have a right to be protected from unnecessary repetition of interviews during the investigation, prosecution and trial.
- Video recorded interviews or other appropriate communication technologies can be used in order to avoid that a child victim or witness has to give evidence in open court and to prevent visual contact between victims, witnesses and defendants.
- Interviews with child victims shall be carried out by specifically trained professionals and, if possible, the same person shall conduct all the interviews with the child.
- Interviews shall be conducted in a child-friendly environment.
- The Children's House model<sup>22</sup> is a good practice for conducting forensic interviews and gathering evidence from child victims of crime.

## Quality interpretation and cultural mediation

Interpreters can influence the information gathering process in asylum procedures and criminal investigations as they have an impact on how the child's disclosure is being understood and perceived. Inaccurate translation might compromise the child's statement to the effect that decisions are taken on the basis of incorrect information. This relates not only to the content translated but also to the style and semantic choices made by the child and how these are rendered by the interpreters.<sup>23</sup>

In addition to training and recruiting qualified interpreters, it is important to provide for the following:

- Clarify, which authority is responsible for providing interpretation.
- Make the participation of an interpreter mandatory whenever a child does not master the official language of the interview.
- Avoid the use of informal interpreters, such as family members, other children, other asylum seekers or staff.

- Use telephone interpretation when a qualified and suitable interpreter is not available locally. Distance interpretation may be preferable to protect the child's privacy when sensitive issues are at stake and when the diaspora representing the needed language in the country of destination is particularly small.
- Train law enforcement officers, immigration officials and other interviewers as well as the interpreters on how to collaborate in the context of interviews with children.
- Develop standard procedures with due consideration to quality and ethical standards of interpretation and confidentiality rules.
- Train interpreters to act also as cultural mediators.

<sup>22</sup> The Children's House model provides multi-disciplinary services for child victims under the same roof. The model has been internationally recognised and evaluated as a good practice. The Children's House staff conduct forensic interviews with child victims and witnesses of crime and

with children who have potentially been exposed to abuse. This can guide professionals in developing child-sensitive and child-centred approaches to interviewing child asylum seekers and child victims of trafficking. See: PROTECT 1<sup>st</sup> Expert Meeting, Stockholm, 2014, Bragi Gudbrandson,

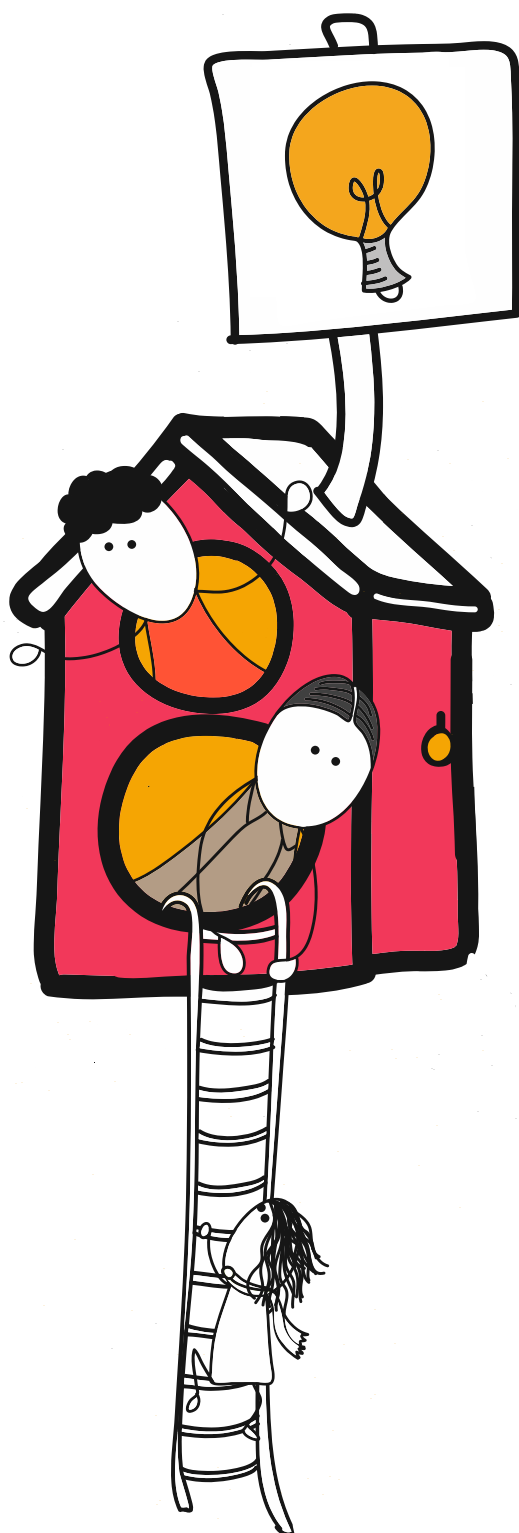
Government Agency for Child Protection, Iceland.

<sup>23</sup> PROTECT 2<sup>nd</sup> Expert Meeting, Riga, May 2014, presentation by Ann-Christin Cederborg, University Stockholm. See also: Crawley, Heaven, *Working with Children and Young People Subject to Immigration Control*,

*Guidelines for best practice*, Second Edition, Immigration Law Practitioners' Association, 2012.

# Step by step: Transnational cooperation towards a durable solution

---



The following checks and assessments are necessary to identify a non-national child and to assess her or his situation:

- Information gathering from different sources and case assessment, including the identification of the child and her or his background, story and status;
- Establishing jurisdiction over the child, if and as appropriate;
- Guardianship and representation;
- Family tracing;
- Family assessment;
- Risk and security assessments;
- Assessments of resources, skills, resiliency and potentials.

While these assessments are being conducted, the child has a right to quality care and protection.

## Identification

Assessing the child's identity in the course of a best interests' assessment requires information about the nationality, upbringing, ethnic, cultural and linguistic background of the child. The assessment should also identify particular vulnerabilities and protection needs connected to the child's identity and background.<sup>24</sup>

The assessments for identification may need to verify a child's name and age, family relations as well as the circumstances of the child's mobility. The identification process might also require an assessment of the nature of the relations between a child and the accompanying persons. In many cases, the assessments for identification require communication and information exchange between countries of destination and origin.

When a person does not carry identity papers or when there are doubts whether the person is a child, age assessments are sometimes conducted. Age assessments are however known to have a significant margin of error. In cases of doubt, the person whose age is unclear shall therefore be assumed to be under 18 years old, be referred to child protection services and appointed a guardian.<sup>25</sup>

Establishing the age of the person is relevant for a range of matters:

- Age determines whether the person is a 'child' and therefore eligible to enjoy the rights afforded under the UN Convention on the Rights of the Child and national laws concerning children.

- Age can make a difference for the referral of the person to shelters and support services not only for differentiating between accommodation for adults and children but also because younger children and adolescents may fall under the responsibility of different authorities.
- Age is instructive in the decision about the appointment of a guardian, the child's right to access work and legal employment, as well as criminal responsibility.
- Age can be decisive for the child to exercise her or his right under national laws to be heard and to have their views taken into account, including in legal and administrative proceedings, to act as party to proceedings, to appeal decisions independently and to have access to legal assistance and representation.
- Age matters when children have been granted a temporary protection status ('leave to remain') until they turn 18 years old.

While the age of the person is relevant for many issues, it can be questioned, how much priority should be attached to it. From a human rights perspective, and considering the importance of continuity and stability of care, a longer-term perspective supporting the young person's development into adulthood and independence is essential, including in the context of return.

