



# Child-Sensitive Return

Upholding the best interests of migrant and refugee children in return and reintegration decisions and processes in selected European countries (Germany, the Netherlands, Sweden and the United Kingdom)

**A comparative analysis**

## Executive Summary

November 2019



## **A joint UNICEF National Committees (Germany, the Netherlands, Sweden and the United Kingdom) and UNICEF Private Fundraising and Partnership Division (PFP) Project**

Adapted from UNICEF original report "Child-Sensitive Return. Upholding the Best Interests of Refugee and Migrant Children in Return and Reintegration Decisions and Processes in Selected European Countries (Germany, the Netherlands, Sweden and the United Kingdom) – A Comparative Analysis"

**Author:**

Melanie Teff

**With support from:**

Julie Lebegue (UNICEF PFP), Karin Ödquist Drackner (UNICEF Sweden), Alexander Carnwath (UNICEF UK), Desiree Weber (Germany) and Eva van Aalst (UNICEF Netherlands)

With contributions from colleagues from UNICEF Private Fundraising Partnerships Division, UNICEF Programme Division Headquarters, UNICEF Public Partnership Division Brussels and UNICEF Regional Office for Europe and Central Asia.

**Design:**

Schone Vormen



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# **SUMMARY OF KEY FINDINGS**



## Summary of key findings

**UNICEF advocates for the right of every child to be treated first and foremost as a child, regardless of the nationality or migration status of the child or their parent(s).<sup>1</sup>**

Many European governments increasingly seek to return migrant children to their countries of origin or transit, but this is often not undertaken in full accordance with international obligations on children's rights, nor with respect for children's best interests. This report highlights the human rights obligations of the four governments under examination (those of Germany, the Netherlands, Sweden, and the United Kingdom), and the commitments that they have made respecting the return and reintegration of refugee and migrant children on their territory – particularly, to uphold these children's best interests, regardless of their nationality or migration status.

The research conducted at country level in 2019 in Germany, the Netherlands, Sweden, and the UK also focused on good practices employed by these governments in relation to returns and reintegration decisions and processes, as well as on current challenges.

<sup>1</sup> As set forth in, for example, UNICEF, OHCHR, International Organization for Migration (IOM), Save the Children, Platform for International Cooperation on Undocumented Migrants (PICUM), European Council on Refugees and Exiles (ECRE), and Child Circle: 'Guidance to respect children's rights in return policies and practices: Focus on the EU legal framework' (September 2019). Available online at [https://picum.org/wp-content/uploads/2019/09/2019\\_Guidance\\_childrens\\_rights\\_in\\_return\\_policies.pdf](https://picum.org/wp-content/uploads/2019/09/2019_Guidance_childrens_rights_in_return_policies.pdf) [accessed 28 October 2019].

## Data on return of children

In all four countries<sup>2</sup>, statistical data<sup>3</sup> for the 2016 – 2018 period relating to the return of children was analysed, and interviews were conducted with government officials, lawyers, and civil society organizations. This research showed that:

- In Sweden, there has been a fairly steady number of forced returns<sup>4</sup> of children.
- Numbers of forced returns of children reduced slightly in the Netherlands and have remained low in the UK.
- In Germany, there is no centralized data collection on returns of children at the national level, which leaves important gaps in available data.
- Germany and the UK do not conduct forced returns of unaccompanied children in practice.
- Sweden and the Netherlands do conduct forced returns of unaccompanied children.
- Since 2016, asylum applications in the four countries have been decreasing, and there has been a corresponding reduction in voluntary returns of children in all four countries.

