

Comparative study on best practices in the field of return of minors

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A CHECKLIST TO ACHIEVE GOOD PRACTICES WHEN CONSIDERING THE RETURN OF CHILDREN TO THIRD COUNTRIES:

A TOOL FOR QUALITY PLANNING FOR MEMBER STATES

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**The European Council on Refugees and Exiles
in strategic partnership with
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Disclaimer:

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A. INTRODUCTION TO THE CHECKLIST

1. Goal of the Checklist

The goal of this checklist is to support Member States in achieving good practices when considering the return of children to third countries. The checklist addresses the situation of both children within families and those children who are unaccompanied or separated. Where sections of the checklist below are more relevant for unaccompanied and separated children, this is indicated. However, in general, policies and practices concerning children should be non discriminatory in accordance with the Convention on the Rights of the Child (hereafter the CRC).

The checklist identifies the different steps associated with a decision and procedure to return as required under the Return Directive.¹ It is informed by obligations under EU and international law. Furthermore, it takes account of emerging jurisprudence at national level and from the European Court of Human Rights and the European Court of Justice. Practical indicators are provided for achieving good practices and these are informed by the Inventory of Noteworthy Practices.

The checklist should serve as a key reference for Member States in working towards good processes and practices when returning children when considering the return of children to third countries. It is suggested that the checklist be revised by the Commission on a periodic basis thus reflecting the emergence of relevant evolving practice.

2. Policy background

Member States have the right to decide which third country nationals may enter and reside in their territory and they have the attendant right to take a return decision concerning illegally staying third country nationals in line with international human rights obligations.

When the return of children is in question, Member States must consider the general rights of children, including their right to be heard and the specific needs and rights of children to be protected from harm. In particular, as required under the Return Directive and the CRC, Member States will need to consider the best interests of the child before taking any decision and when working to implement a decision.

In the case of children travelling with their families, Member States will respect and protect the rights of the individual child within the family and the right to private and family life. Member States need to consider the situation of children when making decisions concerning the return of the family and they

¹ Directive 2008/115/EC of the European Parliament and the Council on common standards and procedures in Member States for returning illegally staying third-country nationals

must also consider the safety of the child within the family. Consequently it is important to incorporate safeguards in the return process to ensure that the best interests of children are properly considered.

In the case of unaccompanied and separated children, it is acknowledged in the EU Action Plan for Unaccompanied Minors,² and most recently in the Trafficking Directive³, that Member States should aim to identify durable solutions, taking the best interests of the child as a primary consideration and based on an assessment of the individual circumstances of each case. Return to a country of origin should be considered as an option amongst others, including integration into the host country or transfer to a third country.

It is also clear that where return is considered to be in the best interests of the child and when the child is unaccompanied or separated, there must be adequate care and custodial arrangements in place that are adequate for the individual child before they are returned. The Return Directive expressly indicates that a child must be returned to a family member, a nominated guardian or adequate reception facilities.

3. How to use the checklist

Towards quality planning in return processes

Member States have traditionally faced a number of challenges when considering the return of children. These include how to assess the situation and circumstances in both the Member State and the country of origin and how to assess the best interests of the child. For example, in the case of an unaccompanied or separated child, Member States frequently encounter challenges as regards methods for family tracing and for assessing the situation of the family. Difficulties may be experienced in transnational contacts with actors in third countries that need to be involved in assessing or implementing returns.

As a consequence, several countries simply do not return unaccompanied children until they reach the age of 18 or work towards the return of the child only when it is part of a voluntary return programme, rather than an outcome determined by a formal procedure. Several other countries have worked to develop practices which would allow for return of children but these tend still to be in development, rather than being mature, systematic practices with demonstrable effects.

In relation to children within families, Member States' practice tends to focus largely on the situation of the adults in the family, although there is emerging jurisprudence concerning the need to take account of the best interests of the children within the family. In *Nunez v Norway*, the European Court of

² Communication from the Commission to the European Parliament and the Council, Action Plan on unaccompanied Minors (2010-2014) SEC(2010)534

³ Directive 2011/36/EU of the European Parliament and the Council on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA

Human Rights held that the removal of a mother of two children would be in breach of her right to private and family life because it would have a strong negative impact on her children and would not be in their best interests. Similarly, in the United Kingdom, for example in *ZH (Tanzania) v Secretary of State for the Home Department* the court found that the best interests of the child must be a primary consideration when considering the removal of any family member.