## The role of guardians and representatives in promoting the best interests of non-national children

Guardians are important contact persons for caseworkers and officers as they represent and promote the best interests of the child. They also support the child in contact with the authorities and service providers. Caseworkers, officers and service providers shall therefore involve the guardian in the care planning and decision making processes, in hearings concerning immigration matters and appeal, and all other matters relevant for the child's case. The mandate of a guardian or representative does not usually comprise legal advice. Children who are involved in administrative or judicial proceedings, including asylum proceedings, therefore also require a lawyer and legal assistance.<sup>26</sup>

<sup>24</sup> Committee on the Rights of the Child, General Comment No.6 (2005), par. 20. Committee on the Rights of the Child, *The Rights of All Children in the Context of International Migration, Background Paper, Day of General Discussion*, 2012, p. 10.

<sup>25</sup> Committee on the Rights of the Child, General Comment No.6 (2005), par. 31. UNICEF Guidelines on the Protection of Child Victims of Trafficking, par. 3.2. Separated Children in Europe Programme, Statement of Good Practice, 2009, p. 25.

<sup>26</sup> Committee on the Rights of the Child, General Comment No.6 (2005), par. 33, 36.

## Quality care for children on the move

---

An important reference point for developing quality care for children on the move is the national child protection system. It is important that transnational cases are managed according to the same quality standards and principles that apply in national cases when children need protection. They include the following, with reference to the relevant articles of the Convention on the Rights of the Child:

- The right to non-discrimination (Article 2)
  - The overarching principle of the best interests of the child (Article 3)
  - The right to life, survival and development (Article 6)
  - The right to be heard and to have her or his views taken into account (Article 12)
  - Equality in care
  - Ethic of care
  - Stability and permanency of care for as long as the child is staying in a country
  - Continuity of care within the country of destination and when the child is transferred or returned to another country
- 

## Age assessments

---

When an age assessment is considered necessary, the assessment shall be multi-disciplinary in nature and take the child's origin and background into account while not compromising the physical integrity of the person and respect for her or his dignity.<sup>1</sup> Multi-disciplinary means that one authority, ideally the social services, take the lead in the assessment and engage all other relevant agencies involved with the case in order to achieve a holistic approach while avoiding unnecessary repetition of interviews with the child or examinations by different agencies.

Age assessment procedures shall involve a hearing of the person and be conducted in a child- and gender-sensitive way, with the informed consent of the person. Cultural matters, environmental and living conditions as well as the individual physical, psychological and cognitive development can have a strong impact on the way a young person is

perceived. In some cultures, children under 18 are considered adults as soon as they perform an initiation rite, regardless of their biological age, and their behaviour may appear very mature. Poor living conditions, nutrition and hygiene can lead to stunted growth and development of children coming from contexts characterised by poverty. A purely physical examination is therefore unlikely to lead to reliable results.

The person who has to undergo age assessment shall be assisted by a guardian or another competent support person. The person shall be informed about the procedure and the implications of its outcomes. There must also be a possibility and the necessary support to appeal against the results of the assessment and the margin of error should be applied giving the benefit of the doubt in the individual's favour.<sup>2</sup>

---

1 Separated Children in Europe Programme, Position Paper on Age Assessment in the Context of Separated Children in Europe, 2012, pp. 7-8.

2 United Nations High Commissioner for Refugees, UNHCR Guidelines on Unaccompanied and Separated Children Seeking Asylum, 1997. UNICEF, Age Assessment: A technical note. UNHCR Guidelines on International Child Protection: Child asylum claims, 2009. Separated Children in Europe Programme:

Statement on Good Practice and Position Paper on Age Assessment in the Context of Separated Children in Europe. EU 2011 Anti-trafficking Directive, Article 13.2. EU Asylum Procedures Directive, Article 25.5. CRC General Comment No 6, par. 31(i). UNICEF and UNHCR Safe and Sound, p. 34. UNICEF Guidelines on the Protection of Child Victims of Trafficking, par. 3.1.2. European Asylum Support Office, Age Assessment Practice in Europe, 2013.

When a child is moved to a different shelter, reception centre or foster family, continuity of guardianship arrangements have to be considered a priority. In order to enable the effective communication with the child, guardians may need access to quality interpretation.

A guardian can also play an important role in return procedures. Caseworkers and officers need to ensure continuity of guardianship during return, enable the cooperation between guardians in countries of destination and return and the hand-over of guardianship responsibilities across borders.<sup>27</sup>

## Data protection and confidentiality<sup>28</sup>

Caseworkers and officers have to follow strict rules of data protection and confidentiality and have to respect the child's right to privacy. It is however often necessary to share information about children with other authorities or professionals within countries of destination and across borders.

The following are fundamental principles to guide the processing of personal data. Personal data shall be:

- Given with informed consent;
- Processed fairly and lawfully;
- Obtained only for clearly specified and lawful purposes;
- Adequate, relevant and not excessive in relation to the purpose for which they are processed;
- Accurate and kept up to date;
- Not be kept for longer than is necessary for that purpose;
- Processed in accordance with the rights of data subjects, which implies the right and possibility of the person concerned to access and amend data;
- Adequately protected, which implies appropriate technical and organizational measures against unauthorized or unlawful processing of personal data;
- Not transferred to any country or territory outside the European Union and the European Economic Area without adequate level of protection for the rights and freedoms of data subjects.

In the case of asylum seekers, confidentiality rules need to be observed when information is sought from or transferred to countries of origin. The authorities that receive and assess an asylum application must

not inform the authorities of the applicant's country of origin about the asylum claim and must not share any information about the applicant with the country of origin. The confidentiality rules apply also for the communication with countries of origin that are considered safe. When an asylum application has been rejected and all legal remedies are exhausted, the country of destination is authorised to share limited personal data with the authorities of the country of origin in order to facilitate return. This may be necessary when the person has no valid identity documents. The fact that the person has applied for asylum must however not be disclosed to the authorities in the country of origin.<sup>29</sup>

## Sources of information

The assessments feeding into best interests' determinations need to be based on a diversity of information sources, which need to be verified and cross-checked in order to arrive at a reliable understanding of the child's situation and background:

- The **central source of information is the child**. It is fundamental that the story, the background, the views, needs and aspirations of the child are heard and taken into account.
- The knowledge and views of **professionals from different backgrounds** should be heard in order to take into account their perspectives, expert reports and opinions, including with regard to the child's history and needs in relation to health and education, care, protection and development.
- Information about the child's experiences during the journey as well as the reasons and conditions of the departure should be collected and considered. **National and local authorities in countries of origin and transit** can be important sources of information. When contacting authorities in countries of transit and origin, professionals and officials in the country of destination need to be certain to make these contacts in line with the best interests of the child and in respect of confidentiality rules, especially for children who are applying for asylum
- **Family tracing and assessment** constitutes another important source of information. National central authorities, ministries, regional or local social services may provide relevant information as well

<sup>27</sup> Fonseca, Ana, Anna Hardy and Christine Hardy, Unaccompanied migrant children and legal guardianship in the context of returns: The missing links between host countries and countries of origin, International Organisation of Migration, *Children on the Move*, 2013, pp. 45-61, p. 47, 53.

<sup>28</sup> This section draws substantially on the 4<sup>th</sup> PROTECT Expert Meeting, Riga, November 2014, presentations by Philip Ishola, Independent Child Protection, Human Trafficking, Human Rights Consultant, UK and Aiga Balode, Deputy Director, Data State Inspectorate of Latvia. See also: KOK

e.V., *Data Protection Challenges in Anti-Trafficking Policies, A practical guide*, 2015.

