



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

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

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Geneva, November 2019



ACKNOWLEDGEMENTS

This return and reintegration comparative research project was developed through a broad consultation and participatory process, and benefitted from the support, insights, and expertise of many individuals and organizations. This report forms a part of a wider UNICEF research project on return and reintegration. We wish to firstly extend our most sincere appreciation to the UNICEF National Committees in the United Kingdom, the Netherlands, Sweden, and Germany, and in particular to their advocacy migration specialists – Alexander Carnwath (UK), Dragan Nastic (UK), Eva van Aalst (the Netherlands), Majorie Kaandorp (the Netherlands), Karin Ödquist Drackner (Sweden), and Desirée Weber (Germany) – for their intellectual, logistical, and financial support, and for their fruitful collaboration.

This project was initiated and supported by UNICEF PFP, and Julie Lebeque in particular, who has led and supervised the project. Thanks go to Melanie Teff, the author of the comparative report, for her dedicated and professional work in bringing together findings from the four countries into the comparative report, and to the researchers who conducted research at country level: Melanie Teff and Lisa Payne in the UK; Johanna Hökeberg in Sweden; Martin Vegter and Roos de Wildt in the Netherlands; and James Edwards, Silke Borgstedt, Inga Borchard, Jochen Resch (from SINUS Mark SINUS Markt- und Sozialforschung GmbH) and Alexander Bagattini in Germany.

We sincerely thank our colleagues from New York, Verena Knaus, Irene de Lorenzo-Caceres Cantero, Saskia Blume, and Noela Barasa; from Brussels, Natalia Alonso Cano; and from Geneva, Jonathan Veitch, Elizabeth Wabuge, Laurent Chapuis, Marta Arias, Codi Trigger, and Dailo Alli Alonso, for their valuable contributions to and support for the launch and amplification of the report.

We would also like to thank DLA Piper for their legal analyses on return at the country level, John Hemy for his editing work, and Schone Vormen, and Cyril Tjahja in particular for his design work.

Finally, we would like to thank all those who were interviewed or contributed information. This includes representatives of national and local authorities and independent inspectorates, monitors and panels, guardians, lawyers and social workers, as well as colleagues from a wide range of civil society and legal organizations and UN agencies (UNHCR and IOM) and INGOs (Save the Children). All gave generously of their time and expertise, and this research was only possible due to their participation.

It is our hope that this report, together with the four individual country reports, will provide an important basis for continued advocacy and dialogue, and will contribute to improved policies and processes on return and reintegration of refugee and migrant children, centred around the best interests of the child.



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LIST OF ACRONYMS

BAMF	Bundesamt für Migration und Flüchtlinge (German Federal Office for Migration and Refugees)
BIA	Best Interests Assessment
BID	Best Interests Determination
CMW	Committee on Migrant Workers (in full, The Committee on the Protection of the Rights of All Migrant Workers and Members of their Families, a body of the OHCHR)
COA	Centraal Orgaan opvang Asielzoekers (Dutch Central Agency for the Reception of Asylum Seekers)
COI	Country of Origin Information
CRC	Committee on the Rights of the Child (a body of the OHCHR)
DT&V	Dienst Terugkeer & Vetrek (Dutch Repatriation & Departure Service)
ECHR	European Convention on Human Rights
ERRIN	European Return and Reintegration Network
EU	European Union
ICIBI	Independent Chief Inspector of Borders and Immigration (UK)
IFRP	Independent Family Returns Panel (UK)
IND	Immigratie en Naturalisatiedienst (Dutch Immigration and Naturalization Service)
IOM	International Organization for Migration
MoU	Memorandum of Understanding
OHCHR	Office of the High Commissioner for Human Rights (United Nations Human Rights)
REAG/GARP	Reintegration and Emigration Programme for Asylum-Seekers in Germany and Government-Assisted Repatriation Programme
SBP	Swedish Border Police
SMA	Swedish Migration Agency (Migrationsverket)
UASC	Unaccompanied and Separated Children
UKVI	United Kingdom Visas and Immigration (a division of the Home Office)
UNCRC	United Nations Convention on the Rights of the Child (often also shortened to CRC)
UNHCR	United Nations High Commissioner for Refugees (the United Nations Refugee Agency)
UNICEF	United Nations Children's Fund

DEFINITION OF KEY TERMS

Child – any person under the age of 18 years old.

Separated child – a child who has been separated from both parents, or from their previous legal or customary primary caregiver, but not necessarily from other relatives.¹

Unaccompanied child – a child who has been separated from both parents and other relatives and is not being cared for by an adult who, by law or custom, is responsible for doing so.²

Guardian – an independent person who safeguards an unaccompanied and separated child's best interests and general well-being, and to this effect complements the limited legal capacity of the child. The guardian acts as a statutory representative of the child in all proceedings in the same way that a parent represents a child.³

Best interests of the child principle – Article 3 of the UNCRC (1989; entry into force 1990) in full declares that: "1. 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. 2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures. 3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision". The CRC further explains the nature, scope, and implementation of the best interests of the child in its General Comment No. 14 (29 May 2013), and in the context of international migrants in Joint General Comment No. 3 and No. 22 (16 November 2017). The CRC also refers to "best interests assessments" and "best interests determinations" (particularly in General Comment No. 14, Chapter V), as does the European Commission Communication on the protection of children in migration of 12 April 2017.⁴ The term 'best interests determination' has been used by some stakeholders in this field to focus on durable solutions for unaccompanied and separated children in particular, rather than for all children. To avoid confusion, this guidance refers to the procedure of *examining* the best interests

¹ United Nations Committee on the Rights of the Child (CRC), General Comment No. 6, Treatment of Unaccompanied and Separated Children Outside their Country of Origin, CRC/GC/2005/6 (2005), para. 8. Available online at <https://www2.ohchr.org/english/bodies/crc/docs/GC6.pdf> [accessed 19 October 2019].

² *Ibid.*, para. 7.

³ As defined in European Union Agency for Fundamental Rights (FRA), 'Guardianship for children deprived of parental care: A handbook to reinforce guardianship systems to cater for the specific needs of child victims of trafficking' (2014), p. 12. Available online at https://fra.europa.eu/sites/default/files/fra_uploads/fra-2014-guardianship-children_en.pdf [accessed 26 October 2019]. See also Committee on the Rights of the Child, General Comment No. 6, CRC/GC/2005/6, para. 33.

⁴ For UN Committee on the Rights of the Child, General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), CRC/C/GC/14 (29 May 2013), see https://www2.ohchr.org/English/bodies/crc/docs/GC/CRC_C_GC_14_ENG.pdf; for United Nations Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW) and United Nations Committee on the Rights of the Child (CRC), Joint general comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of international migration, CMW/C/GC/3 CRC/C/GC/22 (16 November 2017), see https://tbinternet.ohchr.org/_layouts/15/treaty-bodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f22&Lang=en; and for the European Commission Communication from the Commission to the European Parliament and the Council, on The protection of children in migration (COM(2017) 211 final: Brussels, 12 April 2017), see https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20170412_communication_on_the_protection_of_children_in_migration_en.pdf [all accessed 19 October 2019].

of the child, and the necessary constituents of said procedure, to clearly assess the situation of both children with their primary caregivers and children who are unaccompanied or separated from their primary caregivers, without defining or redefining those terms.

Voluntary return – situations in which a child or family voluntarily chooses to depart the country in order to return to their country of origin or another country in accordance with their rights.

Voluntary return and reintegration programmes – the International Organization for Migration (IOM) summarizes such programmes thus: “Assisted voluntary return and reintegration (AVRR) programmes provide administrative, logistical and –financial support, including reintegration assistance, to migrants unable or unwilling to remain in the host/transit country and who decide to return to their country of origin”.⁵ This entails enabling migrants to make informed decisions and assume ownership of the return process; that migrants reach their country of origin in a safe and dignified manner; to overcome any obstacles to the migrant’s effective reintegration; to ensure that communities in the country of return are capable of providing an environment fitted for effective reintegration; to ensure that appropriate policies and public services are in place to meet the specific needs of migrants and communities alike; and to deal with specific migrant vulnerabilities throughout the voluntary return and reintegration process. Any consent given to voluntary return and reintegration programmes must be fully informed and given free of any physical or mental coercion, as consistent with the principle of voluntariness.⁶ This means that the person must not be subject to human rights violations intended to force compliance, including violence or ill-treatment, an actual or implied threat of indefinite or arbitrary detention, or detention in inadequate conditions.

Voluntary departure – “means compliance with the obligation to return within the time-limit fixed for that purpose in the return decision”, as part of the termination of an illegal stay by a third-country national on the territory of an EU Member State.⁷

⁵ See International Organization for Migration (IOM), Framework on Assisted Voluntary Return and Reintegration (2018). Available online at https://www.iom.int/sites/default/files/our_work/DMM/AVRR/a_framework_for_avrr_online_pdf_optimized_20181112.pdf (p. 1 for text quoted) [accessed 2 October 2019]. The IOM typically uses the term “Assisted Voluntary Return and Reintegration” when referring to voluntary return and reintegration programmes in general, whether or not they are IOM implemented.

⁶ See Principle 6 in United Nations Office of the High Commissioner for Human Rights (OHCHR) and Global Migration Group (GMG), Principles and Guidelines, supported by practical guidance, on the protection of the human rights of migrants in vulnerable situations (2018), available online at <https://www.ohchr.org/Documents/Issues/Migration/PrinciplesAndGuidelines.pdf> [accessed 2 October 2019]: “Any migrant who is asked to consent to a voluntary return process must be fully and meaningfully informed of the choice they make, having access to up-to-date, accurate and objective information, including in relation to the place and the circumstances to which they will be returning” (p. 31). For more on the principle of voluntariness, and free, prior, and informed consent (FPIC), see OHCHR, Background Paper to the Expert Meeting on Protecting the human rights of migrants in the context of return (6 March 2018), at <https://www.ohchr.org/Documents/Issues/Migration/Return/BackgroundPaper.pdf> [accessed 2 October 2019]. The AVRR Framework on Assisted Voluntary Return and Reintegration (IOM, 2018) refers to voluntariness as follows: “In the context of assisted voluntary return and reintegration, voluntariness is assumed to exist if two conditions apply: (a) freedom of choice, which is defined by the absence of physical or psychological pressure to enrol in an assisted voluntary return and reintegration programme; and (b) an informed decision which requires the availability of timely, unbiased and reliable information upon which to base the decision” (p. 6).

⁷ As defined in 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, Article 3 (8).

Removal – “means the enforcement of the obligation to return, namely the physical transportation out of the Member State”, as part of the termination of an illegal stay by a third-country national on the territory of an EU Member State.⁸ This follows the issuance of a removal order either together with a return decision, or separately.⁹

Durable solution – used here to mean a solution that protects the long-term best interests and welfare of the child, and that is sustainable and secure from that perspective. The outcome should ensure that the child is able to develop into adulthood, in an environment which will meet their needs and fulfil their rights as defined by the CRC, and will not put the child at risk of persecution or serious harm. When assessing possible solutions for a child, States have a responsibility to investigate the implications of the options under consideration.¹⁰

Child rights approach – defined by the Committee on the rights of the Child in full as: “Respect for the dignity, life, survival, well-being, health, development, participation and non-discrimination of the child as a rights-bearing person should be established and championed as the pre-eminent goal of States parties’ policies concerning children. This is best realized by respecting, protecting and fulfilling all of the rights in the Convention (and its Optional Protocols). It requires a paradigm shift away from child protection approaches in which children are perceived and treated as “objects” in need of assistance rather than as rights holders entitled to non-negotiable rights to protection. A child rights approach is one which furthers the realization of the rights of all children as set out in the Convention by developing the capacity of duty bearers to meet their obligations to respect, protect and fulfil rights (art. 4) and the capacity of rights holders to claim their rights, guided at all times by the rights to non-discrimination (art. 2), consideration of the best interests of the child (art. 3, para. 1), life, survival and development (art. 6), and respect for the views of the child (art. 12). Children also have the right to be directed and guided in the exercise of their rights by caregivers, parents and community members, in line with children’s evolving capacities (art. 5). This child rights approach is holistic and places emphasis on supporting the strengths and resources of the child him/herself and all social systems of which the child is a part: family, school, community, institutions, religious and cultural systems.”¹¹

Child protection – used here to mean the safeguarding of children from harm. Harm includes violence, abuse, exploitation, and neglect. The goal of child protection is to promote, protect and fulfil children’s rights to protection from abuse, neglect, exploitation, and violence as expressed in

⁸ As defined in Directive 2008/115/EC of the European Parliament and of The Council of 16 December 2008, Article 3 (5).

⁹ 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), especially pp. 9-10, 36-4.

¹⁰ There is no universally recognized legal definition of a ‘durable solution’. The definition used here is drawn from the signification ‘comprehensive, secure and sustainable solution’, as defined by the Committee on the Rights of the Child in Joint General Comment No. 3 and No. 22, CMW/C/GC/3-CRC/C/GC/22 (para. 32 (j) and n. 9). In the earlier General Comment No. 6, CRC/GC/2005/6 (para. 79), the Committee describes a durable solution for children as one ‘that addresses all their protection needs, takes into account the child’s view and, wherever possible, leads to overcoming the situation of a child being unaccompanied or separated’. In both cases, the objectives, context and options are the same, and so the participating organizations consider them equivalent. ‘Durable solutions’ is thus used for the purpose of this document, and the term is also referred to in EU law and policy in relation to children in migration (e.g. the EU Anti-Trafficking Directive 2011/36/EU (see <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:101:0001:0011:EN:PDF> [accessed 19 October 2019]), and European Commission Communication on the protection of children in migration, (COM(2017) 211 final).

¹¹ UN Committee on the Rights of the Child, General Comment No. 13 (2011), The right of the child to freedom from all forms of violence, CRC/C/GC/13 (18 April 2011), para. 59. Available online at https://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.13_en.pdf [accessed 19 October 2019].

the UNCRC and other international treaties and conventions, as well as national laws. In the case of migrant children, this requires protecting them by responding to their specific needs and the risks that they face, including: protecting and advocating against all forms of discrimination; preventing and responding to abuse, neglect, violence, and exploitation; ensuring immediate access to appropriate services; and ensuring durable solutions in the child's best interests.

International protection – used within the meaning of the EU Common European Asylum System (CEAS) as “granted to people who are fleeing persecution or serious harm in their own country and therefore in need of international protection”; and who thus qualify for “refugee status or subsidiary protection”.¹²

¹² See, for example, the European Union's Common European Asylum System fact sheet at https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what_we_do/policies/european_agenda_migration/background_information/docs/20160406/factsheet_-_the_common_european_asylum_system_en.pdf; and Commission of the European Communities, Communication from the Commission to the European Parliament, the Council, The European Economic and Social Committee and the Committee of Regions, Policy Plan on Asylum: an Integrated Approach to Protection Across the EU (COM(2008) 360 final: Brussels, 17 June 2008), at <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0360:FIN:EN:PDF> [both accessed 26 October 2019]. International protection also derives from international refugee law and international human rights law.



Executive summary

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).¹³

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 the 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.

¹³ 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 [accessed 28 October 2019].

Data on return of children

In all four countries¹⁴, statistical data¹⁵ 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 returns¹⁶ 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 members¹⁷. **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 Directive¹⁸ 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.”¹⁹ 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.

¹⁴ That is, Germany, the Netherlands, Sweden, and the United Kingdom.

¹⁵ Collected from various Ministries of Interior and Immigration Services.

¹⁶ Or removals of children.

¹⁷ 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]. See also UNICEF, ‘A child is a child: Protecting children on the move from violence, abuse and exploitation’ (May 2017). Available online at https://www.unicef.org/publications/files/UNICEF_A_child_is_a_child_May_2017_EN.pdf [accessed 28 October 2019].

¹⁸ 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].

¹⁹ 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 [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)²⁰ or determination (BID)²¹ 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, until recently, unaccompanied children as well as asylum-seeking families, were immediately appointed a legal representative. Since November 2019, the government announced that free legal assistance will no longer be granted from the start of the asylum procedure, but only after the rejection of the asylum application.²² The measure has been heavily criticized by immigration lawyers and NGO's, 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

²⁰ 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.

²¹ 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.

²² See (1) "Response report Investigation committee 'Foreigners staying long-term without a permanent right of residence'" https://www.tweedekamer.nl/kamerstukken/brieven_regering/detail?id=2019Z22301&did=2019D46317, and (2) interview State Secretary of Justice and Security in the Volkskrant published 20 November 2019, <https://www.volkskrant.nl/nieuws-achtergrond/staatssecretaris-ankie-broekers-knoel-over-haar-woeste-portefeuille-asielzaken-ik-wil-de-grenzen-opzoeken~bfe39328/>

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.

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".²³

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 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

²³ 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-assesment-v3-2018.pdf> [accessed 28 October 2019].



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.

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 & Vetrek, 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'²⁴ 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.²⁵ **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,

²⁴ That is, a plan that prepares for the young person's stay in the country while there is uncertainty at the permanence of their residence status; for their potentially long-term stay in the country; and for their possible return.

²⁵ 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 [accessed 28 October 2019].

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 some age disputes). **The Netherlands** detains unaccompanied and accompanied children. Despite the requirements laid down in the 2017 revised EU Returns Handbook²⁶, **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 per year pre-2010 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.²⁷ **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.

²⁶ 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 [accessed 30 October 2019].

²⁷ 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).

A Selection of Challenges Identified in the Comparative Research²⁸

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 lacking** in practice.
- **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, 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 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.
- **In the Netherlands**, until recently, unaccompanied children as well as asylum-seeking families, were immediately appointed state-funded legal representative. Since November 2019, the government has announced that free legal assistance will no longer be granted from the start of the asylum procedure, but only after the rejection of the asylum application.
- 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**, except in exceptional circumstances.
- **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 reduced severely **in Sweden and in the Netherlands**.

²⁸ The complete list of challenges can be found in the various sections of the comparative report and in the individual country reports.

Guardianship

- **In the UK, there is no guardianship scheme for unaccompanied children²⁹ in England and Wales.**
- **In Germany and Sweden, guardians must often take responsibility for many more children than they can adequately look after.** National legislation on guardians 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, 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 preparations. Extension of time limits for voluntary departure – including permitting 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 States 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.

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

- **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 the case of detention or removal of parents for immigration-related reasons.

²⁹ Unless they have been identified as trafficked children.

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 three other 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 Research³⁰

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 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, 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 (DT&V), with a specialized team** responsible for assisting the children following a negative decision, until their return.

³⁰ The complete list of good practices can be found in the various sections of the comparative report and in 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 in 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- a plan to prepare the young person’s life in the UK pending a decision, for their potentially long-term stay in the UK if some status, or for their possible return.
- **In Germany**, in 2015, the BAMF published a non-binding **Guideline for Nationwide Return Counselling**.

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 per year pre-2010, 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.

Oversight of 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 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.

UNICEF calls on States to pursue the following recommendations ³¹:

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 ³² 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.

³¹ These recommendations are based on findings from the field studies conducted at country level, as well as on the EU Return Guidance presented in 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).

³² It is stated, for example, in the 1951 Convention Relating to the Status of Refugees that: "No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where [their] life or freedom would be threatened on account of [their] race, religion, nationality, membership of a particular social group or political opinion" (Article 33 (1)). See UNCHR, Convention and Protocol relating to the Status of Refugees, which contains the Text of the 1951 Convention Relating to the Status of Refugees, the Text of the 1967 Protocol Relating to the Status of Refugees, and Resolution 2198 (XXI) adopted by the United Nations General Assembly (p. 30 for the text quoted; see also 'Introduction', pp. 3, 4). Available online at <https://www.unhcr.org/3b-66c2aa10> [accessed 19 October 2019]. This tenet is restated in the OCHCR Convention Against Torture (1984; entry into force 1987): "No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that [they] would be in danger of being subjected to torture [...] [taking] into account all relevant considerations including, where applicable, the existence of a consistent pattern of gross, flagrant or mass violations of human rights". See <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx> [accessed 19 October 2019]. See also UNHCR, Advisory Opinion on the Extra-territorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol (26 January 2007). Available online at <https://www.unhcr.org/4d9486929.pdf> [accessed 28 October 2019].

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 to prepare for return, and that corresponding provisions are made for their parents where applicable.
- 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.



**PART I:
INTRODUCTION
& BACKGROUND**



1 Background and key principle

1.1 Background

In 2018, some 141,500 refugees and migrants arrived in Europe by way of the Mediterranean migration routes, of whom around one in every four was a child. This included an estimated 6,000 unaccompanied and separated children.³³ An important challenge faces governments that have a keen interest in the return of irregular migrants: how to ensure that their policies and practices on returns and reintegration respect human rights, including the principle of the best interests of the child. The return of irregular migrants is high on the agenda of most European governments, and is discussed at the highest levels of the European Union (EU). European governments are increasingly developing readmission agreements with countries of origin to facilitate the return of irregular migrants. In 2015, the European Commission called for “improved cooperation with third countries for identifying and readmitting nationals”.³⁴ Many governments consider that an increase in returns is necessary to restore public trust in their ability to control their borders and to alleviate pressure on resources. According to this narrative, “credible” and “effective” return policies and practices are a precondition for giving priority to people who are entitled to international protection, and to open avenues for regular migration. These agreements have been strongly criticized for failing to incorporate countries’ international obligations under humanitarian and human rights law.

³³ See UNICEF, Refugee and Migrant Crisis in Europe: Humanitarian Situation, Report #30, End of Year 2018 (31 December 2018): <https://reliefweb.int/report/greece/unicef-refugee-and-migrant-crisis-europe-humanitarian-situation-report-30-end-year> [accessed 19 October 2019].

³⁴ See European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: A European Agenda on Migration (13 May 2015): https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/background-information/docs/communication_on_the_european_agenda_on_migration_en.pdf [accessed 19 October 2019].

With regards to children, Article 2 of the Convention on the Rights of the Child (UNCRC or CRC) stipulates that all children, “irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status”, should have their rights ensured and be protected from all types of discrimination or punishment by the State. However, there is concern among organizations working on children’s rights, including UNICEF, at the lack of adequate protection and assistance for children seeking asylum or whose refugee or other regular migration status has not been granted, whether or not they are accompanied by parents. This concern at the lack of adequate protection and assistance for children is associated with return determination processes in European States, the implementation of the concept of “safe countries” for returns, the returns process itself, the conditions to which many children are returned, and support for and monitoring of their reintegration. To date, there are no harmonized standards on best interests determinations or on return procedures specific to children (including unaccompanied children) among European countries, and very limited guarantees on the child rights situation in countries of return. When return decisions are taken, no monitoring systems are put in place to ensure that children’s rights to suitable conditions are protected throughout each step of the return process, whether in the countries of departure or in the countries of origin or transit.

In order to better understand how and when children are returned from European countries to either countries of origin or third countries, this research project was developed to focus on the return and reintegration of migrant and refugee children in Germany, the Netherlands, Sweden, and the United Kingdom, by collating primary and secondary data on return, conducting interviews with government authorities and key stakeholders working with children being returned, and analysing the data collected. This resulted in the production of four country reports, as well as this comparative report, which compares the outcomes of the research from the four countries.

1.2 A key principle: the Best Interests of the Child

The Best Interests Principle is set out in Article 3 of the UN Convention on the Rights of the Child, the opening paragraph of which requires 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 UNCRC has made clear that reasoning such as that relating to general migration control cannot override best interests considerations unless there are exceptional circumstances (for example, if the child poses a serious risk to the State or society), and has recommended that States implement best interests of the child measures through law, policy, and practice.³⁵

³⁵ See Joint General Comment No. 3 (of the CMW) and No. 22 (of the CRC), CMW/C/GC/3-CRC/C/GC/22, para. 33; UNCRC, Report of the 2012 Day of General Discussion on the Rights of Children in the context of International Migration (2012), available online at <https://www.ohchr.org/Documents/HRBodies/CRC/Discussions/2012/DGD2012ReportAndRecommendations.pdf> (especially pp. 9, 17-18) [accessed 19 October 2019]; and UNCRC, General Comment No. 6, CRC/GC/2005/6, para. 85. See also OHCHR and Global Migration Group, Principles and Guidelines, supported by practical guidance, on the protection of the human rights of migrants in vulnerable situations, Principle 6, Guideline 6.

In return and reintegration decisions and procedures, the principle that the best interests of the child shall be a primary consideration often comes into conflict with other State interests, particularly those related to migration control. Political pressures can tempt States to ignore this principle in order to facilitate easier enforcement of their migration policies. However, the best interests principle is foundational to all child rights protections. If States do not fully comply with their obligations under this principle in relation to all children on their territory – not just children who are native to that territory – this has very serious consequences for the affected children, for the communities in which they are living and in which they may be received, and for the overall respect for human rights, including children’s rights.

A Best Interests Assessment (BIA) is an ongoing assessment to enable a child’s best interests to be taken into account in decision-making by any professional involved with the child.

A Best Interests Determination (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.³⁶ States should establish Best Interests Assessment and Best Interests Determination procedures for all children undergoing asylum/immigration determination and return processes.

1.3 UNICEF priorities on the return and reintegration of children

UNICEF calls on States to pursue the following recommendations³⁷:

- 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.

³⁶ The office of the United Nations High Commissioner for Refugees (UNHCR, the UN Refugee Agency) has developed Guidelines on Determining the Best Interests of the Child (see UNHCR, UNHCR Guidelines on Determining the Best Interests of the Child (May 2018), available at <https://www.unhcr.org/4566b16b2.pdf> [accessed 19 October 2019]). These guidelines state that the UNHCR “must [...] complete a BID: (i) for all unaccompanied and separated refugee children to whom UNHCR provides direct or indirect care [...] [and] (ii) for all other unaccompanied and separated refugee children whom UNHCR assists in finding durable solutions, such as providing travel or other documents, unless national authorities or other partners to which the task has been entrusted have already determined the best interests of the child through a process that respects the rights set out in the CRC, and the standards as defined by the Committee on the Rights of the Child in General Comment No. 6 (see in particular paragraph 20)”.

³⁷ These recommendations are based on findings from the field studies conducted at country level, as well as on the EU Return Guidance presented in 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).

- 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 principle³⁸ 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.
- 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.
- Never detain a child for immigration purposes, including while their removal is awaited. Alternatives to detention should be made available, inclusive of accompanied children.
- 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.
- 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 time and support to prepare for return.
- Employ extended time periods for voluntary departure when in the best interests of the child.
- Avoid using physical force during enforcement of removal orders, and instead implement child appropriate and gender-sensitive enforcement by staff trained in children's rights, with the presence of a child protection specialist in the team.
- 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.
- Provide for an alternative durable solution – with long-term regular migration status – for the child (and their family) if they cannot be returned.
- 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. for young people in apprenticeships, training, or employment.

³⁸ As stated, for example, in the 1951 Convention Relating to the Status of Refugees and the OCHCR Convention Against Torture (1984; entry into force 1987). Article 33 (1) of the 1951 Convention declares: "No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where [their] life or freedom would be threatened on account of [their] race, religion, nationality, member-ship of a particular social group or political opinion".



2 Methodology

In order to better understand return decisions and processes at the country level and to develop clear advocacy messages and recommendations for government partners, UNICEF Private Fundraising and Partnership (PFP) in Geneva and four European UNICEF National Committees (Natcoms) in Germany, the Netherlands, Sweden, and the United Kingdom initiated an innovative project on the return and reintegration of migrant and refugee children, comprising the following phases:

1. An overview of legal and policy analysis on return of migrant children at country level (conducted by DLA Piper, a global law firm).
2. Interviews of government authorities on the return of migrant children (conducted jointly by UNICEF PFP and Natcoms migration focal points).
3. Quantitative and qualitative data collection, by way of a research methodology conjunctly developed by UNICEF PFP, Natcoms, and consultants; an analysis of the conditions for children and adolescents being returned or at risk of being returned, which is supported by interviews of guardians, lawyers/legal representatives, child and youth welfare staff, child protection/centre staff, and NGOs; as well as a consideration of the post-return monitoring of children.
4. Development of four country reports and a comparative report drawn up from the principal findings of the individual country reports, including their good practices, challenges, and recommendations.³⁹

³⁹ For more specific and detailed country information, please refer to the four individual country reports.