As a consequence, the checklist is designed as a quality-planning tool to support Member States in developing or strengthening their practices. It refers to the legal obligations and authoritative guidance in relation to each step. Its indicators will help actors to assess their existing practices or to develop new practice. The Inventory of Noteworthy Practices allows Member States to learn from each other's experiences and indeed to aim to further improve practices.

Addressing the process as a whole

An important feature of the checklist is that it enables actors to look at the process as a whole, rather than addressing isolated elements of the process. This approach is crucial to developing effective and appropriate processes for engaging with the situation of the child.

Facilitating cooperation between actors

A clear feature of processes considering return is that there is a wide range of actors involved in the situation of a child. They hold different mandates and, operationally, are oriented towards different primary goals, be it migration control or child protection, which may, or may not coincide in each individual case. This checklist should facilitate cooperation between these actors by providing a common framework within which they together discuss the situation of the child and their best interests.

The checklist and the Inventory of Noteworthy Practice are underpinned by good practice criteria which highlight some of the common interests of the various stakeholders including that returns are:

- Durable
- Undertaken in a manner that respects Member States' international obligations
- Undertaken in an orderly manner and without unnecessary delay once a decision has been made
- Carried out in a manner that minimises disruption to the stability of children and without causing distress to children
- Undertaken in a manner that upholds the dignity of individuals and in particular children, without violence or harm being inflicted on individuals

Further it is in the interests of all stakeholders that mechanisms are in place to provide:

- Fair, expedient, appropriate and transparent decision making processes
- Accurate and accessible information, available at the beginning of the procedure, not least to explain options concerning return thus enabling real choices about voluntary return

Facilitating cooperation between actors will also help ensure a suitable and effective allocation of resources and improve children's participation in the process, thereby making the return process more fair, workable and sustainable.

4. Abbreviations used for references

The checklist refers to some of the relevant international standards, recommendations and guidelines. The following abbreviations and acronyms are used:

- *CRC* - United Nations Convention on the Rights of the Child
- *UN Refugee Convention* - United Nations 1951 Convention Relating to the Status of Refugees
- *CoE Trafficking Convention* - Council of Europe Convention on Actions against Trafficking in Human Beings,
- *Return Directive* - Directive 2008/115/EC of the European Parliament and the Council on common standards and procedures in Member States for returning illegally staying third-country nationals
- *Trafficking Directive* - Directive 2011/36/EU of the European Parliament and the Council on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA
- *Asylum Procedures Directive* - Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status
- *Asylum Reception Directive* Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers
- *General Comment No 6* - Committee on the Rights of the Child General Comment No 6 on the Treatment of Unaccompanied and Separated Children Outside their Country of Origin
- *General Comment No 12* – Committee on the Rights of the Child General Comment No 12 on the right of the child to be heard
- *SCEP Statement of Good Practice* - Separated Children in Europe Programme, Statement of Good Practice, 2009
- *UNHCR Guidelines on Unaccompanied Children* - UNHCR Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum, 1997
- *UNHCR Guidelines on Child Asylum Claims* - UNHCR Guidelines on International Protection: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees, 2009
- *ExCom Conclusions* - UNHCR Executive Committee Conclusion on Children at Risk, 2007

- *CoE Guidelines on Forced Return* - Council of Europe, Twenty Guidelines on Forced Return, 2005
- *UNHCR BID Guidelines* - UNHCR Guidelines on Determining the Best Interests of the Child, 2008
- *JHA Conclusions* - Council conclusions on unaccompanied minors, June 2010
- *Belgian Presidency Recommendations 2010* - Belgian EU Presidency Recommendations on Unaccompanied Children at the EU External Borders

B. THE CHECKLIST

1. Designing the return procedure: general child rights and child protection

International Legal Obligations:

- Return Directive, Article 5
- CRC, Article 3

1.1 National child protection provisions apply to the situation of children who are subject to a return procedure and appropriate child protection procedures are followed where necessary

International Legal Obligations:

- Return Directive, Article 5
- Trafficking Directive, Articles 11(4) and 13(2)
- CRC, Article 2 and 19

Authoritative Guidance:

- General Comment No 6, paragraph 67

Indicators:

- All children in situations of irregular migration, whether within families or unaccompanied, fall under national child protection legislation and measures
- Children are cared for within their families unless it has been demonstrated that this is not in the child's best interests; where children have been removed from their families under national legislation, all appropriate procedures have been followed
- Inter-agency cooperation protocols are in place between actors involved in the situation of the children
- Child welfare/protection authorities are responsible for the care and well-being of separated and unaccompanied children
- Agencies providing care to children have child protection policies and staff caring for children are trained in child protection
- Child protection agencies have training in relation to the situation of children in migration and the issues which they confront