<sup>29</sup> United Nations High Commissioner for Refugees, Asylum Processes, Fair and Efficient Asylum Procedures, Global Consultations on International Protection, EC/GC/01/12, 31 May

2001, par. 50 (m). EC Asylum Procedures Directive, 2013/32/EU, Recital 52 and Article 48.

## Basic human rights principle: Access to the territory

When a child is identified at border entry points, with or without identity documents, the state authorities must grant the child access to the territory of the state and to relevant support or reception structures. Granting access to the territory means that a child cannot be held in immigration detention at borders, ports or airports and that a child shall be registered and referred to

child protection and immigration authorities at first point of contact in the state of arrival. This imperative derives from the obligations of states to promptly identify children in need of protection, to grant access to the asylum procedure and to conduct a best interests' assessment and determination for each child.<sup>1</sup>

<sup>1</sup> UN Convention on the Rights of the Child, Articles 1, 3, 20 and 22. United Nations 1956 Convention Relating to the Status of Refugees. Committee on the Rights of the Child, General Comment No. 6 (2005), par. 20 and Chapter VI. Committee on the Rights of the Child, General Comment

No.6 (2005), par. 20. Committee on the Rights of the Child, *The Rights of All Children in the Context of International Migration, Background Paper, Day of General Discussion, 2012*, p. 10.

as contacts established through international networks such as the International Committee of the Red Cross, the International Social Service or the International Organisation of Migration. In some cases, local social services get directly in contact with their counterparts in the child's country of origin. The information gathering and sharing with these sources should respect national data protection laws and regulations and any matters of confidentiality related to the asylum procedure.

- **Child-specific and gender-specific country of origin information** needs to be developed and used as it is critical that child-specific forms of persecution are recognised. Country of origin information is available from national migration authorities and their networks, as well as the European Asylum Support Office, UNICEF and the United Nations High Commissioner for Refugees.<sup>30</sup>
- **Law enforcement agencies** may be important sources of information in cases involving law enforcement investigations, in civil or criminal matters. Europol, Interpol and national police liaison officers based abroad, constitute important points of entry for law enforcement enquiries in international cases.
- Judges may seek access to **regional and international networks of judges** in order to gather information if a trial involves a transnational case that has been heard by a court of law in another country.

## Family tracing and re-establishing family links

Family tracing is the first step towards re-establishing the contact between an unaccompanied child and her or his family of origin. It is also a precondition for the assessment of a child's family situation.

Family tracing can be initiated upon the request of the child or upon the initiative of the authorities. Family tracing should be done with the informed consent of the child and the child's views about family tracing should be heard prior to initiating the process. If the child is against family tracing, the dialogue with the child should be sought to understand the child's position. Family tracing shall only be conducted when it is considered to be in the best interests of the child. This means that tracing and restoring the family ties is expected not to cause the child or the family any harm or other adverse effects.

Family tracing can take place in the child's country of origin or another country to where the family has migrated, within the European Union or in third countries, according to the family situation and their history of migration or displacement. Caseworkers and officers can request the assistance of international organisations for family tracing, for instance the national branch of the International Social Service or the Red Cross.

In the case of unaccompanied children from third countries who are seeking asylum in a Member State of the European Union, the EU Reception Conditions Directive offers guidance for family tracing within the country where the child's asylum application is

<sup>30</sup> Committee on the Rights of the Child, General Comment No.6 (2005), par. 75. United Nations High Com-

missioner for Refugees, Guidelines on International Protection, Child Asylum Claims, 2009, par. 11.



being processed or in a third country. In both cases, family tracing shall start as soon as possible after an application for international protection is made, whilst protecting the best interests' of the child. In cases where there may be a threat to the life or integrity of the child or her or his close relatives, family tracing must be undertaken on a confidential basis, in order to avoid jeopardising the safety of the child or the family members.

For children who migrate within the EU and who have lost contact with their families, the authorities in the country of destination might take the initiative to trace and assess the child's family before returning the child to her or his country of origin, as part of a best interests' determination. These assessments are usually done in cooperation with the authorities in the country where the family lives. The authorities in the country of destination can however also decide to return the child to the country of origin without conducting family tracing when the country is considered safe. This is common practice within the European Union as all Member States are considered safe and national child protection authorities are considered competent and qualified to trace a family, to assess the best interests of the child with regard to family reunification and to provide quality alternative care if necessary. An individual assessment for each child is however required in order to ensure that return without prior family tracing is in the best interests of the child and to exclude any risks to the child in the country of origin.

For child victims of trafficking who have been officially recognised as such in a country of destination, family tracing would be conducted in order to explore the possibility of returning the child to the family of origin, and to assess any possible risks as well as sources of protection in the family environment.

## Maintaining family relations and contact

Children who are unaccompanied or separated from their family have a right to remain in contact and to maintain family relations, wherever this is not contrary to the best interests of the child (Convention on the Rights of the Child Article 9.3).

Legal regulations on family contact for unaccompanied children are not always in place. In the absence of legal regulations, the support of care staff, guardians and other relevant professionals is essential to ensure that unaccompanied children maintain relations and contact with their home countries, communities and families, wherever this is in their best interests and in accordance with confidentiality standards during the asylum procedure.

## Assessing risk factors, resiliency and sources of support

A child can only be effectively protected from violence, exploitation and abuse, when the caseworkers and officers have a good understanding of the risks facing the child. Risk assessments are conducted at different moments in the reception and care of a child and are part of social inquiries and best interests' determinations.

### Assessing possible risks is important for

- Decisions about the child's referral, placement and arrangements for care and security;
- The identification of a durable solution;
- In relation to criminal investigations and proceedings, when the child is known or presumed to be a victim of trafficking or other crime and when the child acts as witness;
- When the child has been involved in illegal or criminal activities and there are reasons to assume that the child has been exploited or abused in this context;
- When a child is transferred to another country under the Dublin III Council Regulation; and
- When the possibility and conditions for a child to return are being assessed.

Risk assessments analyse individual, family and structural or institutional factors that could cause or increase the risks of a child. These assessments offer an important opportunity to assess and understand also the resiliency of the child and the family as well as sources of support that are available from within the family or community, from social support networks and service providers. Mapping sources of risk and resiliency for the child and the family is a precondition for preparing a safety plan for the child in her or his individual situation. A good understanding of risks and resiliency is essential for the identification and implementation of a durable solution.

With regard to the *child*, a risk assessment needs to take into account:

- Age- and gender-specific risks,
- The child's awareness and understanding of risks,
- The knowledge about rights, entitlements and sources of support and the access and use of these,
- Previous experiences of violence, exploitation and abuse,
- Any emotional or behavioural problems, and
- The educational background of the child and caregivers.

At the *family level*, the quality of the family relations needs to be looked into as well as the socio-economic situation of the family and their social inclusion or

exclusion in the community. The assessments need to consider the awareness within the family of childcare and protection, parenting skills and the prevalence of domestic or gender-based violence. The assessments need to understand also to which degree the family has access to and is using social support networks and family support services.

With regard to the *institutional and structural level*, a risk assessment needs to consider the capacity of local service providers to support the child and the family effectively through services for protection, rehabilitation and the prevention of further harm. Socio-political dynamics, such as the prevalence of gender-based and other discrimination, stark inequalities or exclusion of certain population groups or minorities are important. In addition, the level of tolerance of violence, including specifically violence against women and children, needs to be assessed.