3 Legal and policy framework on the return and reintegration of migrant and refugee children

3.1 Global and regional legal and policy framework on return and reintegration

Global legal and policy framework:

- At the international level, the CRC directs that “States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind” (Article 2), and that “States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance” (Article 22).
- The rights of refugees, including refugee children and children seeking asylum, are protected under the 1951 Refugee Convention and its 1967 Protocol. The principle of non-refoulement for all those seeking asylum, including children, is outlined in the 1951 Refugee Convention and further developed in the 1984 (entered into force 1987) UN Convention Against Torture. The Committee on the Rights of the Child and the Committee on the Protection of the Rights of all Migrant Workers and Members of their Families have developed a Joint General Comment on the human rights of children in the context of migration, which reiterates the need to fulfil the rights of migrant children – both those in host countries and those who return to their country of origin, either voluntarily or by force, alone or with their parents.
- The Committee on the Rights of the Child published a General Comment (No. 6) on the Treatment of Unaccompanied and Separated Children Outside their Country of Origin, in which it is stated that no return should take place if it would result in violations of the fundamental rights of the child or if it contravenes the principle of non-refoulement.

- To realize the commitment to co-operate in facilitating safe and dignified return and readmission, and sustainable reintegration, the Global Compact for Safe, Regular and Orderly Migration (Objective 21) includes action by governments to ensure that return and readmission processes involving children are carried out only after a determination of the best interests of the child; that they take into account the right to family life and family unity; that a parent, legal guardian, or specialized official accompanies the child throughout the return process; and that appropriate reception, care, and reintegration arrangements for children are in place in the country of origin upon return.⁴⁰

European legal and policy framework on return:

- The EU Common European Asylum System (CEAS) sets out minimum standards and procedures for processing and deciding asylum applications, and for the treatment of asylum seekers and refugees. Implementation of the CEAS varies throughout the EU, leading to a variety of asylum systems and different practices between States.
- The EU Return Directive, which entered into force in 2010, 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”. The Directive has been incorporated into national law by all States bound by its conditions, these being all EU States (except the UK and Ireland), as well as the 4 non-EU Schengen area countries – Switzerland, Norway, Iceland, and Liechtenstein.⁴¹ Concerning children, the EU Directive requires the “provision for persons residing irregularly of a minimum set of basic rights pending their removal, including access to basic health care and education for children”, as well as “a limit on the use of coercive measures in connection with the removal of persons, and ensuring that such measures are not excessive or disproportionate”.⁴²
- In 2015, the EU adopted an **Action Plan on Return**, which calls for an “increasing effectiveness of the EU system to return irregular migrants” and recommends “enhancing cooperation on readmission with countries of origin and transit”.⁴³ A practical **handbook on return** was developed by the EU to support relevant authorities and bodies (police, border authorities, immigration authorities, prisons directors) when implementing the EU Return Directive.⁴⁴

⁴⁰ See United Nations General Assembly, Seventy-third session, Agenda items 14 and 119, Resolution adopted by the General Assembly on 19 December 2018: 73/195. Global Compact for Safe, Orderly and Regular Migration (A/RES/73/195) (11 January 2019), pp. 30-31. Available online at https://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/73/195 [accessed 19 October 2019].

⁴¹ The Directive calls for: fair and transparent procedures for decisions on the return of irregular migrants; an obligation on EU States to either return irregular migrants or to grant them legal status, thus avoiding situations of “legal limbo”; promotion of the principle of voluntary departure by establishing a general rule that a “period for voluntary departure” should normally be granted; a limit on the use of coercive measures in connection with the removal of persons, and that such measures are not excessive or disproportionate; providing for an entry ban valid throughout the EU for migrants returned by an EU State; limiting the use of detention and binding it to the principle of proportionality; and establishing minimum safeguards for detainees.

⁴² For an overview of these rules, see https://ec.europa.eu/home-affairs/what-we-do/policies/irregular-migration-return-policy/return-readmission_en (the text here quoted appears at this webpage) [accessed 19 October 2019].

⁴³ See European Commission, Communication from the Commission to the European Parliament and to the Council: EU Action Plan on return (COM(2015) 453 final: Brussels, 9 September 2015). Available online at https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/communication_from_the_ec_to_ep_and_council_-_eu_action_plan_on_return_en.pdf [accessed 19 October 2019].

⁴⁴ This being the European Commission’s ‘Annex to the Commission Recommendation establishing a common “Return Handbook” to be used by Member States’ competent authorities when carrying out return related tasks’ (2017).

- In 2017, the Council of Europe adopted an Action Plan on protecting refugee and migrant children (2017–2019). This Action Plan was adopted by the 47 member states of the Council in May 2017.⁴⁵
- The European Court of Human Rights regularly judges cases related to migrant and asylum seeking children in Member States. In March 2017, the European Commission adopted a **Recommendation on Return**⁴⁶, which advocates an integrated and co-ordinated approach to the implementation of returns. Referring to families and children, the EC Recommendation urges the “respect of the rights of the child, and [to take] fully into account the best interests of the child and family life”.
- In September 2018, the European Commission proposed “a targeted recast” of the EU Return Directive “aiming to reduce the length of return procedures, secure a better link between asylum and return procedures and ensure a more effective use of measures to prevent absconding”.⁴⁷ Negotiations are pending on this proposed revision.

3.2 Summary of existing legal and policy framework by country, compared with children’s rights key principles in the CRC

The following summary of existing legal and policy framework on the return of children is provided to measure existing laws and policies on return and reintegration in the four countries studied against key CRC principles.

The table below only concerns the existing legal and policy framework; main findings on actual practices and processes of the return and reintegration of refugee and migrant children are detailed in section 5.2. onwards.

⁴⁵ The Action Plan is available online at <https://edoc.coe.int/en/children-s-rights/7362-council-of-europe-action-plan-on-protecting-refugee-and-migrant-children-in-europe-2017-2019.html> [accessed 19 October 2019].

⁴⁶ The Recommendation requests Member States to: establish clear rules on the legal status of unaccompanied children – either to issue return decisions and carry out returns or to grant them a right to stay, and ensure that decisions on the legal status of unaccompanied children are always based on an individual assessment of their best interests. This assessment should systematically take into consideration whether return of an unaccompanied child to the country of origin and reunification with the family is in their best interests; put in place targeted reintegration policies for unaccompanied children; ensure that the assessment of the best interests of the child is systematically carried out by the competent authorities on the basis of a multi-disciplinary approach; and assure that the unaccompanied child is heard and that a guardian is duly involved. Member States should not preclude in their national legislation the possibility to place children in detention, where this is strictly necessary to ensure the execution of a final return decision. See European Commission, Commission Recommendation of 7.3.2017 on making returns more effective when implementing the Directive 2008/115/EC of the European Parliament and of the Council (C(2017) 1600 final: Brussels, 7 March 2017). Available online at https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20170302_commission_recommendation_on_making_returns_more_effective_en.pdf [accessed 19 October 2019].

⁴⁷ European Parliamentary Research Service (EPRS), European Parliament Briefing, ‘Recasting the Return Directive’ (author Maria Diaz Crego: PE 637.901 – June 2019). Available online at [http://www.europarl.europa.eu/RegData/etudes/BRIE/2019/637901/EPRS_BRI\(2019\)637901_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2019/637901/EPRS_BRI(2019)637901_EN.pdf) [accessed 23 October 2019].

Principle: Best interests of the child a primary consideration	
CRC; CMW/C/GC/3 CRC/C/GC/22; and CMW/C/GC/4 CRC/C/GC/23	
<p>'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' (Article 3, CRC).</p> <p>'Assess and determine the best interests of the child at the different stages of migration and asylum procedures that could result in the detention or deportation of the parents due to their migration status' (CMW/C/GC/3-CRC/C/GC/22, para. 32 (e)).</p>	
Germany	<ul style="list-style-type: none"> • The Best interests principle (BIP) is not clearly laid out in German law, although a form of BIP is incorporated in the German Social Code. • The BIP is not operationalized systematically through BIDs or BIAs. • No formal criteria exist to assess the best interests of the child. No legally binding standards are present at the national level to ensure that the primacy of the best interests of the child is applied to all children in asylum, immigration or return procedures.
The Netherlands	<ul style="list-style-type: none"> • The BIP is not embedded in the Netherlands Aliens Act and is not operationalized in a systematic manner. • The BIP is not operationalized systematically through (individual) BIDs or BIAs. • BIDs will sometimes be conducted by the University of Groningen, when requested.
Sweden	<ul style="list-style-type: none"> • A decision was taken by Swedish Parliament in 2018 to incorporate the CRC into Swedish law on 1 January 2020. • Swedish law⁴⁷ mandates BIAs for all refusal decisions and in the return proceedings. • The Swedish Migration Agency's regulations require that a child impact assessment be made before any decision or action is taken concerning a child. • But the SMA's BIAs⁴⁸ are not often based on the individual circumstances of the child, but rather on general observations of law and policy, and without consulting other agencies. Due to restrictions made by the 2016 temporary law (Aliens Act) there is limited possibility to consider BIP when assuming alternative migration status.
United Kingdom	<ul style="list-style-type: none"> • The BIP is not clearly laid out in UK law. • However, UK law requires the safeguarding and promotion of the welfare of children who situated are in the UK.⁴⁹ • Statutory Guidance requires staff to act in accordance with the CRC BIP, but fails to make clear the CRC requirement on informing the best interests consideration.⁵⁰ • There is a strong legal framework and positive case law on best interests, but a divide between the case law and Home Office policy and practice. • There is no formal BID or BIA process. Case reviews are held for Unaccompanied Asylum-Seeking Children (UASC).

⁴⁸ Sweden Aliens Act (2005:716), Chapter 1, Section 10. Available online at https://www.government.se/contentassets/784b3d7be3a54a0185f284bbb2683055/aliens-act-2005_716.pdf [accessed 29 October 2019].

⁴⁹ As recorded in a 2016 Government-commissioned Inquiry on the Rights of the Child – see Barnrättighetsutredningen, *Barnkonventionen blir svensk lag* (SOU 2016:19) (11 March 2019). Available in Swedish online at <https://www.regeringen.se/rattsliga-dokument/statens-offentliga-utredningar/2016/03/sou-201619/> [accessed 19 October 2019].

⁵⁰ Borders, Citizenship & Immigration Act 2009, Section 55. Available online at <http://www.legislation.gov.uk/ukpga/2009/11/contents> [accessed 19 October 2019].

⁵¹ Home Office UK Border Agency, Every Child Matters – Change for Children: Statutory guidance to the UK Border Agency on making arrangements to safeguard and promote the welfare of children. Issued under section 55 of the Borders, Citizenship and Immigration Act 2009 (November 2009), para. 2.7. Available online at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/257876/change-for-children.pdf [accessed 2 October 2019].

Principle: Right to liberty/No immigration detention⁵¹	
CRC; CMW/C/GC/3 CRC/C/GC/22; and CMW/C/GC/4 CRC/C/GC/23	
<p>'No child shall be deprived of his or her liberty unlawfully or arbitrarily' (Art. 37 (b), CRC). '[T]he possibility of detaining children as a measure of last resort, which may apply in other contexts such as juvenile criminal justice, is not applicable in immigration proceedings' (CMW/C/GC/4-CRC/C/GC/23, Section II, para. B. 10).⁵² 'Any kind of child immigration detention should be forbidden by law and such prohibition should be fully implemented in practice' (CMW/C/GC/4-CRC/C/GC/23, Section II, para. B. 5)</p>	
Germany	<ul style="list-style-type: none"> • No detention of children for immigration purposes in practice. • Although legal barriers are high, migration detention of children is possible in law. As with other aspects of immigration law, detention is the responsibility of the federal states.
The Netherlands	<ul style="list-style-type: none"> • Immigration detention employed prior to forced return. • 210 children were detained in 2018, of whom 50 were unaccompanied and 160 accompanied. • No active search is made for alternatives to migration detention prior to return.
Sweden	<ul style="list-style-type: none"> • Children are detained for migration purposes, although their numbers are limited; 13 in 2018. • Supervision as an alternative to detention is authorized (Aliens Act), although this could be used more frequently.⁵³
United Kingdom	<ul style="list-style-type: none"> • No detention of UASC for migration purposes (except in some age disputes). • There has been a major reduction in the use of pre removal immigration detention of children in families due to the UK's family returns process, from over 1,000 detainments in 2009 to 63 in 2018.

⁵² Based on data available at the time of the research.

⁵³ CMW and CRC, Joint General Comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return, CMW/C/GC/4 CRC/C/GC/23 (16 November 2017). Available online at <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FP-PRiCAqhKb7yhsrMulHhdD50s6dX7ewCBgoc3aRFSDe0ukyIgphiFFs8N%2Fk1uf0mPUJgdK2vXMEFXwBUJydRTZ4IILcOtT9G-DUqemWeCc2%2BI%2F6gJkKBzFDWgj> [accessed 28 October 2019].

⁵⁴ A 2018 Red Cross report found that the Swedish Border Police do not consistently consider the best interests of the child in their detention decisions or in their assessment of alternatives to detention. See Swedish Red Cross, Barn i förvar – en undersökning av Svenska Röda Korset (November 2018), available in Swedish at <https://www.rodakorset.se/globalassets/rodakorset.se/dokument/om-oss/fakta-och-standpunkter/rapporter/barn-i-forvar-181126.pdf> [accessed 19 October 2019].

Principle: Family unity⁵⁴	
CRC; CMW/C/GC/3 CRC/C/GC/22; and CMW/C/GC/4 CRC/C/GC/23	
<p>'States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child' (Art. 9, CRC). 'No child shall be subjected to arbitrary or unlawful interference with his or her privacy [or] family' (Art. 16 (1), CRC).</p>	
Germany	<ul style="list-style-type: none"> • Cases are reported of families facing return being separated, with the fathers placed in detention and the mothers and children in other accommodations, and cases of fathers returned whilst their families remained in Germany.
The Netherlands	<ul style="list-style-type: none"> • Family members will generally be returned together. • If not possible, separated return is an option if the case has been assessed by the DT&V (Dienst Terugkeer & Vetrek (Dutch Repatriation & Departure Service)). The State Secretary of Justice and Security must assess whether separated return will cause distress. If so, a balancing exercise is carried out re interests of the family vs interests of the State to proceed with the separated return.
Sweden	
United Kingdom	<ul style="list-style-type: none"> • Family separations have resulted from parent(s) being detained, returned or deported, including some cases of children being taken into local authority care as a result. • No official statistics are kept on these family separations. • The UK policy on family separations is protective of children's rights, but there are reports of a concerning gap between policy and practice.⁵⁵

Principle: Non discrimination – in access to healthcare, education, protection services	
CRC; CMW/C/GC/3 CRC/C/GC/22; and CMW/C/GC/4 CRC/C/GC/23	
<p>'States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind' (Art. 2, CRC).</p>	
Germany	<ul style="list-style-type: none"> • Children in the asylum system have access to healthcare and protection services. • Access to school is regulated differently in the federal states – in some states such access is not possible as long as children are living in initial reception centres.
The Netherlands	<ul style="list-style-type: none"> • Children in the asylum system have access to healthcare, education, and protection services.
Sweden	<ul style="list-style-type: none"> • Children in the asylum system have access to healthcare, education, and protection services. • UASC have the same rights as resident children, and these rights continue to apply unchanged after a return decision and after a case is handed over to the police for non-cooperation.
United Kingdom	<ul style="list-style-type: none"> • Children in the asylum system, including unaccompanied children, have access to healthcare, education, and protection services (this is a legal obligation).

⁵⁵ This issue was not researched in Sweden for the purposes of this report.

⁵⁶ See, for example, May Bulman, 'Home Office separating scores of children from parents as part of immigration detention regime'. The Independent, 4 July 2018. Available online at <https://www.independent.co.uk/news/uk/home-news/immigration-child-separation-parents-uk-home-office-immigrant-detention-a8431671.html> [accessed 2 October 2019].

Principle: Due process guarantees/Access to justice	
CRC; CMW/C/GC/3 CRC/C/GC/22; and CMW/C/GC/4 CRC/C/GC/23	
‘States parties should appoint a qualified legal representative for all children, including those with parental care, and a trained guardian for unaccompanied and separated children, as soon as possible on arrival, free of charge’ (CMW/C/GC/3-CRC/C/GC/22, para. 36).	
Germany	<ul style="list-style-type: none"> • There are very few options for state funding of professional legal aid by lawyers. • There is a wide network of organizations offering legal counselling, but most of the counsellors do not have a legal background. • There is no independent monitoring of forced returns.
The Netherlands	<ul style="list-style-type: none"> • Until 2019 all children and families receive state-funded legal aid throughout asylum procedures and asylum appeals, but not for all immigration-related matters. However, the State Secretary of Justice and Security announced that state-funded legal assistance will no longer be granted from the start of the asylum procedure. When the measure will be implemented only after the initial decision to reject the asylum application children and families will be assigned a state-funded lawyer. • Upon submitting an asylum request, the immediate appointment of a legal representative is made.
Sweden	<ul style="list-style-type: none"> • Temporary legislation was adopted in 2016 to reduce the rights of asylum-seeking and migrant children by aligning Swedish asylum rules with minimum EU standards. • Legal aid is available for the vast majority of asylum cases throughout asylum procedures and asylum appeals, but not for all immigration-related matters.
United Kingdom	<ul style="list-style-type: none"> • State-funded legal aid is available for asylum cases and their appeals, but not for most immigration cases (it is available only in exceptional immigratory circumstances). • Immigration-related support for UASC is to be brought back into the scope of legal aid.

Principle: Unaccompanied and separated children’s right to the appointment of a guardian	
CRC; CMW/C/GC/3 CRC/C/GC/22; and CMW/C/GC/4 CRC/C/GC/23	
‘States should appoint a guardian or adviser as soon as the unaccompanied or separated child is identified [...].The guardian should have the authority to be present in all planning and decision-making processes, including immigration and appeal hearings, care arrangements and all efforts to search for a durable solution’ (CRC/GC/2005/6, para. 33).	
Germany	<ul style="list-style-type: none"> • A guardian is appointed for each unaccompanied/separated child.
The Netherlands	<ul style="list-style-type: none"> • Has a dedicated guardianship institution, Nidos. A guardian is appointed swiftly for each unaccompanied/separated child.
Sweden	<ul style="list-style-type: none"> • A guardian is appointed for each unaccompanied/separated child.
United Kingdom	<ul style="list-style-type: none"> • No guardians appointed in England and Wales, except for trafficked children. • A guardian is appointed for each unaccompanied/separated child in Scotland and Northern Ireland.

Principle: Child's right to be heard/Participation

CRC; CMW/C/GC/3 CRC/C/GC/22; and CMW/C/GC/4 CRC/C/GC/23

'States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child' (Art. 12 (1), CRC). '[T]he child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child [...] in a manner consistent with the procedural rules of national law' (Art. 12 (2), CRC).

Germany	<ul style="list-style-type: none">• Trained decision makers usually conduct interviews with UASC, but this is not implemented consistently.• Children in families are often not heard during the asylum/immigration procedure or return process.
The Netherlands	<ul style="list-style-type: none">• Unaccompanied children, and children in families who have filed their own separate asylum claim, are interviewed by the IND. The child's answers can be used to verify the statements of parents, a practice which has been criticized.
Sweden	<ul style="list-style-type: none">• The Sweden Aliens Act instructs that a child has the right to be heard if it is not inappropriate and that a child's opinion shall be taken into account in relation to the child's age and degree of maturity.
United Kingdom	<ul style="list-style-type: none">• UASC are interviewed. Children in families are generally not interviewed.



4 Country contexts: authorities in charge at national level and data on return

4.1 Authorities in charge at national level

Each of the four countries has established a different arrangement for the authorities responsible for taking asylum/immigration/returns decisions, and for those responsible for the protection of children in these procedures. There is an added value in having an agency responsible for a child’s return process that is distinct from the immigration authority which has taken the decision to refuse the child their bid to remain in the country. In the Netherlands, the DT&V deals only with the returns process, not the returns decision, which makes it easier for the child to engage with them in the post-decision returns procedure.

Type of authority			
Authorities in charge of taking returns decisions			
Germany	Netherlands	Sweden	United Kingdom
The Federal Office for Migration and Refugees (BAMF) is responsible for the asylum procedure and returns decisions.	Immigration and Naturalization Service (IND)	Swedish Migration Agency (SMA)	UK Visas and Immigration, a division of the Home Office, responsible for asylum and immigration determinations.

Type of authority			
Authorities in charge of taking returns decisions			
Germany	Netherlands	Sweden	United Kingdom
The Child and Youth Welfare Office is in charge of child protection. Guardians have legal parental responsibility for UASC, and decide on issues such as consent for family tracing and returns. The immigration authorities control return after the BAMF has taken a return decision.	The DT&V is responsible for returns once the IND has taken a decision. The COA accommodates asylum seekers and offers basic services. Nidos provides guardianship. The Child Care and Protection Board is consulted or called in when there are child protection concerns. During return, either the DT&V, IOM, or Royal Military Police is in charge of a child depending on whether or not the return is voluntary.	The SMA is responsible for all unaccompanied asylum-seeking children. The SMA assigns the children to a municipality, and the Social Services in that municipality are then responsible for the children's care and housing. During return, it is either the SMA or the Swedish police who are in charge of a child, depending on whether or not the return is voluntary.	Care of UASC pre-return is the responsibility of local authorities in England, Scotland, and Wales, and health and social care trusts in Northern Ireland. In England, care is overseen by the Department for Education (DfE); in Northern Ireland, by the Department of Health; in Scotland, by the Children and Families Directorate; and in Wales, by the Health and Social Services Department. UK Visas and Immigration and UK Immigration Enforcement have authority over child protection during the return process.

4.2 Data on Returns: facts and gaps

For comprehensive development and monitoring of policies on return, it is essential for States to collect and publish annual data on: the number of returns (both forced and voluntary); countries of return; return decisions; the number of children in detention for immigration purposes and the number of children actually returned from detention; the number of family separations for immigration purposes; the number of children who turned 18 years old and are returned; and the number of missing foreign national children. While in some of the countries studied data on return of children are published and publicly available, in others, data on return were more difficult to access and specific requests were made to government departments in attempting to obtain this data.

Numbers of Voluntary and Forced Returns of children, 2016 – 2018 ⁵⁶			
2016	Netherlands	Sweden	United Kingdom
Voluntary returns (including Dublin transfers) of children	1,670 (1,610 accompanied, 60 unaccompanied)	4,176 (3,785 accompanied, 391 unaccompanied)	2,422 (most – if not all – accompanied)
Forced returns (including Dublin transfers) of children	120 ⁵⁷ (110 accompanied, 10 unaccompanied)	667 (no breakdown available ⁵⁸)	26 (all likely to be accompanied)

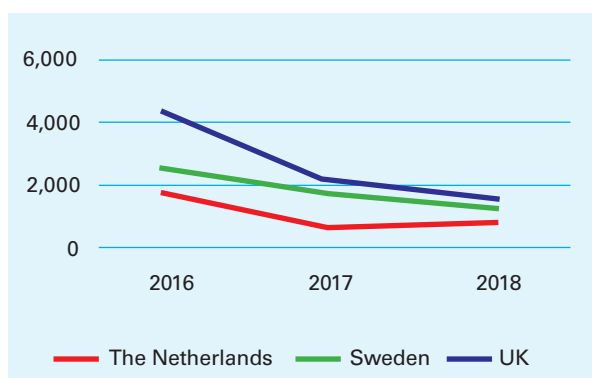
⁵⁷ There were no data available from Germany at the national level, and so Germany has been omitted from the tables and graphs in this section.

⁵⁸ Plus <5 forced Dublin transfers of UASC.

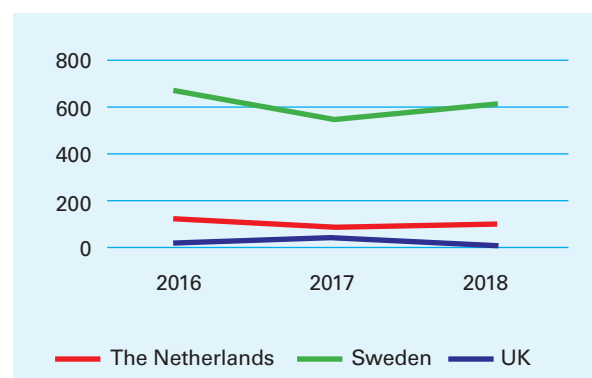
⁵⁹ Statistics received from the Swedish Border Police by email on 5 April 2019. Currently, the police do not separately record accompanied and unaccompanied children.

Numbers of Voluntary and Forced Returns of children, 2016 – 2018			
2017	Netherlands	Sweden	United Kingdom
Voluntary returns (including Dublin transfers) of children	630 (580 accompanied, 50 unaccompanied)	2,066 (1,168 accompanied, 319 unaccompanied)	1,738 (most – if not all – accompanied)
Forced returns (including Dublin transfers) of children	100 (80 accompanied, 20 unaccompanied)	564 (no breakdown available)	40 (all likely to be accompanied)
2018	Netherlands	Sweden	United Kingdom
Voluntary returns (including Dublin transfers) of children	800 (760 accompanied, 40 unaccompanied)	1,530 (1,354 accompanied, 176 unaccompanied)	1,267 (most – if not all – accompanied)
Forced returns (including Dublin transfers) of children	100 (80 accompanied, 20 unaccompanied)	610 (fewer than 10 unaccompanied)	28 (all likely to be accompanied)

Voluntary returns of children from the Netherlands, Sweden and the UK



Forced returns of children from the Netherlands, Sweden and the UK



The data shows that in 2016 there were significant numbers of voluntary returns of children, particularly accompanied children, from all three countries. The numbers of voluntary returns of children have fallen each year since 2016. There has also been a significant decrease in arrivals during these years. In Sweden, there has been a fairly steady number of forced returns of children during the 2016 – 2018 period, whilst numbers of forced returns of children have slightly decreased in the Netherlands, and have remained low in the UK. In Germany, there is no centralized data collection on returns at the national level, as return policies are the responsibility of the 16 federal states, and these states collect data in various ways and using different definitions. Resultantly, there are important gaps in the availability of data on returns from Germany, which is very problematic given the large numbers of children who have arrived in Germany in recent years.

PART II: FINDINGS



5 Findings

5.1 Best interests assessments and determinations

“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.”

– Article 3, CRC

All four countries considered herein are signatories of the CRC, but none of them have fully incorporated the CRC into their domestic law (although a formal decision has been taken to incorporate the CRC into Swedish law in January 2020). There are no specific provisions **in German or Dutch law** that mandate the application of the ‘best interests of the child’ as it is defined in Article 3 of the CRC. There are in the Dutch legal system requirements that the authorities take the child’s best interests into consideration when making their decisions. However, the Dutch Supreme Court has stated that treaty stipulations may only have direct effect when they are sufficiently “concrete and manageable”, and the courts have found that the individual directions in the CRC are not so. Book VIII of the German Social Code (Sozialgesetzbuch, SGB VIII) outlines the basic rights of children and mechanisms for their protection, participation, and development. The legislation further follows § 8a SGB VIII in requiring that an assessment by the Child and Youth Welfare Office be carried out when the child’s well-being is at risk. If deemed necessary, the Child and Youth Welfare Office involves the court, which is charged with identifying cases of “child welfare endangerment” (*Kindeswohlgefährdung*) and taking measures requisite to avert the danger (§ 1666, Bürgerliches Gesetzbuch (BGB), the German Civil Code).

