

In brief

Seven reasons for considering what happens in adulthood when assessing the best interests of a child

PICUM

Context

While governments should identify a durable solution for children in migration, to date, no European country has developed an in-depth, formalised procedure for assessing best interests and identifying a durable solution for all undocumented migrant children (whether accompanied or unaccompanied) in their migration laws. However, best interests assessments do happen across the region and there is ongoing debate as to whether it is appropriate, or even legally required, for best interests procedures to take account of the long-term impact of a migration decision beyond the age of 18.

PICUM's report "Taking a child's future into account today: Legal arguments for considering what happens in adulthood when assessing the best interests of a child" advances arguments why impacts during adulthood should be taken into account when assessing a child's interest and identifying a durable solution. In doing so, it aims to inform work by all those working towards a safer transition into adulthood.

This brief highlights key reasons for best interests of the child assessments or procedures to take into account what happens in (young) adulthood when making a decision in the best interests of a child. It should not be read as a stand-alone document, as the legal foundations and argumentations for each of the arguments are not included in this summary. Please refer to the full report for those.

Seven arguments for assessing post-18 impacts

There are several reasons why best interests assessments to identify a durable solution[1] should take into account what happens in (young) adulthood. There may be others, but the report identifies at least seven, which are connected to:

1. **Right to development**
2. **Right to identity**
3. **Continuity of personhood**
4. **Fundamental rights continuity**
5. **Integrated human rights**
6. **Lessons from care experienced people**
7. **Lessons from juvenile justice**



1. Right to development

In migration contexts, the right to development requires an assessment of how decisions will affect a child's transition to independent adult life. This would include, for example, whether the decision would disrupt education and thus have an impact on future employability, its impact on supportive family relationships, and whether it would create legal uncertainty that has a long-term impact on mental well-being and undermines the capacity for independent living.

Life planning is part of the right to development and uncertainty about what will happen after reaching majority can create psychological pressure that undermines the child's present development. These are not speculative concerns but predictable impacts on the child's development that must be considered to comply with Article 6 of the United Nations Convention on the Rights of the Child (CRC). Questions may arise as to how far into the future assessments should project and thus whether this creates legal uncertainty and risks inconsistent application.

While these concerns are valid, UNCRC General Comment 14's framework provides guidance: decision-makers must consider 'short and long term possible scenarios of the child's development'. This requires assessment of reasonably foreseeable and predictable developmental impacts rather than distant speculation.

1 Initiative for Children in Migration, 2019, Durable solutions and the best interests of the child in the context of return processes

2. Right to identity

The United Nations Refugee Agency (UNHCR) refers to the need to consider the child's right to identity in best interests procedures in decisions on durable solutions.[2]

Identity development has long-term dimensions. A child who spends formative years in a host country develops connections, including family, cultural, social and economic ties, which become integral to their sense of self. Migration decisions therefore affect not only a child's current identity but also their future identity and sense of belonging. Return or deportation could disrupt these established connections, with impacts extending well beyond childhood. And, by analogy with adoption, where decisions are assessed in light of their lifelong effects, migration decisions should be understood to have similarly enduring consequences. Both decisions determine legal aspects and shape identity formation continuing into and throughout adulthood.

Best interests procedures in the migration context should therefore similarly take account of the long-term implications of such decisions, extending beyond the age of 18.

3. Continuity of personhood

Rights are inherent to the person. The concept of 'best interests of the child' should thus be interpreted as referring to the child as a continuous person. The child and adult are the same rights-bearing person on a developmental trajectory. Best interests should therefore protect the whole of the person's life and not just the period of childhood: decisions made during childhood shape the person's entire trajectory.

The continuity of personhood argument does not extend CRC protections to adults: rather, it requires that decisions made during childhood consider reasonably foreseeable consequences for the same person's future. Failure to take account of such consequences when carrying out a best interests procedure results in failing to conduct an adequate best interests assessment that is required under UNCRC General Comment No. 14.