Risk assessments are stronger and more meaningful when they are multi-disciplinary in nature, involving the child and the family, the authorities and key professions in the country of destination and origin. Risk assessments give very concrete hints about what kind of support is needed to build resiliency, to strengthen the protective resources and capacities of the child, the family and the social context.

### Missing children: Children leaving care and receptions without informing the authorities

In countries of destination, many children leave care arrangements without informing the authorities of their whereabouts. When children go missing, they face high risks of being exposed to harmful and destitute living conditions, exploitation and abuse.

Some of the children who 'go missing' move on to other countries in Europe or beyond. Children may refuse to lodge an asylum application, some children do not wait for the decision on their application before leaving reception centres and others leave when their applications have been rejected. Some might continue their journeys in order to reach their final destinations, to join family members or other contacts abroad. Others might be trafficked and follow the routes determined by their traffickers or exploiters. Effective national responses and transnational cooperation are important to locate these children and to ensure their safety.

Experience shows that care staff, guardians and service providers can prevent children from going missing when they succeed to establish a trust-based relation and communication with the child and when they support children in integrating socially into the community of destination. Social contacts and support networks may help to prevent that children go missing. When children have mobile phones and e-mail accounts and share their contact details with care staff or trusted persons, remaining in contact can be a way for reconnecting children to services once they have left. Previous identification and registration, including of photographs, is critical to look for children once they have left. National protocols for missing persons can guide the cooperation of different authorities in preventing and tracing missing children and should ideally be extended across borders. A fundamental safeguard to prevent children from going missing is that their views, needs and aspirations are being heard and taken into account in a meaningful way at all stages of their reception, referral and care and in the best interests' determination.<sup>31</sup>

When an unaccompanied child goes missing, the police has to investigate the case in the same way as cases of national children missing. This is required under the obligations of the state to ensure the safety and well-being of any child within its jurisdiction, as afforded under the UN Convention on the Rights of the Child, in particular the principle of non-discrimination under Article 2. The child's guardian, social services and care staff and the child's lawyer, where applicable, should be informed about the progress of the investigations. Guardianship arrangements do not cease when a child is missing.

### Establishing jurisdiction over a non-national child

The UN Convention on the Rights of the Child affords universal standards that apply to each child within the jurisdiction of a state (Article 2). Being on the territory of a state, and therefore *within* the state's jurisdiction, entitles a non-national child to immediate care and assistance if and as required. The provision of services for immediate care and assistance, however, does not automatically imply that the authorities in the country of arrival *have the jurisdiction* over the child.

Decisions in civil law matters such as the longer-term care arrangements for the child, contact with

<sup>31</sup> European Migration Network, *Policies, Practices and Data on Unaccompanied Minors in the EU Member States and Norway*, Synthesis Report: 2015, pp. 28-32.

family members, maintenance and parental responsibility may fall under the jurisdiction of another state. While assessing the child's case and situation, state authorities have a responsibility to clarify which state has the jurisdiction over a child and, if required and appropriate, transfer or establish jurisdiction in the country of destination.

The authorities in the country of destination need to know if there are any formal proceedings pending in another country:

- There could be a case pending at court in which the child is involved,
- Social services in another country may have been monitoring the child and her or his family;
- The child's situation may have been under law enforcement investigations in another country, including where child trafficking is suspected;
- The child may have handed in an asylum application in another country;
- The child may be registered as a 'missing child' abroad.

### Establishing and transferring jurisdiction: Rules and regulations under the Brussels II bis Regulation and the Hague Conventions<sup>32</sup>

Establishing jurisdiction is a precondition for an international case to be tried by a court. Under the Brussels II bis Regulation Article 15, the court of a EU Member State may look into the possibility to transfer jurisdiction when

- It is in the best interests of the child that the Member State becomes the habitual residence of the child;
- The child has previously had her or his habitual residence in the Member State;
- It is the country of the child's nationality;
- It is the habitual residence of a holder of parental responsibility; or
- It is the country where the child's property is located.

When a case is passed to the court and the court finds that it has no jurisdiction to take a decision in the case, Article 17 of the Brussels II bis Regulation applies. The article provides that the court declares that it does not have the jurisdiction and notifies the authorities in the child's country of habitual residence. The notification is usually sent through the central authority under the Brussels II bis Regulation.

Under the 1996 Hague Convention Article 8, the central authority of a Contracting State may consider the transfer of jurisdiction if they believe that the authority of another Contracting State would be better placed to assess the best interests of the child. This would potentially be the case when the state is that of a child's nationality or where the child's property is located or where the child has substantial connections.

Clarifying jurisdiction is important for the case assessment and decision making processes. As long as the jurisdiction over a non-national child is not explicitly established, the child risks staying in a state of uncertainty and might benefit only from temporary services and protection measures, until the child's status is fully regularised or the child returns to the country holding jurisdiction.

<sup>32</sup> This box draws extensively on the PROTECT 1<sup>st</sup> Expert Meeting, Stockholm, January 2014 and the PROTECT 2<sup>nd</sup> Expert Meeting, Riga, May 2014.

# Implementation of a durable solution

---



## Durable solutions

A durable solution is identified on the basis of a best interests' determination and it is therefore always an individual solution. It shall be identified for each unaccompanied or separated child, including refugees and asylum seekers, and children who are victims of trafficking. The durable solution is oriented at longer-term objectives ensuring the child's safety, well-being and development. It leads to family reunification or alternative care arrangements according to the best interests of the child.<sup>33</sup>

The identification and implementation of a durable solution involves different agencies and the child's guardian, while the child is at the centre of the process and her or his views have to be heard and taken into due consideration.<sup>34</sup>

When the best interests' determination process concludes that a child has no grounds for international protection and that transfer to a third country is not an option, the possibility of returning the child to the country of origin will be assessed. The assessment needs to look for updated information on the following matters:

- The safety and security situation in the place of return;
- The conditions awaiting the child upon return, including socio-economic conditions;
- The availability and appropriateness of care arrangements for the child according to her or his individual needs;
- The continuity in a child's upbringing, care arrangements and development;
- The views of the child and the caretaker(s) regarding return;
- The child's level of integration in the country of destination;
- The duration of absence from the country of origin and the quality of the child's relations and contact with the home country;
- The child's right to preserve her or his identity, including nationality, name and family relations;
- The child's ethnic, religious, cultural and linguistic background.<sup>35</sup>

When these assessments conclude that return is indeed in the best interests of the child, return will be ordered and the preparations for return will set in. In any other case, where there are doubts that return

corresponds to the best interests of the child or where the assessments do not lead to satisfactory outcomes, the option of return must be reconsidered.

## Life projects

In 2007, the Committee of Ministers of the Council of Europe adopted a recommendation on 'life projects' for unaccompanied children. The recommendation aims to promote the identification of "... lasting solutions for and with unaccompanied migrant minors that will help them to build life projects guaranteeing them a better future".