1.2 Mechanisms exist to identify children who may be victims of trafficking or who are at risk of abuse, exploitation, neglect or violence



International Legal Obligations:

- Return Directive, Articles 5 and 10(1)
- Trafficking Directive, Articles 11.4, 18.3
- CoE Trafficking, Article 10
- CRC, Articles 1, 8 and 35
- Asylum Reception Directive, Article 17(1)

Authoritative Guidance:

- General Comment No 6, paragraph 31
- SCEP Good Practice, sections C3 and D2
- UNHCR Guidelines on Unaccompanied Children, paragraphs 5.1 – 5.3

Indicators:

- Border guards, immigration officials and other actors encountering arrivals or presence of third country national children in their country should receive tools and appropriate training to identify children in situations of risk
- Member States develop a toolkit containing profiles and indicators to assist officials in identifying children in situations of risk, including trafficking
- Mechanisms are in place to ensure all children in situations of risk are referred to the appropriate and specialised child welfare agencies who provide them with care and protection

1.3 When designing the return procedure, specific safeguards must be introduced throughout the return process to ensure that the best interests of the child is a primary consideration and that appropriate respect is given to best interests throughout the process



International Legal Obligations:

- Return Directive, Article 5, preamble paragraphs 4 and 22
- Trafficking Directive, preamble paragraph 8, Article 13.1
- CRC, Articles 3 and 6

Authoritative Guidance:

- General Comment No 6, paragraphs 26 and 27
- General Comment No 12. paragraphs 2 and 70

Indicators:

- There should be an obligation to provide information to persons subject to the return procedure which specifically refers to the way in which the best interests of the child must be identified and considered within the process
- Decision-making and return processes are required expressly to consider the best interests of children (more generally see 3.1 below). Where the child is within a family, the child's best interests must be systematically considered, independently from the circumstances of their parents, with a view to contributing to the overall decision in relation to the family or individual decisions in relation to family members. In the case of unaccompanied children, there should be a best interests determination (see 2.4 below)
- All relevant actors and decision makers involved in the situation of children are familiar with the necessary legal considerations and procedures for returning children and have received training and are qualified to fulfil their roles regarding the return of children

1.4 When designing the return procedure, specific safeguards must be introduced to ensure that children are provided with opportunities to have their views and opinions heard



International Legal Obligations:

- Trafficking Directive, Article 14
- CRC, Article 12

Authoritative Guidance:

- General Comment No 6, paragraphs 25 and 84
- General Comment No 12, paragraphs 2 and 70
- SCEP Good Practice, section B4
- UNHCR Guidelines on Unaccompanied Children, paragraphs 5.14 and 5.15
- UNHCR Guidelines on Child Asylum Claims, paragraphs 70 and 71
- ExCom Conclusions, paragraph b(iv)

Indicators:

- There must be a requirement to explain options to the child and information about their situation and they must be supported in understanding this information
- As part of the decision making process, the lawyers of the child and the decision makers must be required to solicit the child's views in appropriate processes. The child's views must be fully taken into account accordance with their age and maturity
- Interviews, appointments, meetings and discussions about the child's wishes and feelings must be required to use child appropriate language and be conducted in a child sensitive manner in appropriate settings

Also see Section 3 below.

1.5 Prior to any return decision and procedure, voluntary return is explored with families with children, with appropriate consideration of the best interests of the children and appropriate consultation with children



International Legal Obligations:

- CRC, Articles 3 and 12

Authoritative Guidance:

- SCEP Good Practice, section D15.2

Indicators:

- Assisted voluntary return and reintegration (AVRR) programmes are available which are specially adapted to the needs of children and families
- Information is provided to families on the availability of such programmes covering:
 - Availability of financial support
 - Availability of assistance with reintegration, including reintegration for the children into education or training
 - The potential consequences of accepting or refusing AVRR, for example possible re-entry bans or the requirement to reimburse AVRR expenses if they subsequently return to the EU
- Children within families have been provided with opportunities to contribute to the decision regarding voluntary return
- An assessment of whether voluntary return is in the best interests of the child has been undertaken, with input from all relevant actors including those specialising in the welfare and protection of children

2. Assistance to unaccompanied and separated children prior to a return decision

2.1 Mechanisms are established to identify children who are separated from their primary caregivers

International Legal Obligations:

- Return Directive, Article 10.1
- Trafficking Directive, Article 11.4
- Asylum Procedures Directive, Article 17
- CRC, Articles 11 and 20