## Legal and policy framework on return and reintegration

The Convention on the Rights of the Child (CRC) requires that the rights of all children must be respected, protected and fulfilled by States Parties, without discrimination of any kind based on their status or that of their parents or legal guardians, and that States Parties shall protect children against all forms of discrimination and punishment, regardless of their status or that of their parents, legal guardians, or family members<sup>5</sup>. **Germany, the Netherlands, Sweden, and the UK** are all signatories of the CRC, but none of them have as yet fully incorporated the CRC into their domestic law – although **Sweden** is poised to do so at the beginning of 2020. The EU Return Directive<sup>6</sup> provides for “common rules for the return and removal of the irregularly staying migrant, the use of coercive measures, detention and re-entry, while fully respecting the human rights and fundamental freedoms of the persons concerned”<sup>7</sup>. This has been absorbed into national law by **Germany, the Netherlands, and Sweden**, but not by **the UK**, which is not bound by this Directive. **All four countries** have legislation and policies which are protective of the rights of migrant and refugee children, but this research found that there is a significant divide between policy and practice.

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<sup>2</sup> That is, Germany, the Netherlands, Sweden, and the United Kingdom.

<sup>3</sup> Collected from various Ministries of Interior and Immigration Services.

<sup>4</sup> Or removals of children.

<sup>5</sup> United Nations Convention on the Rights of the Child (adopted and opened for signature, ratification and accession by General Assembly Resolution 44/25 of 20 November 1989; entry into force 2 September 1990, in accordance with Article 49), Article 2. The UNCRC is available in full and summary form at <https://www.unicef.org.uk/what-we-do/un-convention-child-rights/> [accessed 28 October 2019].

<sup>6</sup> Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (published in the Official Journal of the European Union, December 24 2012.). Available online at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32008L0115> [accessed 28 October 2019].

<sup>7</sup> See the European Commission’s overview of return and readmission, at [https://ec.europa.eu/home-affairs/what-we-do/policies/irregular-migration-return-policy/return-readmission\\_en](https://ec.europa.eu/home-affairs/what-we-do/policies/irregular-migration-return-policy/return-readmission_en) [accessed 28 October 2019].

***The best interests of the child must be systematically identified, documented, and given priority on an individual basis throughout asylum, immigration, and return processes for all children.***

**The principle of the best interests of the child, as set forth in the UN Convention on the Rights of the Child (1989; entry into force 1990), unequivocally upholds the principle that the best interests of children, whether accompanied or unaccompanied, should be a primary consideration in all actions that involve them. Accordingly, all stages of return decisions and processes and all actors involved must adhere to this principle of the UNCRC; otherwise, the return of children should not be pursued.**

The research found that there was no systematic, compulsory best interests assessment (BIA)<sup>8</sup> or determination (BID)<sup>9</sup> procedure in place for unaccompanied or accompanied children facing potential returns **in Germany, the Netherlands, or the UK**. In the absence of this procedure, children's best interests are not given sufficient weight in decision-making processes. **In Sweden**, BIAs are routinely conducted, and Sweden is introducing a formal BID tool. However, the BIAs undertaken in Sweden are seldom based on the individual circumstances of the child, but rather on general observations of law and policy, and factors related to migration control often override best interest decisions. In **none of the four countries** do the enquiries conducted by decision-makers in migration authorities routinely seek the views of those professionals who possess the greater knowledge of the child (e.g. child protection authorities or social workers), and when such information is made available, it is often given insufficient weight in the decision making process. **In all four countries**, assessments of the security situation in the country of return, and of any individualized risks that the child may face upon their return, are lacking.

***Children must be provided with child-sensitive information and legal advice and representation throughout asylum, immigration, and return processes, and should have the right to be heard.***

**In the Netherlands, Sweden, and the UK**, state-funded legal assistance is available to unaccompanied children and to families for asylum cases, inclusive of appeals. **In the Netherlands**, upon submitting an asylum request, an unaccompanied child is immediately informed about the appointment of a legal representative (as are asylum-seeking families), while **in Sweden**, unaccompanied children and families with children are appointed public counsel in asylum cases. **In Germany**, even though many children and families receive free legal counselling by way of non-governmental organizations (NGOs) and welfare organizations, they only have limited options for state funding of professional legal representation which often results in families and children having to bear the cost themselves. **In the UK**, state-funded legal aid is unavailable for the majority of non-asylum immigration cases, while **in Sweden and the Netherlands**, legal aid is accessible for a minority of non asylum immigration cases.