A 'life project' is an individual care planning and case management tool. It helps unaccompanied children and the competent state authorities to collaborate in a transparent and respectful way. The objective is to jointly confront the challenges that result from the child's migration and to plan and implement a sustainable solution for the child.<sup>36</sup>

Life project planning should set in as early as possible and proceed in parallel to the best interests' determination process. Life project planning supports the identification and implementation of a durable solution, without interfering with the decision about where the durable solution is being implemented. Life projects do not anticipate any decision about the child's stay in the destination country, return or resettlement. The responsibility for developing life projects rests primarily with the authorities of the destination country, while the implementation might involve also the countries of origin or other states. Life projects help children and young people in their transition into adulthood and an independent life. Strengthening the transnational cooperation between the relevant authorities is therefore a key aspect for the development and implementation of life projects.<sup>37</sup>

## Local integration

### After-care and youth support

Children are not always aware of how their situation and rights change when they turn 18. They may lose the support of a guardian or representative and the right to accommodation in a special home or in a fos-

<sup>33</sup> Committee on the Rights of the Child, General Comment No.6 (2005), par. 20, 86., par. 79. United Nations Children's Fund, *Guidelines on the Protection of Child Victims of Trafficking*, September 2006, p. 3. United Nations High Commissioner for Refugees, UNHCR Guidelines on

Determining the Best Interests of the Child, 2008, p. 30.

<sup>34</sup> Separated Children in Europe Programme, *Statement of Good Practice*, 4<sup>th</sup> Revised Edition, Save the Children, UNHCR, UNICEF, 2009, p. 15, 33.

<sup>35</sup> Committee on the Rights of the Child, General Comment No.6 (2005), par. 84.

<sup>36</sup> 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, 2007, Appendix, par. 1-2.

<sup>37</sup> 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, 2007, Appendix, par. 7-8.

## Durable solution

A durable solution for an unaccompanied or separated child is understood as “a sustainable solution that ensures that the unaccompanied or separated child is able to develop into adulthood, in an environment which will meet his or her needs and fulfil his or her rights as defined by the UN Convention on the Rights of the Child and will not put the child at risk of persecution or serious harm. Because the durable solution will have fundamental long-term consequences for the unaccompanied or separated child, it will be subject to a best interests’ determination.

A durable solution also ultimately allows the child to acquire, or to re-acquire, the full protection of a state.”<sup>1</sup>

The term durable solution is considered to comprise three different options:

- The return and reintegration in the country of origin;
- The granting of international protection or other legal residence status allowing children to integrate in the country of destination; or
- Resettlement to a third country.<sup>2</sup>

<sup>1</sup> United Nations High Commissioner for Refugees, United Nations Children’s Fund, *Safe and Sound, What States can do to ensure respect for the best interests of unaccompanied and separated children in Europe, 2014, p. 22.*

<sup>2</sup> European Commission, *Action Plan on Unaccompanied Minors (2010-2014)*, COM(2010)213 final, Brussels, 6 May 2010, p. 12. Committee on the Rights of the Child, *General Comment No.6 (2005)*, par. 79-94.

ter family. They lose child-specific social, economic and educational rights and might be detained when their immigration status has not been regularised or when they have been ordered to leave the country.

Considering the difficult experiences that unaccompanied children might have lived through, their need for support will not cease abruptly upon turning 18. Care arrangements and services for these children and young people need to integrate measures right from the start to support their transition into adulthood and independent life. Consideration for after care is essential for the identification and implementation of a durable solution. In particular for adolescents as the solution can only be sustainable when it ensures their transition into an independent life.

Some countries have made good experience with expanding the young person’s stay in reception homes for children until appropriate accommodation has been found. After-care support is offered to young adults ageing out of care up to the age of 21 or 25 in some European countries, including to unaccompanied asylum seeking children turning 18. Life projects and after-care plans are particularly useful to prepare for the child’s transition into adulthood and independent life as early as possible.<sup>38</sup> The after-care services available for national children deprived of parental care can guide caseworkers and officers in planning the support for the child’s transition into adulthood.

## Family reunification in the country of destination

Family reunification is an important part of the durable solution for an unaccompanied child, wherever this is in the best interests of the child (Convention on the Rights of the Child Articles 3 and 9). Family reunification could take place in the country of destination or origin, or in a third country.

As part of the best interests’ determination, caseworkers and officers have to assess if family reunification is in the best interests of the child. Where a best interests’ determination concludes that the child shall be reunited with the family, family reunification needs to be carefully prepared and monitored. It is important to prevent or reduce emotional distress for the child in this context.<sup>39</sup>

When the immigration authorities in the country of destination grant international protection to the child, family reunification cannot take place in the child’s country of origin. In these cases, children have a right to family reunification in the country of destination or a third country.

When the child’s application for international protection is rejected, there can nonetheless be concerns about the child’s safety in the country of origin, which exclude return for family reunification. This might be the case when there are concerns about a high level

<sup>38</sup> European Migration Network, *States and Norway, Synthesis Report, 2015, pp. 33-35.*

<sup>39</sup> United Nations Children’s Fund, *Victims of Trafficking, UNICEF Technical Notes, 2006, p. 29.*

<sup>39</sup> United Nations Children’s Fund, *Guidelines on the Protection of Child*

*Victims of Trafficking, UNICEF Technical Notes, 2006, p. 29.*

of general violence that pose risks to the child. In these cases, the child's rights to life, survival and safety outweighs the child's interests to reunite with the family in the country of origin. In consequence, the possibilities for family reunification in the destination country or in a third country need to be assessed.<sup>40</sup>

Caseworkers and officers should inform unaccompanied children about the possibilities and procedures for family reunification. It is important that the child has access to support when applying for family reunification.

When the assessments reveal that family reunification would mean a reasonable risk for the child, alternative care arrangements need to be considered.<sup>41</sup> The service providers must assess if it is in the best interests of the child to maintain family relations and active contact and support the child accordingly.<sup>42</sup>

### Special safeguards for child victims of crime, including victims of trafficking and exploitation

Child victims of crime are entitled to special safeguards, including rights to guardianship, legal assistance and representation, safety and protection, support for physical and psychological recovery and social reintegration, regularisation of immigration status, the right to compensation, and rights to act as a party, or plaintiff, in criminal proceedings.<sup>43</sup> These rights apply to all children who have been exposed to violence, exploitation and abuse, including child victims of trafficking, asylum seeking children who have been exposed to criminal acts, children who have been exploited in prostitution or in the context of child labour.<sup>44</sup>

An important safeguard for child victims of crime is the 'non-punishment clause'. It means that child victims of criminal offences, including human trafficking, are to be protected from sanctions or prosecution for acts that they committed in relation to their situation as victims. The non-punishment clause is critical for protecting children who are exploited in illegal or criminal activities and child victims of trafficking or exploitation who entered a country without valid travel documents. Caseworkers and officers need to be aware that children who are in conflict with the law might in fact be victims of crime. They might have been exploited or abused in illegal and criminal activities and might be victims of trafficking.

## Resettlement and transfers

### Resettlement and integration in a third country

When the best interests' determination process concludes that there is no durable solution for a child in the country of destination or origin, the possibility of resettlement to a third country needs to be assessed as a possible alternative.

Resettlement might be an option when it enables safe family reunification in the resettlement country, in line with the best interests of the child. Resettlement can also be an alternative to protect a child against refoulement or persecution or other serious human rights violations in the country of destination. This might be the case when a child victim of trafficking has to be protected from reprisals or renewed recruitment by traffickers.

Before a decision on resettlement is taken, the best interests' determination process needs to look specifically at the following matters, with reference to articles under the UN Convention on the Rights of the Child:

- The envisaged duration of legal or other obstacles to a child's return to her or his home country;
- The child's age, sex/gender, emotional state, educational and family background;
- The child's right to preserve her or his identity, including nationality and name (Article 8);
- The desirability of continuity in a child's upbringing and care, including with regard to the child's ethnic, religious, cultural and linguistic background (Article 20);
- The right of the child to preserve her or his family relations (Article 8) and related short, mid- and long-term possibilities of family reunification either in the home, host or resettlement country.<sup>45</sup>

When the option of resettlement is explored for the purpose of family reunification, the child and the family member located in a third country need to consent and express their wish to reunify. The child welfare or social services authorities in the country of resettlement need to be contacted in order to make the relevant assessments and to ensure their continued involvement for service provision and monitoring after resettlement.

