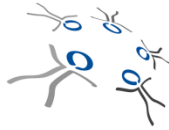




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CHILD CENTRE
Expert Group for Cooperation on
Children at Risk, EGCC



Child Exploitation – Cross-National Child Protection in Practice

‘PROTECT Children on the Move’

First Expert Meeting

**Case assessment and best interest determination:
Special considerations and procedures in transnational cases of
children exposed to exploitation, trafficking, and children at risk**

**CBSS Secretariat, Stockholm
28-29 January 2014**

Meeting Report

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Tuesday, 28 January 2014

Session I: Introduction

9.00 – 9.45 Welcome and introduction of the project

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

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

The first Expert Meeting was convened at the CBSS Secretariat in Stockholm, Sweden, on 28-29 January 2014. It focused on the theme '*Case assessment and best interest determination: Special considerations and procedures in transnational cases of children exposed to exploitation, trafficking, and children at risk*'. The participants, a group of over forty experts, represented local and national authorities, UN Agencies, national and international NGOs, service providers and practitioners from the Nordic and Baltic States, representatives from Member States of the European Union and the Council of Europe..

This report summarises, in synergy, the key outcomes and conclusions that resulted from the meeting. A compilation of the speakers' presentations, the meeting agenda and a short summary report are available from the CBSS website.¹

Key note speech: The best interests of the child

Johanna Schiratzki, Professor of Welfare Law, Ersta Sköndal University College, Sweden

Crossing borders has always been a part of human nature. When people move and leave their country of origin, they lose many things, including being a citizen of their state of origin. When children cross borders, they may also lose the protection of their family of origin. From a legal perspective, the human rights of children are to a large extent dependent on family members. There are however also human rights that children could exercise autonomously. These considerations are important to keep in mind for cases of non-national and migrant children who leave their family behind.

The fundamental question is whether the child is considered autonomous, a rights holder, or a vulnerable human being in need of protection. The conclusion is not an either or but a combination of both perspectives, the protection and empowerment of children as rights holders. A migrant child to some degree proves a remarkable autonomy and self-determination to get along, including language skills. At the same time, it is obviously that these children are particularly vulnerable.

¹ See: Child Centre, Expert Group for Cooperation on Children at Risk, Report and presentations on best interest assessment in transnational cases of children exposed to exploitation and trafficking - Stockholm 28.1.-29.1.2014, available at: <http://www.childcentre.info/presentations-from-the-expert-group-meeting/>, accessed on 8 February 2014.

The human rights of the Child are enshrined in the Convention on the Rights of the Child and its Optional Protocols, as well as other instruments that have a bearing on children's rights, especially in situations of migration. They include the following:

- Minimum Age Convention 1973 (No. 138)
- Worst Forms of Child Labour Convention 1999 (No. 182)
- Convention against Discrimination in Education
- United Nations Rules for the Protection of Juveniles Deprived of their Liberty
- United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules)
- Guidelines for Action on Children in the Criminal Justice System
- United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines)
- Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages

In 2013, the Committee on the Rights of the Child issued the General Comment No. 14 on the best interests of the child. The General Comment presents the best interests of the child as a threefold concept: a substantive right; a fundamental, interpretative legal principle; and a rule of procedure. The General Comment notes also that the best interests of the child is self-executing. It is however not always understood and applied as such. The Norwegian Supreme Court, for instance, stated that the best interests of the child is not considered self-executing in migration situations.

The Committee on the Rights of the Child notes that considering the best interests as a fundamental interpretative principle implies that the interpretation that most effectively serves the child's best interests should be chosen. This is a useful statement as many rights of the child are framed quite widely and do leave room for interpretation. As a rule of procedure, the decision over the best interests of the child must show that the best interests has explicitly been taken into account and it shall be explained how the best interests has been taken into consideration.

The General Comment No. 14 highlights seven points that should always be included in a best interests assessment:

- The child's views
- The child's identity
- Preservation of the family environment and maintaining relations
- Care, protection and safety of the child
- Situation of vulnerability
- The child's right to health
- The child's right to education

For the Swedish context, it is extremely valuable to have these seven issues specified. With regard to the child's views, it is from a legal point of view not always clear how much weight should and can be given to it. The child's identity is important particularly in cross-border situations. It needs to be defined not only by nationality but also according to the ethnic and religious background of the child and the relevant context in the country of origin. When considering the preservation of family environment, it is important to take into consideration that, in some contexts, the family environment may not be protective for the child.

General Comment No. 6 on the treatment of unaccompanied asylum seeking children (par. 1) is quite concrete in the obligations and duties that the receiving states have towards the migrant child: "The objective of this general comment is to draw attention to the particularly vulnerable situation of unaccompanied and separated children; to outline the multifaceted challenges faced by States and other actors in ensuring that such children are able to access and enjoy their rights; and to provide guidance on the protection, care and proper treatment of unaccompanied and separated children based on the entire legal framework provided by the Convention on the Rights of the Child

..., with particular reference to the principles of non-discrimination, the best interests of the child and the right of the child to express his or her views freely.”

In paragraph 53, the same General Comment acknowledges the risks of exploitation and trafficking and notes that trafficked children should be granted protection in a criminal case setting. The fact that they have been trafficked could amount to a right to international protection: “Risks are also great for a child who has already been a victim of trafficking, resulting in the status of being unaccompanied or separated. Such children should not be penalised and should receive assistance as victims of a serious human rights violation. Some trafficked children may be eligible for refugee status under the 1951 Convention, and States should ensure that separated and unaccompanied trafficked children who wish to seek asylum or in relation to whom there is otherwise indication that international protection needs exist, have access to asylum procedures. Children who are at risk of being re-trafficked should not be returned to their country or origin unless it is in their best interests and appropriate measures for their protection have been taken. States should consider complementary forms of protection for trafficked children when return is not in their best interests.”

Why do children leave their countries of origin? The minority status is quite relevant. CRC Article 30 and General Comment No. 11 need to be considered in this regard. CRC Article 30 states the following: “In those States in which ethnic, religious, or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion or to use his or her own language.”

For many unaccompanied children, the situation in the origin country is particularly difficult because they belong to such a minority. It is therefore important to consider the diversity of children and their individual situation. Roma children might nearly find themselves in a situation compared to stateless or undocumented children although they are EU citizens. It can be debated whether this is due to a discriminatory act of the country of origin or of destination. There is a chain of discrimination and abuse from countries of origin and destination, although the right to citizenship and identity is part of the CRC. In general, the states of abode have the responsibility for children. One forward step to take is to challenge the status of the Roma, to use the European citizenship as a tool to work for the human rights of minorities. It has been done in an attempt to bring a case to the European Court of Human Rights.

European Law can have an important effect on promoting and enforcing the rights of the child, including with regard to the principle of the best interests. There are three cases that are particularly noteworthy in this regard:

- MSS vs. Belgium and Greece (Application No. 30696/09) 12/01/2011, ECHR
- Case C-648/11, MA, BT, DA (2013) ECJ 6/6/2013
- European Union Citizenship: 3 months - no rights to social welfare

The ECJ case MA, BT, DA of June 2013 was a case of unaccompanied minors who came into Europe through Eastern Europe and then moved on and tried to have their asylum applications assessed in the country where they were staying rather than in the EU Member State where they had been registered first. The ECJ ruled that it would be an infringement of EU law to transfer the children to the first state, given that the European law is taking into account the obligation of the EU to comply with the CRC. The CRC and the principle of the best interests of the child are clearly recognised as an integral part of EU law. The outcome is that unaccompanied minors as a group were excepted from the Dublin II Regulation and have a right to apply in any country of the EU.

The case MSS vs. Belgium and Greece dealt with the case of an adult asylum seeker and stated that Greece did not meet basic human rights and that Belgium therefore was wrong to send back an asylum seeker to Greece as the Greek state could not guarantee the human rights of the person.

Considering the case law at European level, it becomes obvious that the European Union and the Council of Europe are increasingly becoming child rights actors and promoting children's rights in Europe, including against national law and policy that might not be compliant with the regional standards.

The best interests of the child need to be considered also in relation to the right to non-discrimination. General Comment No. 14 states in this regard that "The right to non-discrimination is not a passive obligation, prohibiting all forms of discrimination in the enjoyment of rights under the Convention, but also requires appropriate proactive measures taken by the State to ensure effective equal opportunities for all children to enjoy the rights under the Convention. This may require positive measures aimed at redressing a situation of real inequality" (par. 41).

There are tools for the interpretation of the best interests. They point out that the child's best interests should be read in the light of the right to non-discrimination. The way that I look into the CRC from a broader human rights perspective, I would venture to say that the construction of the right to non-discrimination is key. The right to non-discrimination challenges the state to live up to its obligations to each child regardless of their status.

The Hague Convention on parental responsibilities has been used in some cases to the effect that a child with a regular abode abroad can be taken into care in another state. There are however challenges arising from relevant national regulations. In Sweden, for instance, it can be criticised that there is a lack of cross-legal knowledge. The Swedish system stresses the use of the parental responsibility in a way that is not in accordance with the Hague Convention or the Brussels II Regulation. There is an ongoing discussion especially with Finland on what types of care should be included under these regulations. Sweden holds that compulsory care should not be included in the international setting but the European Court of Justice has turned down this way of thinking.

Brussels II gives a lot of rights and obligations to the state of domicile, and also the 1996 Hague Convention includes care by someone else than the parents, i.e. different kinds of community care. Sweden has a tradition of dividing care into voluntary and compulsory care, into civil issues and public issues, and it has been a long way to recognize that in a European context. Under Brussels II and the 1996 Hague Convention, what we consider compulsory care in Sweden is considered a public matter. I think that what matters for the child could be considered as a civil right and it does not matter that much who is responsible for it. There is a lot of difference between what sorts of protection a child could expect and demand within the EU as opposed to a child from outside.

The discussion following the key note speech raised issues of establishing jurisdiction over non-national children and the related disputes arising between countries of origin and destination. Establishing jurisdiction is a precondition to best interests determinations. It is challenging to assess and decide about a case in a country of destination when most of the information concerning the child and his or her family is with the authorities in the country of origin. Reaching a decision fast is however important in order to avoid a negative impact on the child's development.

The conflict between immigration, border protection and child rights protection overshadows the best interests determination process. Social workers are trying to mitigate the negative impact of border control and migration regime on child protection. The existing laws and Conventions are sufficient to protect our own children and should be applied to any child. Achieving this in practice is however a challenge because of economic constraints and border protection.

There are some inherent contradictions within EU laws. In the Nordic countries, we have an understanding that any person should be able to enjoy his or her rights without having to claim them at court. The fact that the jurisdiction from regional human rights courts is required to safeguard children's rights in Europe – despite the important case law and progress created this way – can also be considered to demonstrate that the EU still has a significant way to go to safeguard in practice the rights and values that it promotes.

Session II: The best interests of the child in practice: Experience and perspectives from different sectors

The social services approach to best interests assessment

Charlotta Thorelius, Development Manager against Prostitution and Human Trafficking, County Administrative Board of Stockholm

The County Administrative Board of Stockholm has been mandated to coordinate all authorities that work against human trafficking in Sweden. It acts as the Office of the National Coordinator against prostitution and trafficking. The Board is also tasked to coordinate the safe returns of victims of trafficking. It has started a safe return programme together with IOM in Finland. The project is now operating, it will be presented in afternoon. The County Administrative Board is also operating a support and rehabilitation programme for victims of trafficking. It works with a total of 10 institutions of compulsory care and with open institutions. The Board is developing national guidelines on responses to human trafficking, working closely with the National Social Board of Health and Welfare, stepping up the cooperation between authorities.

A National Operational Cooperation Team against human trafficking has been in place since 2009. It has been operating mostly for adults. Now this type of team is being initiated also for children. It will provide advice to authorities and service providers all over the country. The authorities that are participating in the National Operational Cooperation against prostitution and trafficking include the National Police Board, the National Criminal Police, the Specialised Police Units in Stockholm, the Prosecutor's Office, including the international chambers of prosecution, the Swedish Migration Board, including a child expert within the Board, and the social services in Stockholm and Gothenburg. The team can be composed in a flexible way targeted specifically to the needs of each individual case. It provides operational support through advice and practical guidance for the authorities' work in practice.

The National Report on trafficked children in Sweden, 2009-11 was developed on the basis of questionnaires and in-depth interviews with municipalities and NGOs. It found that between 2009 and 2011, the social services and NGOs registered a total of 166 children identified as possible victims of trafficking. Of these, 100 cases were reported to the police. They were approximately 50% boys and 50% girls, in the age group of 3 to 17 years. Half of the children had been exposed to sexual exploitation, most of them girls, whereas the other half were exploited in criminality, begging and work, the majority of them were boys. About one third of them were asylum seeking children, a third were Swedish nationals and one third were EU Citizens. 12 children were with their parents. Only 3 cases were taken to court for prosecution, three persons convicted and 5 children were involved in these cases. One of the conclusions was that it was important to strengthen cooperation between the authorities, especially services providers and social services, prosecution and law enforcement.

Conclusions and proposals from the report:

- Increased national responsibility for trafficked children
- Specific guidelines to social services
- Skills development and increased authority cooperation
- Qualified and specialized institutions for the target group
- Protect children from disappearing
- Strengthen children's rights in the legal process
- Revision regarding legislation in cases with children
- Stronger cooperation between EU countries

Children stay often for only very short time in contact with the social services. The children are often very vulnerable and have more trust in their own support networks and contacts. It is very important to identify a suitable solution for the child and to build trust in the authorities.

The child protection system in Sweden foresees a specific flow of action when a report is made under the Social Services Act (14:1 SoL) about child in need of support. The social services receive a report from another authority or institution. The social services do a first assessment and a risk assessment to identify if there is a need for immediate protection. This first decision has to be taken very fast. When it comes to trafficked children, a critical element is the identification of the child and his or her nationality of the child.