In Sweden, the Aliens Act has incorporated the best interests principle, and it decrees that particular attention must be given to what is required with regard to the child's health and development, and to the best interests of the child in general.⁶⁰

When the UK removed its reservation on the CRC's application to children subject to immigration control in 2008, it included a key provision in its Borders Citizenship and Immigration Act 2009. Section 55 of this Act requires the Secretary of State to make arrangements for ensuring that any function relating to immigration, asylum or nationality must be discharged with regard to the need to safeguard and promote the welfare of children who are in the UK. The UK government has stated that '[t]he principle of the best interests of the child is enshrined in legislation, policy and practice across the UK'⁶¹, and the UK courts have concluded that the Section 55 obligation applies the substance of the best interests principle as termed in Article 3 of the CRC to the immigration context. However, the UN Committee on the Rights of the Child has remarked consistently on the UK that 'the rights of the child to have his or her best interests taken as a primary consideration is still not reflected in all legislative and policy matters'.⁶² Statutory Home Office guidance makes it clear that the Section 55 requirement applies to all United Kingdom Visas and Immigration (UKVI) and Immigration Enforcement staff, and so to all cases where children apply for asylum, through to the decisions made and processes used to return unaccompanied and accompanied children.⁶³ The guidance fails to make clear the CRC Article 3 procedural requisite that the views of all those working with the child, including those outside the asylum/immigration system, should inform the best interests consideration. The decision notice/letter must demonstrate that all available information and evidence has been taken into account in that best interests consideration.⁶⁴

"We see frequent examples of Home Office decision letters making fleeting reference to best interests with no in-depth considerations of the actual impact on the child. We have seen cases where the refusal letter has simply stated that it is in the best interests of the child to be with their family, and no more."

– Coram Children's Legal Centre, a UK NGO

⁶⁰ Sweden Aliens Act (2005:716), Chapter 1, Section 10.

⁶¹ UN Committee on the Rights of the Child, Consideration of reports submitted by States parties under article 44 of the Convention: Fifth periodic reports of States parties due in 2014 – United Kingdom, CRC/C/GBR/5 (6 March 2015), para. 51. Available online at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2FC%2FGBR%2F5&Lang=en [accessed 20 October 2019].

⁶² UN Committee on the Rights of the Child, Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland, CRC/C/GBR/CO/5 (12 July 2016), paras. 26 and 27. Available online at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC/C/GBR/CO/5&Lang=En [accessed 20 October 2019].

⁶³ United Kingdom Home Office, Children's asylum claims (Version 3.0: 15 August 2019); see particularly pp. 12, 44, 48, 60-61, 65-69, 71, 76, 82, 84-86. Available online at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/825735/children_s-asylum-claims-v3.0ext.pdf [accessed 20 October 2019].

⁶⁴ UK Home Office, Immigration returns, enforcement and detention General Instructions – Returns: case considerations (Version 1.0: 10 February 2017), p. 7. Available online at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/591504/Returns-consideration_v1.0.pdf [accessed 20 October 2019].

The research found that there was no systematic, compulsory best interests assessment or determination procedure in place for unaccompanied or accompanied children facing potential returns in Germany, the Netherlands, or the UK. Without this in place, children’s best interests are not given sufficient weight in decision-making processes. The UNHCR-UNICEF publication ‘Safe and Sound’, a good practice document on the best interests of unaccompanied and separated children in Europe, provides information on approaches to and criteria for making operational the best interests principle in decision-making.⁶⁵

In Sweden, BIAs are compulsory to inform return decisions, though in reality they are not always carried out, and even when so, their quality and documentation are not always systematic or satisfactory. The Swedish Migration Agency (SMA) is instructed to perform child impact assessments for any important decision on behalf of a child, and must in the determination of the child’s asylum claim take their best interests into consideration. However, a 2016 Government-commissioned Inquiry on the Rights of the Child ⁶⁶ noted that, although explicit provisions on the best interests of the child exist in Swedish legislation with regards to children in the migration process, the BIAs undertaken by the SMA are not often based on the individual circumstances of the child, but rather on general observations of law and policy. This conclusion was also confirmed through the stakeholder interviews and the review of 20 randomly selected SMA refusal decisions conducted for this research. Sweden is now introducing a formal BID tool.

“SMA case officers often disregard attestations by social workers when assessing the best interest of the child, as many believe these are based on their personal views and not on professional standards.”

– Swedish Migration Agency official

There is concern in all four countries that the views of professionals who have 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 even when such knowledge is gathered, it is seldom given due weight in the decision-making process.

The file review conducted in Sweden showed that in a majority of return decisions, the SMA assesses and takes a decision on the best interests of the child without consulting other actors. When reports were sought from others, they were often disregarded. In two cases, reports from medical professionals (a psychologist and a doctor) were discounted by the SMA, because it found them to be incomplete and/or not compliant with the National Board of Health and Welfare’s Guidelines. The SMA made no attempt to clarify the substance of the reports or to

⁶⁵ UNHCR and UNICEF, ‘Safe and Sound: what States can do to ensure Respect for the Best Interests of Unaccompanied and Separated Children in Europe’ (October 2014). Available online at <https://www.unicef.org/protection/files/5423da264.pdf> [accessed 20 October 2019]. In addition, the UNHCR has recently published a report on its operational approach in the UK – ‘Putting the child at the centre: An Analysis of the Application of the Best Interests Principle for Unaccompanied and Separated Children in the UK’ (June 2019) – which is available online at <https://www.unhcr.org/uk/publications/legal/5d271cdf7.pdf> [accessed 20 October 2019].

⁶⁶ See Barnrättighetsutredningen, *Barnkonventionen blir svensk lag* (SOU 2016:19).

request a second opinion. Interviewees reported that documentation provided by schools and social workers is often disregarded. They found it difficult to understand how the SMA is qualified to overrule or disregard medical attestations or best interests assessments submitted by Social Services, particularly since many other actors work more closely with the children and have both the competence and opportunity to better assess their well-being and situation. For accompanied children, the parent's asylum claim alone is often assessed, and the SMA simply concludes that it is in the best interests of the children to stay with their parents. The SMA's lack of substantive reasoning in best interests assessments also complicates appeals. Lawyers noted that SMA best interests assessments have deteriorated in recent years, since they emphasize reducing their file backlog rather than ensuring the quality of individual assessments.

When making decisions about different aspects of a child's care in Sweden, inflexible administrative procedures amongst authorities and strict confidentiality rules prevent effective co-operation for the child's best interests, which results in a non-holistic approach. Instead, considerations of the child's best interests are managed in isolation by different authorities. The decentralized structure of the Social Services in Sweden can result in differing interpretations and applications of the Social Services Act, which impact on children's access to equal rights irrespective of their migration status and situation.⁶⁷ The UN Committee on the Rights of the Child has criticized Sweden in this regard, and for disparities in its implementation of the CRC in the municipalities, counties, and regions.⁶⁸

"Our interventions on behalf of a child are indirectly impacted by the SMA's return decision. The treatment that was decided for a child under The Care of Young Persons (Special Provisions) Act was terminated not because we thought care was no longer necessary, but because the return decision was being enforced anyway."

– Swedish Social worker on the inconsistency between the best interest assessments and interventions of Social Services and decisions made by the SMA

Even when interventions on behalf of a child are found to be in their best interests, they are sometimes abandoned as a result of the impending return. This is exemplified by situations in which children are removed from the charge of their parents by Social Services due to concerns for their welfare and placed in foster care, but, when the time comes to execute the return decision, the family is reunited and they are returned together. According to stakeholders, the SMA is of the view that any family dysfunction is the responsibility of the authorities in the country of return. Information about the situation is, however, rarely conveyed to the authorities in the country of return.

⁶⁷ See Save the Children Sweden, CONNECT project, 'One plus One Equals Three: a mapping of the reception and protection of unaccompanied children in Sweden' (2014), available online at http://www.connectproject.eu/PDF/CONNECT-SWE_Report.pdf [accessed 20 October 2019].

⁶⁸ UN Committee on the Rights of the Child, Concluding observations on the fifth periodic report of Sweden, CRC/C/SWE/CO/5 (6 March 2015), para. 11. Available online at <https://www.refworld.org/docid/566e7e8c4.html> [accessed 20 October 2019].

In the Netherlands, although the IND and the DT&V are responsible for taking into consideration the best interests of the child, interviewees stated that neither the IND nor the DT&V actively collects knowledge on the child, and only consider such information when it is offered not by the child but by concerned others, such as guardians. BIDs are not routinely carried out in the Netherlands, but they are sometimes conducted by the University of Groningen's Faculty of Behavioural and Social Sciences, when requested by lawyers, guardians, families, or children. This faculty has much expertise on the development of children in the migration context, but interviewees related that the Faculty's reports are often dismissed by the IND.

In the UK, there is a strong legal framework and positive case law with regard to the promotion and protection of children's best interests. But the UK does not currently have a process for undertaking BIDs or BIAs, though the Home Office does hold 'UASC case reviews'.

In all four countries, serious concerns were expressed by lawyers and NGOs at the lack of adequate consideration for the accompanied child in family asylum and immigration cases, with children being treated as an 'add-on' to their parent(s) rather than as individual rights-holders.

In the UK, interviewees reported that in the vast majority of cases the Home Office provides 'cut and-paste' decisions using automatically generated, standard paragraphs from a template, which merely state that it is in the child's best interests to be returned with the family. There is no best interests process that the Home Office caseworker must follow before making a decision on return, and caseworkers have no method by which to collect evidence on best interests. In a 2010–13 audit of asylum decision-making in family asylum claims in the UK⁶⁹, the UNHCR found that: not all decision makers required to assess and determine the best interests of children in families had received the full training on the principle of best interests; there was no formal and systematic collection or recording of information that would be necessary and relevant to a well-considered best interests assessment, including a lack of any mechanism to obtain the views of the child and give those views due weight; decision-makers were not always able to identify when, where, and from whom they could and should solicit information, or what sort of information that they should pursue; the decision-makers' analyses of the child's best interests were often piecemeal, focusing on common elements like family relationships, whilst neglecting others, like the child's safety; and in some cases, immigration control was brought directly into the determination of best interests.

⁶⁹ UNHCR, *Considering the Best Interests of a Child Within a Family Seeking Asylum* (December 2013). Available online at <https://www.unhcr.org/uk/protection/basic/57600a504/considering-the-best-interests-of-a-child-within-a-family-seeking-asylum.html?query=THE%20BEST%20INTERESTS%20OF%20A%20CHILD> [accessed 20 October 2019].

Challenges to conducting Best Interests Assessments/Determinations

- The CRC is not currently incorporated into the domestic law of any of the four countries under consideration (although a formal decision has been taken to incorporate it into Swedish law).
- 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.
- 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.
- **In Sweden**, despite BIAs being routinely undertaken, in the vast majority of cases decisions based on migration control override BIA decisions. Even when interventions on behalf of a child are found to be in their best interests, they are sometimes abandoned as a result of the impending return.

Taking steps forward with best interests considerations?

The Swedish Parliament decided in 2018 to incorporate the CRC into Swedish law. Acting on the recommendations of a Government-commissioned inquiry⁷⁰, it was recognized that the impact of the CRC needed to be strengthened in Swedish law and practice, both at state and municipal levels. The inquiry noted that “[t]he shortcomings are most obvious with regard to the principle of the best interests of the child and the child’s right to express his or her views”. The Ombudsman for Children in Sweden was mandated to support municipalities, county councils/regions, and government agencies in their efforts to prepare for the incorporation of the CRC on 1 January 2020.⁷¹ There are also discussions in Germany about the possibility of incorporating the CRC into German law.

Two Dutch political parties introduced an (initiative) bill in 2016 to enshrine the best interests of the child in the Netherlands Aliens Act. This proposes a child rights assessment in residence procedures, to ensure that the best interests of the child are explicitly and comprehensively ascertained, as well as granting children priority in residence procedures. The bill proposes taking the best interests of the child into consideration in all procedures in which the interests

⁷⁰ Barnrättighetsutredningen, *Barnkonventionen blir svensk lag* (SOU 2016:19). For a summary of this report in English, see: <https://www.government.se/information-material/2016/06/english-summary-on-proposals-for-an-act-on-incorporation-the-un-convention-on-the-rights-of-the-child-crc-into-swedish-domestic-law-from-sou-201619.pdf> [accessed 21 October 2019].

⁷¹ Regeringskansliet (Government Offices of Sweden), *Ny satsning för att stärka kunskapen om barnets rättigheter* (3 January 2017). Available in Swedish at <https://www.regeringen.se/pressmeddelanden/2017/01/ny-satsning-for-att-starka-kunskapen-om-barnets-rattigheter> [accessed 21 October 2019].

of migrant children are at stake.⁷² The first version of the proposal was postponed. The bill was then adjusted and reintroduced in Parliament on 26 June 2019, with the support of three more opposition parties. The Advisory Committee on Migration Affairs has given its advice on the proposed bill. In September 2019, the Dutch parliament sent written comments on the adjusted version of the bill and asked additional (legal) advice of the Council of State.

An inquiry by the UK's Joint Committee on Human Rights recommended⁷³ that the UK Government establish an independent advisory group to provide guidance to Ministers on how to consider the best interests of unaccompanied and separated children most effectively, and that the Government evaluate the case for the establishment of a formal BID process. In their response⁷⁴, the Government agreed to consider the case for establishing a BID process in the context of the existing immigration and asylum process, and confirmed that in doing so they will take into account the views of experts from across the statutory and voluntary sector. However, this process has not yet commenced. UNICEF UK has supported a research project, led by the UNHCR, mapping the current approach to the consideration of the best interests of UASC in the UK and highlighting current strengths and weaknesses in the UK system. This analysis has informed recommendations for strengthening the application of the best interests principle.⁷⁵

Good practice for conducting Best Interests Assessments/Determinations

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. The Swedish Migration Agency's regulations require the Agency to carry out a child impact assessment before any decision or action is taken concerning a child. Sweden is also introducing a formal BID tool.

⁷² Initiative Bill of Attje Kuiken (PvdA) and Linda Voortman (GroenLinks), 'Voorstel van wet van de leden Voortman en Kuiken tot wijziging van de Vreemdelingenwet 2000 in verband met het verankeren van het belang van het kind' ['Proposal of the bill of the members Voortman and Kuiken to change the Aliens Act 2000 to embed the interests of the child'], Kamerstukken [Parliamentary papers] II 2015/16, 34 541, no. 2 (19 September 2016). Available in Dutch online at <https://zoek.officielebekendmakingen.nl/kst-34541-2.htm> [accessed 21 October 2019].

⁷³ House of Lords and House of Commons Joint Committee on Human Rights, Human Rights of unaccompanied migrant children and young people in the UK: First Report of Session 2013–14 (12 June 2013), recommendations 32 & 33 (p. 66). Available online at <https://publications.parliament.uk/pa/jt/201314/jtselect/jtrights/9/9.pdf> [accessed 21 October 2019].

⁷⁴ UK Home Office, The Government Response to the First Report from the Joint Committee on Human Rights, Session 2013-14, HL PAPER 9 / HC 196: Human Rights of unaccompanied migrant children and young people in the UK (February 2014). Available online at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/279104/UnaccompaniedMIgrantMinors.pdf [accessed 21 October 2019].

⁷⁵ UNHCR, 'Putting the child at the centre: An Analysis of the Application of the Best Interests Principle for Unaccompanied and Separated Children in the UK'.

5.2 Asylum/Immigration determination procedures

5.2.1 Access to legal support

“States parties should appoint a qualified legal representative for all children, including those with parental care [...] as soon as possible on arrival, free of charge.”

– Joint General Comment No. 3... and No. 22 of the CRC on the general principles regarding the human rights of children in the context of international migration CMW/C/GC/3 CRC/C/GC/22 (2017), para. 36).

State-funded legal assistance is available for asylum cases for unaccompanied children in the Netherlands, Sweden, and the UK. State-funded legal assistance is also available for asylum cases for families in Sweden, the Netherlands, and the UK, including for appeals – but not for children within the family unit, unless they have filed a separate claim. In Germany, legal aid during the asylum procedure is available through NGOs and welfare organizations. The BAMF also offers some information and counselling.

In the Netherlands, until now, upon submitting an asylum request, an unaccompanied child, as well as asylum-seeking families, were immediately informed about the appointment of a state-funded legal representative. However, in November 2019 a measure was announced by the Dutch State Secretary of Justice and Security which entails that free legal assistance will no longer be granted from the start of the asylum procedure. Instead asylum seekers, including children, will be assigned a state-funded lawyer only after the initial decision to reject the asylum application. The measure was part of the coalition agreement 2017-2021, and has been heavily criticized by immigration lawyers and NGO's.

Despite the complexities of UK immigration law, state-funded legal aid is not available **in the UK** for non asylum immigration cases – such as applications for leave to remain under Article 8 of the European Convention on Human Rights (ECHR) – unless there are exceptional circumstances. Nor is such aid available for children **in the Netherlands**, although after rejection of an immigration application, there is a right to a state funded lawyer in the objection phase. **In Sweden**, there is no guarantee that state-funded legal aid will be made available for immigration cases; this is dependent upon the specific situation. The UK government has announced that state-funded legal aid will be made available for unaccompanied children in immigration procedures, but not for accompanied children, apart from in exceptional cases.⁷⁶ It is essential for children to have access to child-sensitive information on the asylum and immigration procedure, as well as to receive support from advisors capable of explaining all relevant possibilities and consequences.

⁷⁶ See Lucy Frazer, Parliamentary Under Secretary of State for Justice, Justice Update: Written statement - HCWS853 (12 July 2018). Available online at <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2018-07-12/HCWS853/> [accessed 21 October 2019].

In Germany, the very limited options for state funding of professional legal aid often result in asylum seekers not being legally represented. Some free legal counselling – provided by NGOs and welfare organizations and carried out by social workers or volunteers with occasional assistance from lawyers – is generally available. This is however not equivalent to professional legal aid. In 2015, the BAMF published non-binding Guidelines for Nationwide Return Counselling, which are currently being revised. While not specifically targeting practitioners working with children, the Guidelines do specify that counselling should be sensitive to the needs of vulnerable groups. Interviewees in Germany reported that legal information requirements for children are not adequately met at present. A recent law, which entered into force in August 2019, declares that the Federal Office or welfare organizations will provide advice and counselling for children in families.⁷⁷ This change in law has been debated intensely in the public sphere, as the BAMF is the executive authority responsible for the asylum procedure and its independence is contestable.

In the Netherlands, upon submitting an asylum request, an unaccompanied child is immediately informed of the appointment of a legal representative.⁷⁸ However, it is expected that from 2020 and on state-funded legal assistance only will be provided after the initial rejection of an asylum claim.

In Sweden, all unaccompanied and separated children are appointed public counsel, as are families with children, and they are represented by this counsel until a return decision gains force. There is an exception for families when the case is considered manifestly well-founded and it is assumed that the applicants will be granted asylum. In Dublin procedures, the right to public counsel is available from the outset for all cases of unaccompanied children, whilst others, including families with children, only have a right to legal assistance in exceptional circumstances.

Good practices for access to legal support for children

- 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 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.
- In the UK, the government has announced that state-funded legal aid will be made available for unaccompanied children in immigration procedures.

⁷⁷ See Amendment § 12a of the Asylum Act (dated 21 August 2019), available in German online at <https://www.buzer.de/ge-setz/6406/al75176-0.htm> [accessed 21 October 2019].

⁷⁸ Netherlands Aliens Decree 2000 (Vreemdelingenbesluit 2000), Art. 3.109d, para. 1. Available in Dutch online at <https://wetten.overheid.nl/BWBR0011825/2013-01-01> [accessed 15 August 2019].

Challenges to providing access to legal support for children

- 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 complexity of UK immigration law, accompanied children are not eligible for state-funded legal aid for immigration cases, other than in exceptional circumstances.
- State-funded legal aid is not available in any of the four countries once decisions have been taken on the right to remain or necessity to return, and so children, including UASC, do not have access to a lawyer during returns procedures.

5.2.2 Accelerated procedures

Accelerated procedures in asylum cases – with reduced time limits for asylum interviews and decisions – are sometimes applied by countries in cases that they consider very likely to be refused, which are often those concerning children or families who come from countries that have been designated “safe”.

In the Netherlands, “fast-track” asylum procedures (taking up to seven days) are available and applied in certain cases⁷⁹, which means that procedural safeguards, such as adequate time to consult with lawyers, might be reduced. This “fast-track” procedure is an accelerated method of dealing with asylum procedures and puts great pressure on asylum seekers, as they must go through two interviews with the IND and several appointments with their lawyers in the space of just a few days. This is especially the case for children. In 2015, the UN Committee on the Rights of the Child criticized the general eight-day asylum procedure (named the Algemene Asielprocedure, or AA) in the Netherlands, and recommended a review of this procedure.⁸⁰ In their recent report on unaccompanied children in the Netherlands, the UNHCR observed that children need more time to recover after arrival. They often feel overwhelmed and confused during the asylum procedure, which begins soon after their reaching the Netherlands.⁸¹

In the UK, until 2015, there was a “Detained Fast-Track Procedure” for asylum seekers, although this was not usually applied to children. This procedure was suspended in 2015 following a court decision. There are still “Non-Suspensive Appeal” cases, the majority of which concern applicants from a deemed “safe country of origin”. There is no time limit for a decision to be made in such cases, although Home Office guidance states that the aim is to reach a decision within 14 calendar days.⁸²

⁷⁹ Those concerning asylum seekers originating from “safe” countries, or who have legal residence in another EU country.

⁸⁰ UNCR, Concluding observations on the fourth periodic report of the Netherlands, CRC/C/NL/CO/4 (8 June 2015), paras. 52 (a) and 53 (a), available online at <https://www.refworld.org/docid/566fc5a04.html> [accessed 21 October 2019]

⁸¹ UNHCR, *In de Eerste Plaats een Kind. Bevindingen, aanbevelingen en oplossingen in het belang van alleenstaande minderjarige vreemdelingen in Nederland* [‘In the First Place a Child. Findings, recommendations and solutions in the interests of unaccompanied, underaged aliens in the Netherlands’] (April 2019). Available in Dutch online at <https://www.unhcr.org/nl/wp-content/uploads/UNHCR-Children-First-2019-screen-1.pdf> [accessed 21 October 2019].

⁸² Asylum Information Database (AIDA), managed by the European Council on Refugees and Exiles (ECRE), ‘Accelerated Procedure: United Kingdom’ (authored by the Refugee Council). See <https://www.asylumineurope.org/reports/country/united-kingdom/asylum-procedure/procedures/accelerated-procedure> [accessed 21 October 2019].



In Sweden, the law makes no express reference to “accelerated procedures” and it does not have a list of “safe countries of origin”. However, the SMA has established a dedicated track for two categories of cases: “manifestly unfounded claims” and claims from nationalities with a recognition rate below 20%. The time limit for a decision under the accelerated procedure in these cases is three months. If the time limit has not been respected the case will be dealt with in the regular procedure.⁸³

In Germany, an accelerated procedure has been in place since March 2016 for certain cases, including those from a “safe country of origin”. In this speeded-up procedure, the BAMF has to decide on asylum determinations within 1 week. There are so-called AnkER Centres (Arrival centres) in some federal states, at which all relevant authorities act under one roof and conduct an accelerated procedure.⁸⁴ The BAMF does not collect statistics on the use of this accelerated procedure.⁸⁵

5.2.3 Right to be heard in proceedings/child participation

“[T]he child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child.”

– Article 12 (2), CRC).

⁸³ ECRE, Asylum Information Database, with Flyktinggruppernas Riksråd (FARR – Swedish Network of Refugee Support Groups), Country Report: Sweden (2017 Update) (31 December 2017). Available online at https://www.asylumineurope.org/sites/default/files/report-download/aida_se_2017update.pdf [accessed 21 October 2019].

⁸⁴ See the BAMF website, Welcome page > Asylum and refugee protection > ‘Arrival centres and AnkER facilities’, at <http://www.bamf.de/EN/Fluechtlingsschutz/Ankunftscentren/ankunftscentren-node.html> [accessed 21 October 2019].

⁸⁵ ECRE, Asylum Information Database, ‘Accelerated Procedure: Germany’ (authored by Informationsverbund Asyl und Migration). See <https://www.asylumineurope.org/reports/country/germany/asylum-procedure/procedures/accelerated-procedure> [accessed 21 October 2019].

Whereas unaccompanied children are individually interviewed during the asylum process in all four countries, accompanied children are treated by default under the heading of the family unit in Germany, Sweden, and the UK, and thereby assumed to have the same reasons for claiming asylum. Accompanied children may thus appear as a ‘footnote’ in their parents’ files.

In the Netherlands, for accompanied children, parents (or other family members) file an asylum application on behalf of their children, if they are younger than 15 years of age. Children who have filed their own application are interviewed by the IND, during which they are asked to give their own reasons for applying for asylum. Children as young as 12 may also file their own asylum application. Recently, it has become more common for lawyers to have their young clients be heard explaining their individual reasons for seeking asylum during the two interviews with the IND. Occasionally, this may occur in cases of children younger than 12 years of age. The second interviews are not always conducted in child-friendly rooms or by specially trained staff members. During the interviews, the child is asked not only about their own reasons to flee the country of origin, but also the reasons of the parent(s). The answers provided can then be used to verify the statements of the parents. This practice is criticized by the UN Committee on the Rights of the Child in their latest Concluding Observations on the Netherlands.⁸⁶

Unaccompanied children are interviewed by the immigration authorities at a dedicated location. Unaccompanied children under 12 years of age are interviewed by a special Unit of the IND at this location in line with the protocol for the interviewing of children from 6 to 12 years of age. The staff members of this Unit are trained to interview children.

In Germany, the BAMF has established nationwide guidelines for asylum procedures involving unaccompanied children, which direct that unaccompanied children be given a personal interview by a specially trained decision-maker; but this does not always happen in practice. Interviewees found that current asylum procedures are not child-appropriate, and interviews are not currently conducted in a child-sensitive manner. Questions are often asked in a specific, formalized, sometimes even adversarial way, which is neither sensitive nor age-appropriate. The interviews are often superficial and can assume a “default position” of mistrust of the asylum seeker. The quality of interpretation services during interviews varies widely, and interpreters do not always appear to have been trained in child-sensitive language and behaviour.

There are no mandatory provisions and few specific procedural steps defined for accompanied children. Individual interviews by specially trained personnel are not mandatory. Accompanied children are not generally present during their parents’ interviews. This results in accompanied children lacking opportunities to claim individual, child-specific reasons for flight and migration; rather, they are habitually assumed to share their parents’ reasoning. In many cases, parents are not offered childcare services during their personal interviews at the BAMF. As a result, parents – especially single parents – often have no choice but to bring their (young) children with them to their interviews, thereby potentially exposing them to traumatising information about reasons for flight or migration and/or the disturbing experiences of their parents.

⁸⁶ UNCRRC, Concluding observations on the fourth periodic report of the Netherlands, paras. 52 (b) and (c), and 53 (b) and (c).

5.2.4 Appeals

Appeals against initial decisions are permitted in all four countries. Children are eligible for state funded legal aid in the Netherlands, Sweden, and the UK to cover costs for appeal against a refusal of asylum.

In Germany, during court proceedings, asylum seekers can apply for state-funded professional legal aid to pay for a lawyer. Access to state-funded legal aid varies depending on cases. Some lawyers do not recommend applying for legal aid in certain situations, since they are concerned that a negative decision in the legal aid procedure may have a negative impact on the main proceedings.⁸⁷ Children, whether unaccompanied or accompanied, have the right to be heard in appeal hearings. In practice, however, the legal guardian must decide whether children have the capacity to speak for themselves and whether it is in their best interests for them to do so.

In the UK, if a child has been refused asylum or granted UASC leave⁸⁸, they can appeal. But, without guardians who have a more specialist understanding of asylum and immigration processes than do social workers, many children in England and Wales are not properly informed of their right to appeal, since it is sometimes not fully understood that a grant of UASC leave effectively amounts to a refusal of an asylum claim and it will expire within 30 months from its issuance or when the child turns 17 and a half years old (whichever happens sooner). A judicial review of court decisions may also be possible. The last-minute “appeals” that often delay or avert returns in the UK are usually judicial reviews/injunctions. These are sometimes made at the last moment due to the lack of state funded legal aid for immigration issues earlier in the process.

Some rights to appeal do not suspend court decisions. For example, in the UK, the Home Office has the power to ‘certify’ protection and human rights claims as ‘clearly unfounded’, which restricts the right of appeal against refusal, and means that the appellant can only appeal from outside the UK.

