

Expert Recommendations on
Model Agreement on the Return of Children to Their State of Origin

- Recalling the Convention on the Rights of the Child of 1989, the Global Compact for Safe, Orderly and Regular Migration of 2018, General Comment No. 6 (2006) Treatment of unaccompanied and separated children outside their country of origin of UN Committee on the Rights of the Child, 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, and 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, and the Guidelines for the Alternative Care of Children, adopted by Resolution of the UN General Assembly No. 64/142 (2010);
- Committed to the principles of non-discrimination and the best interests of the child, as well as the rights of the child to life, survival and development, to express his or her views in all matters affecting the child and to be heard;
- Recognizing that the deprivation of liberty of children on the basis of their migration status is unacceptable;
- Guided by the desire to develop neighborly partnership relations between the two states and strengthen cooperation in various areas, including migration;

Have agreed as follows:

Objectives and principles of the agreement

This agreement regulates the procedure of return of an unaccompanied or separated child identified on the territory of one of the parties to this agreement who is a citizen of the other party.

The main principles of this bilateral Agreement are observance of the best interests of the child, non-discrimination, the right of the child to be heard and the right of the child to life, survival and development. The main objectives of a child's return to his or her country of origin are observance of his or her best interests, family reunification, and creation of conditions for his or her safe and free development. Unaccompanied or separated children of the other party to this agreement identified in the host country shall enjoy the same rights, protection and care as children citizens of the host country.

Terminology

State party – a state that is a party to this agreement;

Host country – the state on whose territory the child is detected and/or located at the time of the return procedure;

Country of origin – the state of which the child is a citizen, or, for stateless children, the country of permanent residence;

Child – a human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier;

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;

Separated child – a child who is separated from both parents or from their previous legal or customary primary caregiver, but not necessarily from other relatives; this may include children accompanied by other adult family members;

Undocumented child – a child who has no documents at the time he or she is detected;

Determination of the best interests of the child – a system of measures and procedures adopted by authorized state bodies in the host country and country of origin that determine the best interests of the child on a case-by-case basis through the interpretation and implementation of Article 3, Paragraph 1 of the Convention on the Rights of the Child in combination with other provisions of the Convention. The principle of the best interests of the child shall be applied to all matters concerning the child or children and taken into account to resolve any possible conflicts among the rights enshrined in the Convention or other human rights treaties or national laws;

Alternative care for a child – care for a child temporarily or permanently deprived of his or her family environment, or whose best interests do not allow him or her to remain in that environment.

Procedure for return of a child to his or her country of origin

The return procedure consists of the following stages: 1) appointment of a legal representative for the child in the host country; 2) placement and care for the child in the host country; 3) determination of the best interests of the child; 4) notification of the country of origin if a child is returned; 5) social assessment in the country of origin; 6) adoption of a decision to return the child jointly by the states parties; 7) development and adoption of a reintegration plan by the country of origin; 8) preparation of the child for return and transfer of the child to the country of origin; 9) reintegration, rehabilitation and monitoring.

The procedure for a child's return to his or her country of origin shall be coordinated by the parties' central executive state bodies responsible for state policy related to the rights of the child. The child's view on any actions must be taken into account at each stage of this process.

Identification of a child and appointment of a legal representative for an unaccompanied or separated child

Within twenty-four hours after an unaccompanied or separated child is found in the host country, a legal representative shall be appointed for him or her in accordance with the national legislation

Placement and care for a child in the host country

Unaccompanied and separated children shall be placed in the conditions of alternative care in accordance with the national legislation of the host state that at least equal to those for child citizens in a similar situation.

States Parties shall provide each child beneficiary of this Agreement with access to free education and healthcare and free legal and psychological assistance, and shall ensure other rights set forth in the national legislation of the State Party to the same extent as for child citizens.

Regardless of the length of the return procedure or the term of stay, a child shall be provided with the appropriate level of education in a language understood by him or her from the age mandated for citizens under national legislation and to the age that a basic level of education is mandated for citizens of the host country. Full and complete free medical care shall be provided by the host country for all medical indications, including medical care for psychological or chronic illnesses.

Expenses related to placement, alternative care and access to other services in the host country shall be covered by the host country.

Separated child accompanied by adults

If a separated child is accompanied by adults with whom he or she has resided or who accompany him or her, he or she shall not be separated from them except if it is necessary for ensuring the child's best interests. Such necessity shall be determined by the authorized state bodies of the host country within procedures conducted for child citizens. The liberty of adults accompanying a child shall not be restricted solely on the basis of their migration status within the framework of the return procedure in order to ensure the best interests of the child.

Determination of the best interests of an unaccompanied or separated child

After a child is detected on the territory of a State Party, the authorized child protection state bodies shall conduct the procedure for determining the best interests of the child as soon as possible, but not later than a period of one month. This procedure includes identification of

the child, a family assessment in the country of origin and the host country, an assessment of the child's safety and existing risks and the level of the child's integration into the host country, and the length of his or her absence from the country of origin, as well as the child ethnicity, religion, cultural and linguistic particulars. A decision shall be made on the basis of the above mentioned information as to which measures meet the best interests of the child, specifically: return of the child to the country of origin; integration into the host country; application for international protection in the host country; or return to a third country.