When there is a suspicion of trafficking, the social services have to report the case to the police. When social services and the police do not share a common understanding of what trafficking is, police officers might refuse to recognise a case as a potential trafficking case due to insufficient information.

A social investigation is started that looks into every aspect of a child's life, under 11:1,2 SoL and the programme BBIC ('Children's Need in Focus'). It is important to hear the child in this process. Different municipalities take different decisions, including on guardianship. The social investigation includes and leads to the following:

- Social assessment – for appointment of a legal guardian
- §6 LVU: Referral to an open or closed institution?
- In case of non-national children: Contact embassy or the County Administrative Board (LST) of Stockholm, IOM, social authorities in home country
- Consider if the case falls under the Brussels II Regulation: There are certain issues that Sweden can take decisions on and other issues belong under the jurisdiction of the home country. Courts are responsible to decide on this but their decisions are not always consistent.

The decision making process is regulated under the Care of Young Persons Act: It starts with a recommendation for the decision from a social worker, which is referred to the Chairman of Social Welfare Board within the Municipality, who refers it on to the Administrative Court for a formal decision. Children can be in care for one week initially upon the decision from an individual social worker before the case goes to court; then there can be another social investigation to follow in order to gather additional information.

There are several authorities, institutions and organizations involved in the assessment and management of the child's case, which has to consider the child and his or her interests as a central issue. The authorities involved include the child protection and social services, the outreach social workers, health services, relevant NGOs, the child care institution, and the police or prosecutor. The programme BBIC (Children's Needs in Focus) guides the authorities in assessing the case and determining the best interests of the child.

Social workers are sometimes confronted with dilemmas in the best interests determination. Asylum seeking children who are in conflict with the law might find themselves in a legal limbo. When an asylum seeker does everything that he or she should do according to the official procedures and regulations, then the person has more or less all rights seen to. But for children who are not complying with the regulations and who might not be doing what they are expected to, they might be in a very vulnerable position as their rights might not be fully guaranteed and they can be exposed to many risks. When a child has left a reception centre without informing the authorities and is considered a missing child, the police files a report but there is no active search for these children and no authority would be responsible for them. Each authority is doing their own bit of the task, according to their mandate, but there is no single authority that has a broader perspective, to gather all the information in one place and understand the complexity of a case. This gap in the system is currently being addressed. Some children apply for asylum four, five times, always when the child comes in conflict with the law and is committing a crime.

It is important to strengthen the knowledge within the authorities about the possibility that children in conflict with the law might be victims of trafficking and to better understand and respond to their needs to ensure that the child is treated as a victim and not as a perpetrator. When a child's

identity and case are being assessed, it is therefore important to consider the previous involvement in criminal acts. There needs to be a well-established communication and cooperation between the police and the social workers. It would be in the best interests of the child that the charges are being dropped and that the child is considered a victim of crime, although in some cases, the child might not agree with this. This might result in ethical dilemmas in the assessment and determination of the best interests of a child. It cannot be taken for granted that the child's views and the view of the social services on what actually constitutes the best interests of the child are identical.

Determining the best interests of a child is therefore a very complex process. In "ordinary" cases, it can mean to tick the box and to do all the required assessments but for some children it is particularly complex especially those children for whom there is not a single authority responsible or where no single authority has the overview of the child's history.

Ethical dilemmas have been noted also in cases of EU children begging in the streets. The age of the child might make a difference and there are cultural dilemmas, different perspectives of children from different cultural backgrounds.

Under the Care of Young Persons Act, the social workers sometimes place children into locked institutions as they might be victims of trafficking and might run away. So the motivation is that the social workers need to assess the child's case. Sometimes it works but it is also a form of infringing against the child's rights, it undermines the child's trust and the child might not talk to the social workers while he or she is staying in a closed institution. The institutional setting therefore needs to be improved so that there are alternative options for monitoring the situation of a child more closely. We have so many cases of children running away in the middle of the night, without shoes, that tells us something about how determined they are that they do not want to remain in that place. It is a dilemma to decide how to balance the different perspectives and motivations. We have now ten institutions in the programme and try to place the children in these institutions, but they are mostly for children in conflict with the law and some of our children do not really fit that target group and are really bad off in those institutions. So we are working to improve the situation.

In the discussion, participants agreed that there is a huge dilemma between protecting the child and not violating his or her rights, although that is part of the social services tasks. In the UK, children are placed mostly in children's homes or in foster care. The institutions are usually locked, but not to stop people from getting out but to prevent others from getting in. So there are security protocols that can be used. It is equally important to identify and mitigate the risks for the child with regard to the use of mobile phones and internet. Taking a decision on the child's placement is important. It might be helpful for social workers if there was centralized body of expertise in charge of taking the decision over the type of placement and to centralise also the information about a case.

Philip Ishola, Advisor, Association Directors Children Services Asylum Taskforce and CEO, Counter Human Trafficking Bureau, UK

In the UK, it is a primary ambition to adopt a holistic approach to case management and the best interests of the child. Holistic refers to every level of intervention for safeguarding each and every child, a victim of trafficking, a migrant child, or a UK citizen. As transnational child protection cases are often very complex, it is important to combine the expertise, skills and knowledge on social work and child protection and competence to talk to a child with specialist knowledge on issues related to migrant children or indigenous children, transnational and global issues of protection, trafficking and migration. This is however precisely the mandate of social workers and the social services approach is well prepared to work with these cases. The best interests concept is extremely helpful because everything that social workers are doing is oriented at it. It is very important to adopt a holistic perspective.

The best interests of the child in the UK should be the basis for any intervention. It applies equally to all children, unaccompanied children, trafficked children, and national children. The approaches should be consistent. There is however often a conflict between immigration and children's issues.

For non-national children, the immigration regime is relevant. It will come in at some point and has an effect on the ability and willingness of social services and other authorities to treat the child as a child. There is a risk that the immigration regime has a detrimental impact on the approach guided by the rights and protection of the child. In the UK, all unaccompanied children enter the child care system, even as adolescents. There is a process of case assessment, best interests assessment and care planning. When the child reaches the age of 17.5 years old, the case changes from a purely child welfare case into the immigration regime system, which has an impact on the continuity of the provision of care.

In the UK, we started several years ago to look into trafficking and how it related to the various authorities involved in the cases. The objective was to develop a coordinated scheme involving all authorities that provide protection services. Child victims of trafficking should have access to the same services, based on their needs, that any other child would have access to, for the personal development of the child. We developed a toolkit and rolled it out in different regions of the country.

The Council of Europe Convention on Action against Trafficking in Human Beings was immensely helpful for linking the safeguard of child victims of trafficking into the mainstream child protection services. It lowered the threshold as the authorities could come in when there were suspicions of trafficking. We proposed to act in cases that were considered potential trafficking cases as if the child was trafficked and to follow all the procedures in place for child victims of trafficking. This brought transnational child trafficking right into the core of our child protection system. A child at risk of trafficking is considered a vulnerable child in need of protection.

We consulted on how to translate the provisions of the Council of Europe Convention into child protection measures. We conducted an in-depth assessment to understand what these provisions meant for the local agencies, what do they need to do and what can they do to protect children in line with the Convention. We developed indicators on how to identify potential trafficking cases and structured this into the existing frameworks of assessment that local service providers use. Prior to the Convention, we had to prove that it was trafficking. That was quite problematic for social services because it would be the responsibility of the police to prove a case. So now that is not necessarily required because the threshold has been lowered and children are assessed as vulnerable children in need of protection.

The holistic approach was important, to harmonise services for these children and to remove the barriers between the front-line practice of child protection specialists and the knowledge on child trafficking, cross-national issues, and the relevant transnational and European legislation on these matters.

At the time we took this initiative, many local authorities had not even considered that they might be identifying child trafficking cases. We could see that it had an important effect for protecting children. What we did was to change our statutes of legislation, to start enshrining the concept and terminology of child trafficking into the procedures, to include the advice to local authorities to follow the procedures when they suspect that a child was at risk of trafficking, to investigate using the child protection framework whether it was trafficking or not.

The practice guidance on responding to (potential) child trafficking cases was developed for front-line workers and was found very helpful. It guided them in what they needed to do to protect the child but also to share information and mitigate risks. It made a difference to mobilise the support among the organizations, to reach out throughout the country and to provide support and develop guidance for the local authorities and service providers, to provide concrete support to social workers and others to implement and apply the guidance, on a daily basis. That worked very well.

With regard to migration, there appears to be a shift that governments approach the best interests determination for children more and more from a perspective focused on the immigration regime and border control, under the lead of the Home Office. Our ambition is to promote a multi-disciplinary and holistic approach. Organisations and service providers have to follow the statutory guidance. But some are not following it closely for various reasons, mainly in the cases of non-national children as then the border issues come in and might override the protection of children. To mention an example from the United States, although they may not be particularly relevant to the CBSS or Europe more generally, the US Government took a decision to enact a convention that allowed migrant children, including trafficked children, to remain in the US open-ended. The reasoning was the obligation to protect them as they are children. There was a very hot debate if this was going to encourage increased migration into the US. Eventually, there were 490,000 children who were identified and were allowed to stay in the US. As a guiding principle, is that something that we could be considering in Europe as well? Are there any barriers to it? If we talk about children and child protection in our own country, is there a barrier to that?

Another challenge we are seeing in safeguarding the best interests of the child is the implementation of national laws and policies into practice. The policies and procedures in place are good but that does not mean that there is also an effective system in place to support children in practice.

The language on the best interests of the child and best interests determination has been at the core of child welfare work since 1989, helping organizations to define what these interests are. Today, this is very helpful. It is hugely important and helps us fulfil our mandate to protect children. It shines a light on the differences between migration and children in the statutory framework. The CRC and in particular the General Comment No. 14 provide three key areas that help to define what the issues are that need to be looked at for a best interests assessment. Having EU legislation and Conventions coming into the UK is not always considered helpful but in the context of child protection it is. We see the changes as now the language is being referenced. The next step is to maintain that.

In the discussion, the participants noted that the approach to the best interests of the child was however not as holistic in practice as it could be as the immigration perspective is not reconciled with the social services perspective. The immigration authorities assess the case for the possibility of return and social services assess for welfare and care planning. The care planning for non-national children cannot be projected beyond the age of 18 because local authorities do not know how the case will be assessed by the immigration authorities. There are certain countries where children are not returned to. In these cases, their status remains unclear for an undetermined time. It is critically important that children maintain contacts with their communities and families of origin, especially in cases where their immigration status has not yet been permanently resolved.

13.30 – 15.00 The perspective on the return and best interests assessment

Eva Biaudet, Ombudsman for Minorities and National Rapporteur on Trafficking in Human Beings, Finland

The National Rapporteur on Trafficking in Human Beings in Finland is mandated to gather information from all relevant national authorities. The mandate is not limited to the gathering of quantitative data but includes also an important component of analysis. There is no way international monitors can make meaningful recommendations to a country if they do not have access to in-depth analysis of the situation in the country.

In Finland, having an independent office has made a great difference. The function of the National Rapporteur on Trafficking in Human Beings was attached to the office of the National Ombudsman for Minorities. The Ombudsman and Rapporteur are being heard and listened to, including by the Parliament, and provide information to authorities on an ongoing basis. Some of the

recommendations issued by the office are of longer term nature, structural ideas and reforms in legislation that have to take place. The office issues annual reports to the government and reports every four years to the Parliament, which is considered essential for promoting change. There are several new laws that are based on the office's recommendations.

Fighting trafficking requires a comprehensive approach, looking at the prevention, and promoting successful prosecutions and law enforcement, all the time bearing in mind that the victims' interests need to be respected. These different perspectives are not in conflict with each other, even if it can be perceived as such. It is important to build good cooperation and trust between the authorities and NGOs. Usually the victims, once that they feel safe and when they know what will happen to them and what options there are, they may like to cooperate with the authorities, but coming to that stage is difficult and a long-term process.

Working as the Special Representative and Coordinator against human trafficking at the OSCE, it struck me how similar the issues are that countries are struggling with. The differences in national legislation are important but do not matter as much. Usually the main problem is that the victim is in a bad spot, is a foreigner, and is not believed. The perception of who is a victim of trafficking might be changing now that we come more to the attention of national cases in Europe. Addressing the awareness and attitudes of policy makers and practitioners is an issue at all levels, including particularly at the local level.

There is a long way before we even speak about the return of victims of trafficking, particularly when they are involved in court cases and prosecutions. In Finland, almost all persons who are officially recognised as a victim of trafficking have received a permit to stay. Those who are not identified are the ones whom we need to be more worried about. For them, it is often the trafficker who is the most trusted person, they see little alternative options, they may have emotional bonds to the trafficker and are often led to believe that they are part of the crime. They do not feel at home in the destination countries, it may be difficult for them to imagine to stay there. Usually in the history there is a long history of distrust, and relation to unreliable adults. The experience from the few child trafficking cases that we have had in Finland is that compulsory child protection measures are used. In some cases, it can take years to convince the person to accept help but in some cases it can also happen much sooner.

The most difficult problem to address in order to make a difference is the mindset. In the Nordic countries, we are used to quite a strong social support and welfare system in support of children and families and we are used to relying on it. In the cases of non-national children, we tend to lose out of sight what we know. There is a perception that the social welfare is for the nationals. We have also very few persons who live outside the society and therefore we do not have much experience with persons who are not in the registry. So it is different to deal with cases of persons who are not registered in the systems as nationals are. Most of the identified presumable child victims of trafficking have been identified in the asylum system in Finland, that also applies to adults. We have been criticizing our system for that. One of the reasons might be that they have legal advice and there are persons who recognize that this might be a victim of trafficking.

In Finland, we have had little more than a dozen of cases of sex trafficking in the courts. We know from these cases that victims have asked for support many times, many have been in care or received support services, but although there are many indications and 'alarm bells' ringing, they are not being identified as victims. Often, it is the police that eventually identifies the cases.

