

Voluntary Return to Ukraine of Refugee Children without Parental Care, including Unaccompanied Children and Children Evacuated from Care Institutions in Ukraine

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Scope

This document elaborates UNHCR's position in relation to the voluntary return to Ukraine of refugee children¹ without parental care, including unaccompanied children and children evacuated from care institutions in Ukraine. It sets out protection safeguards to be followed when assisting refugee children who wish to voluntarily return to Ukraine. The position is based on the recognition that it is the primary responsibility of the country of asylum to protect the rights of refugee children within its territory.² In the context of the Ukraine situation, the Ukrainian authorities can have an important role to play in providing information on the situation and services available in the area of return and the care arrangements for each child, as part of a broader assessment by the competent authorities in the country of asylum.

Non-Return Advisory

In its Position on Returns to Ukraine,³ UNHCR calls on States to suspend the forcible return of nationals and former habitual residents of Ukraine, as the situation in the country is volatile and may remain uncertain for some time to come. Consequently, States should not forcibly return refugee children without parental care to Ukraine.

Voluntary repatriation of refugee children

Return as a durable solution in the exceptional context of an ongoing international conflict raises the risk of potential harm to the child and triggers the need for best interests procedures as a safeguard for children at risk, including children without parental care.⁴ Voluntary return of refugee children without parental care may only be pursued when:

- 1) The refugee child and their parent(s) or, where relevant, their legal guardian or customary caregiver, voluntarily seek(s) the return; and
- 2) The return of the child can be carried out in safety and dignity, taking into account the specific needs of the child; and
- 3) A determination has been made by the competent authorities in the country of asylum that it is in the best interests of the child to return,⁵ taking into consideration the rights

¹ This is inclusive of children who have formally been recognized as refugees or as beneficiaries of temporary protection, or other forms of international protection, and other children who are citizens or former habitual residents of Ukraine who are outside the country.

² *Convention on the Rights of the Child*, 20 November 1989, 1577 UNTS 3, www.refworld.org/docid/3ae6b38f0.html, Article 22. *Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children*, 19 October 1996, (Hague Convention of 1996), www.hcch.net/en/instruments/conventions/full-text/?cid=70, Art. 6.

³ *UNHCR Position on Returns to Ukraine*, March 2022, www.refworld.org/docid/621de9894.html.

⁴ *UNHCR Best Interests Procedure Guidelines: Assessing and Determining the Best Interests of the Child*, May 2021, www.refworld.org/docid/5c18d7254.html, p.158.

⁵ UN Committee on the Rights of the Child (CRC), *General comment No. 6 (2005): Treatment of Unaccompanied and*

and wishes of the child, as well as those of their parents and guardians/caregivers, where relevant; the security situation in the proposed area of return; any specialized needs of the child; and the services/support available to the child in the area of return.

Best interests of the child

Each decision regarding a child without parental care must be guided by the best interests principle, as defined in Article 3.1 of the Convention on the Rights of the Child (CRC)⁶ and as further elaborated by the Committee on the Rights of the Child in its General Comment No. 14,⁷ as well as for children with disabilities in Article 7 of the Convention on the Rights of Persons with Disabilities (CRPD)⁸ and in General Comment No. 6 of the Committee on the Rights of Persons with Disabilities.⁹ As noted by the Committee on the Rights of the Child, the best interests of the child is a threefold concept, namely a substantive right; a fundamental, interpretative legal principle; and a rule of procedure.¹⁰ In applying this concept, due regard should be given to balancing different elements of children's best interests and the determination of the best interest must be undertaken in line with the procedural safeguards outlined in section V of CRC General Comment 14. As noted previously, this decision should be taken by the authorities of the country of asylum under the Hague Convention of 1996, which foresees that the host country has responsibility for the safety of "refugee children and children who, due to disturbances occurring in their country, are internationally displaced".¹¹

Balancing the views of the child, parents and legal guardian

In determining if the return of a child to Ukraine is voluntary and in the best interests of the child, there may be situations where the views, rights, and wishes of the child, their parents and/or their legal guardian diverge. For example, the child's legal guardian may wish for the child to return to Ukraine (and may him/herself intend to return to Ukraine), while the child may wish to remain in the country of asylum. In such situations, the child should be entitled to appropriate legal representation so that their best interests can be formally assessed to ensure that their views, rights and wishes are represented during any administrative or judicial procedures as part of the procedural safeguards referred to above.¹²

Family reunification

Where the return of refugee children without parental care, including those evacuated from institutions is being considered, the right to family life and principle of family unity should be prioritised so that children can be reunified with a parent, sibling, or other close family

Separated Children Outside their Country of Origin, 1 September 2005, CRC/GC/2005/6, www.refworld.org/docid/42dd174b4.html, Section VII (c).

⁶ Convention on the Rights of the Child, note 2 above, Article 3.1.