In the Netherlands, if the appeal lacks a suspensive effect, the asylum seeker has to ask the court for a preliminary measure in order to prevent forced return during the appeal procedure. When a forced return is imminent, it is possible to appeal against the forced return itself and/or the way in which this forced return is to be carried out.⁸⁹

In Sweden, the appeal before the Migration Court has a suspensive effect, except for appeals lodged against decisions rejecting a “manifestly unfounded” application in the accelerated procedure. In such cases, a suspension must be requested by the appellant.⁹⁰

⁸⁷ ECRE, Asylum Information Database, ‘Regular Procedure: Germany’ (authored by Informationsverbund Asyl und Migration). See <https://www.asylumineurope.org/reports/country/germany/asylum-procedure/procedures/regular-procedure> [accessed 21 October 2019].

⁸⁸ A form of limited leave in the UK available to unaccompanied children who are under the age of 17 and a half years old, and who have applied for asylum but have been refused refugee status or humanitarian protection, if there are no adequate reception arrangements in the country to which they would be returned.

⁸⁹ See General Administrative Law Act the Netherlands (Algemene wet bestuursrecht), Article 1:3 (4 June 1992). Available online at https://www.acm.nl/sites/default/files/old_publication/publicaties/15446_dutch-general-administrative-law-act.pdf. For the General Administrative Law Act in Dutch, see <https://wetten.overheid.nl/BWBR0005537/2019-10-01> [both accessed 21 October 2019].

⁹⁰ ECRE, Asylum Information Database, ‘Short Overview of Asylum Procedure: Sweden’ (authored by Flyktinggruppens Riksråd (FARR)). See <https://www.asylumineurope.org/reports/country/sweden/short-overview-asylum-procedure> [accessed 21 October 2019].

In Germany, if asylum applications are rejected as “manifestly unfounded”, the timeframe for submitting appeals is reduced to one week. Since appeals do not have automatic suspensive effect in these cases, both the appeal and a request to restore a suspensive effect have to be submitted to the court within one week, and a suspension is only granted in exceptional circumstances.⁹¹

5.2.5 Delays

Whilst fast-track procedures are problematic when attempting to ensure that sufficient safeguards are in place for children, delays are also endemic in the asylum and immigration processes in all four countries. Lawyers noted that a child asylum seeker will often struggle with memory issues caused by trauma and common psychiatric conditions such as post-traumatic stress disorder (PTSD), and therefore having to recall the precise circumstances under which they left their country of origin is inevitably harder as the months and years pass since the event, as well as after their thoughts have been directed elsewhere, such as towards integrating, schooling, and generally getting used to a completely new environment. Waiting in a kind of limbo can have seriously detrimental effects on children’s mental health.

“The more time an asylum case took to resolve, the more likely barriers to removal would arise from the formation of relationships, the birth of children and other community ties. It also meant individuals were left not knowing if or when the Home Office might take action to remove them.”

– UK Independent Chief Commissioner of Borders and Immigration⁹²

Despite the fast-track practice in **the Netherlands**, over recent years asylum procedures have been shown to be very lengthy and often subject to delays. There are many backlogs, and the time set for the procedures is often exceeded. The delays and backlogs have been criticized by various national and international organizations. In July 2019, the UN Human Rights Committee recommended, inter alia, that the Netherlands “[i]ntensify its efforts to reduce the backlogs in the asylum application process and the family reunification process, including by strengthening the capacity of the immigration and naturalisation services in all constituent countries”⁹³

In the UK, many interviewees argued that delays throughout the asylum process appear to be derailing the system. As lawyers noted, the system is so slow that families who may not have had a good case for remaining in the UK at the start of the process often do have a good case by the time of their attempted removal, since the child may have resided for more than seven years in the UK by that point and be well-settled into their schooling and their life in the UK.⁹⁴

⁹¹ See ECRE, Asylum Information Database, ‘Regular Procedure: Germany’.

⁹² Quoted from David Bond, Independent Chief Inspector of Borders and Immigration (ICIBI), An inspection of removals, October 2014 – March 2015 (December 2015), p. 5. Available online at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/547681/ICIBI-report-on-Removals-December_2015.pdf [accessed 21 October 2019].

⁹³ OHCHR Human Rights Committee, Concluding observations on the fifth periodic report of the Netherlands, CCPR/C/NLD/CO/5 (25 July 2019). Available online at https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/NLD/INT_CCPR_COC_NLD_35596_E.pdf (text quoted is at p. 5 of this report) [accessed 21 October 2019].

⁹⁴ The UK Immigration Rules permit a child who has spent at least seven years in the UK to remain if it is deemed that it would not be reasonable to return them.

5.2.6 Alternative regular migratory status for children not eligible for asylum

In all four countries, there are some special options for regular migratory status available for children and young people if they are not eligible for refugee status under the 1951 Geneva Convention or subsidiary protection under Article 3 of the ECHR and Article 15 (c) of the Qualification Directive (or its equivalent of Humanitarian Protection in the UK). In all four countries, consideration will be given to granting a residence permit under Article 8 of the ECHR (a right to protection for one's private and family life).

The UK grants a form of limited leave (known as UASC leave) to unaccompanied children who are under the age of 17 and a half years old and who have applied for asylum but have been refused refugee status or humanitarian protection, provided that there are no adequate reception arrangements in the country to which they would be returned. UASC leave is granted for a period of 30 months or until the child reaches 17 and a half years old (whichever that occurs sooner). Depending on the length of their residence, they might be able to seek registration as a British citizen. Under UK Immigration Rules, children younger than 18 years of age are entitled to a grant of leave to remain if they have lived continuously in the UK for at least seven years and it would be unreasonable to expect them to leave the UK. If the person is between 18 and 25 years old, they are entitled to a grant of leave to remain if they have spent at least half of their life continuously in the UK.⁹⁵

In all four countries, in some cases, the best interests of the child might be better served not through claiming asylum, but rather through exploring alternative pathways to residency.

In Germany, the Apprenticeship Deferment Law of 2015/16 provides for the deferment of removal for young people who have turned 18 years old if they are able to find a valid apprenticeship, and the Residence Act allows for "well-integrated" young people who have legally resided in Germany for four years to be granted a residence permit if they apply before the age of 21.

In the Netherlands, in 2013, the "Children's Pardon" was introduced, to provide a solution for children who had been staying in the Netherlands for at least five years without being granted a residence permit. Under the preliminary regulation, around 700 children and their immediate family members (parents, siblings) were granted a residence permit. The permanent regulation was much stricter⁹⁶ and was applied ever more stringently, to the point that no child could use it to qualify for a residence permit.⁹⁷ In January 2019, the government decided to reassess all cases of children who were refused under the permanent regulation of the Children's Pardon.⁹⁸

⁹⁵ Immigration Rule 326B decrees that the Secretary of State must take into account Article 8 of the ECHR, the right to private and family life, when making decisions in respect of the grant of asylum or humanitarian protection.

⁹⁶ The permanent regulation required many criteria to be fulfilled, including the requirement to actively co-operate with one's own forced return procedure after the asylum request had been rejected.

⁹⁷ For an analysis of the gradual shift in the decision-making process and the related jurisprudence, see Martin Vegter and Machteld van Werve for Defence for Children, *Staatssecretaris en Afdeling reduceren Kinderpardon tot dode letter Terug bij af* ['State secretary and department reduce the Children's Pardon Agreement to a dead letter'], in *Asiel&Migrantenrecht (A&MR)* 2017, no. 2, pp. 67-74. Available in Dutch online at <https://www.defenceforchildren.nl/media/1491/terug-bij-af-staatssecretaris-en-afdeling-reduceren-kinderpardon-tot-dode-letter.pdf> [accessed 21 October 2019].

⁹⁸ See *Staatscourant van het Koninkrijk der Nederlanden, Besluit van de Staatssecretaris van Justitie en Veiligheid* [Government Gazette of the Kingdom of the Netherlands: Decision of the Secretary of Justice and Security] van 8 februari 2019, nummer WBV 2019/1, houdende wijziging van de Vreemdelingencirculaire 2000 ['Amendment of the Aliens Circular 2000'] (11 February 2019). Available in Dutch online at <https://zoek.officielebekendmakingen.nl/stcrt-2019-8116.html> [accessed 21 October 2019].



Moreover, other children who had never applied for the regulation, but who had also been staying in the Netherlands for at least five years, were also allowed to apply. The IND expects to have completed this reassessment by the end of 2019.

The Children's Pardon is no longer available, and the discretionary power of the State Secretary of Justice and Security has been transferred to the director of the IND⁹⁹, who assesses whether there are reasons to grant a residence permit to applicants on humanitarian grounds. There has been much criticism of the transfer of the discretionary power to the director of the IND.¹⁰⁰ On 30 July 2019, two new categories for grant of a residence permit on humanitarian grounds were announced¹⁰¹ – non-nationals qualifying for the witness protection programme, and children for whom the juvenile judge has issued a child protection measure for at least one year. There is also a “no-fault” policy by which applicants who through no fault of their own are unable to leave the Netherlands are entitled to a specific permit. Unaccompanied children who were 15 years old or younger at the time of their arrival and whose application had been rejected, and

⁹⁹ Besluit van 8 april 2019 tot wijziging van het Vreemdelingenbesluit 2000, in verband met de aanpassing van enkele regels voor de beoordeling van verblijfsaanvragen [‘The decision of 8 April 2019 to change the Aliens Decree 2000, in relation to the adjustment of certain rules for the assessment of applications requesting residence’]. Available in Dutch online at https://www.tweedekamer.nl/kamerstukken/brieven_regering/detail?id=2019Z07669&did=2019D15662 [accessed 21 October 2019].

¹⁰⁰ State Council Advisory Division (Afdeling advisering van de Raad van State), Samenvatting advies over het vervallen van de discretionaire bevoegdheid [‘Summary advice concerning the loss of discretionary powers’] (15 April 2019). Available in Dutch online at <https://www.raadvanstate.nl/@114920/samenvatting-advies-1/> [accessed 15 August 2019].

¹⁰¹ State Secretary of Justice and Security the Netherlands (Staatssecretaris van Justitie en Veiligheid), Kamerbrief over humanitaire vergunningen [‘Letter to Parliament concerning humanitarian permits’] (30 July 2019). Available in Dutch online at <https://www.rijksoverheid.nl/documenten/kamerstukken/2019/07/30/tk-tijdelijk-humanitaire-vergunningen> [accessed 15 August 2019].

who have no relatives or adequate reception facilities available in the country of origin are, up to three years after their initial application, also eligible for the 'no-fault' policy. However, it generally proves very difficult to meet the conditions required.¹⁰² In 2017, Nidos stated that the IND had yet to grant a no fault permit to any unaccompanied child aged 15 years or younger upon arrival.¹⁰³

In Sweden, the granting of residence permits on humanitarian grounds for children has been limited by the 2016 temporary legislation which aligned Swedish asylum rules with the minimum EU standards. Humanitarian considerations for children had been strengthened by the adoption of the 2005 Aliens Act, with the inclusion of residence permits based on exceptionally distressing circumstances. The Aliens Act had stated that the reasons for these permits could be less severe for children than for adults. The intention was to reinforce the best interests of the child and provide the adjudicator with some additional flexibility when assessing children's cases. But when Sweden adopted the temporary legislation in 2016, this provision of the Aliens Act was amended, now stating that the adjudicator could only consider exceptionally distressing circumstances if Sweden would otherwise contravene an international convention. Recent studies by the Swedish Asylum Seeker and Refugee Advice Centre¹⁰⁴ and the Swedish Red Cross¹⁰⁵ indicate that this has limited the migration authorities' ability to consider the best interests of the child in its assessment of exceptionally distressing circumstances as grounds for granting a residence permit. Furthermore, a lack of direction and guidance on how to interpret the new legislation has led the SMA and Courts to take a very restrictive approach. The temporary law has also resulted in temporary residence permits becoming the norm for persons in need of international protection.

Good practices for alternative regular migratory status for children and young people

- **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.

¹⁰² Adviescommissie voor Vreemdelingenzaken (Advisory Committee on Alien Affairs, ACVZ), 'Waar een wil is maar geen weg: Advies over de toepassing van het beleid voor vreemdelingen die buiten hun schuld niet zelfstandig uit Nederland kunnen vertrekken' ['Where there is a will, but not a way: Advice concerning the application of the policy for Aliens who want to leave the Netherlands, but are unable to'] (Den Haag: ACVZ, July 2013). Available in Dutch online (with an English language summary of the report's findings at pp. 119-24) at https://acvz.org/wp-content/uploads/2015/05/01-07-2013_Advies38-ACVZweb1.pdf [accessed 21 October 2019].

¹⁰³ Stichting Nidos, Jaarverslag [Annual Report] 2017 (Utrecht: Nidos, 2018). Available in Dutch online at <https://www.nidos.nl/uitgelicht/jaarverslag-2017/> [accessed 21 October 2019].

¹⁰⁴ Swedish Advice Centre for Asylum Seekers and Refugees (Rådgivningsbyrån för asylsökande och flyktingar), 'Migrationsrättens framtid – En redogörelse för de juridiska riskerna med att förlänga den tillfälliga lagen (2016:752) om tillfälliga begränsningar av möjligheten av få uppehållstillstånd i Sverige', available in Swedish at <https://sweref.org/wp-content/uploads/2018/10/Migrationsrattens-framtid-en-redogorelse.pdf>. See also: Swedish Advice Centre for Asylum Seekers and Refugees, 'I strid mot ett svenskt konventionsåtagande?' (2018), available in Swedish at <https://sweref.org/wp-content/uploads/2018/08/I-strid-mot-ett-svenskt-konventionsatagande-5.4.pdf> [both accessed 21 October 2019].

¹⁰⁵ Swedish Red Cross, *Humanitära konsekvenser av den tillfälliga utlänningslag* (2018), available in Swedish at https://www.rodakorset.se/globalassets/rodakorset.se/dokument/om_oss/fakta_och_standpunkter/rapporter/humanitara_konsekvenser-av-den-tillfalliga-utlanningslagen-sammanfattning.pdf. An English-language version thereof is available online at https://www.rodakorset.se/globalassets/rodakorset.se/dokument/om_oss/fakta_och_standpunkter/rapporter/humanitarian-consequences-of-the-swedish-temporary-aliens-act-181206.pdf [both accessed 27 October 2019].

- **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**, the "Children's Pardon" was introduced in 2013 to provide a solution for children who had been staying in the Netherlands for at least five years without being granted a residence permit. Later, in July 2019, it was announced in the Netherlands that children for whom the juvenile judge has sanctioned a child protection measure can be granted a residence permit on humanitarian grounds.

Challenges in asylum/immigration determination procedures

- **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.
- **In all four countries**, accelerated procedures can leave children without adequate protections of their rights.
- Significant delays are endemic in the asylum and immigration processes **in all four countries**.
- Alternative regular migration status options for children have been severely reduced in both Sweden (following the introduction of the 2016 temporary legislation limiting the granting of residence permits on humanitarian grounds for children¹⁰⁶) and the Netherlands (since the Children's Pardon was ended, and the discretionary power of the State Secretary of Justice and Security transferred to the director of the IND).

5.2.7 Particular considerations for unaccompanied & separated children

"A child temporarily or permanently deprived of his or her family environment [...] shall be entitled to special protection and assistance provided by the State."

– Article 20 (1), CRC

Age assessments

Many children have to undergo medical age assessment procedures in the Netherlands and Sweden, despite the lack of scientific evidence of their accuracy. 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 best social work practice and ethics and utilising the knowledge of all agencies involved in the life of the child to inform the holistic assessment of a

¹⁰⁶ This temporary law being Lag (2016:752) om tillfälliga begränsningar av möjligheten att få uppehållstillstånd i Sverige (22 June 2016), which is available in Swedish online at https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2016752-om-tillfalliga-begransningar-av_sfs-2016-752 [accessed 28 October 2019].

young person's age".¹⁰⁷ This guidance sets out the views of The Royal College of Paediatrics and Child Health and the British Dental Association, who have advised their members that "x-rays, including dental x-rays, should not be used to assess a migrant child's age unless the x-ray has been taken for a therapeutic or medical reason".¹⁰⁸ Home Office policy is to give claimants the benefit of the doubt unless their physical appearance/demeanour very strongly suggest that they are over 18 years of age, and, following a court judgement, the Home Office updated its age assessment guidance accordingly to clarify that, besides there being no credible evidence to the contrary, their physical appearance and demeanour must very strongly suggest that claimants are 25 years of age or over for an age assessment to be conducted.¹⁰⁹ Local authorities may also choose to undertake an age assessment in order to determine the asylum claimant's eligibility for children's services.

In Germany, the Child and Youth Welfare Office is typically charged with the assessment of minority. If doubts persist following this initial evaluation, a medical assessment is pursued.

In Sweden, the Aliens Act was amended in 2017 with a requirement for the SMA to assess a person's age earlier in the asylum process. This assessment is performed using both medical and non-medical methods. The amended law states that a temporary age assessment should be carried out straight away in the initial phase of the asylum procedure, through interviews and a request for the applicant to submit identity documents. If the applicant cannot provide suitable evidence of their age, the SMA may offer them the opportunity to undergo a medical age assessment. This is conducted by the Swedish National Board of Forensic Medicine upon referral by the SMA and with the consent of the asylum applicant. The medical age assessment procedure has been heavily criticized by both scientists and the public, and has been suspended at times due to changing scientific data. Several stakeholders strongly believe that many children have been wrongly classified as adults, which in turn has had an impact on their rights and the outcome of their asylum claim.

In Germany, Sweden, and the Netherlands, the asylum seeker must consent to an age assessment. If they do not consent, they might be presumed an adult, which can leave them little choice but to comply, and thus the degree of such "voluntariness" is dubious. In Germany and the Netherlands, if doubt persists about someone's age following the assessment, they are presumed to be a child.

Good practices for the performance of age assessments

The UK does not utilize medical or dental assessments to determine age. Home Office policy is to give claimants the benefit of the doubt, unless their physical appearance/demeanour very strongly suggest that they are 25 years of age or over. Local authority guidelines on age assessment procedures in the UK give social workers the tools to

¹⁰⁷ Association of Directors of Children's Services (ADCS), Age Assessment Guidance: Guidance to assist social workers and their managers in undertaking age assessments in England (October 2015), p. 4. Available online at https://adcs.org.uk/assets/documentation/Age_Assessment_Guidance_2015_Final.pdf [accessed 22 October 2019].

¹⁰⁸ Ibid., p. 64.

¹⁰⁹ UK Home Office, Assessing age (Version 3.0: 23 May 2019). Available online at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/804760/Assessing-age-asylum-instruction-v3.0ext.pdf [accessed 22 October 2019].

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

"States should appoint a guardian or adviser as soon as the unaccompanied or separated child is identified."

– UNCRC General Comment No. 6, CRC/GC/2005/6 (2005), para. 33).

Guardians play a critical role in the protection of unaccompanied children's rights in Germany, the Netherlands, Sweden, and in Scotland and Northern Ireland in the UK. Guardians are fundamental to the protection of children who are temporarily or permanently deprived of their family, regardless of their nationality and migration status. The role of the guardian is to ensure that the child receives care, accommodation, education, healthcare, and other services that they require and to which they are entitled. The guardian accompanies the child during the various relevant procedures, augmenting the child's limited legal capacity and safeguarding the child's best interests. Guardians are involved in identifying any long-term durable solution for the child.¹¹⁰

"For children in Scotland, having guardians makes a transformative difference. The guardian is the go-between – the cog in the wheel that connects us all around the child. The guardian helps the child understand the difference between all the different adults they are surrounded by, and helps the child express their views."

– JustRight Scotland – NGO providing legal assistance

In the Netherlands, an independent (family) guardianship institution, Nidos, performs the guardianship task for unaccompanied children in accordance with Dutch law. The support is aimed at creating conditions for the reception, education, and development of the young person and their functioning in the Netherlands or the country of origin/return. Aside from their care for unaccompanied children, Nidos is responsible for the supervision of children for whom an application has been submitted for a (temporary) asylum residence permit, and who are therefore staying in a COA reception location with their families but are placed under supervision by the

¹¹⁰ UNICEF, Advocacy Brief, Refugee and Migrant Crisis in Europe: A call for effective guardianship for unaccompanied and separated children (August 2016). Available online at https://www.unicef.org/eca/sites/unicef.org.eca/files/REFUGEE_MIGRANT_CRISIS_ADVOCACY_guardianship_08_08_16.pdf [accessed 22 October 2019].

juvenile court.¹¹¹ Guardians are appointed until the child reaches the age of 18 years old or until return takes place if the guardianship can be transferred to an appropriate agent in the country of return. If guardianship cannot be transferred, the guardian (officially) keeps guardianship for 3 months while the child is in the country of return. However, in practice, it is not usually possible for Nidos to maintain contact with a child after they have returned.

In Sweden, the Chief Guardian of the municipality is responsible for appointing a legal guardian for an unaccompanied child as soon as possible following the child's arrival in Sweden or when the child first comes into contact with Swedish authorities. The guardian can be a non-specialist, but should, with the oversight of the Chief Guardian, be experienced and suited to working with children in vulnerable situations, must possess sufficient knowledge of children's needs and of Swedish society, and understand the asylum procedure. Their duties include making any legal decisions on behalf of the child; applying for a residence permit on behalf of the child; assisting in contact with the SMA, Social Services, the school, and health care authorities; applying for financial support; managing the child's financial assets; and providing other general support. The guardian is also expected to participate and support the child through the asylum procedure. The guardian's role continues following a negative decision on the asylum claim and ends once the child has returned to their country of origin or a third country or turns 18 years of age. During the return process, the guardian shall support the child with information and represent the child during contact with the SMA, including in return meetings. The guardian is responsible with the child for making necessary preparations to facilitate the return, such as helping the child to obtain identity documents and locate family members, and assisting the child's contact with family or relatives in the country of origin.

National legislations on guardians define the formal qualification requirements very broadly, leading to a wide variance in the quality of guardians' performances.¹¹²

In Sweden, interviewees noted that the absence of a cap on the number of children a single guardian may support has led some guardians to take responsibility for many more children than they can adequately look after, resulting in children being neglected and ill-informed. Several interviewees in Sweden related their concerns about the qualifications of some legal guardians and interpreters used by the SMA. It was noted that, particularly in Dublin transfers, a child without access to legal aid can be left vulnerable to the actions of a guardian who is not performing their role adequately.

In Germany, within a few days of the child's arrival, the Child and Youth Welfare Office must inform the family court that they need to appoint a legal guardian for the child. The family court must then initiate the necessary steps to appoint a guardian. Interviewees indicated that state-employed guardians are often overworked, caring for up to 50 children each. Many

¹¹¹ In accordance with Article 1:254 of the Civil Code of the Netherlands, a child can be placed under supervision by the juvenile court "if they are growing up in such a way that their moral or spiritual interests or their health are at serious risk, and other means to avert this risk have failed or are expected to fail." An unofficial English translation of the Dutch Civil Code, provided by Dutch Civil Law, is available online at <http://www.dutchcivillaw.com/civilcodegeneral.htm> (see <http://www.dutchcivillaw.com/legislation/dcctitle001414.htm> for Article 1:254) [both accessed 22 October 2019]. For an English translation of the Dutch Civil Code in book form, see Hans C. S. Warendorf, Richard Thomas, and Ian Curry-Sumner, *The Civil Code of the Netherlands*, Second Edition (The Hague: Wolters Kluwer, 2013). The original Civil Code (Burgerlijk Wetboek) in Dutch is available online at <http://www.wetboek-online.nl/site/home.html> [accessed 22 October 2019].

¹¹²

privately employed and volunteer guardians, conversely, care for one child. Training is generally available, but many guardians still remain overburdened, especially by the demand to adequate support in the asylum procedure. In worst-case scenarios, guardians can sometimes give priority to the perceived overall needs of their institutions/communities over the needs of individual children.

The UK government argues that since its child protection legislation covers UASC, there is no need for a guardianship scheme in England and Wales. However, in local authorities, specialist social work teams have been cut in order to reduce costs, and it is difficult for overstretched social workers to dedicate sufficient attention to the needs of UASC. The Refugee Council is funded by the Home Office to run the Children's Advice Project. They have a team of 25 advisors across the country to work with UASC, and every UASC in England and Wales is supposed to be referred to them. The Home Office does not have accurate data on the overall percentage of UASC supported by the Refugee Council. However, the Independent Chief Inspector of Borders and Immigration reported in 2013 that in only 39% of sampled cases were referrals made to this service.¹¹³ The advisor's involvement with UASC might be limited to a single phone call or finding them legal representation, or they might play a greater role. Under modern slavery legislation¹¹⁴, England and Wales have Independent Child Trafficking Advocates to provide specialist independent support for trafficked children. Northern Ireland and Scotland have a guardianship service for UASC¹¹⁵, operated by Barnardo's in Northern Ireland and the Scottish Refugee Council and Aberlour children's charity in Scotland.

Good practices – 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, named Nidos. A guardian is swiftly appointed for each child.

Challenges on guardianship

- **In the UK**, there is no guardianship scheme for unaccompanied children¹¹⁶ in England and Wales.
- **In Germany and Sweden**, guardians must often take responsibility for many more children

¹¹³ John Vine, Independent Chief Inspector of Borders and Immigration (ICIBI), An Inspection into the Handling of Asylum Applications Made by Unaccompanied Children, February – June 2013 (2013). Available online at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/546850/An-Inspection-into-the-Handling-of-Asylum-Applications-Made-by-Unaccompanied-Children-Oct_2013.pdf [accessed 22 October 2019].

¹¹⁴ Government of the United Kingdom, Modern Slavery Act 2015, Section 48. Available online at <http://www.legislation.gov.uk/ukpga/2015/30/section/48/enacted> [accessed 22 October 2019].

¹¹⁵ By way of Section 21 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015; and Section 11 of the Human Trafficking and Exploitation (Scotland) Act 2015. See, respectively, <http://www.legislation.gov.uk/nia/2015/2/contents> and <http://www.legislation.gov.uk/asp/2015/12/contents/enacted> [both accessed 22 October 2019].

¹¹⁶ Unless they have been identified as trafficked children.



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.

Care arrangements for unaccompanied and separated children

In all four countries, UASC, whilst they are undergoing the asylum process, are entitled to access to healthcare, education (although this may be harder to access for older teenagers in some settings), and child protection services. The authorities make arrangements for their accommodation. If their asylum or immigration application is rejected and they are undergoing the returns procedure, they are still eligible for all of these services until they reach 18 years of age.

In Sweden, the municipal authorities are responsible for arranging the placement of unaccompanied children in reception facilities. They are sometimes placed with foster families or with relatives. In reception facilities, a staff of 8 or 9 counsellors plus a director for each 10 to 15 children is the norm in Sweden.¹¹⁷ Both unaccompanied and accompanied children with return decisions are entitled to the same level of health care and access to education as other children in Sweden. They maintain their right to government-assisted accommodation and other benefits after a refusal decision has gained legal force.¹¹⁸ National law grants asylum-seeking children the same entitlement to health care as children native of the country.

In the Netherlands, an unaccompanied child is initially placed in a dedicated Process Reception Centre for unaccompanied children. Afterwards, they are moved to a dedicated housing facility

¹¹⁷ See UNICEF, 'Protected on Paper? An analysis of Nordic country responses to asylum-seeking children', p. 44.

¹¹⁸ *Ibid.*, p. 57.

for unaccompanied children. If they are younger than 15 years of age, they are placed in a foster family. UASC whose asylum application has been rejected have a right to reception in the Netherlands as long as they are children and their return has not yet been arranged. If return is possible and the child is not complying, they might be detained pending their removal.

In Germany, unaccompanied children are treated in the same way as German vulnerable children, in that they are accommodated and cared for under the superintendence of the Child and Youth Welfare Office.