For children, the time scope is different and there should be a way for ensuring that there is sufficient time available to assess the cases involving children. The procedures may take so long that the child turns 18 and then loses some of the entitlements that he or she would have had as a child, including the right to family reunification.

The CRC actually obliges us to investigate the trafficking case. A child cannot be transferred or returned when there are allegations that the child has been trafficked elsewhere. There needs to be an in-depth assessment to be sure what exactly the situation would be when transferring or

returning the child. The numbers we have are so few so it is possible to do a case by case assessment.

In 2010, we did a report on the best interests of the child in the asylum system in Finland. One of the findings was that the decision over the best interests of the child was noted in the case documents but the process for assessing the child's best interests and arriving at a decision as not effectively documented in the asylum procedure. It did improve since then and there are efforts to document the process in a more detailed way.

In the cases of transfers under the Dublin Regulation, the migration officials prepare the documentation and take the decision. They have to hear the social workers but there different cultures within the various authorities involved and differences in the ways that the social workers, immigration officials and police officers speak about and understand the best interests of the child. There have to be much stronger recommendations from the social workers and clearer indications. If a family is assessed for immigration detention, for instance, the police ask the social workers who say that this is not the best place for the child to be but the child should be with the parents. As the police will send the parents into immigration detention, they interpret the statement by the social workers as meaning that the family should be placed all together in immigration detention.

One group that is very rarely identified and not even a client with the social workers are the children of victims of trafficking. We have a growing number of Nigerian women in prostitution in the Nordic countries, which might involved an established practice of trafficking. Many of these women are in a very bad shape either as a reason or as a consequence of being in this situation. Many of them have children. As many of the women have been exploited in Italy and Greece, it is quite challenging to investigate these cases. The situation of these children is very difficult. Usually these women are deported or sent away, they do not get any protection even if they are in the health system for a while. It is very problematic and we feel that there is not enough knowledge and action about these cases. Even sometimes the social workers in the asylum system notice that they have been trafficked. Usually they move around a lot within Europe. It would be important to have networks and contacts not only among the immigration authorities but also among NGOs. Strengthening the connections with NGOs throughout Europe might help to facilitate the follow-up to what happens when they are transferred or returned.

In the discussion, examples of NGO networking and alternatives to detention were mentioned. In the UK, the Children and Families Across Borders works with a network of NGOs to support persons who drop out of the asylum system and who decide to accept support for returning to their countries of origin. There are initiatives underway to explore alternatives to immigration detention, particularly for families with children. Barnardo's is conducting a study to assess an initiative where adults are held in immigration detention and the children are staying with them but can leave the place accompanied by Barnardo's staff. The preliminary findings show, however, that very few children use this possibility.

Claes Lyckner, Coordinator - Return of Victims of Trafficking, County Administrative Board of Stockholm - Replaced by Charlotta Thorelius

Assisted Voluntary Return and Reintegration for victims of Trafficking and Foreign Persons in Prostitution (AVRR SWE TIPP)

The County Administrative Board of Stockholm has recently launched a new programme for the assisted return for victims of trafficking and foreign persons involved in prostitution in Sweden. The programme is targeted at children and adults. The programme aims to prepare the authorities better to support the returnees regardless where the victim is found in Sweden and regardless of

the country to which the person will be returned. It was developed as a response to the following general challenges in international assisted returns from Sweden:

- Limited knowledge on assisted international return,
- 290 municipalities and social services throughout Sweden that are potentially involved,
- Lack of earmarked funding for costly return and reintegration,
- Lack of possibilities to maintain updated information on suitable recipients, service providers and return programmes in the countries of origin, and
- Difficulty to give support in the entire return process, including re-integration.

Thus far, there have been three cases of children from Romania and Bulgaria who were considered for the programme. Two of the children have however left without informing the authorities. The adults who have participated in the programme thus far are mostly from Europe, Africa, West Indies, and also Nepal.

IOM will be organising the return and will facilitate the contacts with the authorities in the countries of origin. The aim is that the authorities in the country of origin can concentrate on the child and that all the information will land on their desk. IOM has contacts also with NGOs and embassies.

Support is offered in three stages:

1. Pre-departure phase

- Information and counselling to social services
- Family tracing, tracing of child protection authorities, family assessments (if embassies of the country of origin are unavailable)
- Acquisition of travel documents
- Needs assessment and available support in country of origin
- Travel arrangements, including tickets and itineraries
- Risk and security assessment

2. Travel

- Provision of escorts
- Transit assistance at airports

3. Post-arrival

- Reception assistance
- Onward transportation
- Referral to partners, as necessary
- Reintegration assistance, monitoring and follow-up

Reintegration support is granted for three months and includes safe housing, contact with a therapist or psychologist, health care to treat or prevent STDs. It may also include support for reinsertion into school. Legal aid is granted to the family including in cases of divorce, custody rights, acquiring identity documents or health insurance. Financial support is granted to cover everyday costs of living, in the amount of USD 150 per month for a total of three months. Costs for special medical care are covered based on the needs of the person and up to a total amount of USD 300. Housing support is granted in the amount of USD 300. Re-integration support and income-generation support is offered in the amount of USD 3,000 (in kind) and is used for training courses, internships, help to get back to school and to cover tuition fees.

In Sweden, the NGOs, social services, the police or the Migration Board might identify cases of trafficking. They refer them to the County Administrative Board of Stockholm, which in turn refers the case to the IOM Regional Office in Helsinki. IOM gets in contact with the IOM Field Office in the country of origin and the latter establishes contact with the local service providers and authorities that need to be involved in the case.

For children, the process has some additional components. It is always the social services or the Swedish Migration Board that refer cases to the County Administrative Board of Stockholm. They might also receive referrals directly from the twelve administrative courts in Sweden, the legal guardian of a child and the Chief Guardian Commissions in the 290 municipalities. The social services might get in contact directly with the embassy of the child's country of origin, which is a practice used mainly for children who are EU citizens. Embassies might also be in direct contact with the IOM Regional Office in Helsinki or with the child protection authorities in the country of origin. In the country of origin, the child protection authority would in some cases get in contact with the IOM Field Office within the country. IOM provides support to making the contacts in the country of origin, to receive the assessments from the child's country of origin, to conduct the assessment on whether it is in the best interests and safe for children to return.

The County Administrative Board of Stockholm is preparing a manual for assisted voluntary return. The programme has been tested since 2012 and is ongoing. This year, there will be two cases of return from the criminal justice system, two women who are in prison in Sweden and are considered victims of trafficking. A survey on prison sentences for foreigners in Sweden found out that many of the non-nationals convicted to a prison term in Sweden were actually victims of trafficking, exploited in drug trafficking for instance.

During the discussion, it was clarified that persons participating in the programme will not have restrictions to return into Sweden, except for those persons who are returned from the criminal justice system. The unit that is managing the programme is also in charge of determining which persons are eligible to participate in the programme. Whereas IOM is facilitating the contacts with the authorities in the countries of origin, the responsibility for the best interests determination is with the social services in Sweden. The determination is done on the basis of the information gathered from the country of origin. During the post-arrival phase, monitoring and follow-up is offered through the local IOM office or their partners. They have a documentary and monitoring system for it and are working with a reporting system for filling in the information, that is the usual process, which is used for adults and children alike.

15.15 – 16.45 Examples of multi-disciplinary/cross-sectoral/inter-agency approaches to best interests assessment

Mariana Petersel, President, Association 'Generatie Tanara', Romania

The NGO 'Generatie Tanara' is based in Timis county, Romania, with the head office in Timisoara. It has received the mandate from ISS Geneva to represent the ISS in Romania. It operates shelters for children and adults, women and men, who have been exposed to trafficking within Romania or abroad. Since the establishment in 2001, the organisation has assisted approximately 1,000 persons, half of whom were children. The services offered to child victims of trafficking include medical and psychological support, legal advice, in kind support, psycho-social counselling, support to school education and professional skills training and finding employment for persons staying at the shelters. The reintegration support for victims of trafficking is a longer-term process and requires the support from a multi-disciplinary team, including social-educative and professional integration and reintegration into the family and community.

The Romanian law obliges authorities to act in the best interests of the child victim of trafficking. This was established under the Decision 49/2011, which applies specifically to child protection offices, police offices, public health units, the general school unit, labour units, and NGOs. The involvement of all relevant authorities and disciplines is particularly important in responding to the cases of child victims of trafficking. When we work together with the police, the judiciary, the social care, we might however forget the child or the woman concerned because we are so much concerned with the procedures and the regulations.

Under the Law 272/2004, the best interests of the child refers to the right of the child to a normal physical and moral development, to socio-affective balance and family life. The law provides for certain actions and considerations to be taken when the child's best interests are being determined. They include the following:

- The needs of physical, mental, educational, health, security and stability development and the belonging to a family;
- The child's opinion according to his or her age and maturity;
- The child's history, taking into consideration the situation of abuse, neglect, exploitation or any other form of violence against the child and also the potentially dangerous situations that may occur in the future;
- The parents' capacity or the persons who will take care of the child to meet the needs of the child;
- Maintaining the personal relations with the persons with whom the child developed attachment relations.

(Law 272/2004, Cap.1 Art.2).

The formal decision over a child's best interests are taken by a court.

With regard to child victims of trafficking, there are challenges regarding the period of accommodation of the victims in the centre operated by the NGO. For a trafficked person who has been traumatised, the 90 days of accommodation for recovering and social reintegration is insufficient. It is even more so for child victims who cannot return into the community or their family because they are in danger to be re-trafficked. These child victims are legally represented by their parents, which might cause a dilemma if one or both parents were or are involved in the exploitation of the child.

There are specific challenges in transnational cases. When child victims from Romania are identified on the territory of another state, they are often missing documentation and might not be able to give information related to the identity of the persons who exploited them. Child victims are commonly taken into juvenile centres and they are appointed a legal representative. They are sent back to Romania only after the Romanian authorities are contacted and only after the authorities manage to find a place to stay for the victims that is suitable to their situation and needs. The Ministry for Foreign Affairs through their diplomatic missions and their embassies can release a travel document so the victim can return in the country. When the traffickers are relatives of the victims or even parents, the court of the state where they are caught will implement a protection measures for a limited period. In all this time, the family in Romania is evaluated in order to see if the children can live with this family or if they have to be taken into a placement centre.

Two months ago I met with a group of 250 Romanian girls in Switzerland. We discussed and they said our traffickers now are our families, they ask us to work and to send money home. The economy at home is broken, there is no social protection. There is a need to invest in the social and economic development of the country, including education and employment, to give the people a future.

**Bragi Guðbrandsson, General Director, Government Agency for Child Protection, Iceland
Children exposed to exploitation, trafficking and at risk in transnational situations: Case
Assessment and Best Interest Determination**

Themes of the presentation:

1. International law and tools in relation to transnational cases of exploitation, trafficking and children at risk and their child-friendliness
2. Inter-disciplinary model of the Children's House

Children who are moving across borders are often already traumatized and at risk. There is a danger of re-traumatization when the children are in contact with the authorities, especially when the intervention is not coordinated in a child-friendly manner.

The CRC explicitly provides for the right of the child to have his or her best interests assessed and taken as a primary consideration. There is explicit reference to the obligations of all agencies to collaborate and to work together to secure the best interests of the child. This is extremely important if we really want to implement the best interests' principle. It should be a primary consideration of the police, the immigration authorities, the medical professions, and all others involved in the case of a child. The best interests of the child should have the priority no matter what context we are working in.

The UN Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime afford that professionals should develop and implement comprehensive and specially tailored interventions in cases where there are risks that the victim may be victimized further. These strategies should take into account the nature of the victimization, including sexual exploitation and trafficking and other forms of violence, in line with CRC Article 39. Article 39 provides that "States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of ... any form of neglect, exploitation, or abuse...".

The Council of Europe Lanzarote Convention is the first international binding convention on sexual abuse and sexual exploitation of children. It came into effect in 2010. By now, 29 states have ratified it, and all Member States of the Council of the Baltic Sea States have signed it. This is important particularly for its comprehensiveness, as it addresses all forms of sexual exploitation, including sexual abuse or exploitation in pornography, prostitution, trafficking, grooming, or the sexual abuse of a child in the circle of trust.

The Convention is comprehensive as it combines provisions under criminal law and protection provisions. It is also comprehensive in scope as it addresses all forms of sexual exploitation and abuse of children, and it is comprehensive in terms of the strategies and measures that it adopts. It requires State Parties to implement measures for prevention, special protection measures, therapeutic services for victims and their families, the treatment for child perpetrators, child-friendly investigations and prosecution, as well as the recording and storing of data. The Convention is equipped with a mechanism to monitor the implementation by States Parties and promotes the international cooperation for its implementation.

The Convention provides for the principles of a multi-disciplinary and multi-agency approach. This obliges States to ensure that the authorities work together in all areas of the Convention, including in prevention, protection, prosecution, at the local and national levels as well as across borders. For prevention, Article 10.1 of the Convention provides that States need to ensure the coordination on a national or local level between the different agencies. On protection or intervention, it provides that "each Party shall establish effective social programmes and set up multidisciplinary structures to provide the necessary support for victims, their close relatives and for any person who is responsible for their care" (Art. 11.1). Article 15.2 provides for "the development of partnerships or other forms of co-operation between the competent authorities".

The Council of Europe has an important role in standard setting in Europe, including in the area of child friendly justice. The Council of Europe guidelines on child-friendly justice address all the principles that should be in place when children are in contact with the justice system, irrespective of the nature of that contact, as victims, witnesses or defendants.

The Member States of the Council of Europe are held, under the guidelines, to "set up child friendly multi-agency and inter-disciplinary centres for child victims and witnesses where children could be interviewed and medically examined for forensic purposes, comprehensively assessed and receive all relevant therapeutic services. Of particular relevance in this regard are also the Recommendation Rec(2011)12 on Children's Rights and Social Services, the work of the Congress of Regional and Local Authorities and the Strategy against Child Sexual Exploitation and

Sexual Abuse. The principles of child-friendly, multi-agency and interdisciplinary responses are central and cutting across many different provisions and regulations.