⁷ CRC, *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)*, 29 May 2013, CRC/IC/GC/14, www.refworld.org/docid/51a84b5e4.html.

⁸ *Convention on the Rights of Persons with Disabilities*, 13 December 2006 (CRPD), www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities, Article 7.

⁹ UN Committee on the Rights of Persons with Disabilities, *General comment No. 6 on equality and non-discrimination*, www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no6-equality-and-non-discrimination, para. 38.

¹⁰ CRC, General Comment No. 14 (2013), note 7 above, para. 6.

¹¹ Hague Convention of 1996, note 2 above, Article 6. Hague Conference on Private International Law, *The Application of the 1996 Child Protection Convention to Unaccompanied and Separated Children*, 2023, <https://assets.hcch.net/docs/96a3875d-fb7c-44dc-99b0-844c39562851.pdf>, para. 25.

¹² Convention on the Rights of the Child, note 2 above, Article 12; CRC, General comment No. 14 (2013), note 7 above, para. 96.

member,¹³ unless it is not in the child's best interests, as articulated in the UN Guidelines for the Alternative Care of Children.¹⁴

Alternative Care

Where reunification with family members is not possible or in the best interests of the child, children should be placed in family-based alternative care whenever possible.

With respect to the return of children without parental care evacuated from care institutions, institutional care arrangements are not considered to be in the child's best interests and should therefore only be used as a matter of last resort and for the shortest possible time. These measures will equally apply for children with disabilities, in line with Article 23 of the CRPD on respect for home and the family.¹⁵ The preference for family-based care and the plan to reform the care system is reflected in the Government of Ukraine's National Recovery Plan.¹⁶

Role of Ukrainian authorities in enabling informed decision around voluntary returns

In order to make informed decisions, authorities in the country of asylum may need support and information to be able to holistically assess the best interests of the child when considering reunifying and/or returning a refugee child without parental care to Ukraine. As such, authorities in the country of asylum may request or receive support to collect this information, including from the Ukrainian child protection and guardianship authorities, in line with relevant personal data protection laws.

To support informed decision-making to ensure that the return is voluntary, informed, and in the best interests of the child, Ukrainian authorities can usefully provide assistance to authorities in the countries of asylum to strengthen these processes, including by:

- Providing individualized information about previous care arrangements, guardianship decisions and options for care arrangements in Ukraine;
- Providing up to date situational information on the area of origin of the child;
- Facilitating contact, family tracing, or assessment of/with parents, family members or previous legal guardians, with the consent of the child and provided it is in the child's best interests;
- Assessing and providing information on areas of return to determine if there is the presence or likelihood of physical dangers and/or environmental hazards; and
- Confirming availability and accessibility of essential services in areas of return (individual care management, social services, education, healthcare, rehabilitation services, family reunification, etc.), supplemented by information collected by humanitarian organisations.

For children evacuated from care institutions for whom family-based care is not immediately available, Ukrainian authorities should assess the childcare institution to ensure that they are safe and have the staff and services to meet the needs of returning children, while continuing

¹³ Whenever possible and in the best interests of the child, competent authorities should facilitate family reunification in the country of asylum, or in a third country.

¹⁴ General Assembly, *Guidelines for the Alternative Care of Children*, A/RES/64/142, 24 February 2010, www.refworld.org/docid/4c3acd162.html. This is also in line with Articles 9 and 10 of the Convention of the Rights of the Child, which stipulates a right to family reunification for all children, including those seeking international protection, and with Section VII (b) of the CRC's General comment No. 6.

¹⁵ Convention on the Rights of Persons with Disabilities, note 8 above, Article 23, para. 3.

¹⁶ Ukraine's National Recovery Plan, 2023, www.uncr-international.com/urc2022-recovery-plan.

to explore options to reunite children with their families or placing children in family-based care in line with their best interests. If there are concerns regarding the safety and security of the facility or the location, or the ability of the institutional care facility to meet the needs of returning children, returns should not take place. This information should be shared with competent authorities in the country of asylum to inform the decision making on returns.

Role of Ukrainian authorities in monitoring and providing support to children after voluntary returns

To mitigate risks and further support decision-making around voluntary returns, Ukrainian authorities should make necessary efforts to ensure that adequate systems are in place to monitor the situation of child returnees. This includes ensuring that social workers are available in areas of return to develop individual care plans for returning refugee children without parental care so as to promote sustainable return and reintegration, and placement in family-based care wherever possible.

UNHCR Support

UNHCR stands ready to advise and support States on family reunification and the implementation of procedural safeguards for decision making on voluntary returns/Best Interests Procedures, in line with the above legal standards and UNHCR's Best Interests Procedure Guidelines.¹⁷

¹⁷ UNHCR Best Interests Procedure Guidelines, note 4 above.