When resettlement is explored as an option motivated by other reasons than family reunification,

<sup>40</sup> CRC General Comment No. 6 (2005), par. 82.

<sup>41</sup> CRC General Comment No. 6 (2005), par. 82.

<sup>42</sup> CRC General Comment No. 6 (2005), par. 81-83. Swiss Foundation of the International Social Service,

Separated Children Handbook, From identification to the search for a durable solution, A practical guide for professionals, 2015, p. 110.

<sup>43</sup> United Nations Children's Fund, Guidelines on the Protection of Child Victims of Trafficking, UNICEF Tech-

nical Notes, 2006. United Nations Economic and Social Council, Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, Economic and Social Council Resolution 2005/20, 22 July 2005.

<sup>44</sup> United Nations Children's Fund, Implementation Handbook for the Convention on the Rights of the Child, Fully Revised Edition, Rachel Hodgkin and Peter Newell, 2002, p. 580.

<sup>45</sup> CRC General Comment No. 6 (2005), par. 93.

the assessments need to consider whether resettlement could pose any obstacles to family tracing, family reunification or maintaining family relations and contacts. Considering the distance between the place of resettlement and the child's family and the existing communication infrastructure is important in this regard.

An important precondition for resettlement in these cases is that it does not undermine the possibility of family reunification in the future, provided that family reunification is considered to be in the best interests of the child. In addition to hearing the child's views, also the child's parents need to be informed, consulted and heard in the assessment and resettlement process, unless this poses any risks to the child.<sup>46</sup>

### Transfers under the Dublin III Council Regulation

The Dublin III Council Regulation is an agreement among EU Member States, Iceland, Liechtenstein, Norway and Switzerland that regulates, which country is responsible for examining a person's asylum application.<sup>47</sup> It provides for the possibility to transfer persons to the responsible state.

The Regulation is based on the assumption that the Common European Asylum System is in place and fully operational. Under this precondition, adults and children could be transferred to another participating State without compromising the right of the person to international protection with appropriate standards of reception and care. The Dublin III Council Regulation was developed on the basis of the previous Regulation and several judgments by the European Court of Human Rights and the European Court of Justice concerning the transfer of asylum seekers.<sup>48</sup>

The Dublin III Council Regulation provides that the best interests of the child should be a primary consideration of Member States when applying the Regulation, in accordance with the Convention on the Rights of the Child and the Charter of Fundamental Rights of the European Union. The Regulation requires Member States that are assessing the best interests of the child to:

- Take due account of the child's well-being, social development, safety and security, and background;

- Take into account the views of the child in accordance with her or his age and maturity;
- Develop specific procedural guarantees for unaccompanied children with due consideration to their particular vulnerability;
- Cooperate closely between Member States for conducting best interests' assessments under the Regulation.<sup>49</sup>

Before a decision about transfer is taken, evidence of the presence of family members, relatives or other family relations of the applicant on the territory of another Member State shall be produced. Transfer is only admissible on the condition that a first instance decision on the previous application has not yet been taken.<sup>50</sup>

The responsibility of a Member State to process the asylum application of a child applicant is determined as follows:

- When the applicant is an unaccompanied child under 18 years of age, the Member State responsible shall be the one where a family member or a sibling of the child is legally present, provided that it is in the best interests of the child to have her or his application assessed in that state.
- In cases where a relative of an unaccompanied child is legally present in another Member State, an individual assessment shall be made to establish that the relative can take care of the child. If the assessment is positive, the child shall be united with the relative if this is in her or his best interests and that Member State becomes thereby responsible.
- In cases where family members and relatives are found in different Member States, the decision on which Member State is responsible shall be guided by the best interests of the child. In cases, where family members or relatives cannot be identified, the Member State responsible shall be that where the unaccompanied child has lodged the asylum application, if this is in the best interests of the child.<sup>51</sup>

The process for determining the Member State responsible shall start as soon as an asylum application is lodged.<sup>52</sup> Once a Member State receives a request to take charge of an applicant, the decision shall be taken within a period of two months. In particularly complex cases, this term may be extended by one additional month.<sup>53</sup>

Member States should transmit information about an applicant when requesting another state to take

<sup>46</sup> United Nations High Commissioner for Refugees, *UNHCR Guidelines on Formal Determination of the Best Interests of the Child*, 2006, pp. 34-35. Separated Children in Europe Programme, *Statement of Good Practice*, 4<sup>th</sup> Revised Edition, Save the Children, UNHCR, UNICEF, 2009, Chapter D.13.

<sup>47</sup> See: European Commission, Commission Implementing Regulation (EU) No 118/2014 of 30 January 2014.

<sup>48</sup> The practice of automatic transfers under the previous Dublin II Council Regulation had been critiqued due to the risks involved for asylum seekers transferred to countries that offer sub-standard reception

conditions, with case law concerning especially Greece, and the overburden of the countries where the majority of asylum seekers enter the European Union, in particular Greece, Italy, and Spain. Library of the European Parliament, *Transfer of Asylum-Seekers and Fundamental Rights*, Library Briefing, 30 November 2012.

<sup>49</sup> Dublin III Council Regulation, 2013, par. (13), Article 6.

<sup>50</sup> Dublin III Council Regulation 2013, Article 7.

<sup>51</sup> Dublin III Council Regulation 2013, Article 8.

<sup>52</sup> Dublin III Council Regulation 2013, Article 20.

<sup>53</sup> Dublin III Council Regulation 2013, Article 22.



charge of or receive a person back, including information about immediate needs of the applicant and contact details of family members, relatives or other family relations in the Member State to which the persons is transferred. For children, this includes information about the child's education and the age assessment. The written approval of the applicant is required for the communication of such information. The applicant has a right to be informed about the data that is processed concerning her or his case and is entitled to have such data corrected or erased where they are incomplete or incorrect.<sup>54</sup> For unaccompanied children, caseworkers and officers need to ensure that the child receives support in these matters.

Member States may decide to use a certain level of discretion in applying the provisions concerning the determination of the responsible state and may assume the responsibility for examining an asylum application. The responsible Member State may also, at any time before a first instance decision over the asylum application has been taken, request another Member State to take charge of an applicant in order to reunite family members. This may be requested on humanitarian grounds particularly for family or cultural considerations. The persons concerned need to consent to this procedure in writing.<sup>55</sup>

The Dublin III Council Regulation affords the applicant the right to effective remedy against decisions taken under the Regulation, in the form of appeal or review, before a court or a tribunal, including the right to legal assistance and interpretation. In case of appeal or review of a decision, the transfer is automatically suspended and the applicant has a right to remain in the Member State pending the outcome of the appeal or review.<sup>56</sup> The responsibility of the Member State ceases when there is evidence to ascertain that the person concerned has left the territory for at least three months. After this period, the person has to lodge a new application for asylum.<sup>57</sup>

## Return

When the best interests' determination concludes that return is in the best interests of the child, the preparations for return are set in motion. Prior to ordering return, the authorities of the destination country need to ensure that the child will be received in safe care and looked after in the country of return. Some of the assessments that were conducted for the best interests' determination may need to be repeated in order to ensure that the findings are still up to date. Where any of these assessments have not been made previously to inform the best interests' determination, this may give grounds for the child to appeal against the decision on her or his best interests.<sup>58</sup>

## The use of international and European private law for returning children on the move

The Brussels II bis Regulation<sup>59</sup> regulates parental responsibilities in transnational cases. It guides caseworkers and officers who are considering to take protection measures in cross-border cases involving children who are EU nationals. The Regulation provides that contacts should be made with the child's home country. The authorities in the home country shall provide information on the situation of the child, the parents and any official decisions or actions concerning parental responsibility or other relevant matters. Whereas the Regulation applies primarily to civil law matters concerning the parental abduction of children and parental responsibility, it is also being applied for the protection and return of EU migrant children, including children living on the streets or involved in street based activities and those who are at risk of or exposed to exploitation and trafficking.