In Iceland, trafficked children and children at risk are under the responsibility of the local child protection services. As a small country, we do not have very many trafficking cases, but we have had a few cases throughout the years. In practice, the agencies involved with these cases are not only those at the local level.

In Iceland, the child protection services are organised as follows: Under the Ministry of Social Affairs, the Government Agency for Child Protection has the role of supporting local authorities in implementing child protection services. The local authorities are obliged to report cases to the Government Agency and will then get support in handling these cases. A crucial structure in Iceland's child protection system is the Children's House. It was set up with two aims, firstly to prevent the re-victimisation of children suspected to be victims of sexual abuse. We know that they are to be examined by different agencies, including child protection services, prosecution, medical staff and others. That means that children need to go from one agency to another, often having to repeat the same statements again and again. Research has evidenced that this has a harmful effect on the child, which can in fact be more traumatizing than the actual abuse. It has, however, also a negative effect on the case itself, as the child's story might be perceived as contradictory and that might not be useful when bringing the case to the justice system.

The Children's House is tasked to facilitate the collaboration and coordination of all authorities involved in a case. They include the child protection services, the police and prosecution and the medical profession involved in the investigation of a case. The Children's House provides a child-friendly setting for joint investigative interviews and medical examinations and ensures the professional implementation of the investigative interviews. The story of the child and the child's disclosure are crucial for the investigations. The Children's House ensures that the child victim and the family receive appropriate assessment, treatment and support. It establishes professional work practices and guidelines for interdisciplinary cooperation. It enhances also the specialised knowledge on child sexual abuse and mediates that knowledge as appropriate to professionals and the general public. Through its work, the Children's House contributes essentially also to prevent the re-victimisation of the child.

The environment of the Children's House in a residential area is extremely important. We need to be able to build trust, and therefore, a child-friendly environment is very important. We have accomplished a lot in building confidence and it is very helpful for the child's disclosure. The more stress the child is exposed to, the less likely we are to get reliable information from the child. The model itself is based on the joint investigative interview, which means that the child is interviewed by a professionally trained forensic interviewer, in a child-friendly interviewing room. This can be observed through a close circuit TV. Under that same roof, we have also medical exams and evaluation, victim therapy and family counselling and support, and the Children's House is also delivering education and competence building for professionals.

In the interviewing room, a small camera is placed in a corner of the room. This is explained to the child always. When the child's disclosure is very clear and points to a possible perpetrator, than this becomes a formal court interview, so the presence of the defence lawyer is important to ensure the rules of due process. And also a child protection professional, the police, prosecution and the child's lawyer are present. The Children's House staff also do exploratory interviews when the child's disclosure is more ambiguous. Then the judge and the other professionals are not present but a child protection staff can be there.

Medical examinations are done with video recording for forensic evidence. It is part of the process and in cases where there has not been any physical harm, it is important for the therapy to explain to the child that they are physically fine and healthy.

The Children's House model is spreading throughout Europe. Save the Children considered the Icelandic Children's House model a "best practice" in a 2002 study of 10 European countries on

child abuse and justice. In 2006, the Children's House model received the ISPCAN Multi-disciplinary Award. Since the opening of the first Children's House in Sweden, there are now approximately 30 settings all over the country. In Norway, the first Children's House opened in 2007, and there are currently 10 settings operating. In Denmark, five Children's Houses opened in October 2013. Finland and Lithuania have already decided on a pilot, and there is a growing interest also in Estonia, Latvia and Poland. There are networks of children's houses meeting every two years approximately. Training and workshops are given at the ISPCAN conferences.

In Sweden, the experiences with the Children's House has been evaluated. All the evaluations demonstrate that it has been successful and the basic conclusion is that this model is more effective than previous situations. The evaluations, however, point also to a number of shortcomings and suggest that there should be a unified standard setting to how the children's houses are operating in Sweden. There have been positive evaluations also in Norway and Iceland. Iceland has studied the children's perspective comparing cases of children who have testified in the Children's House and those who have testified in a court room. The children's voices are clearly indicating more positive experiences in the Children's House.

During the discussion with the participants, it was clarified that the responsibility for best interests assessments rests with the child protection services. They make this assessment on the basis of the documentation that the Children's House provides, including the child's disclosure. The social services need to develop an individual plan of support for each child, including for victims of trafficking as for any other child. In the case of non-national children, there would be consideration with regard to the possible return of the child or an asylum application, but the child protection services are responsible for the comprehensive assessment of the child's case and providing required support.

In Iceland the Children's House has originally been developed for cases of child sexual abuse but it is being opened up for other kinds of trauma as well. The model can be applied in all contexts of children at risk, including in transnational cases. The crucial aspect is the child's story and disclosure. It is often the only reliable information that we can base the action on. In order to get that, the interview with the child needs to be conducted in a trusted, child-friendly environment and in a controlled manner, and with an experienced interviewer and a child-sensitive process.

Evija Ivdra, Senior Inspector, State Inspectorate for the Protection of Children's Rights, Latvia

Special considerations and procedures in transnational cases of children exposed to exploitation, trafficking, and children at risk

The State Inspectorate for the Protection of Children's Rights in Latvia is directly subordinate to the Welfare Minister. It is mandated to supervise and control the implementation of the Law on the Protection of the Rights of the Child in Latvia, as well as other relevant laws and regulations concerning children's rights. These laws afford that children have a right to be protected from exploitation, including economic exploitation and employment in dangerous or harmful conditions, physical and mental exploitation, sexual exploitation and any other form of exploitation.

On a daily basis, the State Inspectorate works with institutions, such as schools, children's homes, welfare centres. Although the State Inspectorate is not directly concerned with cases of child trafficking, it is mandated to monitor the implementation of the national laws that protect children from exploitation in any form. As human trafficking is a criminal law matter, it falls primarily under the responsibility of the police, which is institutionally affiliated under the Ministry of Interior.

In cases of child trafficking, there are therefore different laws that apply. In addition to the Law on the Protection of the Rights of the Child and the Criminal Law, there is also the Law on Residence

of a Victim of Trafficking in Human Beings in the Republic of Latvia, the Asylum Law and the Law on Social Services and Social Assistance.

The Republic of Latvia has issued a series of National Action Plans against trafficking in human beings: The first Programme for the Prevention of Human Trafficking was adopted for the years 2004-2008 and was followed by one for 2009-2013 and one for 2014-2020.

Inter-institutional cooperation is important in cases of human trafficking. When there is a case identified that concerns a child, the child protection authorities are to be involved. The inter-institutional cooperation includes the State police, the Ministry of the Interior, the Office of Citizenship and Migration Affairs, the State Border Guards, the Ministry of Foreign Affairs, the Ministry of Welfare, the social services, the orphans court, medical institutions, the State Inspectorate for Protection of Children's Rights, and relevant NGOs.

The best interests and the rights of the child have been enacted as guiding principles into the national law and shall take priority. The law provides that in all activities in regard to a child, irrespective of whether they are carried out by State or local government institutions, public organisations or other natural persons and legal persons, as well as the courts and other law enforcement institutions, ensuring the rights and interests of the child shall take priority.

The law provides also for confidentiality of the child's case and data. Information regarding a child obtained by an employee of a child care, educational, social assistance or other institution or by an employee of a state or local government institution, in fulfilling the duties of their office, shall be confidential. Information which could in any way harm the future development of the child or the maintenance of the psychological balance of the child may not be divulged. It is prohibited to disseminate personally obtained information regarding a child victim, witness or a child who is in conflict with the law, as well as any information that could harm the child now or in the future.

Thus far, there have not been any cases of child trafficking officially registered in Latvia. The groups considered most at risk of trafficking are young women, single mothers, unemployed persons, members of large families and children living in child care institutions, and persons with a low level of education and limited financial means. For prevention measures, there are programmes in educational institutions, seminars and courses and information disseminated through the media, campaigns and projects.

During the discussion, the participants noted that it might be worthwhile to recommend that the national Ministries of Social Welfare have an international focal point for transnational cases. Across Europe, some countries have established international focal points but the way they operate is variable and information on who is responsible is not always effectively disseminated or available, within a country or abroad. Many countries have different central authorities dealing with the different Hague Conventions and the Brussels II Regulation. It would be good to integrate these structures and to develop general guidance on what works well. As the EU is now developing guidelines on child protection systems, it would be important to advocate for the establishment of such focal points. The EC is also working to set up a network of NGOs that might be very helpful and might be mobilised for cross-border cooperation on child protection cases. The way that such networks operate and share information internationally need to be considered from a perspective of the rights of the child to confidentiality and data protection.

Wednesday, 29th January

Session III: International perspectives

9.00 – 10.30 The contribution of international actors to best interests assessments in transnational child protection cases

Andy Elvin, CEO, Children and Families Across Borders, UK

Returning or placing children overseas – Issues and solutions

Children and Families Across Borders (CFAB) acts as the UK branch of the ISS. The ISS network has partners in over 120 countries worldwide. It is working on issues of mass migration, which includes cases of families separated through migration, divorce, disasters and emergencies or conflicts, as well as cases of human trafficking. The presentation will provide an overview of CFAB's work, discuss issues with placing children overseas, and present the potential Joint Court Pilot in the UK.

The CFAB focuses on cross border child protection issues, issues with placing children across borders and judicial issues in transnational child protection cases. The main countries it is dealing with are Poland, Lithuania and Spain. The cases involve UK citizens moving to other countries as well as cases of non-nationals within the UK.

The CFAB provides a diversity of services, including assessments, welfare checks, social services and police checks, advice, referrals of child protection concerns, and post-placement services. The first option considered always is to leave the children with the birth families if possible. When that is not possible, a child might be placed with the extended family and, if that is not available, institutional care or adoption are being considered. Looking for extended families is increasingly becoming an international and global issue.

Cross border child protection cases are very diverse. They might include cases of child abuse, including those linked to a belief in spirit possession, which is a very dangerous form of child abuse. There are also cases of staged fake births or 'miracle babies'. Usually these happen in Nigeria and babies are taken from women exploited in prostitution. It is a way of buying babies. Women travel to these 'clinics' and come back with a baby. There are also cases of trafficking. FGM is a form of child abuse that is very difficult to identify and is often identified only once the girls are adult women. Unaccompanied asylum seeking children continues to be an issue in the UK but not as much as it used to.

In these or other cross-border child protection cases, the CFAB has a duty to pass on information to the competent bodies overseas. It is vital to gather information from overseas in order to thoroughly understand the case. The CFAB can obtain information from overseas and pass on child protection concerns to overseas authorities.

The number of referrals to CFAB of families fleeing social services has increased by 600% in 2013. There were 20 cases in 2012 and 119 cases in 2013. The most common destinations are Poland, Lithuania and Spain. In handling these cases, it has emerged as a good practice to ensure that you have the contact details of the family overseas. If the child who is on a plan of protection agrees, the child's passport can be held by the local authority. The child may however have a second passport, one for the UK and one from the country of origin. It is important to discuss the case with the family so that the family is aware and informed that social services are monitoring them.

As regards child trafficking in the UK, the latest figures demonstrate that the numbers are much lower than actual estimates. Although there is a national referral mechanism, the problem is that the people who are supported to report the cases to the NRM do not always know that it exists. It has not been well advertised and there is need for more consistent training for local authorities and frontline professionals on how to report and refer cases. According to data provided by the UK

Human Trafficking Centre in 2013, key countries of origin outside the EU in 2012 were Vietnam (72 children), Nigeria (67 children), Albania (25 children). In the EU, the main countries of origin are Romania, the Czech Republic, Lithuania and Bulgaria. In 2010, there were a total of 186 children identified as victims of trafficking, 234 in 2011, and 372 in 2012.

Many non-national children are accommodated in the UK in private fostering: 10,000 children from overseas may be privately fostered in the UK. They are living with a carer who has no parental responsibility for them. The notification of these cases does not always work and there may be a ubiquitous "aunt" with whom the children are living. These children are hidden in plain view. There is no visa tracking of their cases and once the child turns 18 years old, there are issues with his or her status. In some cases these children are subjected to domestic servitude or other forms of exploitation. There is a tradition across some cultures that children are placed with the most successful relatives to supposedly have better opportunities for their lives. These relatives might be staying in the UK and so the children come on a tourist visa and overstay. As there is no registration of the persons leaving the UK, no-one knows if or how many people are overstaying their visas.

Placing children overseas: In 2011, 3 out of every 5 children born in London had at least one parent from overseas. It is vital that social workers obtain details of the family overseas. An increasing number of children looked after have relatives overseas: at least 4,000 and possibly up to 10,000. Overseas relatives must be given proper consideration when the case of a child is being assessed for placement. The parents' solicitors must help to contact the extended family. The way we assess in different countries varies widely. If we are going to place a child with the grandparents, a lot of jurisdictions will cooperate and consider this a viable option, so the assessment would just be looking at issues for why not to place the child with the grandparents. In the UK, we take a different view, and do a very rigid assessment as if it was a foreign family placement and that can lead to some difficulties in placing children so a lot of our work involves gathering information to write the statements for the judges.

There are many issues that need to be considered when placing a child overseas: Evidence gathering and the availability of social worker staff: If you can have a social worker from overseas give a statement over Skype that works very well, the judges can ask questions. There is an increasing use of video link / Skype for hearing witnesses. The social work assessment practice differs between countries so there are different standards in the type of information that is being gathered and how it is documented. The Brussels II Regulation and the 1996 Hague Convention have limitations and benefits. UK courts are starting to realize that it may not be very sensitive for a UK court to take a decision when all the evidence is in another country. This has not yet been recognized but there might be a process of increasing recognition. There might be an ongoing risk to child while these assessments are being made. There are also very practical issues in arranging for the placement overseas, such as visa issues and the availability of UK entry visas for relatives in some cases. We may need to work with mirror orders and gaining orders once a child has been placed. And there may be a need to arrange for follow-up visits once the child has been placed. The guardianship needs to be established as well in the country to which the child will be sent.