Authoritative Guidance:

- General Comment No 6, paragraph 31
- SCEP Good Practice, sections D2 and D4
- UNHCR Guidelines on Unaccompanied Children, paragraphs 5.1 – 5.3
- Belgian EU Presidency recommendations on Unaccompanied Children at the EU external borders

Indicators:

- Border guards, immigration officials and other actors encountering third country national children arriving or present in their country, regularly receive training, tools and materials on:
 - Circumstances and behaviour that may indicate an applicant is a child
 - Communicating with and interviewing children
 - The principle of applying the benefit of the doubt where a person who may be an unaccompanied or separated child
 - The processes which exist to initiate formal identification procedures where necessary with all appropriate safeguards
- Mechanisms are in place to ensure all children are referred to the appropriate and specialised child welfare agencies who provide them with care and protection
- In cases of doubt as to age or responsibility of the adult in relation to the child, child appropriate identification procedures are in place relating to age assessment and screening of accompanying adults

2.2 Prior to any return decision and procedure, unaccompanied and separated children are provided with special protection and assistance, with a view to ensuring that all decisions have their best interests as a primary consideration



International Legal Obligations:

- Return Directive, Article 10.1
- Trafficking Directive, Articles 13, 14.1, 14.2 and 16.3
- CRC, Articles 3, 12, 18 (1,2) and 20 (1)

Authoritative Guidance:

- General Comment No 6, paragraphs 33 – 38 and 95
- SCEP Good Practice, section D3
- UNHCR Guidelines on Unaccompanied Children, paragraph 5.7
- UNHCR Guidelines on Child Asylum Claims, paragraph 69

Indicators:

- Children are provided with appropriate accommodation and are able to access basic services such as health and education
- Information is provided to children in an appropriate format on the processes in which they may be involved and the services and assistance available to them
- A guardian is appointed for every unaccompanied child as soon as possible and is provided throughout any procedures and formal identification procedures
- The guardian is:
 - Qualified and trained, independent and accountable
 - Has a clear mandate in relation to the situation of the child and is tasked to act in the child's best interests
 - Able to communicate effectively with children
 - Knowledgeable about child migration, including asylum and trafficking, and familiar with the general context of immigration procedures including return procedures⁴
 - Able to communicate in a language the child fully understands or is otherwise skilled in working with interpreters
 - Able to ensure the necessary involvement of other actors including interpreters and cultural mediators
- The guardian is fully consulted by other actors and the opinion of the guardian is taken into consideration on all stages of the return procedure
- Legal assistance is available to the child throughout any procedures
- Processes exist to engage the child in considering the opportunities that they wish to plan around for the future

⁴ This knowledge could be acquired after appointment into the role through training

2.3 Processes are in place to restore family links for unaccompanied or separated children where this is requested by the child or their guardian, is in the best interests of the child and where it is safe to do so for family members



International Legal Obligations:

- Asylum Reception Directive, Article 19(3)
- CRC, Article 10

Authoritative Guidance:

- General Comment No 6, paragraphs 80, 81 and 82
- SCEP Good Practice, section D7
- UNHCR Guidelines on Unaccompanied Children, paragraph 10.5
- UNHCR Guidelines on Child Asylum Claims, paragraph 68

Indicators:

- The child or their guardian has requested that family tracing is undertaken
- Steps are taken to ensure that it is safe to pursue family tracing and that there are no risks to the family associated with the tracing
- The tracing enquiry is undertaken by an independent agency experienced in family tracing
- Child sensitive and age appropriate methods are used to gather the information necessary to undertake the tracing enquiry
- The child's right to a confidential service and privacy is respected
- Support exists to restore the child's contact with the family where this is possible and assessed to be appropriate, including support from a guardian, where necessary to facilitate understanding by the family of the child's circumstances
- Counselling is provided to assist the child and their family restore their relationship

2.4 A formal procedure for determining the best interests⁵ of an unaccompanied or separated child has been undertaken, with a view to identifying a durable solution for the child



International Legal Obligations:

- Return Directive, preamble 22, Articles 5(a) and 10(2)
- Trafficking Directive, Articles 13(1) and 16(2)
- CRC, Article 3 (1,2)

Authoritative Guidance:

- General Comment No 6, paragraphs 19 – 22, 27, 84, 92, 93
- CoE Guidelines on Forced Return, guideline 11
- SCEP Good Practice, sections B1, D9.1 and D15.3
- UNHCR BID Guidelines, pages 23, 26, 70, 72 and annex 9 soon to be supplemented by specific BID guidance for industrialised countries
- ExCom Conclusions, paragraphs g(i) and h(xv)