In the UK, UASC are entitled to local authority support as a “looked-after child” under four distinct children’s social care legal frameworks in England, Northern Ireland, Scotland, and Wales. Local authorities are legally obliged to provide for UASC in the same way as for any other child in their care. However, the Home Office provides the funding for UASC, which does set them apart from other children in care, and local authorities complain about the shortfall in funding from the central government received for UASC.¹¹⁹ If boys are younger than 16 years of age, they are placed in a foster family. Boys who are 16 years of age and older are placed in children’s homes. Girls of up to 18 years of age are placed in foster families.

5.3 Return decisions

5.3.1 Child Notices on countries of origin

In 2015, UNICEF **The Netherlands** began to develop ‘Country of Origin Child Notices’ to meet the need for child-specific information in countries of origin or countries of return.¹²⁰ UNICEF Sweden and Belgium were also initially part of this project. The Child Notices contain child-specific information on countries of origin and identify child-specific grounds for persecution. The Child Notices are intended as a source of knowledge on the country of origin of a child, to be consulted prior to a decision being taken on the application for a residence permit. The Child Notice gives an overview of the most important findings of the research on circumstances in which children live – trends, significant events, the difficulties children face in the country, the political context, and the country’s political responsibility for children. To date, Child Notices have been developed for Afghanistan, Albania, Sudan, Somalia, Ethiopia, Morocco, and Guinea. They are publicly available and can be used by governments and professionals from all countries.

Country of Origin Information (COI) reports are developed by most destination countries and also by the European Asylum Support Office (EASO). However, **child-specific conditions in countries of return are not given sufficient consideration in any of the four countries**, especially when the family comes from a country that has been declared a “safe country of origin”. Little consideration is generally given to whether or not the country of origin is actually secure for specific vulnerable groups such as children.

¹¹⁹ See UK Parliament, ‘Funding of local authorities’ children’s services’ > ‘Other pressures’ (1 May 2019), at https://publications.parliament.uk/pa/cm201719/cmselect/cmcomloc/1638/163806.htm#_idTextAnchor018; and UK Home Office, Funding to Local Authorities, Financial Year 2019/20 – Home Office Funding: Unaccompanied Asylum-Seeking children (Version 1: Date of Issue 01 April 2019). Available online at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/806813/UASC_funding_instructions_to_local_authorities_2019_to_2020.pdf [both accessed 22 October 2019].

¹²⁰ UNICEF, Child Notice Afghanistan 2013 (January 2013), available online at <https://www.refworld.org/docid/5124c09e2.html> [accessed 22 October 2019]. Since this first Child Notice, UNICEF The Netherlands has written and revised several more.

In the UK, the Home Office publishes Country Policy and Information Notes (CPIN) to provide guidance to UKVI on decisions in asylum and human rights applications. The only child-specific guidance note produced by the Home Office is for unaccompanied asylum-seeking children in Afghanistan.¹²¹ Some lawyers also use UNICEF Child Notices when representing children and families.

5.3.2 Children with special needs

“States Parties recognize the right of the disabled child to special care.”

– Article 23 (2), CRC

In all four countries, lawyers referred to many cases with which they deal that centre on the issue of how children’s special needs would be attended to in countries of return after those children have been receiving assistance for such needs in the host state. Lawyers may also carry out their own specific research, e.g. by contacting a number of pharmacists in the proposed return area to enquire the supply and cost of certain drugs needed by the child, or consulting schools in the proposed return location to see if appropriate special educational needs provision is available.

“I represented a child who suffered from epilepsy, who has spent all his life in the UK, and is at risk of being accused of witchcraft in his country of origin because of his disability if returned. The Home Office refusal letter purports to deal with his best interests, noting that there is a problem because of superstitions in his country of origin about epilepsy sufferers, but it says that the child and his parents can move somewhere else within that country where there are less superstitions (without stating where that would be), that the child has spent the majority of his life in his country of origin (which is incorrect, as the child had never even been there), and that his parents can help him integrate.”

– UK lawyer

In the Netherlands, in cases of families with special medical needs, the DT&V ascertains whether those special needs can be fulfilled in the country of origin/return, and what measures should be in place to meet any needs. In such cases, the DT&V requires confirmation that the return country’s provisions are adequate before the return can be made. Special medical needs are checked by the Bureau Medische Advisering (BMA), which identifies appropriate facilities in the country of origin.

¹²¹ See UK Home Office, Country Policy and Information Note – Afghanistan: Unaccompanied children (Version 1.0: April 2018). Available online at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/697275/Afghanistan_-_Children_-_CPIN_-_v1.1_April_2018_.pdf [accessed 22 October 2019].

In Germany, the IOM has established mechanisms for assisting unaccompanied children, and some children with special needs, during departure from Germany and reception in the receiving country.

5.3.3 Children reaching 18 years of age

In all four countries, the research showed that young people reaching the age of 18 years who have not had their migration status resolved face high risks of destitution, exploitation, and disappearance. They tend to disengage from the authorities that were caring for them, as they fear detention and removal.

“He arrived in Sweden when he was only 13 years old. Although he received a negative decision last year, the SMA has still not done anything to trace his family. Instead, the reception officer told us at the last return meeting that they will wait another year and return him once he turns 18. I cannot even begin to tell you the negative impact this has on his well-being and daily life.”

– Swedish foster parent of a 17-year-old boy with a return decision

In Sweden, the research showed that little effort is made to try to establish whether or not adequate reception facilities in children’s countries of origin are available, or to offer support for overcoming other practical obstacles to the return process, and according to informants, there is a “non-formal” practice of waiting for children to turn 18 years old before making a return decision. Furthermore, the Law on the Reception of Asylum Seekers and Others (1994:137) was amended in 2016 such that adults – including those who have just turned 18 – lost their entitlement to a daily allowance and accommodation, as well as to subsidized health care and medication at the end of the period for their voluntary return following a refusal decision.

“If they are appeal rights exhausted and without recourse to public funds, young people are at risk of exploitation and involvement in criminality.”

– No Recourse to Public Funds Network, UK

In the UK, the No Recourse to Public Funds Network reported that local authorities have a duty to provide leaving care for young people, which ends when they reach 21 years of age. But they can withdraw this support earlier, if the young person is ‘appeal rights exhausted’ and if a human rights assessment has been carried out that shows that there are no human rights-related reasons why they cannot return. The Joint Council for the Welfare of Immigrants stated that, upon turning 18 years of age, young people will often be made homeless if they have exhausted their rights of appeal.

In Germany, interviewees reported that rather than face removal, many young people go to ground. This entails severe risks to their well-being by way of destitution and exposure to human traffickers and other criminal elements.

In the Netherlands, children turning 18 years of age are transferred to regular adult reception centres. Prior to this the COA, Nidos, and the Repatriation and Departure Service are in regular contact to attempt to discuss the child's future post-18 years old. Based on interviews with informants, it seems that it is not uncommon for unaccompanied children to be arrested and detained with a view to forced return shortly after or even just prior to their eighteenth birthday. The requirements for the return of unaccompanied children, such as the need for adequate reception, no longer exist as of the eighteenth birthday of an unaccompanied child, despite these (in a strict sense former) children not suddenly ceasing to be vulnerable at this age, or likewise immediately becoming independent. Some children are more at risk than others, among them Afghan boys aged around 18 to 19 years old, who may run a great risk of being recruited by the Taliban.¹²²

5.3.4 Best interests assessments/determinations

“The best interests of the child should be ensured explicitly through individual procedures as an integral part of any administrative or judicial decision concerning the [...] return of a child.”

- Joint General Comment No. 3... and No. 22 of the CRC on the general principles regarding the human rights of children in the context of international migration CMW/C/GC/3 CRC/C/GC/22 (2017), para. 30).

“Before deciding to issue a return decision in respect of an unaccompanied child, assistance by appropriate bodies other than the authorities enforcing return must be granted with due consideration being given to the best interests of the child.”

- 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 Art. 10 (1)).

BIAs are not conducted prior to a returns decision in any of the four countries for accompanied children. It is essential that children's best interests are determined before a return decision is taken. Any such determination must include an up-to-date assessment of the security situation in the country of return and any individualized risks that the child may face, but in practice these are lacking. If family reunification for an unaccompanied or separated child in the country of return is proposed, an assessment is required to ensure that this is in the child's best interests, as a means of guarding against any risks to the child, such as trafficking by family members.

According to the EU Return Directive, a return decision must have been taken before a rejected asylum seeker can be removed. One of the legal consequences of a return decision is the imposition of a term for voluntary departure on the third-country national. In principle, this term

¹²² See, for example, Marion Guillaume and Nassim Majidi (principal authors on behalf of the independent think-tank Samuel Hall), for Save the Children, From Europe to Afghanistan: Experiences of Child Returnees (Save the Children Sweden and Save the Children International, 2018), p. 34. Available online at https://resourcecentre.savethechildren.net/node/14238/pdf/sc-from_europe_to_afghanistan-screen_1610.pdf [accessed 22 October 2019].

is 28 days, starting from the date on which the decision is taken.¹²³ This applies to Germany, the Netherlands, and Sweden. The UK is not a signatory to the Return Directive, and so this does not apply to the UK situation. When a migrant receives a negative decision on against an asylum or visa application, or is identified as being illegally present in the UK, the Home Office will inform them by letter that they have no right to remain in the UK.¹²⁴

In Sweden, a BIA is conducted when the return decision is made for unaccompanied children.

“These [best interests assessments] are missing in the asylum procedure. They are missing prior to detention, and so are likewise not performed with a view to forced return.”

– Amnesty International, Netherlands

In the Netherlands, a decision to decline an asylum application also includes a return decision, declaring the stay of a third-country national to be illegal and imposing on them an obligation to leave the country.¹²⁵ A return decision can also be included in decisions on a further application for a residence permit or in court rulings. The DT&V relies on the BIA carried out by the IND, and does not perform any reassessment during return procedures. Interviewees confirmed that conditions for the return of children are seldom set in migration procedures.

If, following an individual assessment of the best interests of the child, a Member State decides not to remove an unaccompanied child and to grant them the right to stay as the adequate durable solution, such a decision must be framed in legal terms. This requires granting a residence permit or a right to stay in accordance with Article 6 (4) of the Return Directive.¹²⁶

Challenges when making return decisions for children

- 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 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.

¹²³ See, for example, Netherlands Aliens Act 2000 (Vreemdelingenwet 2000), Art. 62. Available in Dutch online at <https://wetten.overheid.nl/BWBR0011823/2019-02-27> [accessed 24 October 2019].

¹²⁴ The letter will include information outlining the basis for the decision; a statement that the recipient has an obligation to leave the UK; when relevant, an explanation of the recipient’s right to appeal the decision; conditions of continued residence including reporting requirements, the possible use of detention, and advice that removal will be enforced if they do not leave voluntarily; and contact details for the Home Office’s voluntary departures section.

¹²⁵ Netherlands Aliens Act 2000, Art. 45.

¹²⁶ European Union Agency for Fundamental Rights (FRA), ‘Returning unaccompanied children: fundamental rights considerations’ (2019), p. 20. Available online at https://fra.europa.eu/sites/default/files/fra_uploads/fra-2019-returning-unaccompanied-children_en.pdf [accessed 22 October 2019].

5.3.5 Unaccompanied children

“The ultimate aim in addressing the fate of unaccompanied or separated children is to identify a durable solution that addresses all their protection needs, takes into account the child’s view and, wherever possible, leads to overcoming the situation of a child being unaccompanied or separated.”

– UNCRC General Comment No. 6 (CRC/GC/2005/6) (2005), para. 79).

The EU Return Directive does not permit the removal of an unaccompanied child unless the Member State is satisfied that they will be returned “to a member of his or her family, a nominated guardian or adequate reception facilities in the State of return”¹²⁷ This requirement is embodied into domestic law in Sweden, the Netherlands, and Germany. The Netherlands and Sweden perform forced returns of unaccompanied children if the above criteria are met, while in practice, Germany (except in very rare cases) and the UK do not.

The EU Return Directive does not apply to the UK, but Statutory Guidance in the UK states that if the unaccompanied child does not qualify for refugee status or other forms of leave, the decision-maker “must consider whether there are safe, adequate and sustainable reception arrangements in the child’s home country.”¹²⁸ However, current Home Office practice is not to return unaccompanied children below 18 years of age, save for exceptional circumstances. Nevertheless, Home Office guidance¹²⁹ does set out the process for an unaccompanied child who is to return or be returned.

In Sweden, a BIA is conducted during the return decision, to consider the availability of an adequate reception (i.e. from a member of the child’s family, a nominated guardian, or adequate reception facilities) in the country of return. In Swedish law, a reception facility can constitute a social welfare authority, an orphanage, or another institution that is suitable for the reception and care of the child.¹³⁰

In the Netherlands, the DT&V carries out its own assessment on the adequacy of care available in the country of origin/return. There is a dedicated return division for this within the DT&V (staffed by specialist case managers). Once the DT&V decides whether or not adequate care is available, the country-specific asylum policy has to be changed accordingly to make the forced return of unaccompanied children possible or not possible. According to Dutch policy, adequate reception may include parents, family members up to the fourth degree, institutionalized

¹²⁷ 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, Article 10.

¹²⁸ UK Home Office, Children’s Asylum Claims (Version 3.0), p. 65.

¹²⁹ Ibid., pp. 74-78.

¹³⁰ Regeringens (Government) proposition 2011/12:60, ‘Genomförande av återvändandedirektivet’ (Stockholm: 26 January 2012). Available in Swedish at <https://data.riksdagen.se/fil/9DEA2E06-2895-4382-906D-2D14FC8DA5D3> [accessed 22 October 2019]. There are specific internal guidance documents available to the Migration authority on the availability of state protection and child institutions in certain countries. An overview of the general criteria that have to be fulfilled in order for an institution to be deemed suitable to care for a child is further explained in SR 24/2017, which links the child’s basic needs to the rights afforded to children under the CRC, e.g. Arts. 6, 19, 25, 27, 34, and 36.



care and – if facts and circumstances so indicate – another family member (beyond the fourth degree), or a non-family adult.¹³¹ If the country-specific asylum policy states that there is adequate care in the country of origin/return, the DT&V is not required to carry out an individual assessment of the reception facilities.

In Germany, the return of unaccompanied children is permitted in theory, but in practice this very rarely happens.¹³²

5.4 Return and reintegration planning

“If determined that it is in the best interests of the child to be returned, an individual plan should be prepared, together with the child where possible, for his or her sustainable reintegration.”

– Joint General Comment No. 3... and No. 22 of the CRC on the general principles regarding the human rights of children in the context of international migration, CMW/C/GC/3 CRC/C/GC/22 (2017) para. 32 (k)

¹³¹ Netherlands Aliens Circular 2000 (Vreemdelingencirculaire 2000) (B), B8/6.1. Available in Dutch online at <https://wetten.overheid.nl/BWBR0012289/2019-08-01> [accessed 22 October 2019].

¹³² In 2018, there was one removal of an unaccompanied child and 51 voluntary returns or departures of unaccompanied children from Germany. See also Bundesministerium des Innern, für Bau und Heimat (BMI) (Federal Ministry of the Interior, Building and Community), Kleine Anfrage der Abgeordneten Ulla Jelpke u.a. und der Fraktion DIE LINKE. Abschiebungen und Ausreisen im Jahr 2018. BT-Drucksache 19/7395 (Berlin: 22 February 2019), p. 26. Available in German online at https://www.ulla-jelpke.de/wp-content/uploads/2019/02/KA-19_7395-Abschiebungen-Ausreisen-2018.pdf [accessed 22 October 2019].

In all four countries, voluntary departure for persons who do not have a right to remain is usually the preferred option for governments, but all permit forced returns if the person does not comply. The actual “voluntariness” of returns is often questionable, since threats of forced return may leave children and families with little option but to comply.

It is critical that a child is able to give his or her own perspective during preparations for the return. In their 2018 report on Afghan returnees, Save the Children observes that the majority of those children who completed a questionnaire on their experiences of returning declared that they had no say in the decision to return, and it highlights the importance of families being kept informed throughout the return procedure.¹³³ It is important that children are informed about their departure date and time in advance, and that enough time is given to families and children to properly prepare for departure. Whenever appropriate, the child should be permitted to finish their school year.

The IOM is the largest global provider of Assisted Voluntary Return (AVR) and Assisted Voluntary Return and Reintegration (AVRR) programmes. Many IOM offices provide family assessments, family tracing, and facilitation of family reunification for unaccompanied and separated children, in cases of voluntary return. The IOM also provides reintegration assistance.¹³⁴

In Sweden, recent legislative and policy amendments, which include both incentives to leave (e.g. re-establishment and reintegration support) and disincentives to stay (by means of the withdrawal of benefits and services for adults with non-appealable refusal decisions), have been adopted to “encourage” voluntary returns. This is the case also **in Germany, the Netherlands, and the UK**.

In Sweden, the return process typically begins once the refusal decision has gained legal force and domestic remedies have been exhausted.¹³⁵ The decision will stipulate the time period within which a person must “voluntarily” leave Sweden without being subject to a re-entry ban. This is typically two to four weeks for adults, as well as families with children. By way of comparison, **in Germany**, people are usually given a one- to four-week window for voluntary departure. All experts interviewed **in Sweden** emphasized that these short durations do not provide enough time to come to terms with a return decision and undertake the necessary preparations for the return home. Although both the EU Return Directive and Sweden Aliens Act¹³⁶ allow for an extension of the time limit for voluntary departure – including permitting a child to complete the

¹³³ See Save the Children, *From Europe to Afghanistan: Experiences of Child Returnees*; for example, pp. 15 (the account of an Afghan boy whose father decided to return to their home country, against the boy’s wishes), and 34 (the need for information provision).

¹³⁴ See, for example, IOM, 2018 Return and Reintegration: Key Highlights (2019). Available online at https://publications.iom.int/system/files/pdf/avrr_2018_kh.pdf [accessed 22 October 2019].

¹³⁵ An applicant can also choose to accept the initial decision by the SMA and sign a declaration of satisfaction. Once signed, the refusal decision cannot be appealed, and the applicant is expected to plan their return home or to a third country.

¹³⁶ Regeringens Proposition 2016/17:61, ‘Uppföljning av återvändandedirektivet och direktivet om varaktigt bosatta tredjelandsmedborgares ställning’ (2016), p. 26. Available in Swedish at <https://www.regeringen.se/4aef0a/contentassets/b57606eec64a4bd-f865760713109ed8a/uppfoljning-av-atervandandedirektivet-och-direktivet-om-varaktigt-bosatta-tredjelandsmedborgares-stallning-prop.-20161761> [accessed 22 October 2019].

school year¹³⁷ – this is under-used. SMA officials acknowledge that the Agency has become stricter in its approval of extensions, as other considerations, such as the family absconding at the end of the extension, are also accounted for in its assessment. Some experts are therefore of the opinion that return counselling should start earlier in the asylum process, to provide more time for the family to adjust to the decision and prepare for the return. Interviewees reported that whereas the SMA previously had a clear strategic direction to give priority to and advance child-related policy/issues, political developments in Sweden¹³⁸ have led to a reduced focus on children in the migration process. There are no guidance documents about children in the return process.

5.4.1 Accompanied children – return counselling

In all four countries, children in families (accompanied children) 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 participate in returns meetings and counselling (although **in the UK**, the government guidance recommends that children are actively encouraged to attend the “Family Departure Meeting”).

In all four countries, the authorities regard it as a parent’s responsibility to inform an accompanied child of, and prepare them for, the return. However, in an effort to protect their children or due to lack of adequate support and information, parents do not always inform their children of a refusal decision or an impending return. This is aggravated by the short limits required for voluntary return, which do not allow sufficient time for the parents to come to terms with the decision and undertake the necessary preparations for return, such as acquiring school or medical records.

In Sweden, the SMA supports the return of families through return meetings. These meetings provide information concerning travel requirements and the possibility to apply for re-establishment and/or reintegration support. A return meeting is organized with an SMA reception officer soon after the refusal decision has gained legal force. Children will only attend the return meeting if so wished by their parents. The SMA officer is required to inform parents of their responsibility to discuss the return with their children, but it is unclear whether this is routinely done in practice.¹³⁹

“It should be possible for professionals to talk to the children before removal, so that it is not left to chance how the parents will handle the situation.”

– NGO counsellor in Germany

¹³⁷ See Swedish Migration Agency (Migrationsverket), SR 11/2017, *Rättsligt ställningstagande angående förutsättningarna för förlängning av frivillig avresa* (3 April 2017). Available in Swedish at <https://lifos.migrationsverket.se/dokument?documentSummaryId=39244> [accessed 22 October 2019]. In order for an extension to be considered for allowing a child to complete the school year, the returnee (or the parents) must show that they are actively working to obtain travel documents. SMA officials are also instructed to ascertain the child’s age and whether an extension may enable the child to receive a diploma for the completion of studies.

¹³⁸ The specific child units within the SMA have been disbanded, and the Child Co-ordinator position at HQ level has been discontinued.

¹³⁹ According to an email from an SMA expert dated 14 May 2019. A research article (Karl Sallin, et al., ‘Resignation Syndrome: Catastonia? Culture-Bound?’, *Frontiers in Behavioral Neuroscience*, vol. 10, 29 January 2016) has noted that there are cases of children in Sweden who experience ‘resignation syndrome’ due to the stress and anxiety and that the syndrome is linked to circumstances in their return decision. The article is available online at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4731541/> [accessed 22 October 2019].

In Germany, information about return counselling and other aspects of voluntary return and departure is provided early in the process, principally by welfare organizations and NGOs. Children are rarely heard individually during this counselling. In 2015, the BAMF published non-binding Guidelines for Nationwide Return Counselling. Interviewees reported a good standard of returns counselling. At the state and regional levels, smaller organizations often play a proactive role in promoting best practices, either informally through networking activities or by offering training. Whereas official policy is to maintain strict return deadlines, a few immigration authorities tend to be flexible once a family has taken steps toward a voluntary departure. Child-specific factors can also influence the duration of return counselling. For instance, children sometimes require multiple health checks and medical procedures (e.g. vaccinations), while those enrolled in school may wish to finish the school year or join an end-of-year trip before leaving. It is among the responsibilities of the return counsellor to advocate for extensions in such cases, while the immigration authority makes the decision.

In the Netherlands, within seven days of a first negative decision, the IND transfers the case to the DT&V, who start the preparations for return. The DT&V has around 100 case managers, who are normally situated at the asylum centres located in different regions of the Netherlands. The preparations for return start almost immediately after the first decision has been taken, at which time the asylum seeker may still be in the appeal phase. The DT&V invites the asylum seeker to return meetings, which are meant to facilitate returns, identify possible barriers for departure, verify the person's identity, assess what kind of (travel) documentation is needed, determine what is required in the country of return, develop a return strategy (Return Plan), and generally aid the asylum seeker with their return or persuade them to leave the Netherlands. On average, the DT&V holds one return meeting per month with a person who is to return. The return meetings are held for the parents. It is standard procedure that children are not present during these meetings and they are not specifically invited for discussions or otherwise consulted. However, children are sometimes present because there is nobody available to care for them, or they attend at their own request or at the request of their parents. Their care and support prior to and during forced return is considered to be the responsibility of the parents.

The UK has a family returns process¹⁴⁰ for families with children. Families enter this process if all in country appeal rights have been exhausted and the family has no legal right to remain in the UK, and any outstanding documentation or other barriers can be resolved in parallel with the returns process, or if a family has indicated that they wish to leave the UK voluntarily. Initially, the Home Office invites the family to a Family Removals Conference with a minimum of 7 days' notice, at which the Family Engagement Manager (FEM) discusses with the family steps they are making to depart the UK, and what departure options and support are available to them. It is up to parents to decide whether or not their children attend this conference. The Home Office also serves the family with a 'notification of intention' letter which informs them that, if they intend to apply for judicial review, they must do so within five days of receipt of the letter. After the Family Removals Conference, the family is required to attend a Family Departure Meeting after a minimum of seven days to discuss what they may have decided, and at which the FEM asks whether or not the family wish to depart voluntarily. If so, the Home Office can

¹⁴⁰ UK Home Office, Removals, enforcement and detention General Instructions: Family returns process (FRP) (Version 5.0), Guidance and operational process for removing families with children under 18 years who no longer have any right to remain in the UK and are liable to be removed (7 January 2019). Available online at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/773852/Family-returns-process-v5.0.pdf [accessed 23 October 2019].

provide support through an assisted voluntary return, or will check for evidence that the family have made their own return arrangements. The guidance recommends that children are actively encouraged to attend this meeting.

5.4.2 Unaccompanied children – returns counselling, and planning for family tracing and reunification or for adequate reception facilities

Returns counselling is arranged for unaccompanied children in the Netherlands. In Sweden, returns counselling is available to some unaccompanied children through the special project initiated by Strömsund municipality. This however is not a practice that is available throughout the country, nor is it stated in law or formal guidelines for the SMA or other relevant staff. In the UK, the focus of counselling is on the alternative options for the child, including return when they reach adulthood.

In Germany and Sweden, it is the responsibility of the guardian to accompany an unaccompanied child to the returns meetings/returns counselling. **In Sweden**, it is not uncommon for staff at the reception centre or foster parents to accompany the child as well. **In the Netherlands**, guardians are permitted but not obliged to be present during returns meetings. In all four countries, lawyers are generally absent from these meetings, as state-funded legal aid is not available.

In Sweden, the SMA is responsible for facilitating all voluntary returns and for ensuring that adequate reception conditions are in place before an unaccompanied child is returned. It was reported in several interviews that the SMA lacks the capacity to effectively administer returns, including by supporting children with sufficient information, counselling, and other preparations for return. Most of the interviewees (guardians, reception staff/foster parents, legal practitioners, and NGO representatives) believe that the return meeting with the SMA does not amount to a return counselling meeting. They see it rather as an information session on stakeholders' obligations to facilitate the child's return and of available options for reintegration assistance.¹⁴¹ Previously, several return meetings were taking place to support and prepare children for return, but now there is only one meeting with the child about what needs to be done to ease the return, and the manner in which this knowledge is communicated resembles the reading of a check-list. SMA officials do not have any child-specific training, and they do not provide information in a child-sensitive manner.

After a return decision has been made, for unaccompanied children the stated time period within which they must leave "voluntarily" will be longer (typically five months) than for adults or families, in order to ensure an adequate reception in the country of return. There are possibilities to extend the period for voluntary return for reasons such as allowing a child to complete the school year or to investigate other family and social links.¹⁴²

¹⁴¹ The SMA's internal guidelines for the return meeting (Samtalsguide för ÅV-samtal med barn utan vårdnadshavare efter laga kraft (25 April 2016)) state that the purpose of the meeting is to ensure that the child and guardian understand the consequences of the return decision gaining legal force and the alternatives; to follow up on the child's feelings about voluntary return; to pursue the child and guardian's efforts to obtain identification documents; and to appreciate the views of the child, guardian, and family on voluntary return. For youths who will soon turn 18 years of age, it is also noted that the return meeting shall ensure that they understand when the right to financial assistance ends.

¹⁴² See Migrationsverket, SR 11/2017, *Rättsligt ställningstagande angående förutsättningarna för förlängning av tidsfrist för frivillig avresa*.

None of the interviewees reported any situation in which the SMA contacted local authorities in advance of the return. A stakeholder from a leading child rights agency felt that approaches to cross sectoral co ordination to support children in the return process were significantly better before 2015, when clearly articulated roles and responsibilities ensured predictability and facilitated the child's sense of safety. Presently, the Police Authority, Social Services, and schools lack effective co-operation. Instead of providing complete and consistent information to children, authorities seemingly speak only through their respective mandates. Children find this confusing, leaving them to search for their own information with varying degrees of success.

"It is the municipalities' responsibility to solve the puzzle for the children – not for the children to find the puzzle pieces and try to make sense of it all..."

– Representative from Strömsundmunicipality, Sweden

Good practice: returns counselling and preparations

The municipality of Strömsund in Sweden has taken a cross-sectoral approach to working on preparations for returns at an early stage in the asylum process, principally with unaccompanied children but also with families. As a model of good practice, the municipality of Strömsund often informs the child of the refusal decision (together with the guardian) before the child is officially notified by the SMA. This ensures that the child is informed of the decision in an environment where they feel safe. The Social Services thereafter call for a joint meeting with the child and all relevant actors (including the guardian and the school representatives) to establish a common understanding of the child's needs and their required support. Municipality representatives highlight the importance of having established routines in place within the municipality, as the time limits are often short between an enforceable return decision and its execution.