Joint Court Proposal

In order to promote a more holistic perspective to best interests determinations, the CFAB has been developing a pilot for a joint court proposal. It shall help to find the most effective process for the best interests determination in cross-national cases. The pilot foresees that a joint court will bring together the family court and the immigration court. In transnational cases, we are currently working with the immigration tribunals working with matters of immigration and the family courts working with family issues. In other contexts, we have had positive experience with bringing together family courts with the courts dealing with criminal matters, for instance in cases concerning substance abuse by a parent. As this has worked well, we should try and work with immigration court as well in the cases of transnational child protection.

When the case of a non-national child is identified and assessed, the best interests determination has to be made within six months in order to decide whether the child will return to the family or to

alternative care in the country of origin, to a third country, or if the child will stay in the UK with the Indefinite Leave to Remain, that means to become British. When children are granted indefinite leave to remain, they are free to leave the UK if they decide to as an adult, but they do not have to go through all the processes for applying for residence again as an adult and have a more stable perspective for their stay in the UK.

The proposal for the joint court to decide about a child's best interests in transnational cases might be attached to the Modern Slavery Bill. It is not yet certain if it will be passed. The government might have doubts about the effect on immigration and about the availability of robust assessments from some countries. The proposal offers however many opportunities: It is expected to resolve immigration issues early so that the child's future can be planned with confidence. It will also resolve issues of legal parental responsibility early. Taking decisions in a timely manner and informed by robust information is considered to be in the best interests of the child. Overall, it is essential to ensure that the child is at the heart of the process for the assessment and determination of the best interests of the child. The key determinant should be child welfare, not immigration.

During the discussion, participants clarified that children placed overseas tend to be children under 10 years old and the placement overseas depends on how long the child has been in the UK, the linkages to the country of origin and connections with the family. The proposal for the joint courts foresees that it would be possible to work with the judges who are sitting in both, the immigration tribunals and in the family courts. Eventually, there should probably be one judge in the joint court taking the decisions.

Monika Sandvik-Nylund, Senior Advisor for Children, Division of International Protection, UNHCR Geneva

Contributions of International Actors to Best Interests Assessment

With contributions from Karolina Lindholm Billing, Senior Regional Legal Officer, UNHCR Regional Representation for Northern Europe, and Christina Jespersen, UNHCR Consultant for the development of the forthcoming UNHCR and UNICEF guidance on best interests determination.

UNHCR's global experience with best interests assessments relates primarily to UNHCR's role concerning the international protection of children, including the protection of children from trafficking, best interests procedure, and the identification and development of good practice.

Child protection is part of UNHCR's core mandate. Approximately 50% of the persons whom UNHCR is working with are children. A particularly important aspect is the individual case work with children, including individual assessments, the refugee status determination of children in need of international protection, the best interests procedure for children at risk and the identification of durable solutions.

UNHCR does however not have a global mandate on children, its entry point is the international protection of children and the main question is if children have international protection needs. These children might be refugees and among them there might also be children seeking asylum, unaccompanied children in migration flows and victims of trafficking. UNHCR's role in responding to human trafficking is two-fold: On one side, there might be refugees and displaced persons who are vulnerable to trafficking and need to be protected from recruitment into trafficking; on the other side, some victims of trafficking can be defined as refugees and have international protection needs.

How can we protect refugee children against trafficking? UNHCR is working, for instance, with refugees, displaced persons and migrants in camps in Ethiopia, Sudan and Egypt. The key strategies are to address secondary movement, trafficking and smuggling, enhancing alternative

care arrangements, promoting family reunification where possible, and ensuring regional coordination of UNHCR and its partners.

Within the refugee camps, we note a rather stable number of children although children keep arriving but they also leave and move on. In many cases, smuggling, migration, trafficking are all part of the child's migration. UNHCR always tries to place unaccompanied children in family environments but it is not always possible. One challenge is, for instance, that the majority of the adult population in refugee camps are young males and it is therefore not always possible to find a placement for a child in a family. Family reunification is an important issue for children in refugee camps and migrating children. Many children move on because they try to reunite with their family members who are already in Europe. UNCHR works to strengthen information management systems across countries on children. The objective is to have a system in place where we know that children who leave the camps in Ethiopia will also be known and identified when they arrive in Sudan or elsewhere.

Children in emergencies are particularly vulnerable to trafficking. UNHCR has developed some key strategies to mitigate the risk of trafficking:

- Quick identification and documentation of the child's identity.
- Providing support to families that they can stay together and do not separate.
- UNHCR has a core commitment to promote education, which is concentrated on primary education. Providing secondary education is a challenge and the children eligible for secondary education are also those who are most at risk of trafficking.
- Control of what happens to the children. A fundamental principle is that there are no adoptions or removal of children in the emergency phase. Child protection actors in emergencies have to be very vigilant to prevent the sale of children, illegal adoption and trafficking. In emergencies, there are often new actors who might not be aware of minimum standards for child protection and who might be very well-meaning but have not been exposed to other emergencies before and need to be informed and trained on child protection standards and procedures.
- Promoting child protection standards and procedures are therefore key of the work UNHCR is doing in emergencies.
- Adolescents are considered a particular group at risk, including due to the difficulties of accessing secondary education.

The best interests determination (BID) process has quite a long history in UNHCR. It was initiated with the Vietnamese boat people in the 1990s when UNHCR staff were working with individual cases but there was no general guidance on the safeguards in cases of children who are nationals from another country. So at that time, a protocol on best interests assessment was developed and used in practice. The next context in which this was applied and developed further was the so-called 'lost boys' in South Sudan. There were large numbers of children on the move in the area who needed assistance. That is when UNHCR started to write down the process and, based on that, issued the provisional guidance published in 2006 and the final version published in 2008.

The UNHCR Guidelines on best interests determinations are about the "How" and the field handbook is about the "What". The BID process is conducted in two steps and requires a formal procedure. In implementing this process, we differentiate between the 'best interests assessment' and the 'best interests determination'. There are many challenges and we operate in many situations where the staff capacity is quite low. We are not working with academically trained social workers, but it could be a teacher or a nurse who are assessing a child's best interests. These are not ideal conditions but the process could be adapted. The formal procedure for determining the best interests of the child is a safeguard when making these decisions for children that will have a long term impact on their lives.

One instance where we use the BID process is when we make decisions about children going for durable solutions, for instance being resettled in EU countries. One pitfall is that the BID becomes a process, a paper that you fill. But it is actually a child protection assessment and needs to be

conducted individually for each child. It is a child protection tool. The BID is always based on a panel decision. It is a principle safeguard for the child and the process, and it documents the child's views. The assessment and determination process often takes about three months before the decision is being taken by the panel. It should come early on for each child, but it is a challenge that we may not yet be aware of a potential durable solution such as resettlement at the early stage of a case assessment.

In industrialized countries, the best interests determination process is a bit different from the situation in the field and in emergencies. There is a process underway to develop new UNHCR / UNICEF guidance for this context. The purpose is to assist states in ensuring that the best interests of the child are a primary consideration in all actions concerning all unaccompanied and separated children who arrive in Europe. The transnational aspects that are particularly relevant for this context are resettlement or repatriation or family reunification in the host country.

Over the past two years there has been a process to identify the processes and procedures in place in EU Member States to determine the best interests of unaccompanied asylum seeking children. The objective is to develop a process that guides States in developing a BID process for unaccompanied and separated children. The purpose is also to advocate for the application of the best interests principle and to look at ways for putting in place procedures right from the time when an unaccompanied or separated child is identified until the time when a durable solution is being considered.

The best interests assessment is considered something very natural for social workers and other relevant professionals who need to establish a child's identity and plan for care arrangements. So the document for the best interests determination, rather than being a guidance on which steps to take at what time, is guidance on how to develop further the procedures that are already in place.

There are particular challenges with cases of children who are at risk but not in need of international protection. This does not mean that they would not have protection needs. But they are outside the scope of action of UNHCR. In these cases, we need to be clear on who is responsible for the case. The role of national child protection systems is critical for these cases, in the countries of origin, transit and destination. In order to enable the child protection systems to exercise their functions for non-national children or children abroad, it is important to strengthen the collaboration between social welfare, immigration and refugee authorities within countries and across borders.

Children might not know about asylum and their rights in this regard. So a first step is for them to have information about their rights and the available possibilities for them to seek asylum. It is essential that children have access to the asylum procedure and the second step is to have a child-friendly procedure. A fundamental prerequisite is also the access to birth registration. Sometimes, because of this single missed opportunity, children do not have official ways of moving to another country.

The UNHCR Regional Representation for Northern Europe is working specifically in and for this region. We provide guidance and advice to the national authorities and immigration authorities. In this context, we can receive questions about child-specific forms of persecution. Sometimes we can also check if a child has been registered with another country before moving to a country in Northern Europe. Our work is mainly related to asylum but there is sometimes the link between asylum and trafficking so we train also on identifying in which situations a victim of trafficking can qualify as a refugee under the Refugee Convention.

Respecting the best interests of children in transnational child protection cases

International organisations promote the principle of the best interests of the child in many different ways, including in transnational situations. They promote awareness raising, standard setting, monitoring and accountability, gathering of evidence and identification of noteworthy practice, provision of technical support, capacity building, casework, and policy advocacy. There are a lot of requirements that need to be in place for advocacy work to promote the best interests of the child. We need to have criteria in place to identify 'good practice' and to foster partnerships.

The background: Why are we looking at the best interests of children in transnational cases in Europe?

The situation of separated children in Europe is characterised by a lack of implementation of the relevant General Measures of the CRC. The standards for the reception and care of unaccompanied children have not yet been effectively harmonised throughout Europe nor for different groups of children, although we do have relevant EU standards and regulations in place. There is also a lack of procedures for listening to children and determining their best interests. In practice, this may lead to discrimination. It also leads to a lack of protection, a lack of durable solutions for children who might be 'ageing out' of care and might then 'disappear' and live with an irregular status. In these situations, children are particularly at risk of experiencing violence or exploitation. The EU policies are strongly focusing on unaccompanied asylum seeking children. The children whom we see applying for asylum are however only the tip of the iceberg. There are many other children at risk.

The EU policies and laws present challenges and opportunities at the same time, and progress for children have been achieved. The principle of the best interests of the child has been enshrined into the national and regional law and policy frameworks. There is authoritative guidance, training and good practice available to assist officials and professionals working with and for children with the implementation of the principle. Increasingly, there is also jurisprudence from European case law, as was documented by a study on CRC Article 3 in European case law concerning migrant children, conducted by the OHCHR and UNICEF.

The EU Action Plan on Unaccompanied Minors provides that the decisions taken for each separated child need to identify solutions that are in the best interests of child. Family tracing is considered an obligation and there is a need to explore different reintegration possibilities, according to the child's best interests.

The 2011 Trafficking Directive requires Member States to find a durable solutions for each child based on an individual assessment of the best interests of the child. That is a strong legal obligation being transposed now in the Member States. The Joint UN Commentary on the Directive, published by UN Agencies, is commenting on the provisions under the Directive and interprets them in light of human rights and child rights standards.

The Returns Directive provides that Member States should take due account of the best interests of the child when implementing the Directive, including with regard to return and removal of those who are irregularly staying.

The ECRE study by Save the children provides for a checklist that shall help to clarify who is responsible for all these various actions and how the best interests assessment can be made according to these checklists.

With regard to the Dublin transfers, a recent European Court of Justice judgement has established that the Member State where a child hands in an asylum application should consider the case

unless the child has family relations elsewhere in the EU and it would be in his or her best interests to be reunited with the family in another country.

The new dynamics within the EU on child protection systems is relevant for all children in the EU, is promoting the best interests principle, including for unaccompanied children. This work foresees also measures on guardianship for unaccompanied children, as afforded also under the Trafficking Directive. The role of the guardian is central for promoting the best interests of unaccompanied children. Within the regional laws and policies developed at EU level, there are many opportunities and respect for children's rights and the best interests principle.

The principle of the best interests of the child as afforded under CRC Article 3.1. applies to all children within a state jurisdiction, including non-national children who are outside their country of origin. It needs to be applied and understood also as a guiding principle for policy making that concerns all children and for actions that affect children in general, as a group, including for budget allocation and the use of public resources. The General Comment No. 14 by the Committee on the Rights of the Child provides further guidance on the interpretation and application of the principle.

There are some key features that we often discuss with governments and that can guide us in understanding if we have a common vision on what the best interests principle means in practice. It is important to consider a range of solutions for a best interests assessment. The key features of the process should demonstrate and document that the best interests of the child have been a primary consideration, it should be multi-disciplinary and be part of or feed into a determination process that is independent with all due process safeguards. The process should also be informed by the UN CRC, be holistic and ensure child participation through child-friendly procedures and proper information and support.

In general, there are four main areas to consider:

- A safe environment as safety normally takes the precedence and outweighs other factors or considerations.
- The family and close relationships, considering the right of the child to be brought up by the parents as a fundamental principle of international human rights law, except where there are conflicts with the safety of the child.
- The rights of the child to an identity and to development.
- The active consideration of the child's views, which requires that the child is informed about the options and consequences of decisions, to obtain the child's views and assess the child's capacity to understand the implications of options and alternatives.

For the identification of possible durable solutions, the decision makers should compare the available options and weigh possible competing rights of the child to identify the solution that will enable the child to best exercise his or her full range of rights. A durable solution could be implemented in the country where the child is present (local integration) but it could also imply return to the country of origin or resettlement to a third country. It might lead to family reunification, foster care, institutional care or independent living, or adoption.

The Committee on the Rights of the Child's General Comment No. 6 stated that "non rights-based arguments such as those relating to general migration control, cannot override best interests considerations". This terminology has however not been as clearly introduced into the General Comment No. 14. Interests of others that are not rights-based should not override the best interests of the child.