Indicators:

- There is a formal procedure to determine the best interests of the child which leads to a decision or informs decisions on outcomes
- A holistic and multi-disciplinary approach is applied, with relevant actors involved in the situation of the child consulted
- Information is available as regards the current situation of the child and relevant circumstances in the country of origin (see Section 3 below)
- The best interests determination identifies the options available which may include, but are not limited to:
 - Family reunification, return to a nominated guardian or return to adequate reception facilities in the child's country of origin
 - Family reunification in another country
 - Integration into the Member State where the child is living
- When considering family reunification the family has been assessed by a specialist childcare agency as suitable carers who will not harm the child and appropriate

⁵ A best interests' determination describes the formal process designed to determine the child's best interests for particularly important decisions affecting the child, that require stricter procedural safeguards. Such process should ensure adequate child participation without discrimination. It should also allow the views of the child to be given due weight in accordance with age and maturity. It involves decision-makers with relevant areas of expertise, and balances all relevant factors in order to assess the best option. UNHCR Guidelines on Determining the Best Interests of the Child, 2008, page 8

actors⁶ have liaised with the child's family and are available to provide counselling to the family prior to the return

- Where efforts to trace the child's family have failed, or family have been traced but reunification is not appropriate at the current time, return to the care and custodial responsibility of a nominated guardian in the country of return may also be explored where it may be in the child's best interests. Identifying a suitable guardian should start with consideration of, but not necessarily limited to, the child's extended family
- Before deciding on return to a guardian, checks have been undertaken that have established that the guardian is a suitable person to ensure the best interests of the child and care for the child and they have been assessed by a specialist childcare agency as suitable carers who will be able to care for the child, support and protect the child from harm
- Where neither family reunification nor return to a nominated guardian is possible or appropriate, due consideration has been given to whether the needs and best interests of the child will be met by a residential placement, including family-based care. In this instance, appropriate consideration must be given to the purpose of the residential placement and the type, quality and monitoring of residential placement that is available and whether it will meet the needs and wishes of the individual child. The residential placement should be embedded in a functioning child protection system to ensure standards are met. An independent guardian in the country of origin must be assigned to act in the child's best interests. There must be a possibility to prepare an individual care plan which considers further attempts to trace the child's family and addresses long-term plans as well as immediate needs of the child,.
- Reintegration support for the child is available both prior to return and on return
- Due consideration is given to the views and wishes of the child, taking into account their age and maturity; the child's guardian and legal representative are involved but should not be responsible for making the best interests determination.

⁶ Appropriate actors may include social workers, teachers, and other specialist professionals who have supported the child in the returning country

3.1 Decision making procedures regarding return take specific account of the situation of children, including children within families

International Legal Obligations:

- Return Directive, preamble paragraphs 6 and 8
- Trafficking Directive, Article 14.2

Authoritative Guidance:

- General Comment No 6, paragraphs 64, 66, 71 – 74, and 95
- SCEP Good Practice, sections D11 and D12
- UNHCR Guidelines on Unaccompanied Children, paragraphs 4.2, 8.1- 8.10, and 9.7
- UNHCR Guidelines on Child Asylum Claims, paragraphs 65, 66, 72-74

Indicators:

- Decision making processes reflect international legal standards and are:
 - Clear and transparent and include a right of appeal with suspensive effect and for which legal aid is available (see 3.3)
 - Decisions are always based on an assessment of each case
 - Specifically consider the circumstances of the children within the family
 - In the case of unaccompanied and separated children, they are based on, or informed by, a Best Interests Determination (see section 2.4 above)
 - Have processes to draw on and/or gather available information about conditions in the country of origin, especially with regards to the situation of children, as well as the circumstances of the children in the destination country (see 3.2 below)
 - Child appropriate in that they follow specific procedures for considering the views of children, for example, appropriately paced interviews with breaks, appropriately timed interviews (when children are not tired) support from guardians for unaccompanied children during interviews, interviews held in settings designed for children
 - Made with minimal delay whilst recognising the need to gather all relevant material and to undertake the procedure at a pace suitable for the child and sensitive to their particular needs
- All relevant actors and decision makers have received appropriate training and are qualified to fulfil their roles
- Actions that amount to child-specific persecution have been fully considered and decision makers have had training in recognising and understanding the implications of child-specific persecution

3.2 Information has been gathered to indicate that a child will not be at risk of harm, at risk of refoulement, or at risk of (re) trafficking or exploitation following their return