The view of the child shall be considered at all stages of the adoption of any decision regarding the child. The child must be informed of the decision adopted in relation to him or her in a language and manner that he or she understands.

If return to the country of origin meets the best interests of the child, then the country of origin shall be informed of the child within five business days following the determination of the best interests of the child.

Within a month, the authorized bodies of the country of origin shall identify and establish contact with the child's family or other legal representatives, assess living conditions and establish the child's will to return to his or her family and the family's agreement to the child's return. The child's country of origin shall forward this information and recommendations regarding the best interests of the child to the second party.

Decision to return a child to the country of origin

After receiving information from the country of origin and consent from the parents or other legal representatives in the country of origin for the child's return, the authorized bodies of the host country shall adopt a decision to return the child to the country of origin within 10 business days.

At all stages, the child shall be provided with any information regarding his or her rights, available services, means of communication, the identification of his or her family or the search for a foster care institution, or any other information about the situation in the state of origin in a language that he or she understands, with account for his or her level of understanding, as well as free legal and psychological assistance. A child shall also be granted the opportunity to communicate independently with his or her relatives, representatives of the country of origin, and other persons, if this does not harm the child.

A child's return shall be voluntary and based on his or her written consent or the written consent of his or her legal representative in the host country if the child does not know how to write, and on the basis of the written consent of the legal representatives in the country of origin to receive the child.

Preparation of the child for return and his or her transfer to the country of origin

After a decision is adopted to return a child to his or her country of origin, the authorized state bodies of both countries shall compile a plan for reintegration of the child after return that takes account the views and special needs of the child. The child must be familiarized with the plan in a language and manner that he or she understands.

After a decision is adopted to return a child, the authorized bodies of both parties shall together prepare identity and travel documents and a transportation plan for the child.

The time and means of return shall be agreed on with the child and his or her family or other legal representative, and shall correspond to the age and needs of each child. It shall be completed within the shortest possible timeframe, and take into account access to education, healthcare, and other services.

The preferred option for transporting a child from the host country to the country of origin is accompaniment by parents or other legal representatives. If the parents or guardians cannot bring the child to the country of origin for reasons beyond their control, transportation shall be arranged by representatives of the authorized state bodies of the country of origin. Transportation shall be paid for by the country of origin.

If the country of origin cannot arrange transportation for a child for reasons beyond its control, the authorized representative of the host country shall deliver the child to the country of origin. In this case, expenses shall be covered by the host country. The child's transfer shall be recorded in a document on the reception and transfer of a child.

The parties to this agreement may also establish other forms for transporting a child or for financing this transfer that corresponds to the best interests of the child and child rights standards in the specific cases.

Social support and rehabilitation for a child after return

After a child is returned to his or her country of origin, the state must meet the child's basic needs, provide access to housing, education, healthcare, and take measures concerning his or her rehabilitation and reintegration in accordance with the reintegration plan. If necessary, the child should receive social support that provides social accompaniment, assistance and protection to overcoming life's difficulties and preserving or improving the child's social status.

Monitoring of the child's situation after return

The state of origin shall monitor the child's situation for 24 months after return. This monitoring may be extended if necessary, and the parties may conduct joint, interagency monitoring of this situation.

Undocumented child

When a child is found whose citizenship cannot be confirmed by the country of origin, all possible measures shall be taken to identify the child and his or her country of origin. If this is not possible, the child shall be granted citizenship of the host country in order to avoid statelessness in accordance with the national legislation of the state party.

Prosecution of a child

If a child commits a criminal offense in the host country, the child shall be held responsible in accordance with the national legislation of the host country in compliance with the standards for fair trial for minors. Moreover, children shall not be subject to criminal prosecution or punishment only because of their migration status or the migration status of their parents or of the people accompanying them

Return of a child citizen of a party to this agreement to or from a third-party country

The parties to this agreement shall apply the standards of this agreement to the procedures for transferring children whose country of origin is a State Party to this agreement to a third country that is not a party to this agreement.

The parties agree to accept children whose country of origin is a State Party to this agreement if they return from a third-party country to their country of origin through a party to this agreement.

Protection of personal information

The personal information of children and their families is confidential. It shall not be disclosed to third parties or used by the parties without the consent of the beneficiaries and must be protected in accordance with the national legislations. The return procedure of children is confidential and may not be disclosed to third parties without the consent of children, their guardians, or the authorized state bodies of both parties.

Cooperation on the implementation of this Agreement

The parties shall meet once every two years to analyze the implementation of this Agreement and consult on best practices and standards in the sphere of the rights of the child.

Concluding provisions

This agreement shall enter into force at the time of its signing and ratification by the parties.