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<sup>8</sup> The BIA is an ongoing assessment intended to enable a child's best interests to be taken into account in the decision making of any professional concerned with the child.

<sup>9</sup> The BID is a multi-agency process undertaken within a child rights framework, which collects in-depth information about the child and takes into account the views of all key individuals working with the child (including guardians, social workers, teachers, and immigration officials), as well as the child themselves. It should identify the most suitable durable solution for that child in a timely manner, and it should be documented.

***Accelerated asylum processes should not be employed at the cost of children's rights; asylum processes for children should be as swift as possible, but must ensure fairness and maintain safeguards.***

It is naturally beneficial for children that they do not become mired in protracted asylum procedures. However, **in all four countries**, accelerated asylum procedures can deprive children of adequate safeguards for protection of their rights, and leave insufficient time for them to engage with lawyers and advisors at a time when they are often still recovering from traumatic journeys and adjusting to entirely new situations. Further, despite the existence of these accelerated procedures, significant delays are endemic in the asylum and immigration processes in all four countries, which can be seriously detrimental to children's mental health and their capacity to integrate, as they are left waiting in a kind of limbo, uncertain of their fate.

***The best interests of all children are to be upheld, and so for accompanied children who are often treated as being "invisible".***

**In all four countries**, there is a constant lack of adequate consideration of accompanied children in family asylum and immigration decisions, with children treated as an 'add-on' to their parent(s), rather than as independent rights-holders. Accompanied children may appear as a 'footnote' in their parents' files, which means that child-specific or individual reasons for grants of asylum or other immigration status can be missed. Children in families are routinely overlooked in return processes. It is not a requirement in any of the four countries that accompanied children participate in returns meetings.

***If age assessments are conducted, they must respect children's rights: "The age assessment process must be performed using a holistic and multidisciplinary approach which ensures that all the necessary safeguards are in place and the rights of the applicant are protected".<sup>10</sup>***

Many unaccompanied children have to undergo medical age assessment procedures **in the Netherlands and Sweden**, despite the lack of scientific evidence of their efficacy and criticism of their accuracy. **The UK** does not utilize medical or dental assessments to determine age. **In Germany**, the Child and Youth Welfare Office assesses the minority of a child. If they are in doubt a medical assessment is utilized.

***Assign an independent and qualified guardian to every unaccompanied and separated child.***

In recognition of the fact that guardians are key to the protection of children who are temporarily or permanently deprived of their family, guardians are appointed for all unaccompanied children **in Germany, the Netherlands, and Sweden**. **In the UK**, guardians are appointed for unaccompanied children in Scotland and in Northern Ireland, but not in England and Wales (unless they have been identified as a trafficked child). However, **in Germany and Sweden**, some guardians often have to take responsibility for many more children than they can adequately look after, and there is a wide variance in the quality of guardians. **The Netherlands** has a specialized guardianship institution, Nidos, and a guardian is swiftly appointed for each child.

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<sup>10</sup> See European Asylum Support Office (EASO), Practical Guide on age assessment. Second edition (2018), especially pp. 38-43 (text quoted at p. 12). Available online at <https://www.easo.europa.eu/sites/default/files/easo-practical-guide-on-age-assessment-v3-2018.pdf> [accessed 28 October 2019].



***Good alternative care arrangements must be made for every unaccompanied or separated child.***

**In all four countries**, UASC are entitled to appropriate accommodation, healthcare, education, and child protection services. **In the UK and Germany**, authorities are legally obliged to provide for UASC in the same way as for any other child in their care. **In Sweden**, these rights continue to apply unchanged following a return decision and even after a case is handed over to the police due to a child's unwillingness to co-operate.

***States should establish alternative pathways to regular migration status for children/young people who cannot be returned.***

In some cases, the best interests of the child might be best served by exploring pathways to residency other than asylum. **In all four countries**, there are some special options available to children and young people who are not eligible for refugee status or subsidiary/humanitarian protection. **In the UK**, a child with at least 7 years' residence will be granted leave to remain if it would be unreasonable for them to return. **In Germany**, pathways to residence exist for young people, such as the Apprenticeship Deferment Law, which defers removal for young people enrolled in an apprenticeship, and in a provision in the Residence Act which directs that "well-integrated" young people who have been legally dwelling in Germany for at least four years may be granted a residence permit. However, alternative regular migration status options for children have been severely reduced **in Sweden and in the Netherlands**.