International Legal Obligations:

- Return Directive, Article 5
- CoE Trafficking, Article 16.7
- CRC, Articles 6, 19, 32, and 34 – 37,
- UN Refugee Convention, Article 33

Authoritative Guidance:

- General Comment No 6, paragraphs 26 - 28, 50 – 53 and 84
- UNHCR BID Guidelines, page 70

Indicators:

- A general risk and security assessment has been undertaken to guarantee that the child will not be at risk of torture, serious harm, persecution, trafficking, exposure to other forms of exploitation and violations or other inhuman or degrading treatments if returned to a country of origin
- An assessment of family's situation has been undertaken including their finances and whether they have outstanding debts to smugglers or traffickers, which confirms that it is safe for the child to return

3.3 Lawyers with special expertise are appointed to families with children and to unaccompanied children to represent the children throughout the decision-making process and all relevant appeals



International Legal Obligations:

- Return Directive, preamble paragraph 11 and article 13 (3,4)
- Trafficking Directive preamble 19
- CRC, Articles 12 and 22

Authoritative Guidance:

- General Comment No 6, paragraph 69
- General Comment No 12, paragraph 36
- SCEP Good Practice, section D10
- UNHCR Guidelines on Unaccompanied Children, paragraphs 4.2 and 8.3
- UNHCR Guidelines on Child Asylum Claims, paragraph 69
- ExCom Conclusions, paragraph b (iv)

Indicators:

- Before the decision to return a child has been taken the child is represented by a suitably qualified lawyer specialising in immigration law, including knowledge, or capability to access knowledge, of the child's country of origin, and international protection and skilled in working with children
- Legal aid is provided to an unaccompanied and separated child or to the family, or where circumstances require to a child within the family, at no cost to them
- If necessary, lawyers will use interpreters or work with a guardian to inform their clients of the possibility of an appeal

3.4 A prompt and effective remedy exists for children to appeal against the decision to return and such appeals have a suspensive effect on any return decision



International Legal Obligations:

- Return Directive, Article 13

Indicators:

- There is a procedure for lodging appeals against return decisions
- Return decisions are documented and given in written form to the individual(s) concerned and include information about how the decision can be appealed and noting the timeframe in which an appeal is to be made
- Children are informed about these procedures (with specific references to deadlines for their submission). They are supported, for example by a lawyer or a guardian, to understand the procedures. Where children have limited capacity to understand the procedures their guardian should be informed about the procedures
- The decision on the outcome of the appeal is informed by the Best Interests Determination
- The child has been consulted and supported, in the case of unaccompanied children, by their guardian and given appropriate opportunities to be heard
- Legal aid is available throughout the entire appeals procedure

4. Post decision and pre return phase

4.1 A voluntary departure period is afforded to returns of families with children to ensure minimal disruption to the child's situation

International Legal Obligations:

- Return Directive, Article 7(1) and 7(2)
- CRC, Articles 16, 24, 28 and 31

Authoritative Guidance:

- General Comment No 6, paragraphs 40 and 41
- CoE Guidelines on Forced Return, guideline 11

Indicators:

- A voluntary departure period is available which allows time for the child and family to adapt and prepare appropriately for return
- All relevant stakeholders (including the child's guardian) should be involved at this stage and good communication needs to be ensured between them
- Families with children are informed in writing about the possibilities to seek a voluntary departure period of a suitable period
- The grant of a voluntary departure period is notified to the family in writing
- The length of the voluntary departure period (or the availability if extensions to the voluntary departure period) is sufficient to allow children
 - To complete school examinations or reach other academic milestones, for example the end of term/semester, academic year
 - To receive medical treatment or other healthcare where this is necessary in the short term or unavailable following return
 - To acquire all necessary documentation such as birth certificate, education records and health records

4.2 Children have access to education, health and accommodation services pending return

International Legal Obligations:

- Return Directive, Article 14(1b), 14(1c) and 14(1d)
- Trafficking Directive, Article 14(1)
- CRC, Articles 24, 26, 28 and 31

Authoritative Guidance:

- General Comment No 6, paragraphs 40, 41, 44, 46 and 49
- SCEP Good Practice, section D8.1- D8.4
- UNHCR Guidelines on Unaccompanied Children, paragraphs 7.2, 7.9, and 7.11-7.13

Indicators:

- The services provided to the child and their daily routines are maintained including
 - School attendance with reference to completing semesters, the academic year and the taking of exams
 - Remaining in their current accommodation
 - Access to healthcare services
 - Access to recreation and leisure services