The Brussels II bis Regulation mirrors some of the provisions afforded under the Conventions of the Hague Conference on Private International Law, in particular the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction. In addition to individual EU Member States, the European Union is also a Member of the Hague Conference on Private International Law and acceded to some of the more recent Hague Conventions.

<sup>54</sup> Dublin III Council Regulation 2013, Articles 31, 35.

<sup>55</sup> Dublin III Council Regulation 2013, Article 31.

<sup>56</sup> Dublin III Council Regulation 2013, Article 27.

<sup>57</sup> Dublin III Council Regulation 2013, Article 19.

<sup>58</sup> See also: The European Council on Refugees and Exiles, Save the Children, *A Checklist to Achieve Good Practice When Considering the Return of Children to Third countries: A tool for quality planning for Member States, Comparative study on best practices in the field of return of minors*,

European Commission – DG Home, HOME/2009/RFX/PR/1002, 2011.

<sup>59</sup> European Commission, Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental

responsibility, repealing Regulation (EC) No 1347/2000, Official Journal L 338, 23/12/2003, pp. 1-29.

## Minimum standards that states must respect in cases where migrant children are detained<sup>1</sup>

- The deprivation of liberty of migrant children, accompanied or not, should be temporary and for the shortest period possible.
- Migration-related detention centres should be separate from prisons and should not bear similarities to prison-like conditions.
- Centres where child detention takes place should have child protection officials specifically trained in the care and protection of children.
- Children and adolescents should be separated from adults unless it is considered to be in their best interests (CRC Article 37(c)). Centres should ensure the opportunity for regular contact with family members and friends.
- Centres must ensure regular and confidential contact with legal and consular representatives.
- While staying in a detention centre, even temporarily, children should be guaranteed the full enjoyment of economic and social rights such as education, health care, recreation, food, water and clothing.
- States must guarantee the existence and operation of independent mechanisms for the inspection and monitoring of the conditions in detention facilities, including by independent bodies.

<sup>1</sup> Committee on the Rights of the Child, *The Rights of All Children in the Context of International Migration, Background Paper, Day of General Discussion, 2012*, pp. 24-25.

The Hague Conventions are routinely applied in transnational civil law cases concerning children, particularly in matters of international adoption, parental child abduction and parental responsibility as well as the placement of children across borders. The procedures established under the Hague Conventions could also be used for the protection of migrant children and the return of children to their countries of habitual residence.<sup>60</sup>

When children are returned in international family law cases, the central authority of the returning state is the leading body managing the return. The mandate of a central authority who arranges for the return of a child ends usually when the child arrives in the country of habitual residence. It is important to ensure follow-up services after return. These can be provided, for instance, by the International Social Service. National branches of the International Social Service can provide support with the practical arrangements for the child's return to the country of habitual residence, translation of social evaluation reports and providing expert opinions prior to the return and in follow-up.<sup>61</sup>

## Alternatives to immigration detention

The UN Convention on the Rights of the Child provides that “no child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time” (Article 37(b)). These rights apply also to the context of the detention of unaccompanied or separated children: “Unaccompanied or separated children should not, as a general rule, be detained. Detention cannot be justified solely on the basis of the child being unaccompanied or separated, or on their migratory or residence status, or lack thereof.”<sup>62</sup> Depriving children of their liberty for immigration matters constitutes a violation of their human rights.<sup>63</sup>

The conditions of immigration detention are rarely appropriate to children, especially when detention is ordered for extensive periods of time. In immigration detention, children often face challenges in accessing education, appropriate health services, adequate food and accommodation and may have limited opportunities for leisure time and recreational activities.<sup>64</sup>

<sup>60</sup> Cazenave, Pierre, *Protecting Migrant Children in a Freedom of Movement Area, Transnational monitoring of return procedures involving Romanian and Bulgarian migrant children in Greece and France*, Terre des Hommes, December 2012, p. 42.

<sup>61</sup> PROTECT 4<sup>th</sup> Expert Meeting, Riga, May 2014, presentation by Christoph Braunschweig, Swiss Foundation of the International Social Service.

<sup>62</sup> Committee on the Rights of the Child, General Comment No.6 (2005), par. 61.

<sup>63</sup> Committee on the Rights of the Child, *The Rights of All Children in the Context of International Migration, Background Paper, Day of General Discussion, 2012*, p. 23.

<sup>64</sup> European Council on Refugees and Exiles, *Save the Children, Com-*

*parative Study on Practices in the Field of Return of Minors, Final Report*, European Commission Directorate General Home, HOME/2009/RFXX/PR/1002, 2011, pp. 14, 73-78.

Detention is a highly distressing experience, especially for migrants and asylum seekers. It has a harmful impact on the mental health, well-being and development of children. The experience of detention can cause or exacerbate previous traumatisation.<sup>65</sup>

In some cases, migrant children are detained together with their families under the pretext to prevent family separation in cases where parents are being detained for immigration matters. When it is in the best interests of the child to remain with her or his parents, alternatives to detention shall be considered for the whole family.<sup>66</sup>

Alternatives to detention include registration and reporting requirements, deposit of documents, bond or bail, designated residence, case management or supervised release, supervision in the community, electronic monitoring, home curfew or house arrest. Countries that work with alternatives to detention have made positive experience and noted that these alternatives work in practice. Asylum seekers usually comply with the requirements imposed upon them in the context of alternative measures to detention.<sup>67</sup> The intention is that the control of the returnees through detention is replaced by a process of management and supervision with respect to the human rights of the persons concerned, which is also more cost-effective for the state.<sup>68</sup>

## Pre-return preparations

Thorough preparations for return, including all relevant assessments and safeguards are essential to ensure that returns are dignified, safe and rights-based and for making the return a positive experience for the person concerned with good prospects for sustainability.

When return is considered to be in the best interests of the child, it is recommendable that an individual return and reintegration plan be developed for each child prior to return in order to plan step-by-step each phase of the return from preparations through to settlement, reintegration and follow-up monitoring, to determine the needs of the child and appropriate support services. In addition to the detailed care plan for

the child after return, a return and reintegration plan shall give due consideration to ensuring continuity of the care arrangements and support services for the child from the country of destination to the country of return. This includes consideration for the following:

- **Continuity of education and vocational training:** Children may have to return to their country of origin before having graduated from school or vocational training. Before departure, it is important to ensure that the child receives certificates of any education that the child has completed in the country of destination. It would be important to enable the child to complete school years or special training prior to return, wherever this is not contrary to the best interests of the child.
- **Continuity of health services and medical treatment:** Children may have been using regular services of health care and treatment in the country of destination. Prior to return, it is essential to ensure continuity of treatment or that viable alternatives are being identified.
- **Continuity of guardianship arrangements:** Where a child is not returned to her or his parents or primary caregivers, the continuity of guardianship needs to be ensured.