***Make transitional arrangements and open pathways to residence for children reaching 18 years of age.***

**In all four countries**, the research showed that young people turning 18 years old who have not had their migration status resolved face high risks of destitution, exploitation, and disappearance. But certain practices can reduce these risks. **In Germany**, the care of children by the Child and Youth Welfare agency can be prolonged beyond their 18th birthday if the child is allowed to stay.

***Best interests of children should be reassessed if a returns decision is being made.***

Unlike the other three countries, **in the Netherlands** there is a dedicated, separate agency within the Ministry of Justice & Security (Ministerie van Justitie en Veiligheid), called the DT&V (Dienst Terugkeer & Vretrek, the Repatriation and Departure Service), which works on returns and has a specialized team responsible for assisting children from when they receive a negative decision until their return. However, the DT&V relies on the best interests assessment carried out by the Immigration and Naturalization Service (Immigratie en Naturalisatiedienst, IND) during the asylum decision, and does not perform any reassessment during return procedures. The BIAs and BIDs carried out by the IND are not thorough, not multi-disciplinary or well-documented, and do not include input from the child, nor from other organizations, the guardian, or the lawyer. **In Sweden**, BIAs are conducted for unaccompanied children before a return decision is taken.

### ***Form individualized return and reintegration plans for each child, with input from the child.***

When planning returns, the authorities often fail to duly account for considerations that affect children's physical, mental, and emotional health, such as finishing school terms, obtaining school and medical documents, and making arrangements for coping with special educational and health needs. The short limits for voluntary return often do not allow sufficient time for the necessary preparations to be made for children. The extension of deadlines for voluntary departure – including permitting a child to complete the school year – is under-used. **All four countries** have some measures for returns meetings in place, but there are significant deficiencies in the authorities' provision of child friendly materials on return and reintegration. **The UK** government has commissioned the development of good practice resources on the 'triple planning'<sup>11</sup> of alternative options for young people. **In the Netherlands**, individualized return plans are not always made, with standardized return plans instead tending to be used, which do not account for the specific needs of a child.

***Unaccompanied children must not be returned unless this return is based on a decision reached following a multi-disciplinary, documented, individual, robust, and up-to-date BID, while thorough family assessments are to be performed before considering the return of an unaccompanied child to the family. Family tracing should only be carried out by qualified actors and following a BIA, to ensure that restoring contact would not be contrary to a child's best interests.***

The EU Return Directive does not permit the return of unaccompanied children, unless they are received by family members or there are other adequate reception facilities in place for the child. The UN has developed guidelines on alternative care of children.<sup>12</sup> **The Dutch government** holds that a reception facility or orphanage amounts to "adequate reception" if it meets local standards in the country of origin, regardless of a lack of verifiability. Enforced returns of unaccompanied children are carried out **in the Netherlands and Sweden**.

***Never detain a child for immigration purposes; alternatives to detention should be made available; maintain children's rights to family unity by keeping families together throughout all asylum, immigration, return, and related procedures, unless a child's safety would be put at risk.***

**The Netherlands, Sweden, and the UK** all detain children for immigration purposes in return situations. **Germany** retains the possibility to detain children for immigration purposes in law, but generally does not exercise this option. **Sweden** detains unaccompanied children, but only infrequently. **The UK** detains some children in families, but does not detain unaccompanied children for immigration purposes (except in certain instances when the age of the child is disputed). **The Netherlands** detains unaccompanied and accompanied children. Despite the requirements laid down

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<sup>11</sup> That is, an intermediate plan that prepares for the young person's stay in the country while they await a decision and there is uncertainty at the permanence of their stay; a plan for their potentially long-term stay in the country; and a plan for their possible return.