In Sweden, Germany, and the Netherlands, the legal guardian and the child have a responsibility to provide contact information for parents and to acquire the necessary identity documents. Researching whether reunification is possible and in the child's best interests and, if so, attempting to find the family, re-establish contact, and arrange reunification is a State obligation.¹⁴³ It is important to carefully assess the possible dangers for those involved in the tracing, for the concerned children, and for their families; and the process has to account for the possibility that results may be inaccurate as families may have reasons for not wanting to be identified, such as distrust towards government authorities, personal debts, a criminal record, or not wishing to be associated with government officials in front of their neighbours.¹⁴⁴

¹⁴³ CRC, Articles 9, 10, and 22; and CRC/GC/2005/6, para. 80.

¹⁴⁴ UNICEF (principal author Jan Murk), 'Children's rights in return policy and practice in Europe: A discussion paper on the return of unaccompanied and separated children to institutional reception or family' (2015). Available online at https://www.unicef.nl/media/2895738/childrens_rights_in_return_policy_in_europe.pdf



The UN Guidelines for the Alternative Care of Children underline that, “[a]s soon as an unaccompanied child is taken into care, all reasonable efforts should be made to trace [their] family and to re-establish family ties. when this is in the best interests of the child and would not endanger those involved”.¹⁴⁵ For example, in potential return countries with complex security situations such as Afghanistan it is difficult for governmental or other structures to ensure confidentiality and data protection in the process of family tracing, resulting in potential risks. The Separated Children in Europe Programme (SCEP) ‘Statement of Good Practice’ states that “tracing [...] should only be done where it will not endanger the child or members of the child’s family in the country of origin” and that “[t]racing should be undertaken only on a confidential basis”, while “[s]eparated children need to be properly informed and consulted about the process and their views taken into account”.¹⁴⁶

In the Netherlands, the DT&V has a dedicated team of 10–12 members dealing with return cases of unaccompanied children. The UNHCR has emphasized the need for child-specific communication training for organizations and government departments who work with unaccompanied children in the Netherlands.¹⁴⁷ In cases where family tracing is required, the unaccompanied child, together with Nidos, will contact the IOM (or alternatively the Red Cross). In cases of voluntary returns, the DT&V provides advice but the child and Nidos take the lead. The guardian will also organize the transfer of the child to the family. To smooth the possible return of an unaccompanied child, Nidos tries to contact family members of the unaccompanied child upon their arrival in the Netherlands. They attempt to secure a so-called Double Commitment – a commitment to return from both the unaccompanied child and the (extended) family member(s) in the country of origin.

¹⁴⁵ 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), para. 146.

¹⁴⁶ Save the Children and UNHCR, Separated Children in Europe Programme: Statement of Good Practice (Third Edition, 2004), p. 15. Available online at <https://www.unhcr.org/4d9474399.pdf> [accessed 23 October 2019].

¹⁴⁷ See UNHCR, *In de Eerste Plaats een Kind. Bevindingen, aanbevelingen en oplossingen in het belang van alleenstaande minderjarige vreemdelingen in Nederland*.

If there is no family available, or if the family cannot offer sufficient safety, Nidos seeks collaboration with organizations in the country of origin in order to search for alternative care, and to organize a possible guardian transfer and monitoring. Nidos co-operates with partners, such as the DT&V and IOM, to support returns. In cases where the child and Nidos are not co-operating, the DT&V will seek alternative “adequate care”, including family in the fourth degree. With the assistance of partner organizations (including the Ministry of Foreign Affairs and local NGOs), the DT&V will try to trace the family and contact them. No formal family assessment is conducted. If this is not possible, the DT&V’s special return division visits the potential country of return and assesses care facilities and contacts the local childcare authorities to make arrangements for the reception of the child. If the country-specific asylum policy states that there is adequate care in the country of origin/return, the DT&V is not required to carry out an individual assessment of the reception facilities, which raises concerns. For this reason, among others, there is some concern about the definition of ‘adequate reception’ in the Netherlands.¹⁴⁸ The Dutch government has also financed reception houses (also referred to as orphanages) for unaccompanied children in Angola, the Democratic Republic of Congo (DRC), and Sierra Leone, so that the government may still remove unaccompanied children to these countries.¹⁴⁹ The government examined this possibility for Afghanistan as well, but this project has so far been unsuccessful because the Afghan government were uncooperative.¹⁵⁰ As the Council of Europe Commissioner for Human Rights, Nils Muižnieks, has stated, “the – so far limited – experience of sending children to return houses in war-torn countries has also shown that such procedures place children at a very high risk of trafficking for sexual or military purposes and in general at a risk of persecution in the return country. Most of the children have disappeared a few days after return.”¹⁵¹ The Dutch government holds that a reception facility is ‘adequate’ if it meets local standards in the country of origin.¹⁵² The Committee on the Rights of the Child has expressed its concerns about possible returns of vulnerable children to these orphanages.¹⁵³ The DT&V states that most unaccompanied children are returned to their families, rather than to a care facility. Interviewees reported that the DT&V does not always prepare individualized return plans, but that generic, standardized return plans instead tend to be used.

In the Netherlands and Germany, when the IOM is involved (only in cases of voluntary return), they carry out a family assessment to ensure a that caregiver will be able to look after the child upon their return. The family assessment focuses on confirming that the income of the family is sufficient to support the child, and seeking the agreement of the family to accept the return of the child. They also ensure that the living conditions are adequate for return. There is, however,

¹⁴⁸ Netherlands’ Ombudsman for Children (De Kinderombudsman), ‘Advies herijking AMV beleid’ [‘Advice for Review of AMV [alleenstaande minderjarige vreemdelingen – unaccompanied minor aliens] Policy’] (July 2012), p. 3. Available in Dutch online at <https://www.dekinderombudsman.nl/ul/cms/fck-uploaded/2012KOM6A%20herijkingvanhetamvbeleid.pdf> [accessed 23 October 2019].

¹⁴⁹ Defence for Children - ECPAT The Netherlands and UNICEF The Netherlands, ‘Position paper on the return of separated children to reception houses in countries of origin’ (22 April 2010), p. 2. Available online at http://lastradainternational.org/lisidocs/DCI_Separated_children.pdf [accessed 23 October 2019].

¹⁵⁰ UNICEF, ‘Children’s rights in return policy and practice in Europe: a discussion paper on the return of unaccompanied and separated children to institutional reception or family’ (2015), pp. 28-29.

¹⁵¹ Nils Muižnieks, Council of Europe Commissioner for Human Rights, ‘Human Rights Comment: Decisions concerning migrant children should always be based on their best interests’ (19 September 2013). Available online at https://www.coe.int/sl/web/commissioner/blog/-/asset_publisher/xZ32OPEoxOkq/content/decisions-concerning-migrant-children-must-always-be-based-on-their-best-teres-1?_101_INSTANCE_xZ32OPEoxOkq_languageId=en_GB [accessed 23 October 2019].

¹⁵² Netherlands Aliens Circular 2000 (B), B8/6.1. See also: State Council Administrative Law Division (the Netherlands) (Afdeling bestuursrechtspraak van de Raad van State, ABRvS), European Case Law Identifier ECLI:NL:RVS:2012:BW0003, 19 maart [March] 2012, para. 2.2.1 (published 27 March 2012). Available in Dutch online at <https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RVS:2012:BW0003> [accessed 23 October 2019].

¹⁵³ UNCRRC, Concluding Observations on the fourth periodic report of the Netherlands, p. 12.

no assessment of child welfare or of the safety of the family environment. On the basis of the family assessment, the guardian decides if family reunification can take place. The IOM carries out an identity check on the individual nominated to assume custody for the child in the country of return, and organizes the handover of documents.

In the UK, since UASC are not currently subject to forced returns in practice, the focus is on planning for return once they reach adulthood. Local authority children's social care services are responsible for planning for different eventualities, including preparing young people for return. Pathway planning is supposed to take a dual or triple planning perspective, to be refined accordingly as the young person's immigration status is resolved¹⁵⁴. Planning may be based on: 1) a transitional plan covering the period of uncertainty when the young person is in the UK without permanent immigration status; 2) a longer-term plan for when/if the young person is granted long-term permission to stay; 3) planning for return to the country of origin at any appropriate point or at the end of the immigration consideration process, should that be necessary because the young person decides to leave the UK or is required to do so.

There have been a few voluntary returns of unaccompanied children from the UK, but these are very rare, and would require the consent of the child and their social worker. The Home Office reports that children are invited to attend the meetings related to returnee support.

5.4.3 Child-friendly information on returns and reintegration

"[In the context of international migration] children should be provided with all relevant information, inter alia, on their rights, the services available, means of communication, complaints mechanisms, the immigration and asylum processes and their outcomes."

– Joint General Comment No. 3... and No. 22 of the CRC on the general principles regarding the human rights of children in the context of international migration, CMW/C/GC/3 CRC/C/GC/22 (2017), para. 35).

Children awaiting a return, whether voluntary or forced, have a right to – and generally have a keen interest in receiving – dependable information. Such information comprehends knowledge on, for example, the transfer of schooling or vocational training, medical care, provision of accommodation, making contact with family members, and what can be expected upon return to their country of origin or a third country. Providing guidance on these matters can assist the child to make well informed choices, and might prevent problems upon return.

In all four countries, there are significant deficiencies in the authorities' provision of child-friendly materials on returns and reintegration. The IOM in the Netherlands noted that there is a serious undersupply of child-friendly information on returns that could facilitate discussions between parents and children. There are no existing guidelines for IOM counsellors to discuss returns with children.

¹⁵⁴ Care of unaccompanied and trafficked children: Statutory guidance for local authorities on the care of unaccompanied asylum seeking and trafficked children' (July 2014) (see <https://www.refworld.org/pdfid/565731844.pdf>),

In the Netherlands, the DT&V state that they continuously inform unaccompanied children of the particulars of the return process and repeat this information to confirm that it has been retained and comprehended by the child. There are also available leaflets specifically tailored to unaccompanied children. Nidos, the Dutch Refugee Council, the COA, and lawyers also provide information. The DT&V, however, notes that this can result in children receiving contradictory information, as lawyers will use all legal means to ensure that a child has the right to stay, while others will inform the child that their return is inevitable.¹⁵⁵

In Germany, some NGOs and welfare organizations have produced child-appropriate informational material on return counselling, but no central authority oversees the distribution and use of this material. Discussions on creating child-appropriate informational material are currently ongoing within professional working groups and the BAMF.

In the UK, there is a 'Returning Home' booklet (age-appropriate and suitable for parents), which was drafted by staff at the Office of the Children's Champion (in the Home Office). These booklets are available to all Family Engagement Managers, and the Independent Family Returns Panel expects parents to be provided with copies to assist them and their children.

Good practices for returns planning and preparations for children

- **In the Netherlands**, there is a dedicated agency within the Ministry of Justice & Security (Ministerie van Justitie en Veiligheid) that works on the return of rejected asylum seekers and migrants, children included. This agency, the DT&V, has a specialized team responsible for assisting the children following a negative decision, until their return. The DT&V always develops a return plan or strategy.
- **In Sweden**, there are positive examples of local-level interest and a commitment to supporting unaccompanied and separated children, through cross-sectoral co operation and support with preparing the child to return to their country of origin. This is particularly evident in the municipality of Strömsund, which is also supporting 16 other municipalities across Sweden to increase its capability in this regard.
- **In the UK**, as part of its safeguarding strategy for UASC, the Department for Education (DfE) in England has commissioned the No Recourse to Public Funds Network to develop good practice resources on 'triple planning' for social workers – that is, a plan that prepares for the young person's stay in the country while there is uncertainty at the permanence of their residence status; for their potentially long-term stay in the country; and for their possible return.
- **In Germany**, in 2015, the BAMF published non-binding Guidelines for Nationwide Return Counselling.

¹⁵⁵ The Dutch NGO Solid Road gave an example of children being given opposing indications from their parents and schoolteachers. The teachers started a campaign to try to have the family remain in the Netherlands, and told the children that if they tried their best at school, they might be allowed to stay. But there was no prospect of this family staying in the Netherlands, and the parents were in fact already preparing for voluntary return. The Child Care and Protection Board state that much progress could be made with respect to co-ordination.

Challenges to effective returns planning and preparations for children

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

Country-specific challenges to effective returns planning and preparations for children

- **In Sweden**, the authorities are inclined to put off their consideration of whether tracing unaccompanied children's families is in the child's best interests, preferring instead to wait for the child to turn 18 years of age, at which point the authorities no longer have this duty.
- **In the UK**, the authorities tend not to trace families of unaccompanied children, preferring instead to wait for the child to reach 18 years of age.
- **In Germany**, there are concerns that adequate care is not always taken to ensure that family tracing is only conducted when it is in the best interests of the child and when it will not endanger the child and the family members involved.
- **In Sweden**, the return meeting with the SMA, instead of concentrating on return counselling, has become rather an information session on stakeholders' obligations to facilitate the child's return and of available options for reintegration assistance.
- **In the Netherlands**, guardians are permitted but not obliged to be present during returns meetings.
- **In the Netherlands**, the DT&V does not always prepare individualized return plans, with standardized return plans instead tending to be used.
- **In the Netherlands**, the government hold 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.
- **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.



5.5 Circumstances in which returns may not be viable

“Afghan boys panic, truly panic. They are afraid to return to a country that is not safe for them. Often these boys have been recruited by the Taliban. Or there is a trauma underneath their panic that they have not shared yet. [...] Sometimes I feel the reaction of panic does not just reflect the general lack of safety in Afghanistan. [...] We have several boys, around eight to ten boys, who eventually shared LGBT-related issues and accounts of sexual violence by the Taliban.”

– Dutch Council for Refugees

The fear of returning to the country of origin can result from safety concerns that may not have been properly dealt with during the asylum application. For unaccompanied children, the fear of returning after having failed to complete the purpose for which they left home, such as providing for their family, also plays a role. Unaccompanied children fear violence towards themselves or family members when they need to repay money for their journey. General insecurity about what will happen to them upon return can instil fear in children.

In Sweden, the Aliens Act declares that both practical and temporary obstacles to return shall be considered in the initial assessment of an asylum claim. If it is not deemed possible to carry out the return decision due to practical obstacles, such as the absence of an adequate reception at the return location, this may constitute grounds to issue a temporary or permanent residence permit. However, several interviewees observed that such obstacles are not sufficiently

addressed in the initial decision, but instead “pushed forward” to the return proceedings. The SMA’s work to ensure adequate reception begins only after the refusal decision has gained legal force. The child and legal guardian have a duty to co-operate in this process by providing identity documents and the names of and contact information for parents and family members in the country of return.¹⁵⁶

Despite some children desiring to return to their countries of origin, their parents often did not wish to be traced, or, when found, did not want to consent to the return of their child. Consequently, unaccompanied children in these cases could not be returned even when willing. In practice, this has resulted in some unaccompanied children finding themselves in a legal limbo of being denied a status, but unable to return. Stakeholders point to several negative effects, including stress, frustration, depression, and self-destructive behaviour.

In the Netherlands, Nidos encountered only one case in which a “no-fault permit” was granted during the past five years, despite it often being clear that a child is unable to return.

Governments may be unable to return children and families due to their home countries refusing to receive returnees, particularly forced returnees, or because embassies fail to provide the necessary travel documents. For example, in order to return an individual or family from the UK, the Home Office will usually have to approach the embassy in the country of origin and ask for an emergency travel document to enable the person(s) to travel. The Home Office publishes a list of travel documentation requirements in a regularly updated country returns guide.¹⁵⁷ Many countries will require documentary evidence of the person’s identity to establish that the returnee is one of their nationals. Numerous asylum seekers will have arrived in the UK with no, or false, documentation. Others may not wish to provide the Home Office with documentation if it enables their return. Some of the children involved in family returns may be British-born, and so have no identity links to the country of destination.

In the UK, the Independent Family Returns Panel (IFRP) in its 2016–18 report¹⁵⁸ lists additional barriers which tend to prevent returns from the UK, and highlights its concerns about families who abscond, and how this may affect their children’s welfare. However, at the pre-arrest stage, the highest number of cancellations are due to new asylum claims being made, and at the post-arrest stage, are due to judicial reviews/injunctions. The IFRP appears to regard these legal challenges as deliberate obstruction, referring to “the use of last-minute legal procedures to frustrate return.”¹⁵⁹ Lawyers and NGOs identified a lack of legal aid for immigration cases earlier in the process as the main reason for last minute legal applications being made. It can be easier to get Exceptional Case Funding for legal aid at the point of removal. Once in detention,

¹⁵⁶ A ruling by the Migration Court of Appeal (Migrationsdomstolen), MIG 2015:23, Case number UM623-15, 17 December 2015, states that unaccompanied and separated children shall – based on their age and maturity – co-operate in the assessment of reception in the country of origin. The full ruling is available in Swedish at <https://lagen.nu/dom/mig/2015:23> [accessed 23 October 2019].

¹⁵⁷ UK Home Office, Country returns guide (last updated at the time of writing 3 October 2019). Available online at <https://www.gov.uk/government/publications/country-returns-guide#history> [accessed 23 October 2019].

¹⁵⁸ Government of the United Kingdom, Independent Family Returns Panel, Report 2016-2018 (18 December 2018). Available online at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/765573/Independent_Family_Returns_Panel_Report_2016-18.pdf [accessed 23 October 2019].

¹⁵⁹ Government of the United Kingdom, Independent Family Returns Panel, Annual Report 2012-2014, para 1.10. Available online at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/583769/Independent_Family_Returns_report_2012_to_2014.pdf [accessed 23 October 2019].

the person gains access to lawyers, whom they might well instruct to review the case to seek applications or legal arguments that ought to have been presented earlier in the process. Many people are unable to afford the very high fees required to make initial immigration applications for themselves and their children.¹⁶⁰

5.6 Maintaining family unity

“States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities [...] determine [...] that such separation is necessary for the best interests of the child.”

– Article 9 (1), CRC

In Germany, cases are reported in which families facing removal were separated, the fathers placed in detention and the mothers and children in other accommodations. Experts furthermore report cases in which fathers were removed whilst their families remained in Germany. This is despite numerous provisions in German law supporting family unity.

“It is difficult to imagine any other setting in which children in the UK could be left indefinitely without their primary carer, without proper enquiry as to the impact of that decision and/or the proportionality of it. Detailed processes are followed when children are taken into care because of parental abuse or neglect. And yet people with insecure immigration status who are caring and capable parents can be held in immigration detention without time limit. The decision to detain them is not made by a court but by an immigration officer.”

– UK NGO, Bail for Immigration Detainees

In the UK, there appear to be no official statistics on the number of families separated through detention. This lack of data prevents independent scrutiny of the Home Office’s compliance with its own statutory duty. In 2013–14, the NGO Bail for Immigration Detainees (BID) carried out a monitoring exercise with families separated by immigration detention.¹⁶¹ Eleven out of 47 parents, who between them cared for a total of 101 children (19 of whom were British-

¹⁶⁰ For example, to make an application to remain on the basis of the child’s having residence of at least 7 years in the UK (under paragraph 276ADE(1)(iv) of the UK Immigration Rules (the current Rules were published 25 February 2016, and were last updated at the time of writing on 7 October 2019); see <https://www.gov.uk/guidance/immigration-rules/immigration-rules-part-7-other-categories#pt7longresidence> [accessed 23 October 2019]), the cost is £1,033 per person, including children, plus a £1,000 NHS surcharge per person. There is a fee waiver process, but only if the person is destitute (which is estimated using the same threshold for destitution as used for assessing asylum support).

¹⁶¹ For the full details of this research, including its methodology, see Bail for Immigration Detainees (BID), Justice Select Committee Inquiry: Impact of changes to civil legal aid under the Legal Aid, Sentencing and Punishment of Offenders Act 2012. Written evidence submitted by Bail for Immigration Detainees, 30th April 2013. Available online at https://hubble-live-assets.s3.amazonaws.com/biduk/redactor2_assets/files/344/April_2014_Justice_Ctte_Inquiry.pdf [accessed 23 October 2019].



born), were removed or deported without their children. In 46 of those cases, the parents were detained for an average of 286 days before being returned. BID recorded 170 children being separated from their parents in 2017–18, and some children had been taken into care following the detention of a parent.¹⁶² Yet, Home Office policy requires any family separations in this context to be necessary and proportionate, and does not permit separation of a child from a parent if the consequence is that the child would be placed in local authority care.¹⁶³ This demonstrates a gap between policy and practice on this issue.

Complications often arise when a parent has committed a criminal offence and is therefore classified as a Foreign National Offender. **In the UK**, the Borders Act 2007 provides for the automatic deportation of any foreign national who is sentenced to a period of 12 months' or more imprisonment. This affects many people who arrived in the UK as young children and may not even have been aware that they are not British. Cases of intended separation are supposed to be referred to the Office of the Children's Champion (OCC), but recent research by BID showed that this was not always the case.¹⁶⁴

¹⁶² See May Bulman, 'Home Office separating scores of children from parents as part of immigration detention regime', *The Independent*, 4 July 2018.

¹⁶³ UK Home Office, Immigration Returns, Enforcement and Detention General Instructions: Family separations (Version 4.0), Guidance and the operational process for the separation of family members who no longer have any right to remain in the UK and are liable to be removed (11 December 2017). Available online at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/666491/family_separations.pdf [accessed 23 October 2019].

¹⁶⁴ Bail for Immigration Detainees conducted a recent analysis of 28 cases where applications were made to the Home Office for their client to be released on bail. For each of these applications, BID requested full disclosure of any correspondence with the OCC or with local authority children's services, citing evidence of the Home Office's failure to show that it had complied with its child safeguarding duty or its own policies to consider the best interests of the child in any decision to detain or maintain detention up to that point. None of the responses to these bail applications displayed evidence that the OCC had been contacted, and in only one case was there evidence that a local authority been contacted.

Challenges to maintaining the integrity of 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.

5.7 Detention and alternatives to detention

“States Parties shall ensure that [...] No child shall be deprived of his or her liberty unlawfully or arbitrarily.”

– Article 37 (b), CRC

“[T]he possibility of detaining children as a measure of last resort, which may apply in other contexts such as juvenile criminal justice, is not applicable in immigration proceedings.”

- Joint general comment No. 4... and No. 23 of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return, CMW/C/GC/4 CRC/C/GC/23 (2017), Section II, para. B. 10

“Any kind of child immigration detention should be forbidden by law and such prohibition should be fully implemented in practice.”

- Joint general comment No. 4... and No. 23 of the Committee on the Rights of the Child, CMW/C/GC/4 CRC/C/GC/23 (2017), Section II, para. B. 5

“What I hear from unaccompanied children and families is that they fear being suddenly taken by the police at five o’clock in the morning. I’m currently assisting a family with their subsequent asylum application. They told me that they have been leaving their reception centre at four o’clock in the morning for the last month, and they stay on the streets until eight o’clock in the evening. That is the period during which the police can come. These people just roam the streets every day with a six-year-old and a four-year-old in order to avoid forced return.”

– Dutch Lawyer

“The arrest, detention and attempted removal of families from the UK was harmful to children but was often ineffective. Children were woken early in the morning by arrest teams and escorted on long journeys before being detained in an unfamiliar environment with their parents who were often visibly distressed. Some children had witnessed their parents being restrained, but after this traumatic process, nearly 80% of families were simply released.”¹⁶⁵

– Her Majesty’s Inspectorate of Prisons Report UK, 2018

Whilst the EU Return Directive states that “Unaccompanied minors and families with minors shall only be detained as a measure of last resort and for the shortest appropriate period of time” (Directive 2008/115/EC, Article 17 (1)), the Committee on the Rights of the Child has clearly stated that children should never be detained for migration reasons as it is a violation of their rights and is never in their best interests.¹⁶⁶ As adopters of the Global Compact for Safe, Orderly and Regular Migration (2018), all four countries here studied are committed to “protect and respect the rights and best interests of the child at all times, regardless of migration status, by ensuring availability and accessibility of a viable range of alternatives to detention in non-custodial contexts, favouring community-based care arrangements that ensure access to education and healthcare and respect their right to family life and family unity, and by working to end the practice of child detention in the context of international migration.”¹⁶⁷

Despite this, the Netherlands, Sweden, and the UK all detain children for immigration purposes. Germany retains the possibility to detain children for immigration purposes in law, but does not do so in practice except in very rare cases. The Netherlands detains unaccompanied children. Sweden also detains unaccompanied children, but only infrequently.

The 2017 revised EU Returns Handbook requires Member States to develop and use a wide range of alternatives to detention, to provide for these in their national laws, and to assess whether an alternative to detention would be sufficient and effective in each individual case.¹⁶⁸

Yet the Netherlands does not actively consider alternatives to migration detention prior to return. In the Netherlands, pre-departure detention is still frequently imposed on both children within families and unaccompanied children.¹⁶⁹ In 2018, 210 children (50 unaccompanied and

¹⁶⁵ Her Majesty’s Chief Inspector of Prisons, Report of an unannounced inspection of family detention, Tinsley House Immigration Removal Centre by HM Chief Inspector of Prisons, 3–5, 9–12 & 16–20 April 2018 (published 2018), para. S34. Available online at <https://www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2018/08/Family-detention-Tinsley-House-Web-2018.pdf> [accessed 24 October 2019].

¹⁶⁶ Committee on the Rights of the Child, Report of the 2012 Day of General Discussion, para. 32.

¹⁶⁷ Global Compact for Safe, Orderly and Regular Migration, Intergovernmentally Negotiated and Agreed Outcome, 13 July 2018, Objective 13, para. 29 (h). Available online at https://refugeesmigrants.un.org/sites/default/files/180713_agreed_outcome_global_compact_for_migration.pdf [accessed 24 October 2019].

¹⁶⁸ 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’, pp. 67-68.

¹⁶⁹ See Amnesty International, Dokters van de Wereld, and Stichting LOS, ‘Opsluiten of Beschermen? Kwetsbare mensen en vreemdelingendetentie’ [‘Locking up or protecting?: Vulnerable people and the detention of Aliens’] (April 2016). Available in Dutch online at http://stichtinglos.nl/sites/default/files/los/AMN_16_20_kwetsbaar%20in%20vreemdelingendetentie_WEB_300dpi.pdf [accessed 24 October 2019].

160 accompanied) were detained for migration-related reasons.¹⁷⁰

Families with children and unaccompanied children are initially accommodated in Open Family Locations when they are awaiting return. In these locations their freedom is limited, as they are not permitted, in principle, to leave the municipality in which the location is situated. All adult family members must report to the authorities daily, except on Sundays.

The State Secretary of Justice and Security declares that detention can only be imposed when less coercive measures cannot be applied in an effective way, and when there is a real risk of absconding or frustration of the forced return. In accordance with Dutch policy, extra attention must be paid to the possibility of using less coercive measures.¹⁷¹ However, in practice, since 2014 the DT&V has been responsible for decisions on detention and has considered every family that fails to return voluntarily as being at risk of absconding. Generally, therefore, the forced returns process automatically includes detention. The Dutch Children's Ombudsman questions whether the DT&V's assessment of the risk of absconding is carried out with sufficient care in some cases.¹⁷² For unaccompanied children, detention is only considered if there is a strong reason (e.g. the child is suspected or convicted of a criminal offence; or the forced return of the child can be arranged within a maximum of 14 days; or the child has previously absconded and did not respect the duty to report or another measure restricting their freedom of movement). It is possible to appeal against the decision to impose detention on a family with children or an unaccompanied child.