With the support from or led by UNICEF and its National Committees, there are relevant transnational initiatives underway: UNICEF Germany and the UNICEF Kosovo Office for instance conducted research and advocacy work related to forced repatriations of families from Germany to Kosovo. UNICEF Netherlands reported on the Dutch return policy and there is a forthcoming report on ERPUM, the European Return Platform for Unaccompanied Minors. UNICEF Netherlands is also implementing a project on the methodology to develop child specific country of origin information (project under EU Return Fund). When we are looking at return decisions, we are often

missing child-specific information from the country of origin. OHCHR and UNICEF are conducting a study on and are monitoring the application of CRC Article 3 in EU case law concerning migrant children.

Dorothea Czarnecki, Senior Adviser, ECPAT, Germany

The best interests of the child versus the best interest of the German state in transnational child protection cases

ECPAT Germany is a network of 29 organisations that operates mainly through lobby and advocacy work on issues related to child trafficking, sexual exploitation of children in pornography, sexual violence in online situations, and sexual exploitation related to tourism.

In Germany, 52% of the identified victims of trafficking are under the age of 21 years. Many of the child victims were identified in Berlin, the only one among the 16 Federal States that has a specific anti-trafficking unit, which is particularly active in identifying victims. Most of the children and young adults under 21 years old who were identified as victims of trafficking were German nationals, mostly in the age group of 14-17 years old. Other main nationalities include Bulgarians and Romanians. 89% of the victims identified in Germany are EU citizens.

The principle of the best interests of the child in its German translation might be understood as a concept related primarily to the “well-being” of children (“Kindeswohl”). There appears to be a tendency that it is understood more from the perspective of the parents or the caregivers than from a child rights perspective. As a result, it is challenging to recognise that the principle is in fact much broader than that. There are currently no mechanisms in place to ensure that the best interests of the child are being given primary consideration in all relevant measures affecting the child. In practice, the interpretation of the principle remains a challenge. The national or ethnic origin, the social status and the residence status of the child or his or her family might have an impact on how the best interests of the child are being assessed and taken into consideration.

In the case of non-national children, there are two laws that are primarily relevant: the Residency Act and the Child and Youth Welfare Law. The Child and Youth Welfare Law applies to children under 18 years old but the Residency Act refers to all non-nationals as of the age of 16 who are sufficiently mature to be considered “able to act”. There is however no common definition of the “best interests of the child” shared by both these laws. Asylum seekers, for instance, have a residency obligation; they are not allowed to move out of the city where they are being placed and this applies also to children. The Constitution provides for the protection of citizens but does not make specific reference to children and child rights .

There are three concrete areas where we see an infringement against the best interests principle:

As a criminal law matter, the exploitation of children is not yet addressed in a comprehensive way. The national report on the implementation of the Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography noted, for instance, that sexual abuse of children is being addressed mainly in the family and institutional context. Commercial sexual exploitation and other forms of exploitation, such as begging or labour exploitation, are not yet clearly defined or prohibited under the criminal law. With the transposition of the 2011 EC Trafficking Directive, this gap has to be addressed. There have however been hardly any concrete official initiatives to reach out to children at risk such as Roma or street children. As the definition and prohibition of some forms of exploitation is missing from criminal law, some groups of exploited children are missing out on protection. The identification of child victims of trafficking is also challenging, particularly for non-national children. Due to the way that the term “child trafficking” is being expressed in German (“Kinderhandel”), there is a tendency to confuse it with the sale of children or illicit adoption. Thus far, even when children are identified as victims, there is no obligatory provision for children to be protected from punishment or sanctions for offences they committed in relation to their situation as victims of trafficking.

Under the Residence Act, the age determination for unaccompanied non-national children is an area where there are particular conflicts with the principle of the best interests of the child. The Residence Act provides that the non-national holds the burden of proof concerning age determination. This applies for children as of the age of 14 years old. In practice, this means that any child who is considered to be 14 years old or above has to prove his or her age him- or herself. Age determination is done through a visual inspection which is not considered to be in the best interests of the child. For victims of trafficking, adults and children alike, there are no special immigration regulations. Their right to stay in Germany is strictly connected to their cooperation with the authorities. There are no separate immigration requirements for children exposed to human trafficking, which is considered contradictory to the best interests of the child. Child victims of trafficking do not have access to mental health and psychosocial counselling, as the provision of such services is not considered under the Residence Act.

The protection of child victims in criminal proceedings and through accessing support services have not yet been addressed in a comprehensive way. In the context of criminal prosecution, child victims are not necessarily informed about the possibilities to access assistance. Under the Criminal Procedures Code, there are only limited provisions for children to access assistance in criminal procedures. As a result, in many cases child victims and witnesses are directly confronted with the accused person. There is a system of support by specialized counselling services for victims of human trafficking but they often report that the supervision and support they offer have led to doubts about the credibility of the victims' statements. There is no national wide system for the counselling of victims of trafficking. When it comes to accommodation, the situation is inappropriate, there are gender issues, hardly any counselling centres for boys. In some Federal States, guardians are appointed only reluctantly for unaccompanied children because the referral of parental custody to the guardian is complicated. Sometimes it is not possible to appoint a guardian in a timely manner and the guardians do not always have special knowledge about the asylum proceedings. So the guardianship for unaccompanied children still needs to be improved.

As regards the training of professionals working with and for children, there is a need to offer appropriate training in a systematic way as well as sensitisation of all relevant professional groups, training of youth welfare services, immigration officials, judges, lawyers and prosecutors. Training is required on the rights of the child and the CRC, child trafficking and exploitation, in particular legal and psychological training, the situation and entitlements of child victims of crime, child migrants and asylum seekers, and issues such as trauma.

10.45 – 12.15 Experience with handling dilemmas in best interests assessment in transnational child protection cases

Kristina Misiniene, Coordinator - "Aid to the Victims of Trafficking and Prostitution", Caritas, Lithuania

Caritas Lithuania is providing assistance to victims of trafficking, including those who decide to testify against the perpetrators. The traffickers are known to be women and men from Lithuania or other countries. They often start off as individual traffickers and gradually enter into smaller or larger organized groups. Persons from Lithuania are trafficked within Europe but also globally. Since Caritas Lithuania has started providing assistance for victims of trafficking, it has always worked with international cases and considers therefore that international cooperation is essential. In international cooperation, there are many issues at stake. Speaking about source and destination countries can have an impact on the prestige and reputation of countries, especially when there are news about hundreds of thousands of persons trafficked from one country abroad. It is important for national and international partners to be aware of the impact that statements like these can have on the reputation of a country.

The willingness and ability of national authorities and officials to cooperate internationally is very important. There is a high rate of fluctuation among officials working within national authorities and

once the expertise and competence has been built, the responsible staff might be changing positions and the capacity building needs to start again. There have been cases of officials who were involved in trafficking cases or who were taking bribes from pimps, for instance police officers or prosecutors who cooperate with exploiters and traffickers. Such cases have been identified, prosecuted and led to convictions in Lithuania. There is a lot of damage involved as these cases undermine the trust in the authorities, which is critical, including for victims and witnesses to testify. It is important to lead a public debate about such cases.

The responses against human trafficking in Lithuania have been developed over the past years, starting with the public recognition that human trafficking exists in Lithuania. There have been three national programmes against human trafficking. They were well developed and thought through but the state did not allocate sufficient resources to implement these programmes effectively into practice.

There is currently no referral mechanisms for victims of trafficking in Lithuania. Providing assistance to victims without a functioning referral mechanism in place is a big challenge. NGOs have been advocating for a referral mechanism and more and more agencies are joining them so that now there are preparations underway, with the support of EU pressure, to set up a functioning referral mechanism.

Social services and victim assistance and support services still need to be further developed in Lithuania. Among the state authorities, there is a tendency to consider that this is an area delivered by NGOs and private service providers. There is need for more awareness raising, public planning and accountability to ensure that the public authorities live up to their obligations under national and international law. When social services are delivered by NGOs or other private partners, the state authorities need to ensure that the required budget is allocated and need to provide monitoring, oversight and ensure accountability. International partners need to be aware of these issues when assessing the possibilities for returning a child victim of trafficking. Especially in a small country like Lithuania, considering the limited resources of non-state service providers, it is a challenge to provide security for victims of trafficking, especially for those who testified against the perpetrators.

The most recent trafficking case that Caritas Lithuania provided assistance on was a girl trafficked to the Netherlands. Caritas was contacted by the local authorities in the Netherlands where the girl had been identified. She was 15 years old, pregnant, and in a detention centre in the Netherlands. Caritas was asked to support the case and looked into the girl's case. The patterns and forms of child trafficking are changing a lot and new forms are constantly emerging that we did not know before, such as trafficking for criminal activities. This appears to be a very lucrative form of exploitation and there are new destinations. In addition to destination countries previously known such as Germany, UK, and the Nordic countries, now the Netherlands are more and more attracting the attention of Lithuanian criminals.

When we received this information, we assessed the case and the needs of the girl, spoke to the local child protection services in the home municipality of the girl. They said that this girl has been travelling around Europe for two years. She was considered a 'difficult girl', a 'runaway', the family did not know 'what to do with her'. The girl had been travelling around Europe, sometimes hitchhiking. While we were assessing the case, the girl had to be returned to Lithuania after a month in the juvenile detention centre in the Netherlands. She was returned to Lithuania and the national child protection services found a place for her in a shelter for pregnant teenagers. She had a nice room there, had meals, a TV, but after 5 hours, the girl had already left the place without informing the staff. That is when we decided to intervene and to look for the girl and to try understand what was happening, and how it had been possible that she was travelling around Europe for two years and no-body could help her.

We assigned two social workers to this case. We could not count on state help and had to use our own resources until we eventually found her in her home town. The girl told us that she was pregnant from the leader of the gang who recruited vulnerable children from villages in remote

provinces in Lithuania. They were usually made to steal in the UK but something happened there so that they went to the Netherlands. There was a very strict order in that group and we got to understand that the sub-culture of trafficking activities and life within that group was very different from what we would consider about the life that children should have. The girl told us about the punishments that were used within the group, for instance sexual intercourse with the boys and girls was used as punishment within the group and was done publicly, or a boy or a girl had to bath in cold water, and the children think that this is the way things are and that the punishment is justified because they misbehaved. So it is important to understand how these groups work and how to break this trauma.

Now the girl will be testifying against this quite serious international group of traffickers. But beneath the surface, everything is very contradictory. She gave birth to the child and in fact the leader of the criminal group is the father of the child and started to “attack the girl with love”, telling her that he loved her and cared for her and that he wanted to be the father of the child. It is therefore very difficult to approach this issue.

We have also had cases of child trafficking for exploitation in criminal activities in Norway. One of the cases went successfully to the court in Norway and the perpetrator was convicted. The verdict was translated into Lithuanian and was communicated within Lithuania, including among prosecutors, other relevant authorities, and NGOs. The verdict has been discussed in Lithuania, which has been very helpful for raising awareness, providing information and promoting the public recognition that these cases are a reality and that they can be prosecuted successfully. It is important to discuss together, within the country and internationally, what are the barriers for not having a successful case, why are children travelling in Europe and why we cannot find and support them. It is very important to look at concrete cases and there are not that many. When we speak about the best interests of the child, we sometimes speak about the best interests of the adults or the agencies.

Daniela Reale, Exploited Children Adviser, Save the Children, UK

Translating Principles into Practice: Challenges and dilemmas from Save the Children’s international experience in assessing the best interests of children on the move

National child protection systems are in many countries struggling to effectively protect children on the move. This applies to children on their territory, before they start their journey, while they are on the move and at destination. The cross-border cooperation of national child protection systems and the key actors responsible for child protection is particularly challenging. It is against this background that Save the Children is working to translate international standards and principles into more concrete guidance, procedures and practice for working with children on the move. A central issue in this context is to strengthen the coordination and communication between state and private actors responsible for the protection of children on the move across borders. The objective is to try and understand what kind of international framework we need to have in place in order to promote the international cooperation on child protection, and to ensure that children are protected regardless of their migration status.

Save the Children developed a pilot project for best interests assessment for children on the move in Southern Africa. There were several common challenges and dilemmas that have been identified in different countries and regions specifically for the context of children’s migration and mobility. The principle of the best interests is not always taken as a primary consideration for children on the move. There may be immigration matters and other political agendas that take precedence over child protection considerations and obligations. In many countries, the weaknesses of the national child protection system affects non-national children in a disproportionate way. Social workers are often under-resourced, not fully trained and equipped, or might be absent or missing all together. In remote and border areas specifically, the capacity of the child protection system and social workers is often low. The quality of the best interests assessment for non-national children depends however on the training, the capacity and attitudes of social workers and other officials who are meeting these children. In practice, there is limited

guidance and a knowledge gap on how to operationalise the principle on the best interests of the child for children on the move. Many of the front line workers whom Save the Children is working with have little opportunities for reflection on what form of support foreign children might need and the type of trauma they have been through. There is very limited guidance on how to make the best interests principle operational for children on the move.

In South Africa, Save the Children is working in two border areas with migrant children, mainly unaccompanied migrant children who have experienced violence and abuse on their journey. The areas are around the borders between Zimbabwe and Mozambique with South Africa.

In 2001, the Government of South Africa requested support to develop a tool to improve the practice of best interests assessments in the border area for children on the move. At the time, the process had many shortcomings. The documentation of the case consisted mainly of the identification and registration of the child, without adding further details. The interview with the child was often only very brief and the child was not involved in the assessment process in a meaningful way. The social workers on the ground found it very difficult to apply South African law to non-national children, especially those children who did not have any documentation. The social workers were therefore biased in applying the law to non-national children. At the same time, assessing the best interests of the child was however a requirement under national law and is considered a paramount principle under the Children's Act of South Africa. There was therefore clearly a gap between the law regulating the social work and its actual implementation for non-national children. As a result, the recommendations on the child's best interests that the social workers developed were not based on a thorough assessment of the children's case.