<sup>12</sup> UN General Assembly, Resolution adopted by the General Assembly: 64/142, Guidelines for the Alternative Care of Children (A/RES/64/142) (24 February 2010). Available online at [https://www.unicef.org/protection/alternative\\_care\\_Guidelines-English.pdf](https://www.unicef.org/protection/alternative_care_Guidelines-English.pdf) [accessed 28 October 2019].

in the 2017 revised EU Returns Handbook<sup>13</sup>, **the Netherlands** does not actively consider alternatives to detention. In **Germany and the UK**, there are reports of families being separated following the detention or removal of the parent/s for immigration-related reasons. But there has also been some progress. **The UK's** family returns process, which appoints a Family Engagement Manager and arranges a conference and meetings with the family on planning their return, has resulted in a dramatic reduction in the use of immigration detention of children in families, from over 1,000 detainments in 2009 to 63 in 2018. In **Sweden**, the Aliens Act enables authorities to use supervision at regular intervals as an alternative to detention, although this course of action is somewhat under utilized.

***Implement child-appropriate and gender-sensitive practices during the enforcement of removal orders, carried out by staff trained in children's rights; independent monitoring must also be in place.***

The EU Returns Directive requires independent monitoring of enforced returns, but this is currently lacking in **Germany and Sweden**. Forced returns can be traumatic for children in all four countries. For example, in **the Netherlands**, early-morning arrests of families are conducted by uniformed personnel. In **the UK**, the Independent Family Returns Panel (IFRP) provides independent advice to the Home Office on forced family returns and plays an important role in making the Home Office answerable for their decisions.

***Provide specific support for the sustainable reintegration of children, and monitor the situation and reintegration progress of children and families after their return, for at least six months, and if possible for up to twelve months.***

**All four countries** are investing some resources in returns and reintegration support, and certain child specific needs can be taken into account when determining the level of reintegration support; but none of the programmes currently constitute a comprehensive framework for the reintegration of children. There is a range of reintegration programmes currently in place<sup>14</sup>. **The UK** is engaging in research on existing reintegration schemes, with a view to improving their effectiveness. None of the four countries actively monitor the situation of children after return, though there is some limited but promising support from **the Dutch government** for monitoring, carried out by the International Organization for Migration (IOM) and by some Dutch NGOs.

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<sup>13</sup> See European Commission, 'Annex to the Commission Recommendation establishing a common "Return Handbook" to be used by Member States' competent authorities when carrying out return related tasks' ((C(2017) 6505, Annex 1: Brussels, 27 September 2017), pp. 67-68. Available online at [https://ec.europa.eu/home\\_affairs/sites/homeaffairs/files/what\\_we\\_do/policies/european\\_agenda\\_migration/20170927\\_recommendation\\_on\\_establishing\\_a\\_common\\_return\\_handbook\\_annex\\_en.pdf](https://ec.europa.eu/home_affairs/sites/homeaffairs/files/what_we_do/policies/european_agenda_migration/20170927_recommendation_on_establishing_a_common_return_handbook_annex_en.pdf) [accessed 30 October 2019].

<sup>14</sup> For example, some European Member States collectively 'buy' reintegration support in the countries of origin from ERRIN (the European Return and Reintegration Network), for both voluntary and forced returnees (although at differing levels of support).



# **SELECTED CHALLENGES AND GOOD PRACTICES**



## Selected Challenges and Good Practices

### A Selection of Challenges Identified in the Comparative Research<sup>15</sup>

#### Best Interests Considerations

- There are no systematic, compulsory BID or BIA procedures in place for unaccompanied or accompanied children facing potential returns in Germany, the Netherlands, or the UK.
- In all four countries, the views of professionals who possess the greater knowledge of the child – such as social workers, guardians, teachers, doctors, and psychologists – are not routinely sought by asylum and immigration decision-makers, and when such knowledge is made available, it is seldom given due weight in the decision-making process.
- In all four countries, assessments of the security situation in the country of return and any individualized risks that the child may face are in practice lacking.
- The BIAs undertaken in Sweden by the SMA are not often based on the individual circumstances of the child, but rather on general observations of law and policy and in the vast majority of cases decisions based on migration control override BIA decisions.