2 UNHCR, 2021, UNHCR Best Interests Procedure Guidelines: Assessing and Determining the Best Interests of the Child, section 2.4.2 and 4.1.5.

4. Fundamental rights continuity

Children do not lose their human rights protections when turning 18. The rights of the future adult already belong to the present child, even those rights that are not fully exercisable yet. This continuity of fundamental rights requires an assessment of the child's best interests to take account of future risks of harm (including post-18) on their continuing rights trajectory: 'In order to ensure that the child after 18 continues to benefit from their human rights, you should already take into account when determining the best interests of the person at that time the possible negative human rights consequences afterwards'.

Existing legal doctrine and case law in migration law supports this: non-refoulement assessments require a forward-looking evaluation of the probability that an individual will face the risk of violations of certain fundamental rights. Applying a forward-looking approach to include post-18 impacts in best interests procedures strengthens rather than dilutes child protection by ensuring comprehensive consideration of reasonably foreseeable impacts.

5. Integrated human rights

Children's rights should be seen as the human rights of children that specifically apply to their particular circumstances, as opposed to a separate category or system of rights. Whilst children have additional protections under the CRC, all human rights apply equally to children. The CRC operates within the broader human rights framework.

Additionally, when interpreting 'best interests of the child' under Article 3 CRC, nothing in the text limits consideration to pre-18 impacts. General Comment No. 14 requires assessment of 'short and long-term effects' without referring to a cut off at the age of 18.

Pursuant to an integrated human rights approach, effective rights protection would require considering the full scope of reasonably foreseeable consequences across the child's developmental trajectory. An integrated human rights approach does not blur the age boundary established in the CRC or dilute its child-specific protections. Rather, it ensures there are no gaps in protection as children transition to adulthood.

6. State responsibility does not end at age 18: lessons from care-experienced people

Parallels can be drawn from the alternative care sector. People leaving care require enhanced support to make a successful transition towards independent living. The state also stood *in loco parentis*[3]. The State's exercise of authority creates responsibility for foreseeable consequences, including those manifesting after majority. Additionally, the requirement to plan for aftercare before the child leaves the care setting clearly means that post-18 outcomes must be considered when making decisions during childhood. By analogy, migrant children, over whom the State exercises equally profound control through migration decisions, should benefit from the same extended state responsibility as well as a forward-looking assessment.

While extending the scope of best interests assessments and support beyond 18 may raise concerns about paternalistic overreach, the goal is not to make decisions for the future adult, but to ensure that decisions made during childhood do not restrict the future adult's ability to exercise autonomy or enjoyment of rights, such as by disrupting education, severing family or social relationships or creating legal precarity.

7. Recognition of post-18 impacts: lessons from juvenile justice

Several principles from juvenile justice transfer directly to migration contexts, including the CRC Committee's acknowledgement that protecting children's rights requires anticipating and preventing harms, such as stigmatisation and impact on employability, that will manifest throughout their lives. The Committee bases these extended child justice protections on 'developmental and neuroscience evidence that shows that brain development continues into the early twenties' (General Comment no 24).

If states must consider lifelong stigmatisation and employment impacts when making child justice decisions, consistency requires similar consideration of the lifelong impacts of migration decisions on employment, family relationships, mental health, and social integration.

3 The Latin term 'in loco parentis' ("in [the] place of a parent" or "instead of a parent") refers to legal doctrine which denotes the legal responsibility of a person or organization to perform some of the functions or responsibilities of a parent. Source: Cornell Law School Legal Information Institute, In loco parentis, webpage [checked on 7 July 2026]

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Cover image: Ahmet Kurt, Unsplash

This publication was made possible with the kind support from:

Co-funded by the European Union

Funded by the European Union. Views and opinions expressed are however those of the author(s) only and do not necessarily reflect those of the European Union or European Union Programme for Employment and Social Innovation "EaSI" (2021-2027). Neither the European Union nor the granting authority can be held responsible for them.



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