4.3 Family unity is maintained throughout all stages of the return procedure

International Legal Obligations:

- Return Directive, Article 14 (1a)
- CRC, Articles 9 and 18

Indicators:

- Children are not separated from their family unless it is in their best interests, for example, if the child is being abused by a family member within the family
- Any decision to detain a family member considers the best interests of the child concerned and separation is avoided
- Alternatives to detention are considered fully (see 5.1 below)
- Where a parent is detained regular contact between the parent and child is arranged in a child-friendly setting that does not frighten or disturb a child

5. Detention

5.1 Alternatives to detention are in place and are fully considered in each case before a decision to detain is taken

International Legal Obligations:

- Return Directive, preamble paragraph 16 and Article 15 (1)
- CRC, Article 37(b)

Authoritative Guidance:

- General Comment No 6, paragraph 61
- SCEP Good Practice, section D6.1
- UNHCR Guidelines on Unaccompanied Children, paragraph 7.6

Indicators:

- Alternatives to detention of children and families with children are fully considered, including, for example
 - Regular reporting to the police or border guards as appropriate
 - Placement in reception centres or other accommodation where curfews are imposed
 - Provision of a bail, bond, surety or guarantee
 - Surrendering of documentation
 - Regular liaison with the family and coaching on return
- The reasons why alternatives to detention are judged to be inappropriate are documented

5.2 Detention is used only as a measure of last resort and for the shortest possible period, is regularly reviewed, and children have access to legal advisers and other actors as well as the possibility to challenge the detention decision



International Legal Obligations:

- Return Directive, Articles 15(3), 16(2), 16(4), and 17(1)
- CRC, Articles 37(b) and 37(d)

Authoritative Guidance:

- General Comment No 6, paragraph 61,
- UNHCR Guidelines on Unaccompanied Children, paragraph 7.7

Indicators:

- Detention of children is avoided
- Children are held in detention for the shortest possible period necessary to effect removal. To this end Member States should have actively taken steps to remove the family prior to detention, for example, flights to return the family are imminent
- Provisions on children within families should be in line with those for unaccompanied children to avoid discrimination
- Any decision to detain fully considers, and must be in line with, the best interests of the child in the individual circumstances of each case
- The decision to detain is documented and subject to judicial oversight and regular review. Children and families with children are advised that they can have access to legal advisers
- In detention, children and families with children are allowed to see their legal adviser, physician and other actors, for example, guardians, social workers, psychologists and NGOs, without being impeded
- The situation of children affected by detention is continuously monitored. The welfare of children and any changes in their health, mental health or behaviour is considered as part of the review of detention. The review considers any detrimental impact upon the children caused by their separation from parents or carers, or a decline in the health or mental health of the adults caring for them

5.3 Detention conditions are suitable for families with children

International Legal Obligations:

- Return Directive, preamble paragraph 17 and Articles 16(3), 17(2), 17(3) and 17(5)
- CRC, Article 37(c)

Authoritative Guidance:

- General Comment No 6, paragraph 63
- UNHCR Guidelines on Unaccompanied Children, paragraphs 7.7 and 7.8
- CoE Guidelines on Forced Return

Indicators:

- Families are detained in accommodation that is separate from single adults
- Family unity is maintained and families are accommodated together
- The accommodation provides privacy regarding toilets, bathrooms and sleeping areas which reflect age and gender
- Children have access to education and educational materials, books, paper and pencils
- Opportunities exist for open air recreation and exercise and children have access to toys and play areas
- Children are provided with nutritional meals and have an age appropriate diet
- The premises where children are detained are appropriate for this purpose
- The centres that are used to detain children have a child protection policy and all staff working in these centres are trained in child protection and in recognising the signs that may indicate that a child is being abused or is at risk of abuse. Centres are regulated and inspected/monitored by an external body and children's safeguarding should be part of the regulatory criteria
- Access to medical care is available in detention centres

5.4 Unaccompanied children are not detained in adult accommodation



International Legal Obligations:

- Return Directive, Articles 16(3), 17(4) and 17(5)
- CRC, Article 37(c)

Authoritative Guidance:

- General Comment No 6, paragraph 63
- UNHCR Guidelines on Unaccompanied Children, paragraphs 7.7

Indicators:

- Detention of unaccompanied children is avoided
- Unaccompanied children are never held in accommodation with adults and communal areas are monitored to ensure unaccompanied children are safe within them
- Conditions are suitable for children (see 5.3 above)

6 The return process

6.1 If, after appropriate consideration of all durable solutions, the return option is pursued, relevant information regarding the return procedure is given to the child concerned