#### Access to legal support and right to be heard

- In Germany children and families only have limited access to state-funded, professional legal representation for appeals, which often results in families and children having to bear the costs of the appeal themselves.
- Despite the complexities of UK immigration law, the government has not signalled any plans to make state-funded legal aid available for children in families in non-asylum immigration cases, other than in exceptional circumstances.

<sup>15</sup> The complete list of challenges can be found in the relevant sections of the comparative report and of the individual country reports.

- In all four countries, accompanied children are often denied the right to be heard, and frequently treated as a “footnote” to their parents’ files, which means that child-specific or individual reasons for grants of asylum or other immigration status may be overlooked.

#### **Accelerated procedures**

- In all four countries accelerated procedures can leave children without adequate protections of their rights.

#### **Delays**

- Significant delays are endemic in the asylum and immigration processes in all four countries.

#### **Alternative regular migratory status for children not eligible for asylum**

- Alternative regular migration status options for children not entitled to international protection have been severely reduced in Sweden and in the Netherlands.

#### **Guardianship**

- In the UK, there is no guardianship scheme for unaccompanied children in England and Wales.
- In Germany and Sweden, guardians must often take responsibility for many more children<sup>16</sup> than they can adequately look after. National legislations on guardianship define the formal qualification requirements very broadly, leading to a wide variance in the quality of guardians’ performances.

#### **Return decisions**

- Individualized Best Interests Assessments are not conducted during returns proceedings in any of the four countries for accompanied children.
- In the Netherlands, the DT&V relies on the BIA carried out by the IND during the asylum decision, and does not perform any reassessment during return procedures. The BIA and BID carried out by the IND are not thorough, not multi-disciplinary or well documented, and do not include input from the child, nor from other organizations, the guardian, or the lawyer.
- In the Netherlands, the government holds that a reception facility or orphanage amounts to “adequate reception” if it meets local standards in the country of origin, regardless of a lack of verifiability.

#### **Returns and reintegration planning**

- In Sweden, Germany and the Netherlands, the short timelines for voluntary return do not allow sufficient time for the necessary return preparations. The extension of time limits for voluntary departure – including permission for a child to complete the school year – is under-used.
- In all four countries, children in families are routinely overlooked in the return process, with the focus being on the parent(s). It is not a requirement in any of the four countries that accompanied children should participate in returns meetings and counselling.
- In the Netherlands, the DT&V does not always prepare individualised return plans, with standardized return plans instead tending to be used.

<sup>16</sup> Unless they have been identified as trafficked children.

#### **Child-friendly information**

- In all four countries, there are significant deficiencies in the authorities' provision of child friendly materials on return and reintegration.

#### **Children turning 18 years of age**

- In all four countries, the research shows that young people reaching 18 years of age who have not had their migration status resolved face high risks of destitution, exploitation, and disappearance.

#### **Maintaining family unity**

- In Germany and the UK, interviewees reported children being separated from their parents in cases of detention or following the removal of parents for immigration-related reasons.

#### **Detention and alternatives to detention**

- The Netherlands, Sweden and the UK all detain children in families for migration control purposes.
- The Netherlands detains unaccompanied and accompanied children for migration control purposes.
- Sweden also detains unaccompanied children for migration control purposes, though only infrequently.
- While the other three countries do consider alternatives to detention for unaccompanied children, the Netherlands does not actively search for alternatives to detention of children for immigration purposes.

#### **Monitoring of forced returns**

- Germany and Sweden lack independent monitoring of forced returns.

#### **Reintegration support**

- None of the reintegration programmes in the four countries studied constitute a comprehensive framework for the reintegration of children.

#### **Monitoring after return**

- There is almost no follow-up monitoring of children post-return in any of the four countries.

## A Selection of Good Practices Identified in the Comparative Research<sup>17</sup>

### Best Interests Considerations

- In Sweden, consideration of the best interests of the child is set forth both in policy and law. Best interests assessments are routinely conducted as a part of all asylum decisions, and included in all refusal and returns decisions concerning both unaccompanied and accompanied children. Sweden is also introducing a formal BID tool.