On average, families with children are detained for 7 days, half of the maximum term of 14 days. The authorities have typically already arranged everything with respect to the forced return, such as the travel documents and flight tickets. The duration of the detention of families with children can be extended beyond 14 days, but only when the forced return cannot be arranged because of physical resistance by a family member or family members, or because the family member/s has/have begun migration procedures when there is no reason why these could not have been started at an earlier stage.¹⁷³

In 2018, according to information from the Dutch government, the average period in detention for unaccompanied children was 21 days. The government states that this longer-than-average period is caused by the time that can be required to arrange adequate reception in the country of origin.¹⁷⁴

In Sweden, although the number of asylum seekers has steadily decreased since 2015, the government continues to increase its detention capacity, detaining more individuals and for

¹⁷⁰ These numbers include 10 border detentions.

¹⁷¹ As affirmed in a letter from the Secretary of State on the opening of the Closed Family Location in Zeist (Utrecht province, the Netherlands), 26 September 2014. 'Kamerstukken II 2014/15 19637', nr. 1896, letter of the State Secretary of Justice, 26 September 2014. <https://zoek.officielebekendmakingen.nl/kst-19637-1896.htm>

¹⁷² See Netherlands' Ombudsman for Children, 'In Pyjama naar buiten' ['Going outside in pyjamas'] (16 June 2017). Available in Dutch online at <https://www.dekinderombudsman.nl/nieuws/rapport-in-pyjama-naar-buiten?id=741> [accessed 24 October 2019].

¹⁷³ Netherlands Aliens Circular 2000 (A), A5/2.4. Available in Dutch online at <https://wetten.overheid.nl/BWBR0012287/2019-08-01/#-Circulaire> [accessed 24 October 2019]. See also Netherlands Aliens Act 2000, Art. 59b.

¹⁷⁴ For example, in 2017 and 2018, a large number of unaccompanied children detained in the Closed Family Location during this period had been arrested as part of migration restriction procedures, as when trying to reach the UK. In such cases, the return can only be prepared once the child has been detained, whereas in other situations, preparations for the return have already begun while the child is still in a reception centre.

longer periods. The Aliens Act stipulates that children may not be detained for more than 72 hours unless there are exceptional circumstances; they can then be held for an additional 72 hours (a maximum of six days). However, this is not applicable in detention related to transfers under the Dublin Regulation. The Aliens Act also enables authorities to use supervision as an alternative to detention. This entails reporting to the Police Authority or an SMA office at regular intervals.

A total of 13 children were detained in 2018 on immigration-related grounds¹⁷⁵ – three unaccompanied children and ten children accompanied by their parents, who spent an average of 7 days in detention. According to information received from the SMA and the Swedish Border Police, there were 53 children detained in 2017, although the Swedish Red Cross reports that at least 57 children were detained during 2017.

A 2018 report¹⁷⁶ by the Swedish Red Cross indicates serious shortcomings in the implementation of immigration detention legislation. They analysed 57 immigration detention decisions concerning children taken by the Swedish Police Authority in 2017, and found numerous flaws with the legality of the decisions, including the failure to provide adequate support for the validity of the decisions, and applying the rules of the Aliens Act in cases where the Dublin Regulation takes precedence. In particular, the report also points to the lack of consideration for alternatives to immigration detention, as a breach of the Aliens Act, the Dublin Regulation, and the CRC, and observes that the application of Swedish law does not meet the requirement of necessity, according to which immigration detention is a measure of last resort.

In the early 2000s, **the UK** was holding large numbers of children in families in immigration detention. In 2010, the government made a political commitment to end immigration detention of children. This has not been fully achieved, but numbers of child detainees have reduced significantly, from over 1,000 detainments in 2009 to 63 in 2018. Unaccompanied children are not detained, apart from in some cases where their age is disputed. Families undergoing forced return may be detained in Pre Departure Accommodation (PDA), usually for no more than three days, though they can be held for up to seven days. A 2018 report of an inspection of Tinsley House¹⁷⁷ is relatively positive concerning physical conditions and detainees' rights. The charity Hibiscus Initiatives provides detained families with a package of practical information to help them prepare for life in their destination country.¹⁷⁸ However, the prisons inspectorate report also recommended that the Home Office should analyse why so many removals failed – only 4 of the 19 families detained in PDA during the inspection period were actually returned to their country of origin – “with a view to reducing the unnecessary and harmful detention of children and families.”¹⁷⁹

In Germany, as with other aspects of immigration law, detention is the responsibility of the federal states. Germany does not generally detain children for immigration purposes in

¹⁷⁵ Statistics received from the SMA by email on 4 February 2019.

¹⁷⁶ Swedish Red Cross, *Barn i förvar – en undersökning av Svenska Röda Korset*.

¹⁷⁷ See Her Majesty's Chief Inspector of Prisons, Report of an unannounced inspection of family detention, Tinsley House Immigration Removal Centre by HM Chief Inspector of Prisons, 3–5, 9–12 & 16–20 April 2018, e.g. pp. 27-28 ('Accommodation and facilities'), 15 (para. S14), 24-25 ('Legal rights').

¹⁷⁸ See the Hibiscus Initiatives website at <https://hibiscusinitiatives.org.uk/> [accessed 24 October 2019].

¹⁷⁹ Her Majesty's Chief Inspector of Prisons, Report of an unannounced inspection of family detention, Tinsley House Immigration Removal Centre, Main recommendation 5.1 (p. 35).

practice. Although legal barriers are high, migration detention of children is possible under Germany law. Rare cases of detention of children are reported. The number of detention facilities had been decreasing in recent years. However, with new changes in asylum law, detention facilities are currently being expanded.

Good practices for alternatives to the detention of children

- **The UK** generally 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.

Challenges to reducing immigration-related detention of children and providing alternatives to detention

- **The Netherlands, Sweden, and the UK** all detain children in families for migration control purposes.
- **The Netherlands** detains unaccompanied 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 the detention of children for immigration purposes.

5.8 Departure – forced returns

In Sweden, during the return itself, the responsible agency, the SMA or the Swedish Border Police (SBP) accompany the child and ensure that the child is transferred to responsible authorities or parents in the country of origin. The SMA may refer the return to the SBP if it does not believe that the person will leave on their own accord or if the person has absconded. For unaccompanied children, the SBP will also take over the responsibility for organizing travel documents and ensuring that the child is appropriately received in the country of return.¹⁸⁰ The SBP's internal instructions for the execution of return decisions state that specific considerations for children must be made in the planning of the return. The instructions further dictate that when the return is being carried out, children shall not, while at or in proximity

¹⁸⁰ Information received during a phone conversation with Head of Unit at the Swedish Border Police, Stockholm Region, 21 March 2019.

to their school, be searched for or collected. Furthermore, police are to wear civilian clothing when collecting children or speaking to them about return. The SBP must also consider the best interests principle in their dealings with children, but have no specific procedure to conduct such assessments. The police can also refer a case back to the SMA if it finds that the child cannot be returned to the country of origin or third country.¹⁸¹ As part of the SBP's duty to ensure the adequate reception of the child, parents or relatives are requested to verify their identity before the child is handed over to their care.¹⁸² Unaccompanied children or families with children often travel privately and only in exceptional circumstances are they placed on chartered flights with other passengers.

In the Netherlands, families are taken first to a Closed Family Location. The arrest of a family with children is performed by officers of the Transport and Support Service. The police are always present at the family location at the time of arrest, as they are responsible for the authorization to enter the home. Every arrest is extensively prepared for by the services involved. In principle, all cases for arrest are discussed in the national return consultation. Arrests of families generally take place early in the morning, at no later than 7:00 am. The staff members of the Transport and Support Service and the police are in uniform. NGOs have repeatedly criticized the practice of early morning arrests by uniformed personnel, as this causes children additional stress. In June 2018, a motion was accepted in Parliament urging the government to investigate the possibilities of improving this practice.¹⁸³ In reaction to this motion, the State Secretary of Justice and Security informed Parliament that they consider the approach of early morning arrests by uniformed personnel necessary for assuring a safe performance of the task by the Transport and Support Service. The timing of the arrests is also considered necessary by the State Secretary of Justice and Security so that the children are most probably present at the location and that no arrests need be made in schools.

For unaccompanied children, the DT&V's "Special Return" department will manage the transfer and accompany the child to the country of origin to ensure that the transfer is performed according to the agreements made and that the child is placed in the correct care. This mainly involves the verification of the required documents.

In Germany, accompanied children are frequently removed with their families. As for other aspects of immigration law enforcement, removals are the responsibility of the federal states.

If the obligation to return is enforceable, the appeal proceedings have ended, and the family has not agreed to voluntary departure, the central foreigners' department will request a forced return. This request is received by the central police, who are responsible for the logistics of the enforcement. The removal is then carried out by the riot police (*Bereitschaftspolizei*). Generally, within a given time period, the riot police go to the deportees' accommodation, announce themselves, supervise any packing that must be done, and convey the deportees straight to the airport, where custody is transferred to the central police or border patrol. The police do not receive additional training for dealing with removals of children. Police can take some individual circumstances into account when deporting families with children, but are

¹⁸¹ Sweden Aliens Act (2005:716), Chapter 12, Section 3a.

¹⁸² Ibid.

¹⁸³ Motie van het lid Voordewind C.S. [Motion of the member Voordewind C.S.], Tweede Kamer 2017-2018, 19 637, no. 2409 (29 June 2018). Available in Dutch online at <https://zoek.officielebekendmakingen.nl/kst-19637-2409.html> [Accessed 24 October 2019].

not mandated to do so. In cases where a family is to be deported and the parents do not speak German, it is possible to use an interpreter to prevent children from having to act as translators. The police try to avoid retrieving children from schools or day care centres. However, there is no official prohibition against doing so, and respondents suggested that this in fact occurs. In some cases, families who have been handed a removal warning end up awaiting removal for long periods. This is stressful, particularly for children.

“The Panel questions and scrutinizes all areas related to the family case concerning the impact on the children and family. To date, the Home Office has not rejected our advice in any case. So, our impact is immense on individual family’s cases, including on how arrests are carried out to mitigate their negative impact on children and how returns are effected, and extending to the needs and any arrangements required for the family’s reception in the destination country.”

– UK Independent Family Returns Panel member

In the UK, the Independent Family Returns Panel (IFRP) was introduced in 2011, and placed on a statutory footing in the Immigration Act 2014.¹⁸⁴ The Panel is multi-disciplinary, with a membership of medical, social work, policing, and other child-safeguarding experts who provide independent, case-by-case advice to the Home Office on compliance with the duty to preserve children’s welfare during a family’s ensured return process. All plans for enforced family returns are referred to the Panel for advice. The Panel does not question the immigration/asylum determination itself, but it does check that the process of immigration/asylum appeals has been carried out appropriately, and if not, it recommends that the Home Office inform the family that they have the right to consult a lawyer. The Panel receives a Family Welfare Form completed by the Family Engagement Manager, who obtains the children’s school reports, along with any social workers’ reports and other relevant documentation. The Panel verifies whether the return plans are informed by the children’s welfare, and whether the children have been notified. For example, the Panel will recommend that a family cannot be returned if there is a needs assessment of a child still underway. A 2013 evaluation of the IFRP¹⁸⁵ found that the new process improved levels of compliance, and had a positive impact on family welfare and the safeguarding of children.

If a family does not accept voluntary return, they will be given 7 days’ notice of removal directions, and are now considered to be in the required return stage. The family will be offered the option of “self check-in removal” – signifying that they can still take charge of their own departure and thereby avoid arrest. If they do not comply with this, they will be subject to an

¹⁸⁴ With the insertion of a new Section 54A into the Borders, Citizenship and Immigration Act 2009.

¹⁸⁵ Mike Lane, Daniel Murray, Terry Smith, Jon Jones, and Evelyn Hichens (GVA), and Victoria Richardson, Rebecca Linley, and Andrew Zurawan (Migration and Border Analysis, Home Office Science), for the UK Home Office, Evaluation of the new family returns process: Research Report 78 (December 2013). Available online at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/264658/horr78.pdf [accessed 24 October 2019].

ensured return.¹⁸⁶ Families subject to a forced return are arrested and escorted to the airport; they are also escorted during the return flight. In May 2018, a private company, Mitie, was commissioned to provide escort services for forced returns.

Good practices for the overseeing of forced return decisions for 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 process¹⁸⁷ and in holding the Home Office accountable for 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.

5.9 Monitoring of forced returns

Forced returns are often not well-documented or independently monitored in all four countries.

In Germany, the Federal Office for Migration and Refugees (BAMF) is responsible for monitoring of forced returns, but such monitoring is not consistently performed. **In Sweden**, the Swedish Migration Agency (SMA) is responsible for monitoring of forced returns. **In both Germany and in Sweden, these measures do not amount to independent monitoring systems, as the monitoring body appointed by law is an agency/entity belonging to the branch of government responsible for returns.** The EU Agency for Fundamental Rights (FRA) does not consider them to be sufficiently independent to qualify as ‘effective’ under Article 8 (6) of the Return Directive.¹⁸⁸ **In Sweden**, some interviewees suggested that it is more appropriate for the Parliamentary Ombudsman to assume such a role. This could also apply **in Germany**, where the effective forced return monitoring system covers only parts of the country.

Independent monitoring of forced returns **in the UK** is conducted by Her Majesty’s Inspectorate of Prisons and by Independent Monitoring Boards, and **in the Netherlands** by the Inspectorate

¹⁸⁶ The Home Office-allocated Family Engagement Manager will choose from five options: escorted check-in within 10 days without prior notice; escorted check-in with 72 hours’ notice of the removal; escorted check-in with limited notice, which sets the specified period within which departure will take place; return through open accommodation; or return through pre-departure accommodation (detention). See UK Home Office, Family returns process (FRP) (Version 5.0), pp. 19-31 for the details of check-in and return options.

¹⁸⁷ 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).

¹⁸⁸ European Union Agency for Fundamental Rights (FRA), Forced return monitoring systems - 2019 update (June 2019). Available online at <https://fra.europa.eu/en/publication/2019/forced-return-monitoring-systems-2019-update> [accessed 24 October 2019].

of Justice and Security. **In the Netherlands**, Amnesty International has noted that, “over the past few years, several national and international authorities have criticised the Dutch human rights monitoring system. The criticism targeted both the lack of independence and the scope of monitoring activities. The Inspectorate of Security and Justice is located in the same building as the Ministry of Security and Justice. While international human right norms are cited, the Inspectorate does not systematically operationalise these in its implementation manual.”¹⁸⁹

Summary of challenges in the forced return process

- Germany and Sweden lack independent monitoring of forced returns.
- In the Netherlands, policy includes early-morning arrests of families conducted by uniformed personnel. This sometimes happens also in Sweden, though there are internal guidelines for police instructing that it should not be done.

5.10 Reintegration support

“[R]eturn and reintegration measures should be sustainable from the perspective of the child’s right to life, survival and development.”

- Joint General Comment No. 3... and No. 22 of the CRC on the general principles regarding the human rights of children in the context of international migration, CMW/C/GC/3 CRC/C/GC/22 (2017), para. 32 (k)).

All four countries offer reintegration support of varying types and to differing degrees. To incentivize voluntary returns, the level of available support is higher for those who accept voluntary departure, but the Netherlands, Sweden, and the UK do provide some reintegration support for forced returnees. None of the reintegration programmes constitutes a comprehensive framework for the reintegration of children, but all of the four countries have some child-specific funding or support.

“For the children, we have had various support measures for some years in the Western Balkans. Many of our clients are from ethnic minorities, who have often had negative experiences with official structures in their country. We often support school enrolment. It may be that certain certificates are needed. One issue for the children is the language challenge; that children are not used to their mother tongues, and so do not have the level needed to keep up in school. In such cases, we have the possibility to support language courses and such things.”

- German Federal Ministry official

¹⁸⁹ See Amnesty International, ‘Deported: Human Rights in the Context of Forced Returns - Summary’ (July 2017). Available online at https://www.amnesty.nl/content/uploads/2017/07/AMN_17_13_Rapport-mensenrechten-en-gedwongen-uitzetting_ENG-summary_WEB.pdf?x54531 (text quoted at p. 9) [accessed 24 October 2019].

In Germany, the key federal-level programme is the Reintegration and Emigration Programme for Asylum-Seekers in Germany/Government-Assisted Repatriation Programme (REAG/GARP). The operating agency is the IOM. The REAG/GARP mainly provides assistance and financial incentives prior to return. Children usually receive 50% of adult allowances. Online return counselling is available through the ZIRF programme (Zentralstelle für Informationsvermittlung zur Rückkehrförderung, the Information Centre for Voluntary Return), which is administered by the BAMF and the IOM.¹⁹⁰ There is also Returning to New Opportunities, a reintegration programme funded by the BMZ and implemented in collaboration with the German Corporation for International Cooperation (Deutsche Gesellschaft für Internationale Zusammenarbeit, or GIZ) and numerous third country partners. This programme has the potential to assist matters of particular importance to children, such as education and healthcare. There are also reintegration programmes at the federal state and local levels, which are often aimed at third-country nationals by their place of residence (e.g. Informations- und Rückkehrberatungsstelle Berlin), country of origin (e.g. Kosovo URA), or both (e.g. Hamburg-Ghana Bridge). In cases where families apply to REAG/GARP for financial support for the period after returning, the amount offered, according to respondents, is generally calculated based on an analysis of the family's needs and the conditions in the receiving country. Child-specific factors can be incorporated into this analysis. However, respondents indicate that this analysis is not currently performed as a matter of policy; it must be recommended by the individual counsellor. Moreover, depending on the client's personal situation (e.g. their country of origin), non-REAG/GARP sources of funding and support may also be available, including some that take children's needs into account. The German government does make efforts to arrange language classes and other school support in countries of return, but respondents point out that one possibility for implementing a fuller scheme is to place it within the network of development co operation agreements with specific third countries, and that children's reintegration needs could be well-met through the promotion of more inclusive bilateral programmes. There are no individual reintegration plans for children or adolescents.

"We try to transfer the guardianship, but we rarely succeed in doing so. In those cases, we keep custody until a child turns eighteen while the child is in the country of origin. There has to be adequate shelter or family or a guardian. It is or, or, or. So, when there is adequate shelter, it is in line with the return directive, and transfer of the guardianship is not an obligation for return."

– Guardian from Nidos

In the Netherlands, the DT&V co-operates with the IOM and several NGOs active in the field of returns, by providing financial support for their return programmes. The NGOs involved include Solid Road, the Dutch Refugee Council, and Bridge to Better. These organizations have their own network in the countries of return. There are several levels of support which can be

¹⁹⁰ ZIRF provides multilingual country factsheets, compiled using IOM data, on Afghanistan, Albania, Armenia, Azerbaijan, Bosnia & Herzegovina, China, Georgia, India, Iraq, Iran, Kosovo, Lebanon, Morocco, Montenegro, Pakistan, Republic of North Macedonia, Russian Federation, Serbia, Turkey, and Vietnam. ZIRF will furthermore answer individual, case specific questions on conditions in and returns to particular countries by email. All inquiries are anonymized and made available online, where they can be searched by stakeholders or other prospective returnees.



offered to returnees: basic return support, reintegration support, and additional support.¹⁹¹ The IOM's Return and Emigration of Aliens from the Netherlands (REAN) programme is the basic arrangement for voluntary return cases. The IOM also provides support by way of the AVRR-NL (reintegration support through Assisted Voluntary Return and Reintegration from the Netherlands project). Besides these programmes, there are special return projects.¹⁹² Support can be given in the form of financial assistance, various types of in-kind (non-monetary) support and/or coaching, and professional training possibilities. Most return projects concern designated countries (such as Albania and Armenia). The Basic return package consists of the flight ticket, arranging documents at the embassy of the country of origin, providing money for the first days after return, and the option to contact counsellors available in the country of return and arrange to visit them during consultation hours. The Reintegration package consists of in-kind support, a small sum for accommodation, support to set up a small business, educational assistance, and it is flexible – the content of this package depends on the needs of the person.

Voluntary return to certain countries (most of them Development Assistance Committee (DAC) countries¹⁹³) is eligible for financial support. This is €1,800 per adult, €2,800 per child with family, and €2,800 per unaccompanied child. Persons returning to countries whose citizens do not

¹⁹¹ See DT&V and Ministerie van Justitie en Veiligheid (Ministry of Justice and Security), *Ondersteuning van vrijwillige terugkeer en herintegratie voor migranten die terugkeren vanuit Nederland* ['Support of voluntary return and reintegration for migrants returning from the Netherlands'] (December 2017). Available in Dutch online at https://www.dienstterugkeerenvertrek.nl/binaries/Ondersteuning%20vrijwillige%20terugkeer%20en%20herintegratie_tcm49-301112.pdf [accessed 24 October 2019].

¹⁹² For a list of these schemes, see the project overview of the DT&V, available in Dutch online at <https://www.infoterugkeer.nl/terugkeerprojecten/overzicht-projecten/> [accessed 24 October 2019].

¹⁹³ Countries and territories that are eligible to receive official development assistance (ODA) from the Organization for Economic Co-operation and Development (OECD). These comprise all low- and middle-income countries based on gross national income (GNI) per capita as published by the World Bank, with the exception of G8 members, EU members, and countries with a firm date for entry into the EU. The list also includes all Least Developed Countries (LDCs) as defined by the United Nations (UN). For the latest lists of ODA recipients, see: <http://www.oecd.org/dac/financing-sustainable-development/development-finance-standards/daclist.htm> [accessed 24 October 2019].

require a visa to enter the Netherlands receive less financial support (€100 per adult and €40 per child). Vulnerable people can request assistance, even if their return is not eligible for the provision of financial support. This group includes unaccompanied children, victims of human trafficking, and young adults with small children. Families receive support chiefly for education (school fees), and tend to find language classes for their children of the most importance. The IOM can arrange a return within 1 month, if travel documentation is available. Half of the voluntary returns are dealt with inside a 4-week period. There are also NGOs, like Solid Road, that provide support with voluntary returns.

Several projects provide in-kind support to persons who are forced to leave the Netherlands. These are funded through ERRIN (the European Return and Reintegration Network). ERRIN is a DTV-led project from which European Member States collectively 'buy' reintegration support in the countries of origin. This project applies to the following countries: Iraq, Afghanistan, Morocco, Ukraine, India, Sri Lanka, Pakistan, Nigeria, Ghana, Brazil, and Bangladesh. Support is provided through in-kind assistance to the equivalent of €1,000 for each adult member of the family and €600 per child. There is also assistance for finding a house, a job, or starting a business. The support is provided by local organizations; the Dutch embassy does not directly assist.

In Sweden, financial and in-kind support can be made available to returnees who are returning to a country in which the conditions for re-establishment are limited due to severe conflict – currently Afghanistan, the Central African Republic, the Democratic Republic of Congo, Ivory Coast, Eritrea, Iraq, Yemen, Liberia, Libya, Mali, Sierra Leone, Somalia, Palestine, Sudan, South Sudan, Syria, and Chad. A re-establishment grant is offered to both children and adults on the condition that the asylum application has been rejected or withdrawn and that the returnee intends to return voluntarily. Applications for re-establishment support must be submitted no later than two months after the notification of the refusal decision or the withdrawal of the asylum application. This is coupled with a requirement to leave Sweden within a certain period in order to avoid a re-entry ban. An application for re-establishment support is made to an SMA reception officer. The Agency's decision cannot be appealed. The grant is equivalent to SEK 30,000 (about €2,800) for each person over the age of 18 years, and SEK 15,000 (about €1,400) for children under the age of 18. A family can receive a maximum of SEK 75,000 (about €7,000).¹⁹⁴ The funds are administered through the IOM or via bank transfers in countries where the IOM has no presence.

Sweden is also a member of ERRIN. Through this programme, returnees can apply for in-kind reintegration support in their country of return up to the equivalent of €2,500 for voluntary returns and €2,000 for forced returns. ERRIN is aimed at adults, children in families, and unaccompanied children who are returning to their country of origin during the period that the co-operation programme is running. Support is available for the following countries: Afghanistan, Morocco, Iraq (Kurdistan), Iraq (central and south), Pakistan, Russia, and Nigeria. The support includes reception on arrival in the country of return and is further adapted to individual needs, including assistance with starting a business, access to the labour market or education (including vocational training), job counselling, temporary accommodation, and

¹⁹⁴ Information on return incentives is available at the Swedish Migration Agency's website: <https://www.migrationsverket.se/English/Private-individuals/Protection-and-asylum-in-Sweden/When-you-have-received-a-decision-on-your-asylum-application/If-your-application-is-refused/Support-for-your-re-establishment/Financial-support.html> [accessed 24 October 2019].

support in contacts with public authorities, as well as legal counselling and medical care. ERRIN support for returns to Afghanistan was suspended by the SMA in February 2019 following concerns that the partner agency International Returns and Reintegration Assistance (IRARA) was not able to satisfactorily account for their invoicing.¹⁹⁵

In the UK, the Home Office has a dedicated Voluntary Returns Service. Those opting for Assisted Voluntary Return (AVR) can receive assistance with the practicalities associated with returns, such as obtaining travel documents and other necessary documents, transport to airports, and contacts with relevant agencies in countries of return. The Home Office AVR Scheme offers different levels of support depending on status and vulnerability. The assistance offered – up to £2,000 in financial help as well as extra support – is available to under-18s who are travelling alone, or family groups travelling together in which there is someone under 18 years of age.¹⁹⁶ In those countries where the UK has a contract with a service provider, e.g. Caritas, this service provider will pass on the funds to the individual/family. In those countries where there is no service provider, the funds are added to a cash card.

The IOM ran the UK's Assisted Voluntary Return and Reintegration (AVRR) programme from 1999 to 2011, and continued to provide reintegration assistance to returnees to Afghanistan through to 2015. Since then, the IOM has provided reintegration assistance for UK returnees in selected non-EU countries by way of ERRIN, although their involvement in the programme ended in 2018. An NGO, Refugee Action, ran the AVRR scheme via their "Choices" programme from 2011 until the end of 2015, when the Home Office moved it in-house. Refugee Action stated that many of the community groups, organizations, and individuals using their service told them that they would find it difficult to trust or approach a programme run by the Home Office which, on its own terms, will not be available to listen to and provide advice to those who have not yet decided to return.¹⁹⁷ The Home Office has attempted to mitigate concerns that individuals may have about approaching their in house service, by developing a network of community engagement leads around the country who offer face-to-face meetings. They have also established what they report is proving to be a well-used online application service.

For families who are returned by means of the forced return route, some financial assistance may be made available for immediate needs, in consultation with the IFRP. For individuals who were previously asylum seekers, financial assistance of £1,500 is available on return. These individuals may include former UASC. Support for reintegration is also provided in at least 22 countries with the aid of ERRIN.

The Home Office, in consultation with the Department for International Development (DFID), is conducting research on returns and reintegration, drawing on sources including in-country

¹⁹⁵ Swedish Migration Agency, press release of 6 February 2019: 'Migrationsverket pausar utbetalning till samarbetsorganisation i Afghanistan', available in Swedish at <https://www.migrationsverket.se/Om-Migrationsverket/Pressrum/Nyhetsarkiv/Nyhetsarkiv-2019/2019-02-06-Migrationsverket-pausar-utbetalning-till-samarbetsorganisation-i-Afghanistan.html> [accessed 24 October 2019].

¹⁹⁶ See UK Home Office, Returns, Enforcement & Detention policy General Instructions: Voluntary and assisted returns (Version 2.0: 25 September 2019). Available online at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/834061/voluntary-and-assisted-returns-v2.0.pdf [accessed 24 October 2019].

¹⁹⁷ Refugee Action, 'Goodbye to Choices, our assisted voluntary return service' (Blog post, 25 November 2015). Available online at <https://www.refugee-action.org.uk/goodbye-choices-assisted-voluntary-return-service/> [accessed 24 October 2019].

ERRIN programmes, as part of the development of a reintegration strategy.¹⁹⁸ The Home Office plans to begin implementing this strategy before the end of 2019.

5.11 Monitoring after return

“[A] quality rights-based follow-up by all involved authorities, including independent monitoring and evaluation, should be ensured.”