International Legal Obligations:

- Return Directive, Article 12 (1,2)
- CRC, Article 17

Authoritative Guidance:

- General Comment No 6, paragraph 24
- SCEP Good Practice, sections B5
- ExCom Conclusions, paragraph h(xiv)
- JHA Council Conclusions, paragraph 28

Indicators:

- Where necessary families are supported in sharing information, throughout the process, with their children
- Information is given to all children throughout the process, either verbally or in writing that is:
 - Delivered by independent sources
 - In the child's mother tongue, or where necessary through an interpreter or in a language which the child fully understands
 - Simple, and appropriate to the level of maturity of the child
 - Delivered in a non-threatening environment, for example, in a community centre or where the child is living
- Children are afforded regular opportunities and are allowed to ask questions and check the information that has been given to them
- Mechanisms are in place to check that they have correctly understood the information that they have been given (for instance through asking the children to feedback what they have been told in their own words)

6.2 A plan is in place to assist the child with reintegration following their return

International Legal Obligations:

- Return Directive, Article 10(2)
- CRC, Articles, 24, 27-29, 31 and 39

Authoritative Guidance:

- SCEP Good Practice, sections D15.3
- ExCom Conclusions, paragraph h(xiv)

Indicators:

- A reintegration plan has been prepared which covers schooling, training and employment opportunities, access to appropriate health care, accommodation, and care and protection and reintroduction into the community
- An assessment has been undertaken regarding the provision of financial support necessary for the child and families with children to re-establish themselves within their community
- The family of unaccompanied children is involved and there is regular communication with the child and care givers

6.3 Practices for the removal of children are appropriate and proportionate

International Legal Obligations:

- Return Directive, Article 8(4)

Authoritative Guidance:

- General Comment No 6. paragraph 87

Indicators:

- Voluntary return has been fully explored and a voluntary departure period has been set to ensure that the family can return in a well organised way
- Children are given a chance to say “goodbye” to friends in the host country
- The use of force and physical restraint whether on adult family members or on children, is avoided
- Practices are sensitive to the needs of children, for example (they do not take place in the middle of the night nor are children ever removed directly from school)

6.4 Mechanisms allow for unaccompanied and separated children to be escorted on their journey of return

Authoritative Guidance:

- SCEP Good Practice, section D15.5

Indicators:

- Funds are available to allow guardians from the sending country or other actors who the child chooses to accompany them on their return journey and take part in the transfer of care and custodial responsibilities
- The child is actively engaged in the process of deciding which individual will fulfil the escort role

7. Arrival in country of return and post return phase

7.1 Procedures exist for the formal transfer of care and custodial responsibilities for the child

International Legal Obligations:

- Return Directive, Article 10(2)
- CRC, Articles 11 and 18

Authoritative Guidance:

- General Comment No 6, paragraph 85
- UNHCR Guidelines on Unaccompanied Children, paragraphs 9.4
- SCEP Good Practice, section D15.6

Indicators:

- Formal procedures exist for the transfer of the care and custodial responsibilities of a child
- All relevant actors involved in the return are familiar with these procedures
- The person or agency taking charge of the child will be notified in advance of the child's arrival and given sufficient notice to prepare for the taking of care and custodial responsibilities
- The person or agency to whom the care and custodial responsibilities are being transferred to has been identified and vetted and the procedures have established that the child will be cared for and protected whilst in their care

7.2 Appropriate reintegration support exists for returning children

International Legal Obligations:

- Return Directive, Article 10(2)
- CoE Trafficking Convention Article 16.5

Indicators:

- Proper and well resourced reintegration infrastructure exists to address the situation of returning children
- Access to education, training and job opportunities is ensured
- Support for reintegration for the family, including counselling services, is provided
- Local child protection actors are available to support and monitor the situation of the child

7.3 Formal procedures for monitoring the outcomes of the impact of return for children exist in countries of return

Authoritative Guidance:

- SCEP Good Practice, section D15.5

Indicators:

- Experienced actors provide monitoring in the country of return to ensure that what has been agreed as part of a reintegration plan is delivered
- The process for monitoring includes direct contact by those undertaking the monitoring with the child and their family
- A monitoring checklist has been drafted identifying appropriate indicators including indicators for registration (or civil status recognition), accommodation, education, employment, health care, reintegration into family and the community and considering whether the child is safe, and healthy
- Consideration is given to the particular vulnerabilities of girls and monitoring specifically considers the situation of girls and is alert to gender specific exploitation