### Access to Legal Support

- In the Netherlands, Sweden and the UK, state-funded legal assistance is available for children in asylum procedures, including appeals.
- In the Netherlands, upon submitting an asylum request, an unaccompanied child (as well as asylum-seeking families) is immediately informed about the appointment of a legal representative.
- In Sweden, unaccompanied and separated children and families with children are appointed public counsel in asylum cases.

### Alternative regular migratory status for children not eligible for asylum

- In Germany, pathways to residence other than asylum exist for young people, e.g. the Apprenticeship Deferment Law, which defers removal for young people enrolled in an apprenticeship, and Section 25a of the Residence Act, which holds that “well-integrated” young people who have legally resided in Germany for four years may be granted a residence permit.
- In the UK, a child with at least 7 years’ residence in the country will be granted leave to remain if it is thought that it would be unreasonable for them to return.
- In the Netherlands, children for whom the juvenile judge has sanctioned a child protection measure can be granted a residence permit on humanitarian grounds.

### Age assessments

- The UK does not utilise medical or dental assessments to determine age. Local authority guidelines on age assessment procedures in the UK give social workers the tools to complete age assessments in a child-friendly way, using appropriate social work practice and ethics, and utilizing the knowledge of all agencies involved in the life of the child to inform the holistic assessment of a young person’s age.

### Guardianship

- Guardians are appointed for unaccompanied children in Germany, the Netherlands and Sweden.
- In the UK guardians are appointed for unaccompanied children in Scotland and in Northern Ireland.
- The Netherlands has a dedicated guardianship institution. A guardian is swiftly appointed for each child.

### Returns and reintegration planning

- In the Netherlands, there is a dedicated agency within the Ministry of Justice & Security that works on returns (the DT&V), with a specialized team responsible for assisting the children following a negative decision, until their return.

<sup>17</sup> The complete list of good practices can be found in the relevant sections of the comparative report and of the individual country reports.

- In Sweden, there are **positive examples of local-level commitment** to supporting unaccompanied and separated children, both through cross-sectoral co-operation and support with preparing the child for return.
- As part of its **safeguarding strategy for UASC**, the UK government has **commissioned good practice resources** on “**triple planning**” for social workers – an intermediate plan preparing for the young person’s life in the UK while they await a decision, a plan for their potential long-term stay in the UK if some residence status is granted, or for their possible return.
- In Germany, in 2015, the BAMF published non-binding **Guidelines for Nationwide Return Counselling and a plan for their possible return**.

#### **Detention and alternatives to detention**

- The UK does not detain unaccompanied children for immigration purposes (except in certain cases where the child’s age is disputed).
- The UK’s family returns process has resulted in a dramatic reduction in the use of immigration detention of children in families, from over 1,000 detainments in 2009, to 63 in 2018.
- In Sweden, the Aliens Act enables authorities to **use supervision**, which requires reporting to the Police Authority or an SMA office at regular intervals, **as an alternative to detention**. This is a good practice, of which greater use should be made than is at present.

#### **Overseeing decisions on forced returns of children in families**

- In the UK, the **Independent Family Returns Panel** – which provides independent case by case advice to the Home Office on forced family returns – **plays an important role in promoting children’s best interests in the ensured returns process<sup>18</sup> and in holding the Home Office accountable for the performance of its duties and responsibilities towards children and families.**
- In the Netherlands, the Child Care and Protection Board, the IND, and the DT&V are jointly running a pilot whereby they consider the individual cases of migrant children from families with parental problems, who are being assessed by the Child Care and Protection Board because of child protection concerns or who have already been placed under supervision. The goal of the co-operation is to better judge the interests of the child within returns procedures.

#### **Reintegration support**

- In all four countries, some child-specific needs can be taken into account when determining the level of reintegration support.
- All four countries offer financial assistance and return and reintegration support to both unaccompanied and accompanied children, for voluntary returns. Reintegration support (at differing levels) is available both to those returning voluntarily and through forced returns.
- In the UK, the Home Office, in consultation with the Department for International Development (DFID), is conducting research on returns and reintegration as part of the development of a reintegration strategy.