– Joint General Comment No. 3... and No. 22 of the CRC on the general principles regarding the human rights of children in the context of international migration, CMW/C/GC/3 CRC/C/GC/22 (2017), para. 32 (k)

Studies on returns demonstrate many of the problems faced by children and young people returned from European countries – some children returning alone; almost non-existent follow-up; very limited/non-existent child-specific reintegration support; many children returned to regions where they have no family/community links; children feeling unsafe after returning; many children unable to attend school; and the housing and economic situation to which children return not meeting their basic needs.¹⁹⁹

It is clearly set down in **the Netherlands’ return policy** that, in cases of the return of an unaccompanied child to “adequate care” by the authorities in the country of origin, there is no further responsibility for the Dutch government to provide post-return care.²⁰⁰ Little is known about children who have been returned from the Netherlands. The Dutch government does not monitor the situation of these children once they have been received by local authorities at the airport in the country of return. It is rare for NGOs or lawyers to have contact with families or unaccompanied children after return. Nidos has an agreement with the IOM on monitoring, through which the IOM visits families or arranges family visits to the local IOM office to provide some very limited, short term follow-up for unaccompanied children after return. Transfer of guardianship has little chance of success, because of the lack of guardians in many countries of origin. The NGO Solid Road monitors clients (including families with children) following their return. Officially, the monitoring and assistance lasts for one year after return. In Solid Road’s experience, families that have returned on a voluntary basis with their assistance contend better with their situation than families that have returned by force. Yet, the character and specifically the resilience of parents is often decisive. If parents are resilient, their children tend to cope better as well. With specific regard to Armenian children, Solid Road recommends that returned Armenian families are monitored for two years. According to Solid Road, this is the minimum period necessary to determine if reintegration is durable. Such an extended period of monitoring might also provide insight into the circumstances that cause some returned families to consider leaving for Western Europe again.

¹⁹⁸ This will cover issues such as options for reintegration services following the UK’s departure from the EU; the type of support packages offered and whether these are sufficient and suitably flexible to meet the needs of returnees; and ensuring consistency of approach to reintegration among different return types – forced, voluntary, etc.

¹⁹⁹ See, for example, Save the Children, *From Europe to Afghanistan: Experiences of Child Returnees*.

²⁰⁰ Netherlands Aliens Circular 2000 (A), Art. A3/6.1.

There is no follow-up from **Swedish authorities** on children returned to their countries of origin, both in terms of a general monitoring scheme and for individual cases. Officials from the Ministry of Justice have stated that Sweden does not view follow-up after return as an obligation.

In Germany, there is no single mechanism for monitoring child returnees or their families after return. However, multiple channels for (limited) contact do exist. At present, the most extensive monitoring activities appear to take place under the superintendence of voluntary assistance programmes such as REAG/GARP, which have an interest in ensuring that returnees take advantage of the assistance measures offered. For instance, respondents indicate that returnees usually report back to confirm the receipt of primary and secondary financial assistance packages. Attempts are also made to contact returnees (including children) who receive educational, vocational, or medical assistance. While unsystematic, data on outcomes is critical to the evaluation and improvement of reintegration programmes.

Families returning **from the UK** can opt to use a Home Office initial 'meet and greet' service on arrival in those countries where it is available, and these services are able to provide some brief but useful feedback to the Home Office – "for example, confirmation that the family has a plan for where they are going and knowledge of how to get there, [and] that the family has sufficient subsistence funds for this initial journey. This provides assurance that the family is not destitute, and has sufficient resilience in their new situation for the welfare and safeguarding needs of family members not to be at significant risk".²⁰¹ The Home Office used to understand their responsibility as ending at the point of return. The IFRP has insisted that Home Office planning must extend to at least a short time post-return, e.g. by making sure that the family know where the children can be registered in schools, providing access to health-care information, introducing them to a local NGO, and supplying some funding for initial assistance. However, the UK provides no post-return monitoring beyond this initial period. Good practices for reintegration support and monitoring after return

- **In all four countries**, some child-specific needs can be taken into account when determining the level of reintegration support.
- **In the Netherlands**, the DT&V co-operates with the IOM and several NGOs active in the field of returns, by providing financial support for their return programmes. Nidos has an agreement with the IOM on the post-return monitoring of unaccompanied children.
- **Sweden** offers 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, drawing on sources including ERRIN in-country programmes, as part of the development of a reintegration strategy. The DFID has funded field research in Afghanistan, Ethiopia, Iraq, Senegal, and Somalia under the Mediterranean Sustainable Reintegration (MEASURE) Project, managed by the IOM.

²⁰¹ See Government of the United Kingdom, Family Returns Panel report 2016-2018, para. 7.3.

Challenges to providing effective reintegration support and monitoring after return

- None of the reintegration programmes in the four countries studied constitute a comprehensive framework for the reintegration of children.
- There is almost no follow-up monitoring of children post-return in any of the four countries (some very limited short-term support from the Dutch government is provided for monitoring, and performed by the IOM and by some Dutch NGOs).

**PART III:
CONCLUSIONS
& RECOMMENDATIONS**



6 Conclusions

Children's rights are in particular need of protection during the period that decisions are being made concerning their potential return, while plans are being formed for their return and reintegration, and throughout returns processes. This report highlights the human rights obligations of the four governments under examination, and the commitments that they have made respecting all children on their territory, regardless of the nationality or migration status of the child or their parent(s).

While the governments of all four countries state that they are committed to the fundamental principle that the best interests of the child must be a primary consideration in all decisions and actions that involve children, and have taken some steps consistent therewith, this report identifies a number of areas in which they are currently falling short of applying the best interests of the child principle in practical terms. Of the four countries, only Sweden undertakes systematic best interests assessments for unaccompanied children, and the report sets out a number of concerns about the way in which these are implemented, with one foundational problem being an inadequate focus on the particular circumstances of the child. As with the inquiries conducted by decision-makers in migration authorities in Germany, the Netherlands, and the United Kingdom, the judgements of professionals who possess the greater knowledge of the child are not routinely sought, and when they are made available, they are often given insufficient weight. In all four countries, assessments of the security situation in the country of return and any individualized risks that the child might face, as well as considerations of child-specific reasons for flight, are in practice lacking.

When authorities are deciding asylum and immigration cases, and resolving whether or not or what kind of return will be applied, it is essential that children have the right to be heard and

have access to good legal support and representation. In the Netherlands, Sweden, and the UK, there is consensus that children's access to legal aid in asylum proceedings is a worthwhile practice. However, in the Netherlands, a recent measure from the government will no longer make free legal assistance granted from the start of the asylum procedure, but only after the rejection of the asylum application. In Germany, where there are very limited options for the state funding of professional legal assistance, and in the UK, with its lack of state-funded legal support for immigration decisions, many children do not get the standard of legal assistance that befits them. In all four countries, serious concerns were expressed at the want of adequate consideration of the accompanied child in family asylum and immigration cases, with children being treated as an 'add-on' to their parent(s), rather than as independent rights-holders. This same concern persists through the returns planning process, with children in families seldom provided with child-sensitive information, and rarely included in discussions and planning on issues that will fundamentally affect their lives and their futures.

All four governments have made arrangements to provide support for unaccompanied and separated children, and a number of good practices are identified in the report. But deficiencies remain. In the UK, guardians are only provided in Scotland and Northern Ireland; and in Germany and Sweden, guardians often have to take responsibility for many more children than they can adequately look after, while there is a wide variance in the quality of guardians' performances. In Germany, the Netherlands, and Sweden, many children are subjected to invasive medical age assessment procedures, despite the scientific lack of evidence of their accuracy.

The report documents some of the positive steps that governments have made towards improving returns planning for unaccompanied and separated children, but raises a number of concerns at the ways in which family tracing is or is not conducted, and at the considerations of institutional care in countries of return for children who do not have family members to whom they can return. In all four countries, the research identifies serious concerns at the situation of young people when turning 18 years of age, upon which they are at great risk of destitution, disappearance, and exploitation.

Despite their international legal obligation to end immigration detention of children and some positive steps that Germany, the UK, and Sweden have taken to use alternatives to detention, the Netherlands, Sweden, and the UK still detain children for immigration purposes. The report calls on governments to end this practice, for it is never in a child's best interests. Further, concerns were raised in Germany and the UK that families were being separated as a result of parental detention or removal for immigration-related reasons. Enforced returns of unaccompanied children are carried out in the Netherlands and Sweden. No child should ever be returned, unless this return is based on a robust best interests determination.

When planning returns, authorities often fail to duly account for circumstances 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. All four countries are investing some resources in returns and reintegration support, but none of the current reintegration programmes constitute a comprehensive framework for the reintegration of children. There is almost no follow-up monitoring of children post-return, with only some limited but promising support from the Dutch government for such monitoring, carried out by the IOM and by some Dutch NGOs.

Some positive measures have been committed to or are under discussion in each of the four countries. Sweden will incorporate the CRC into its domestic law in January 2020, and Germany is discussing the possibility of similarly revising their legislation. A bill to enshrine the best interests of the child in the Netherlands Aliens Act has been reintroduced in the Dutch parliament, and the UK government is considering the case, made in a joint report by UNHCR, UNICEF UK, and the IOM²⁰², for establishing a BID process. There are prospects for progress, and UNICEF hopes that the good practices documented in this report will be considered and adopted by governments, to advance the rights of an especially vulnerable group of children, and to end practices that fall short of protecting children's best interests.

²⁰² See UNHCR, 'Putting the child at the centre: An Analysis of the Application of the Best Interests Principle for Unaccompanied and Separated Children in the UK'



7 Recommendations

7.1 General recommendations

Key principle

The principle of the best interests of the child unequivocally directs that the specific 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 is not to be pursued.

UNICEF calls on States to pursue the following recommendations:

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 principle²⁰³ 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 with 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, and 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 related 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 actors and following a BIA, to ensure that restoring contact would not be contrary to a child's best interests.

Child-sensitive return preparations

- Form individual return and reintegration plans for each child, with input from that child.
- Ensure that a child who is being returned is given enough time and support 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 staff trained in children's rights, with the presence of a child protection specialist in the team.

²⁰³ As stated, for example, in the 1951 Convention Relating to the Status of Refugees and the OCHCR Convention Against Torture (1984; entry into force 1987). Article 33 (1) of the 1951 Convention declares: "No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where [their] life or freedom would be threatened on account of [their] race, religion, nationality, member-ship of a particular social group or political opinion".

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. for young people in apprenticeships, training, or employment.

7.2 Specific recommendations (by country and by topic²⁰⁴)

Consideration of Children's Best Interests
Germany
Systematically conduct individual BIDs and BIAs for children (both unaccompanied and accompanied) during asylum/immigration/returns procedures. The processes must account for the views of the child, parents/caregivers, guardians, the Child and Youth Welfare officers and any other relevant expert(s) as may be appropriate, including social workers, teachers, doctors, counsellors, and psychologists. The processes must be fully documented, be given primary consideration by the asylum/immigration/returns decision maker, and be reviewed and regarded during appeals and further procedures.
The Netherlands
Embed the best interests of the child principle in the Netherlands Aliens Act. Systematically conduct individual BIDs and BIAs for children (both unaccompanied and accompanied) during asylum/immigration/returns procedures, in co-ordination with government bodies responsible for child protection, which will ensure that all necessary information on the child's best interests is available to the decision-maker. The processes must account for the views of the child, parents/caregivers, guardians, and any other relevant expert(s) as may be appropriate including, social workers, teachers, doctors, counsellors, and psychologists. The processes should be fully documented, be given primary consideration by the asylum/immigration/returns decision maker, and be reviewed and regarded during appeals and further procedures.

²⁰⁴ For more detailed information on each country, the reader can refer to the four country reports: UNICEF Germany (2019), Child-sensitive Return. Upholding the best interests of refugee and migrant children in return and reintegration decisions and processes in Germany; UNICEF Netherlands (2019), Child-sensitive Return. Upholding the best interests of refugee and migrant children in return and reintegration decisions and processes in the Netherlands; UNICEF Sweden (2019), Child-sensitive Return. Upholding the best interests of refugee and migrant children in return and reintegration decisions and processes in Sweden; and UNICEF UK (2019), Child-sensitive return. Upholding the best interests of refugee and migrant children in return and reintegration decisions and processes in the UK. Note that when certain country recommendations were developed that are applicable to multiple countries, they were accordingly added to the recommendations for those countries in the comparative report.

Consideration of Children's Best Interests

Sweden

Implement the formal, individual BID process that is now in place constantly, consistently, and systematically at all stages of asylum/immigration/returns processes. Actors involved in the process should not be limited to those within Swedish migration authorities, even if they have received specific training on children's rights and child friendly procedures, but also take into account the advice of child protection agents, including Social Services. The best interests proceeding should be led or co-led by Social Services. The process should also consider the views of the child, the child's parents/caregivers, the guardian for unaccompanied and separated children, and any other relevant expert(s) as may be appropriate. Systematically conduct individual BIDs and BIAs for children (both unaccompanied and accompanied) during asylum/immigration/returns procedures, in co-ordination with government bodies responsible for child protection, which will ensure that all necessary information on the child's best interests is available to the decision-maker. The processes must account for the views of the child, parents/caregivers, guardians, and any other relevant expert(s) as may be appropriate including, social workers, teachers, doctors, counsellors, and psychologists. The processes should be fully documented, be given primary consideration by the asylum/immigration/returns decision maker, and be reviewed and regarded during appeals and further procedures.

United Kingdom

Systematically conduct individual BIDs and BIAs for children (both unaccompanied and accompanied) during asylum/immigration/returns procedures, in co-ordination with government bodies responsible for child protection, which will ensure that all necessary information on the child's best interests is available to the decision-maker. The processes must account for the views of the child, parents/caregivers, guardians, and any other relevant expert(s) as may be appropriate including, social workers, teachers, doctors, counsellors, and psychologists. The processes should be fully documented, be given primary consideration by the asylum/immigration/returns decision maker, and be reviewed and regarded during appeals and further procedures.

Consideration of Children's Best Interests

Germany

Develop clear and formal criteria and guidance for the migration authorities to consider the best interests of the child in every decision relating to asylum, immigration, and return. Compel decision-makers to provide reasoned decisions (in both UASC and family cases), setting out what they have done to fully consider information on the child's best interests, including what would likely happen to the child upon and following their return.

The Netherlands

Develop clear and formal criteria and guidance for the migration authorities to consider the best interests of the child in every decision relating to asylum, immigration, and return. Compel decision-makers to provide reasoned decisions (in both UASC and family cases), setting out what they have done to fully consider information on the child's best interests, including what would likely happen to the child upon and following their return.

Sweden

Implement and use existing BID tool for the migration authorities to consider the best interests of the child in every decision relating to asylum, immigration and return. Compel decision-makers to provide reasoned decisions (in both UASC and family cases), setting out what they have done to fully consider information on the child's best interests, including what would likely happen to the child upon and following their return.

United Kingdom

Develop clear and formal criteria and guidance for the migration authorities to consider the best interests of the child in every decision relating to asylum, immigration and return. Compel decision-makers to provide reasoned decisions (in both UASC and family cases), setting out what they have done to fully consider information on the child's best interests, including what would likely happen to the child upon and following their return.

Consideration of Children's Best Interests	
Germany	Provide specialized training on child rights and child-appropriate practices to migration authorities, asylum decision-makers, guardians, translators and counsellors. Develop guidelines for interviewing and interacting with migrant, asylum seeking, and refugee children.
The Netherlands	Provide specialized training on child rights and child-appropriate practices to migration authorities, asylum decision-makers, guardians, translators, and counsellors.
Sweden	Provide specialized training on child rights and child-appropriate practices to migration authorities, asylum decision-makers, guardians, translators, and counsellors. Develop guidelines for interviewing and interacting with migrant, asylum seeking, and refugee children.
United Kingdom	Extend in-depth training on best interests to all Home Office staff, including Immigration Directorate staff who make decisions about children's asylum and immigration cases, inclusive of children in families.

Consideration of Children's Best Interests	
Germany	Families must not be separated as a consequence of the detention or removal of parent(s).
The Netherlands	Families must not be separated as a consequence of the detention or removal of parent(s).
Sweden	Families must not be separated as a consequence of the detention or removal of parent(s).
United Kingdom	Families must not be separated as a consequence of the detention or removal of parent(s). Ensure that a referral is made to the Office of the Children's Champion (OCC) if separation is being considered.

Consideration of Children's Best Interests	
Germany	When assessing the security situation in a country of return, decision-makers must give greater weight to information particular to the prospective situation of the individual child or family.
The Netherlands	When assessing the security situation in a country of return, decision-makers must give greater weight to information particular to the prospective situation of the individual child or family.
Sweden	When assessing the security situation in a country of return, decision-makers must give greater weight to information particular to the prospective situation of the individual child or family. Revert to the original provision concerning exceptionally distressing circumstances set forth in the Sweden Aliens Act, to allow the SMA and the Courts to duly consider the best interests of the child and honour the intent of the amendments made in 2014 respecting the granting of residence permits on humanitarian grounds.
United Kingdom	When assessing the security situation in a country of return, decision-makers must give greater weight to information particular to the prospective situation of the individual child or family.

Specific considerations for unaccompanied and separated asylum-seeking children
Germany
Establish guidelines and protocols for guardians, and strengthen and expand their training and supervision.
The Netherlands
Strengthen the role of guardians in the return process of UASC.
Sweden
Establish guidelines and protocols for guardians, and strengthen and expand their training and supervision.
United Kingdom
Introduce independent guardians for all UASC in England and Wales.

Specific considerations for unaccompanied and separated asylum-seeking children
The Netherlands
Incorporate tracing procedures and a family/reception centre assessment of the country of return into the BID for unaccompanied and separated children. Assure that procedures for family tracing and contact are based on the rights of the child, meaning that family tracing can only be performed if it is in the best interests of the child, if the child has given permission, and if it is conducted in a safe manner.
Sweden
Incorporate tracing procedures and a family/reception centre assessment for the country of return into the BID for unaccompanied and separated children.

Specific considerations for unaccompanied and separated asylum-seeking children
Germany
Perform thorough family assessments before considering return of an unaccompanied child to the family.
The Netherlands
Perform thorough family assessments before considering return of an unaccompanied child to the family.
Sweden
Perform thorough family assessments before considering return of an unaccompanied child to the family.
United Kingdom
Perform thorough family assessments before considering return of an unaccompanied child to the family.

Specific considerations for unaccompanied and separated asylum-seeking children
The Netherlands
Ensure that guardians and lawyers are present during return meetings with the DT&V.

Specific considerations for unaccompanied and separated asylum-seeking children	
Germany	Strengthen procedures to ensure that all relevant durable solutions are considered for UASC – long-term settlement and integration in Germany (with the most appropriate form of leave considered on a case-by-case basis), relocation to a third country (whether via family reunion or resettlement), or return to their country of origin.
The Netherlands	Strengthen procedures to ensure that all relevant durable solutions are considered for UASC – long-term settlement and integration in the Netherlands (with the most appropriate form of leave considered on a case-by-case basis), relocation to a third country (whether via family reunion or resettlement), or return to their country of origin.
Sweden	Strengthen procedures to ensure that all relevant durable solutions are considered for UASC – long-term settlement and integration in Sweden (with the most appropriate form of leave considered on a case-by-case basis), relocation to a third country (whether via family reunion or resettlement), or return to their country of origin.
United Kingdom	Strengthen procedures to ensure that all relevant durable solutions are considered for UASC – long-term settlement and integration in the UK (with the most appropriate form of leave considered on a case-by-case basis), relocation to a third country (whether via family reunion or resettlement), or return to their country of origin.

Specific considerations for unaccompanied and separated asylum-seeking children	
All four countries	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.

Specific considerations for unaccompanied and separated asylum-seeking children	
Germany	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.
The Netherlands	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 regular migration status options available to young people not eligible for refugee status or subsidiary/humanitarian protection, taking into account their level of integration, e.g. for young people in apprenticeships, training, or employment.
Sweden	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 more sustainable alternative regular migration status options available to young people not eligible for refugee status or subsidiary/humanitarian protection, taking into account their level of integration, e.g. for young people in apprenticeships, training, or employment.
United Kingdom	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 regular migration status options available to young people not eligible for refugee status or subsidiary/humanitarian protection, taking into account their level of integration, e.g. for young people in apprenticeships, training, or employment.

Access to legal aid, advice, and counselling, and the child's right to be heard	
Germany	State-funded, professional legal advice and representation should be made available to all children and families upon arrival for asylum/immigration/returns procedures.
The Netherlands	Provide access to state-funded legal advice for unaccompanied and separated children and families with children in the return proceeding. This will not only ensure realistic expectations from all parties, but also safeguard children's rights in the return process.
Sweden	Provide access to state-funded legal advice for unaccompanied and separated children and families with children in the return proceeding. This will not only ensure realistic expectations from all parties, but also safeguard children's rights in the return process.
United Kingdom	Make immigration cases that involve potential returns of all children, including children in families, eligible for state-funded legal aid.

Access to legal aid, advice, and counselling, and the child's right to be heard	
All four countries	Apply a tailored approach to case management in the asylum/immigration/return process, to ensure that, consistent with the best interests principle, children have access to accurate information and can prepare effectively for the outcome. This assistance is to include not only the provision of child-friendly information, but also face-to face counselling.

Access to legal aid, advice, and counselling, and the child's right to be heard	
All four countries	Provide specialized training for lawyers and other legal advisors/advocates, and for counsellors, on children's rights and child-appropriate practices.

Access to legal aid, advice, and counselling, and the child's right to be heard	
All four countries	The right of all children, including accompanied children, to be heard must be respected; officials should take into account that every child has specific reasons for flight which they often feel cannot be shared with parents (e.g. their sexual orientation).

Access to legal aid, advice, and counselling, and the child's right to be heard	
All four countries	Multilingual child-appropriate informational materials should be made available during all stages of the return process. Competent and qualified interpreters must be present during all interactions with children.

Access to legal aid, advice, and counselling, and the child's right to be heard	
Germany	Children and families who choose voluntary return, while expressing interest in future residence in Germany, should be informed of and supported with potential legal avenues for achieving residence status in the future.
The Netherlands	Children and families who choose voluntary return, while expressing interest in future residence in the Netherlands, should be informed of and supported with potential legal avenues for achieving residence status in the future.
Sweden	Children and families who choose voluntary return, while expressing interest in future residence in Sweden, should be informed of and supported with potential legal avenues for achieving residence status in the future.
United Kingdom	Children and families who choose voluntary return, while expressing interest in future residence in the UK, should be informed of and supported with potential legal avenues for achieving residence status in the future.

Immigration detention	
Germany	Amend German law to prohibit the immigration detention of children.
The Netherlands	End the use of immigration detention of both accompanied and unaccompanied children. Effective alternatives to detention should be investigated and implemented.
Sweden	Amend the Aliens Act to decree that children shall not be detained for immigration-related purposes, irrespective of their migration status or that of their parents. Alternatives to detention should be implemented.
United Kingdom	Review the use of immigration detention of accompanied children based on civil society consultation, with a view to ending the practice of immigration detention of children by way of a full consideration of alternatives.

Voluntary returns and forced removals	
Germany	Consistently consider the option of extending the period for voluntary departure in line with the Return Directive, taking into account the specific circumstances of the case and the child's best interests. Education and vocational training, as well as the health of children and parents, should be taken into account when making a decision on the child's removal (e.g. consider delaying removal so that school year can be finished).
The Netherlands	Consistently consider the option of extending the period for voluntary departure in line with the Return Directive, taking into account the specific circumstances of the case and the child's best interests. Education and vocational training, as well as the health of children and parents, should be taken into account when making a decision on the child's removal (e.g. consider delaying removal so that school year can be finished).
Sweden	Consistently consider the option of extending the period for voluntary departure in line with the Return Directive and the SMA's own legal instruction SR 11/2017, taking into account the specific circumstances of the case and the child's best interests. Education and vocational training, as well as the health of children and parents, should be taken into account when making a decision on the child's removal (e.g. consider delaying removal so that school year can be finished).
United Kingdom	Education and vocational training, as well as the health of children and parents, should be taken into account when making a decision on the child's removal (e.g. consider delaying removal so that school year can be finished).

Voluntary returns and forced removals	
Germany	The option of voluntary departure and all associated incentives should be extended up until the last possible moment for all children and families facing removal, including those by way of Dublin III transfers.
The Netherlands	The option of voluntary departure and all associated incentives should be extended up until the last possible moment for all children and families facing removal, including those by way of Dublin III transfers.
Sweden	The option of voluntary departure and all associated incentives should be extended up until the last possible moment for all children and families facing removal, including those by way of Dublin III transfers.
United Kingdom	The option of voluntary departure and all associated incentives should be extended up until the last possible moment for all children and families facing removal, including those by way of Dublin III transfers.

Voluntary returns and forced removals	
Germany, The Netherlands and United Kingdom	Travel companions should be provided for all unaccompanied child returnees, and should be available for accompanied child returnees when requested.

Voluntary returns and forced removals	
Sweden	The SMA should develop internal guidelines on children's rights in the return procedure.

Voluntary returns and forced removals	
Germany	Establish an effective forced-return monitoring system, and appoint an independent body to carry out this function. At present, monitoring is not sufficiently independent to qualify as "effective" under Article 8 (6) of the Return Directive.
The Netherlands	Establish a more thorough monitoring system.
Sweden	Establish an effective forced-return monitoring system, and appoint an independent body to carry out this function. At present, monitoring is not sufficiently independent to qualify as "effective" under Article 8 (6) of the Return Directive.

Voluntary returns and forced removals	
Germany	Long delays between removal warnings and the removal itself should be avoided. Specific guidelines and training must be provided to the police for removals involving children. Independent experts should be permitted to monitor and document removals involving children. Children and families should not be collected at night and/or from locations such as schools, hospitals, kindergartens, or other public places.
The Netherlands	Long delays between removal warnings and the removal itself should be avoided. Refrain from the use of uniformed personnel in arrests/removals. Independent experts should be permitted to monitor and document removals involving children. Children and families should not be collected at night and/or from locations such as schools, hospitals, kindergartens/pre-school centres, or other public places.
Sweden	Long delays between removal warnings and the removal itself should be avoided. Guidelines with a stronger focus on child rights and training must be provided to the police for removals involving children. Independent experts should be permitted to monitor and document removals involving children. Children and families should not be collected at night and/or from locations such as schools, hospitals, kindergartens/pre-school centres, or other public places.
United Kingdom	Long delays between removal warnings and the removal itself should be avoided. Specific guidelines and training must be provided to the police for removals involving children. Independent experts should be permitted to monitor and document removals involving children. Children and families should not be collected at night and/or from locations such as schools, hospitals, kindergartens/nurseries, or other public places.

Returns and reintegration support	
Sweden	Conduct or commission research on returns and reintegration, and post-return monitoring of children, young people and families, with a view to understanding their outcomes and improving support for their effective return and reintegration.
United Kingdom	Ensure that the UK's approach to reintegration, based on research by the Home Office and DFID, recognizes the particular needs of children, and delivers reintegration and post-returns monitoring in conformity with the best interests of the child.

Returns and reintegration support	
All four countries	Always develop individual, child specific return and reintegration plans, encompassing practical arrangements for education, medical care, housing, and work. Standardized return plans do not suffice.

Returns and reintegration support	
All four countries	Safe and smooth transitions to country-of-return institutions should be ensured, including at an administrative level (e.g. school certificates should be translated into the relevant language of the receiving country).

Returns and reintegration support	
Germany, Sweden & United Kingdom	Develop post-returns monitoring of children and families.
The Netherlands	Develop more effective and longer-term post-returns monitoring of children and families.

Data on returns

Germany

Collect and publish annual data on the number of returns (both forced and voluntary) of accompanied and unaccompanied children, the number of children in detention for immigration control purposes, and any family separations for immigration control purposes. Federal states should use common definitions and criteria. Measures should be taken to collect qualitative as well as quantitative data, as this would support the evidence based evaluation of programmes and personnel.

The Netherlands, Sweden & United Kingdom

Improve the publication of disaggregated annual data on the number of returns (both forced and voluntary) of accompanied and unaccompanied children, the number of children in detention for immigration control purposes, and any family separations for immigration control purposes. Measures should be taken to collect qualitative as well as quantitative data, as this would support the evidence based evaluation of programmes and personnel.

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