In preparation for return, children and young people need access to training relevant to the country of origin that will allow them to lead an independent life as adults and to gain an income so that return can become a positive experience and sustainable. This includes life and social skills, academic and professional training, as well as entrepreneurial skills and negotiating capacities. In addition to learning the language of the destination country, it is critically important that the young returnees are literate in the language(s) of the country and community to which they return.<sup>69</sup>

Pre-return counselling is important. Return can be a significant source of distress and concern for the child, even when it is considered to be in the best interests of the child. Access to information and counselling, including psycho-social counselling, prior to return, can help the child to gain confidence and to feel safe and empowered about her or his return and the options thereafter.

<sup>65</sup> Cleveland, Janet, Psychological harm and the case for alternatives, University of Oxford, Refugee Study Centre, *Forced Migration Review, Detention, alternatives to detention and deportation*, Issue 44, September 2013, pp. 7-8. Kotsioni, Joanna, Aurélie Ponthieu and Stella Egidi, Health at Risk in Immigration Detention Facilities, University of Oxford, Refugee Study Centre, *Forced Migration Review, Detention, alternatives to detention and deportation*, Issue 44, September 2013, pp. 11-13.

<sup>66</sup> Committee on the Rights of the Child, *The Rights of All Children in the Context of International Migration, Background Paper*, Day of General Discussion, 2012, pp. 23-24.

<sup>67</sup> Committee on the Rights of the Child, *The Rights of All Children in the Context of International Migration, Background Paper*, Day of General Discussion, 2012, p. 24. Edwards A., *Back to Basics, The right to liberty and security of the person and "alternatives to detention" of refugees, Asylum-Seekers, Stateless Persons*

and Other Migrants, UNHCR Legal and Protection Policy Research Series, PPLA/2011/01.Rev.1, 2011. International Detention Coalition, *There are Alternatives, A handbook for preventing unnecessary immigration detention*, 2011. United Nations, Report of the Special Rapporteur on the Human Rights of Migrants, François Crépeau, A/HRC/20/24, 2 April 2012, p. 6.

<sup>68</sup> 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.

<sup>69</sup> Gladwell, Catherine and Hannah Elwyn, *Broken Futures: Young Afghan asylum seekers in the UK and in their country of origin*, United Nations High Commissioner for Refugees, Policy Development and Evaluation Service, New Issues in Refugee Research, Research Paper No. 244, August 2012, p. 48.

## Transportation phase

Unaccompanied children who are returned after receiving a negative decision on their asylum application and who participate in a programme for 'voluntary assisted return' are usually escorted during the journey to the country of return. An escort is important to ensure that the child arrives safely and is met by the responsible authorities and guardian or caregiver upon arrival. Escorting unaccompanied children should therefore be a general rule in all returns, including those within the European Union and returns to countries that are considered safe countries of origin.<sup>70</sup>

## Post-return and reintegration phase

The primary objective of post-return support programmes is to protect the young returnees, to ensure that their rights are safeguarded and to make returns sustainable. They are essential to make return a positive, constructive and successful experience.

The following considerations are important for promoting sustainable returns that are rights-based and child-centred: The authorities of the country of destination and the implementing partners and relevant networks in the countries of return need to cooperate in order to ensure ongoing provision of quality care, support and assistance to the young returnees and counselling services in the country of return. This cross-border cooperation is also important for monitoring and evaluation of return programmes, specifically with regard to the reintegration support, the appropriateness and sustainability of the measures, with due attention to the views of the returnees and ensuring periodic review and adjustments of care arrangements and support services if and as appropriate.<sup>71</sup>

## Monitoring and evaluation

Post-return monitoring is essential to protect the returnees and to safeguard their rights. Monitoring needs to look at:

- The quality of interactions between officials and service providers and the returnee, in countries of origin and destination;
- The quality of preparations and the information and counselling available to the child prior to return;
- The conditions in waiting and detention areas, if applicable;
- The files of returnees and the transparency and quality of documentation they provide;
- The continuity of services of care, protection, health and education as well as guardianship, where applicable;
- The quality of childcare and the child's relations to parents or other caregivers;
- The social and economic situation of the returnee, the support available to her or his transition into adulthood and independent life and the child's integration in the community after return;
- The possibility for child returnees to access reporting and complaints mechanisms that support them in claiming their rights after return.<sup>72</sup>

Monitoring needs to be conducted periodically over an extended period of time, with the involvement of the child returnee her- or himself in the monitoring, including through self-assessments. It needs to evaluate the outcomes of the return against the human rights of the child and guiding principles of quality care for children, continuity of care, safety and the right of the child to life, survival and development. National child protection systems and referral mechanisms play an important role to ensure that monitoring takes place and that the findings of the monitoring are taken into account to inform prompt adjustments of the care arrangements and other issues concerning the child returnee, if and as appropriate.<sup>73</sup>

<sup>70</sup> European Migration Network, *Programmes and Strategies in the EU Member States Fostering Assisted Return to and Reintegration in Third Countries*, March 2011, p. 67.

<sup>71</sup> European Migration Network, *Programmes and Strategies in the EU Member States Fostering Assisted Return to and Reintegration in Third Countries*, March 2011, p. 77.

<sup>72</sup> Podeszfa, Leana and Friederike Vetter, *Post-deportation Monitoring: Why, how and by whom?*, University of Oxford, Refugee Study Centre, *Forced Migration Review, Detention, alternatives to detention and deportation*, Issue 44, September 2013, pp. 68-69, p. 68. See: European Commission DG Justice, Freedom and Security, *Comparative Study on Best Practices in*

*the Field of Forced Return Monitoring*, November 2011. See also: Refugee Council, *'Between a rock and a hard place: the dilemma facing refused asylum seekers'*, December 2012.

<sup>73</sup> Podeszfa, Leana and Friederike Vetter, *Post-deportation Monitoring: Why, how and by whom?*, University of Oxford, Refugee Study Centre, *Forced Migration Review, Detention, alter-*

*natives to detention and deportation*, Issue 44, September 2013, pp. 68-69, p. 68. See: European Commission DG Justice, Freedom and Security, *'Comparative Study on Best Practices in the Field of Forced Return Monitoring'*, November 2011. See also: Refugee Council, *'Between a rock and a hard place: the dilemma facing refused asylum seekers'*, December 2012.



This practical guide presents an overview of measures to safeguard the human rights and the best interests of children in cross-border situations. It is an easy and accessible tool for caseworkers and case officers such as social workers, immigration officials and law enforcement officers as well as lawyers, guardians and other professionals working with and for children on the move.

The international framework concerning children in transnational situations is strong. It sets standards for ensuring children's safety, well-being and development regardless of their national origin or immigration status. Cutting across all these standards is the UN Convention on the Rights of the Child, which provides a solid basis for promoting the best interests of children. The Convention supports caseworkers and case officers in navigating the complexity of international, European and national laws, where the best interests' assessments and determinations constitute a precondition for the identification and implementation of a durable solution for each individual child.

This practical guide translates these standards into step-by-step guidance for the assessment and decision making processes in transnational situations. A good network of contacts and clear procedures for transnational case assessment, decision making, referral and service provision is needed when state authorities and service providers work across borders.

The guide is based on a set of guidelines, which provide more elaborate and detailed information and a discussion of the key themes. In addition, a Transnational Child Protection Portal offers access online to the content of the practical guide as well as additional information for professionals and officials working with and for children on the move.

Council of the Baltic Sea States Secretariat, 2015  
[www.childcentre.info](http://www.childcentre.info)  
[www.cbss.org](http://www.cbss.org)