#### **Monitoring after return**

- In the Netherlands, Nidos has **an agreement with IOM on post-return monitoring of unaccompanied children**.

<sup>18</sup> The ‘ensured return’ process follows the failure of families to leave at the ‘required return’ stage, and entails the forced removal of the family (at the ‘required return’ stage, the family has chosen not to depart voluntarily and so has been given removal directions, with a return date and usually the option to leave without enforcement action).

# | RECOMMENDATIONS



## Recommendations

**UNICEF calls on States to pursue the following recommendations:**

### **Best interests considerations**

- Best Interests Determination must be conducted and must take primary consideration before a decision to return a child (unaccompanied or accompanied) is made. A child should not be returned unless a multi-disciplinary, documented, individual, robust, and up-to-date best interests determination has been conducted to identify the best interests of the child, a durable solution identified, and how this should be implemented. Reasoning such as that relating to general migration control cannot override best interests considerations.
- Never take a decision to return a child (unaccompanied or accompanied) unless a multi-disciplinary, documented, individual, robust, and up-to-date best interests determination has been conducted to identify the best interests of the child, the durable solution required, and how this should be implemented. This decision must be taken into account as a primary consideration. Reasoning such as that relating to general migration control cannot override best interests considerations.
- Ensure that the BID is led, co-led, or guided by authorities responsible for child protection and includes a detailed individual and security risk assessment, ensuring that the security and protection of the child is guaranteed and the non-refoulement principle respected.
- Conduct extensive and independent child rights assessments in countries of return as part of the BID procedure, which estimate access to care, education, health and social protection, and seek to identify safe and protective environments.
- Listen and take into account the views and opinions of the child throughout the process of determining the child's best interests.
- Assign to every unaccompanied and separated child an independent and qualified guardian possessed of the necessary expertise and training.

### **Rights to free legal counselling and representation in return proceedings, and right of appeal**

- Ensure that children have access to free, high-quality legal advice and representation at all stages of asylum/immigration/returns processes, and that they receive child-friendly information and appropriate counselling and support.
- Ensure that children have the right to appeal a decision in front of an independent body, with suspensive effect, and access to effective judicial remedies.

### **Alternatives to detention**

- Never detain a child for immigration purposes, including while their removal is awaited. Alternatives to detention should be made available, inclusive of accompanied children.

### **Family unity and reunification**

- Maintain children's rights to family unity by keeping families together throughout all asylum, immigration, return, and reintegration procedures, unless a child's safety would be put at risk.
- Arrange for family tracing for unaccompanied and separated children, but only if carried out by qualified persons and following a BIA, to ensure that restoring contact would not be contrary to a child's best interests.

### **Child-sensitive return preparations**

- Form individualized return and reintegration plans for each child, with input from the child.
- Ensure that a child who is being returned is given enough child-friendly information, time and support as well as for parents to prepare for return.
- Employ extended time periods for voluntary departure when in the best interests of the child.

### **Child-sensitive removal procedures**

- Avoid using physical force during enforcement of removal orders, and instead implement child appropriate and gender-sensitive enforcement by specially trained staff, with the presence of a child protection specialist in the team.

### **Reintegration support and monitoring of returns and reintegration**

- Ensure that independent monitoring, based on objective and transparent criteria, is in place throughout removal operations.
- Provide specific support for the sustainable reintegration of children, and monitor children and families' situation and reintegration for at least one year after their return.

### **Alternative options for the common treatment of children who cannot be returned**

- Provide for an alternative durable solution – with long-term regular migration status – for the child (and their family) if they cannot be returned.

### **Transitional arrangements for children turning 18 years of age**

- Guardianship and specialized accommodation provision should continue for a transitional period past the age of 18 years old for young people who require further support.
- Make alternative pathways for regular migration available for young people not eligible for refugee status or subsidiary/humanitarian protection, taking into account their level of integration, e.g. if they are in apprenticeships, training or employed.



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