According to South Africa's Children's Act, when a non-national child is identified, a report has to be made to the responsible social services, which are in charge of assessing the case and referring the child to temporary placement for a maximum of 72 hours. Thereupon, a process of tracing and verification is initiated and shall be completed in a maximum of 90 days. In this period, the best interests assessment is conducted. The social workers collect information from the country of origin and formulates a recommendation on the best interests of the child with regard to a durable solution. This recommendation is taken to a magistrate court that decides officially on the best interests of the child and a medium-term or durable solution. During all this time, the child is in temporary care.

The quality of information that is commonly being gathered during the 90 day period was however often so low that the recommendations developed by the social workers were weak, if any at all, and the court was making decisions with very little reference to the information they had obtained. In many cases, the courts were taking blanket decisions about returning the children to Zimbabwe. So the objective was to develop a tool that would help to collect relevant information to develop more comprehensive and solid recommendations to the court.

After developing, consulting on and piloting the tool in three different locations, the toolkit was finalized. It is composed of an assessment form, which is quite lengthy with a lot of boxes to be ticked. It was held that this was the minimum number of questions that had to be assessed to come to a conclusion for the recommendation to the court. In order to get a sense of the child's situation, from the experience at home, the relation with the parents and family, the experiences during the journey, contacts and relations with the extended families and other relevant matters, the second part is a matrix that aims to unpack the first set of questions. The tool is therefore composed of two parts, one for assessment and one for verification. It aims to gather and capture information in an ongoing way. The methodology for gathering information is aimed particularly at an appropriate way to communicate with the child.

The final matrix for developing the recommendation to the court provides for the following potential durable solutions: immediate reunification; delayed reunification; kinship care in the country of origin; kinship care in South Africa; independent supported living; or foster care or adoption. The matrix is very prescriptive in order to help the social workers organize the information that comes from the assessment form. The assessment toolkit was considered an appropriate or good-enough

tool for the needs of that specific context. The gaps and challenges are that the form is very long and it is difficult to apply it for very young children. There is still room for improvement of the tool, for instance to make it more gender-sensitive and to take account of the increasing options for alternative care for children.

There is a need for training, supervision and mentoring for social workers working with the tool as well as longer-term monitoring of how it is being applied. There is now a panel being established for the best interests determination, which is to meet regularly to support social workers and to prompt questions on how and why they have come to the recommendations they issued. It would be important to continue the use of the toolkit in a sustainable way beyond the pilot phase, as an integral part complementing the existing procedures.

In the Southern African region, Save the Children has also supported the establishment of multi-agency cross border coordination working groups bringing together the agencies from different countries for the protection of children on the move. These coordination working groups have been successful in improving the cooperation between different across and across borders, such as law enforcement, the judiciary and social services. They have highlighted gaps that individual actors might not have noticed, developed common operational procedures, and improved the awareness on child protection issues. They have also contributed to strengthening the political will in the area to implement child protection procedures and to enhance accountability. There is a growing awareness of what children go through when moving into South Africa and when they are returned to their country of origin. This understanding and awareness is increasingly being taken into consideration for the case work and policy responses. The working groups are facilitating also the gathering of information to fill in the assessment forms. In some cases, there is an involvement with agencies at the grass roots level where cases are being discussed to speed up processes.

To conclude, it is important to note that national child protection systems need to take into account the needs of children on the move. There is a need for a better understanding of how weak child protection systems can impact the assessment of the best interests of the child and mechanisms to guarantee that the principle is applied in practice. The practice can only be strengthened by addressing knowledge, attitudes and practical, operational procedures. Cooperation and coordination is crucial, and there may be a need to develop a common, global framework, in addition to local solutions.

Pierre Cazenave, Regional Child Rights Officer, Terre Des Hommes, Hungary

Intra-EU Migration of Children at Risk

Terre des Hommes is implementing, in cooperation with other organisations, a project focused on children migrating within the EU. The project is implemented within the MARIO Network in Central and South-Eastern Europe, including in Italy, Belgium and the Netherlands. It is looking at different patterns and dynamics of migration from South-Eastern Europe to countries that are deemed destination countries for children on the move, mainly from Romania and Bulgaria to EU Member States.

The Intra-EU child migration project focuses on the following target group: persons under the age of 18 who are either EU citizens or third country nationals who hold a valid residence permit for an EU Member State, and who are found within another EU Member State in a vulnerable situation. The target group includes child victims of trafficking, juvenile perpetrators, unaccompanied and separated children, and all other groups of migrant children at risk. For the project, a total of 97 cases of children moving from Romania or Bulgaria to France or Greece have been reviewed, with a focus on how the best interests of the children had been assessed and determined.

As EU national children cannot seek asylum in another EU Member State, they are excluded from the formal protection avenues that exist for third country national children, including arrangements and procedures for accommodation and care planning. For EU migrant children, the decision

making process is often ad hoc and cumbersome: There are no standard procedures for taking decisions about these children. Most of the children who participated in the research process were not officially considered victims of trafficking but there were suspicions that they were victims or they were in conflict with the law. There were no formal procedural safeguard in handling the cases of these children, the children were not necessarily involved in the decision making process. When the procedures are not standardised, the children rarely had a possibility to appeal decisions and judicial review opportunities were limited.

Where clear legal regulations on EU migrant children are missing, the available legal grounds for the identification of durable solutions (stay or return) are often distorted to fit the individual situations. The study noticed that in France, for instance, the decision makers were in many cases considering educational measures, which are the only 'protection measure' available for these cases under the law. So the cases were distorted in order to adapt the legal system to find a solution for these children.

Since the early 2000s, there is a significant migration from Bulgaria and Romania into Southern European countries. These migrant children are often involved in economic activities in the streets in those countries, but there are limited opportunities for them to access support and protection. No experience has been drawn from the international practice put in place for asylum seeking children from third countries, such as country of origin information service or platforms for information exchange. With regard to returns, the procedures for EU children are generally less publicized and debated. There is a variety of possibilities and pathways for returning these children but, again, no standardised procedures on how these are being managed.

General observations on policy and practice at the regional level

The existing regional instruments and initiatives, such as the Brussels II Regulation and the 1996 Hague Convention, are scattered and do not properly address the issues concerning EU migrant children at the regional level. When these mechanism are applied, they are not necessarily appropriate to the individual context of the case. They might be more suitable for cases of abduction. To date, there is no adequate response for EU migrant children, including the children who are migrating to exercise their freedom of movement. In practice, the project identified also a general lack of collaboration of authorities in countries of origin and destination.

The issues that most hampered the best interests assessment for EU migrant children was the lack of information exchange. The channels that are used are, for instance, the ones on criminal law, which are however not appropriate for migrant children or for civil law purposes. There is a good exchange between the countries on criminal law matters so it would be important to step that up also for civil law matters.

There is no clearly identifiable central authority responsible for exchanging information on child protection cases with authorities abroad. Under the different Hague Conventions and Brussels II Regulation, central authorities have been established and do cooperate, but their involvement in child protection cases is limited. Different channels of information gathering are therefore used randomly. As a result, essential information for the social inquiry such as information on the socio-economic background and the family situation and relations of a child, risks or security assessments, might not be shared between countries, when central authorities are not available.

The social workers who are competent for the geographical area that the child comes from are not always qualified and competent to make such assessments. The professional qualification of social workers differs strongly between countries and regions. Countries differ however also in how they take the information and opinions delivered by social workers in the child's home country into account. Even in cases where qualified social workers provided information, the recommendations they issued were not always considered credible in the destination country. There is a climate of mistrust between professionals from country of origin and destination. Professionals operate in a conceptual vacuum and the low capacity of the child protection system may further hamper a proper best interests determination process.

In consequence, operational return procedures were very different from one country to another. In some cases, a local authority would decide to implement the return by itself by contacting the authorities in the home country and children were returned without support.

Considering this situation, it would be important to lead a regional debate on the opportunities to improve the protection of EU migrant children and children who exercise their right to freedom of movement. Should this debate be initiated on the basis of Article 81 of the Treaty of the European Union? A debate on how to improve the best interests determination process for EU migrant children should include, at a very minimum, the following issues and questions:

- Questions related to the appointment of a responsible authority at the national level;
- Questions related to guardianship;
- Developing a network of guardians at European level;
- Ascertainment of the identify of children on the move;
- Procedural safeguards in the best interests determination processes;
- Durable solutions and their design; and
- Harmonising methodologies of socio-economic and family assessments, including risks and security assessments and the need for common minimum standards.

Session IV: The Child's Perspective

13.30 – 15.00 The child's perspective and best interest determination in the formal system (courts, possibilities to appeal etc.)

Elin Wernqvist-Roberts, Manager, Children's Rights Bureau, Sweden

The child perspective and best interests determination

The Children's Rights Bureau is Sweden's first independent child rights advocacy service for children. It is part of the Ersta Diakoni, an NGO providing social and health care in Stockholm. Since opening in September 2011, the Children's Rights Bureau has dealt with 100 cases. The CRC and Swedish legislation are providing the main framework for the work of the Children's Rights Bureau. The children are informed about their rights and are offered a support person to help them exercise their rights and to access services they are entitled to, to offer support in contact with the authorities and to ensure that the child is being listened to. It is quite difficult for a child to know which authority is in charge of which part of their lives, understanding the procedure and institutional set-up and providing free legal advice. The Children's Rights Bureau adopts a holistic approach, considering the social, emotional and legal support for children as closely related.

The experience thus far are with cases of unaccompanied children who need support in their contact with the authorities. Thus far there are no cases of EU migrant children because they are not usually getting into contact with authorities that refer them to the Children's Bureau. Among the children whom the Children's Rights Bureau has been in contact with, there are also boys and girls who have been exploited in or outside Sweden. Many of the children share common experiences. The average age is usually 16 years old. The authorities that the children are mostly in contact with and where the Bureau is providing support are the social services which have the overall responsibility for these children, the immigration authorities and medical services or psycho-social services. Thus far, the Children's Rights Bureau has not been in contact with children who have officially been considered victims of trafficking but many of the children share common experiences of abuse, violence, exploitation or trauma.

It is primarily the social services' responsibility to focus on the best interests of the child. The role of the Children's Rights Bureau is to ensure that the views of the child are being heard and taken into consideration in this regard. The Children's Rights Bureau is ensuring that the children are in the right conditions to talk, that they are listened to and that whatever the child is saying is being

given due weight. This is a difficult task to ensure, it is not just about asking a question but demands that the child needs to have the right conditions to feel safe to talk.

Last September, the Children's Rights Bureau was contacted by Ali, 15 years. He had been in Sweden only for four days. Another boy met him on the streets as he had found him wandering in the streets of Northern Stockholm and had taken him to the immigration authorities. The immigration officials assessed Ali to be 18 years old and placed him in a reception centre for adults. Ali was scared and panicked as he did not want to stay in that place.

He had come from Afghanistan. We understood that he had been exposed to abuse on the way and that he was terrified by men. We created a safe place to talk and challenged his age assessment as he appeared to be much younger. Assessed as adult, he did not have access to social services or psychiatric support. We helped to have a legal representative appointed who was sensitive to his needs. What has been important for him in order for him to be able to speak and disclose his story which will be vital for his asylum application was time for building relationships and trust. He has also talked about the sensitivity to special needs, in his case being not having been to be close to men and having people around him that understand what he has been through and also he was clear that he did not want to have male interpreters. For him, asking a question only once would not have been enough. The information about sexual abuse has come out only after some time. So it is important that someone asks and asks again. It was good for him to talk to someone who does not represent an authority, and to understand the different authorities and their roles and mandates.

Children talk to us also before they "disappear" and ask questions how it is like to be living undocumented in Europe. They tend to "disappear" when return is imminent because they do not see a future in their countries of origin. There was for instance a boy who came to us and asked about this and he came back six months later. He had been sleeping in a shed at night and going out into the woods during the days. He had been offered to sell drugs or sex but he did not want to do that. So we called the social services and asked what we could do for him. Although they have a duty to provide immediate care, all roads would eventually lead back to the immigration system, which would mean that the boy would probably be locked into an institution in order to be deported. We found it difficult to give him any advice. What we learned is that he had already made an assessment himself of what was in his best interests when he decided that hiding in the woods was the better alternative than being sent back to his home country. Eventually he accepted to go to an immigration centre where he had a place to sleep but after a week he left the place without informing anyone about his whereabouts. There is very little we can offer to these children and young people.

From our work with the children, we do see some obstacles in giving due weight to the child's views. There may be a conflict between the perspective of the family and that of the child, for instance. This is very strong in Sweden. When a child expresses his or her wishes and feelings, it can be very hard for a child to be heard in certain contexts. There are also in some instances clashes between the CRC and national law. Where laws make reference to the best interests and the rights of the child, this is not always applied consistently in practice. Decisions about asylum make reference to the best interests of the child and the relevant laws but they are not given due weight. The law remains therefore in some cases without effect for the child concerned. There are cases in which the child's perspective may be in conflict with the economic factors that bind the service providers. When children present themselves to social services with huge needs and risks, for instance, it may not always be possible for the social services to offer appropriate services due to limited resources. It is particularly children or young people without advocates, either parents or other adults, who will find it difficult to exercise their rights

The message from the children is that they want to be listened to and that they want to be taken seriously. They have taught us that just to ask the child a question does not necessarily mean that we will get the child's perspective. We need to take time to gain trust and to establish a relationship with the child. We need to genuinely make the child part of the solution but that is not always the case in practice. The right conditions are important to make children feel comfortable and talk. It is

always our responsibility as professionals and officials to create the kind of conditions in which the child feels confident to speak. It is not sufficient to say she does not want to talk, he is lying. If the conditions are right, the children will talk. It is important to give them time to trust and time is the biggest challenge. Children will talk and do well and will cooperate if they can and it is our job to create the conditions that they can.

During the discussion, a case was described of a child who was eager to return to Iraq, reminding of the importance to considering each case individually and to listen to the views of the child when assessing his or her best interests. The Swedish Migration Board contacted the parents of a boy who was to be returned to Iraq. In this case, the parents got upset that the child would be returned and the boy said that he was grateful that the officials spoke with the parents because he had never wanted to come to Sweden. He wanted to return to Iraq but his parents were upset with him for not having made it in Sweden. It is important to understand that a child may be showing loyalty with the parents because they expect him or her to be successful abroad.

Elinor Lindroth, Social Welfare Services Officer / Inspector, Stockholm Municipality, Sweden

Short-term safety planning for asylum seeking children

The Stockholm Region has 26 municipalities. The Social Services Administration works with the central area of Stockholm, which consists of 14 local authorities. We work closely with the Swedish Migration Board and with the airport. The border police at the airport often call the Stockholm social services.

We do the short-term safety planning for asylum seeking children. Upon arrival, we make a minor investigation into the child's case. That is done under the Social Services Act SOL. Under SOL 14 kap 1 §, we have to write a report about the child and under SOL 11 kap 1,2 §§ SoL, a social assessment has to be conducted, which can take up to 4 months. In our office, we have only a few hours for the first assessment.

We work with the Children's Interests in Focus (BBIC), which is a case assessment and care planning programme that has been developed on the basis of the CRC and Swedish law. On the basis of the minor investigation, we have to decide for the next 24 hours up to the next morning because the emergency services operate from 4pm to the next morning. Our office is responsible to identify the immediate needs of the child and to take a decision about suitable short-term accommodation. We find a place to stay for the child and inform the child about his or her rights and what is going to happen. We also inform the child about the differences between social services and the Migration Board. We inform the child that we are working for the best interests of the child and that we are taking care of them for the moment but that we cannot decide what will happen with them when they arrive to the next authorities. We have family foster families on short notice call whom we can call up in the middle of the night and at the next morning the ordinary social services will take care of the child.

Under the Social Services Act, we have to tell the child that we can decide for them where they should be staying until they have a legal guardian appointed and we try to make sure that they know we place them where they are safe from abuse. Some children arrive with family members and would like to stay with them but we have to assess the family first before placing the child with them. During the assessment of the family the child is in foster care or in an institution, and that is often where the children begin to talk and to tell us that the family is not their family, for instance, or that they have been brought to Sweden by smugglers. But first they often tell a very different story. We find out a lot of stories about trafficking especially among girls from Somalia who are brought here to work in private households. Sometimes it is hard for us to tell them that we want the best for them. So we do have a lot of knowledge about cases of abuse and exploitation

It is not a crime to be begging in Sweden but under the Social Services Act it might be considered neglect when a child is found begging on the streets. We know the children often have fake identities. They often claim to be over 18 but they are not. They are often claimed by people who say that they are their family but they are not. We try to work through our law but in some cases, we know that the child is exposed to abuse or trafficking but we cannot always reach the child and take him or her out of the abusive situation. We do have a law that allows us to take custody of a child but it applies only to children who have been in conflict with the law and that is not always the case. In cases of begging, the social worker writes a suggestion for a decision to be taken under the Care of Young Persons Act. This is referred to the Municipality Chairman of the Social Welfare Board who may decide to refer the case further to the Administrative Court for a formal decision.

Summary conclusions

This section summarises the main observations and conclusions from the first Expert Meeting under the project '*Child exploitation: Transnational child protection in practice*'. It is based on the presentations and contributions from the speakers as well as the discussion among all participants.

A human rights imperative: The best interests of the child as a general principle under international law

Under Article 3.1, the UN Convention on the Rights of the Child (CRC) affords 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". The principle of the best interests of the child is applicable to decisions concerning individual or groups of children as well as to the planning and implementation of policies on all matters concerning the child population more broadly, including legal and administrative reform and budget allocation.

Article 3 is considered one of the general principles of the Convention. It needs to be understood in relation to all the other human rights of the child afforded under the CRC, including specifically the other general principles, i.e. the right to non-discrimination (CRC Art. 2), the right to life, survival and development (CRC Art. 6), and the right of the child to have his or her views heard and taken into account (CRC Art. 12).

In 2013, the Committee on the Rights of the Child issued a General Comment No. 14 on the best interests of the child. This General Comment clarifies the concepts and procedures of a best interest assessment and determination. It provides guidance on how to understand, interpret and apply the principle of the best interests of the child. In particular, it notes that the principle needs to be understood as a three-fold concept: a substantive right; a fundamental, interpretative legal principle; and a rule of procedure. The discussants at the conference concurred that the understanding and awareness of the best interests of the child needs to be strengthened significantly in relation to each of these three dimensions.

The principle of the best interests of the child has been enshrined into national laws and policies in many countries. It is also a central element of European and international laws, policies and regulations. Yet, its application in practice is still often very weak. There is clearly a risk that the principle is understood primarily as a legal concept and that its implementation stops short at legal reform, introducing the wording into relevant laws and policies on children. Countries do not always provide advanced guidance, in national law, policy and procedures, on the elements that need to be considered when the best interests of the child are being assessed.

The best interests principle as a key for individual assessments

The principle of best interests of the child is a key concept for the individual case and needs assessment, care planning and case management. It requires that professionals and officials consider and assess each case individually, according to the specific background, situation, views

and needs of each boy or girl. The individual approach to case assessment and management still needs to be strengthened, including specifically for non-national children.

A holistic approach to the best interests assessments and determinations

There is a need to strengthen holistic and inter-disciplinary approaches to the assessment and determination of the best interests of the child. The various authorities involved in the case of a child may take different approaches to assessing the child's best interests and in gathering and balancing relevant information. Social workers are trained to conduct assessments and care planning in a holistic way, giving due consideration to all the rights afforded under the Convention. The responsibility for conducting the assessments and taking formal decisions over the best interests of the child are however not always in their hands. In many countries, the decision over the best interests of a national child or a child who is residing regularly in a country is taken by a court of law.

For non-national children, however, the immigration authorities have a leading role in assessing the child's case in order to decide about the child's stay within the country, return or transfer to another country. The social workers assess the best interests of the child with regard to the child's safety, well-being and relevant care arrangements. In some countries and for some groups of children, police officers or border guards are taking decisions over children, including with regard to immigration detention. The communication and cooperation between these different authorities may pose a significant challenge to ensuring a balanced and holistic approach to the assessment and determination of the child's best interests.

Speakers from different countries and backgrounds reiterated the challenges of achieving a holistic approach and to integrate the assessments conducted by different authorities. Strengthening and institutionalising the cooperation and consultation among these authorities was considered essential for ensuring that all the human rights of the child are given due weight, being considered as inter-related and indivisible, as afforded under international standards.

Inter-disciplinary approaches to case assessment and best interests determinations

Inter-disciplinary approaches and models for interviewing child victims and witnesses of crime, including children who have been exposed to abuse, exploitation and trafficking, should be established and promoted more consistently. The internationally recognised best-practice model of the Children's House in Iceland was presented. 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 model would be well-prepared to conduct interviews also with child victims of trafficking and can guide professionals in developing more child-sensitive approaches to interviewing child asylum seekers.

In addition, a best interest assessment tool developed by Save the Children in the Southern African region was presented. The tool guides social workers in developing more comprehensive and holistic case assessments for children on the move. It is complemented by cross-border multi-agency cooperation groups that support the cooperation of authorities in the country of origin and destination. They facilitate the information gathering and case assessment and help strengthening the awareness, knowledge and implementation of the best interests of the child in the region.

In the UK, the Children and Families Across Borders is supporting the development of Joint Courts for determining the best interests of children in transnational cases, uniting the Family Court and the Immigration Tribunal to promote a more holistic approach to the formal decision making process. A Bill for establishing such joint courts is currently at Parliament.

Incoherent standards and procedures for different groups of children

The standards and practices for case assessment and best interests determination have not been harmonised throughout Europe and differ for different groups of children. Children arriving from

third countries are commonly referred to the asylum reception system. EU migrant children are usually referred to the general child protection system operating locally in the municipality where they are identified. For child victims of trafficking, special procedures have been developed in most European countries.

Whereas the standards for referral, case assessment, care and protection have been rather well defined for asylum seeking children and child victims of trafficking, they are less clearly defined for EU migrant children. The responses followed for EU migrant children are barely standardised and are often decided upon ad-hoc, resulting in significant variation between municipalities, regions and countries.

Overall, the participants in the expert meeting noted that the responses and procedures that apply to different groups of children are highly heterogeneous. Institutional responsibilities, regulations and procedures vary significantly between and within countries. As a result, this might lead to differential treatment of children on the grounds of their national or ethnic background and their immigration status.

The best interests of the child as a primary consideration: Policy coherence

The best interests of the child are not always given a primary consideration in decision making processes concerning individual children. There are cases, in which other interests may override the best interests of the child and may take precedence. This is particularly the case when the human and financial resources of social services are limited and do not allow the responsible authorities to provide services in line with the best interests of the child. In other cases, family matters and the interests of parents or alleged parents may override the consideration given to the rights and interests of the child. For non-national children, there is particularly a risk that immigration regulations take precedence over the best interests of the child.

Professionals or officials working with and for children are often confronted with dilemmas that arise from unclear mandates and limitations in their scope of action when they have to balance the interests of the child with other interests, demands and constraints. It is therefore important to review national laws, policies and practice from a perspective focused on the best interests of the child. This will help identifying incoherent and inconsistent laws and policies. Reform of policy and practice and training need to be promoted to harmonise different sectoral laws, such as immigration laws and child protection laws, and to build competence on holistic and rights-based approaches to case assessments and best interests determinations.

Training, capacity and attitudes to ensure the implementation of the best interests' principle

In some contexts and cases, the attitudes, knowledge and awareness of the social workers or other competent authorities are inhibiting rights-based and holistic approaches to the best interest assessment and determination. Professional training, information and awareness raising are required to support social workers and other professionals and officials involved in case assessments and best interests determinations. In addition to a strong legal mandate, there is also a need for effective tools that support the relevant professionals or officials in conducting best interest assessments and determinations in a child-sensitive, rights-based and holistic way. They need to be trained to communicate effectively with the children whose cases they are assessing and to listen to what the child is saying. It is further essential, that the competent professionals or officials have access to technical advice, supervision and coaching on how to strengthen their performance in this regard.

Strategic litigation to strengthen case law on the best interests of the child

In addition to the standards afforded under international law, the European Commission and the Council of Europe have a key role in further promoting and clarifying the rights of the child and the principle of the best interests of the child in Europe. They enact important regional law and policies, as well as regulations, recommendations and guidelines that enhance the regional debate and

awareness of child rights and the best interests' principle. It remains a challenge to implement these standards effectively and consistently into child rights practice. Although European countries have achieved significant progress, the status and quality of implementation remains highly heterogeneous and there are still gaps in national child protection systems that leave children unprotected. Non-national children and children belonging to ethnic or other minorities are particularly at risk in this regard.

The monitoring and judicial systems established under the Council of Europe and the European Union have contributed to enhancing legal clarity in the interpretation and application of the best interests' principle. Relevant case law from the European Court of Human Rights and the European Court of Justice has helped to promote the human rights of children and the best interests' principle at national and regional level. The European Court of Justice, for instance, ruled in 2013 that it would be an infringement of EU law to transfer children to the state where they had first been registered as asylum seekers. The ruling was based on European law and the obligation to comply with the CRC. It recognises the CRC and the principle of the best interests of the child as an integral part of EU law. As a result, unaccompanied asylum seeking children are now exempted from the transfers under the Dublin Regulation and have a right to apply for asylum in any EU Member State.

Whereas this and other relevant case law constitutes an important achievement for promoting children's rights in Europe, it is also pointing to shortcomings and gaps in the way that European states are implementing the Convention on the Rights of the Child and other international or regional child rights standards. Taking cases to the European courts constitutes a huge burden for any person, especially for a child. Claiming respect for human rights can often only be achieved when a child has access to legal and other support throughout the entire process. Strategic litigation is essential to enhance the implementation of international and regional standards and should therefore be pursued more actively, with the support of child rights advocates. At the same time, governments need to strengthen national laws, policies and practice to ensure that all children enjoy their human rights without having to actively claim them at court.

Children's perspective on their best interests

Children's own perspectives on their best interests are not always given due consideration when their cases are being assessed. There is not always sufficient time available to establish a trusted relationship between the authorities and the child. A child-sensitive procedure is as important as meeting and accommodating the child in a friendly and welcoming environment that supports the child in building trust, feeling respected and safe.

A child whose asylum application was rejected might leave the reception centre without informing the authorities of his or her whereabouts in order to avoid deportation. By taking the decision to leave, children make strong statements about what they consider is in their best interests, under the limitations and constraints imposed by the immigration regime. A child who prefers to remain in Europe as an undocumented migrant, living under highly precarious, insecure and risky conditions, expresses thereby that returning to his or her country of origin would be an even worse alternative. This constitutes a statement on the interests of the boy or girl concerned, that the authorities should take seriously into account when assessing or re-assessing the case.

In some cases, children are encouraged or induced by parents, family members, peers or traffickers to migrate to and within Europe, sometimes getting involved in illegal or exploitative situations. Exploiters and traffickers might even be the most important persons of 'trust' for exploited children – or they may threaten the child with harming them further or their family – and it is therefore important to understand loyalties, expectations and pressure imposed on children. Building trust, taking time and meeting the child in a friendly environment are therefore all considered essential to get children to talk about their experiences and to freely express their views about their own best interests.

Establishing jurisdiction: A precondition in transnational cases

For non-national children, the assessment of a case is often hampered by unresolved questions about the jurisdiction over the child. The communication and information exchange between the competent authorities in countries of origin, transit and destination are not always effective and might cause delays in the decision making process. It would be important to strengthen the cooperation between authorities, harmonising procedures within Europe, and providing more clarity in practice on how to establish the jurisdiction over a non-national child. In this regard, it is important to consider the situation of the child in the home community. In addition to individual case assessments, there is also clearly a need to strengthen the national and local level child protection systems in European countries and beyond, in order to ensure that children enjoy their rights to a safe and healthy development in their home communities.