

Taking a child's future into account today

Legal arguments for considering what happens in adulthood when assessing the best interests of a child

PICUM

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Foreword

Foreword by Laetitia Van der Vennet, Senior Advocacy Officer, PICUM

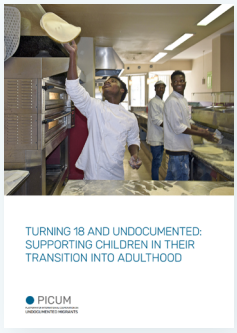
For years now, undocumented young people, PICUM members and partners have raised awareness of the many difficulties children and young people transitioning into adulthood face and how harsh turning 18 can be. It is a real 'step into the void' for many, as our 2022 animation video is called,[1] with support systems and services ending from one day to the next. That is the case for all children who are either unaccompanied, are undocumented or have an insecure residence status, because so many of the legal entitlements they may have depend on them being a child or on their residence status.

Our 2023 report 'Turning 18 and undocumented: Supporting children in their transition into adulthood'[2] looked into transition into adulthood and identified five key trends in Europe, including the reasons why some children are undocumented at 18 years old.

We see two key reasons why children transition into adulthood without a secure residence status. The first is that current migration laws rarely, if ever, include thorough best interests of the child procedures that identify a durable solution.[3] In other words, a decision to order a child to leave the territory is rarely, if ever, preceded by a thorough assessment of whether that return is in the child's best interest, or whether the stay in the country would best serve the child's development. The second is that, when assessments are done, their scope often stops at the child's 18th birthday and fails to look at the impacts beyond it.

This briefing aims to help resolve the latter by setting out a series of arguments why best interests of the child assessments or procedures should take into account what happens in (young) adulthood when making a decision in the best interests of a child. It complements two other publications, a collection of good practices[4] and guidance for policy makers who want to design residence procedures with those transitioning into adulthood in mind.[5] These also aim to address key challenges we see across the region: ill-adapted residence procedures and the fact that many promising projects are not well known beyond their contexts.

We hope that this brief, and especially the legal arguments in it, can be useful to all professionals working towards a migration system and residence procedures that truly identify durable solutions in the best interests of the child.







1 PICUM, 2022, A step into the void, animation video

2 PICUM, 2023, Turning 18 and undocumented: supporting children in their transition into adulthood

3 As developed by IOM, UNICEF, UN Human Rights, PICUM, ECRE, Save the Children, and Child Circle, 2019, Guidance to respect children's rights in return policies and practices. Focus on the EU legal framework

4 PICUM, 2024, Stepping up: A collection of projects and practices helping migrant children transition into adulthood

5 PICUM, 2024, Guidance for policy makers and practitioners on regularisation mechanisms for people transitioning into adulthood

Introduction and Context

Under international and EU law, the best interests of the child must be a primary consideration in all actions relating to children, including decisions taken in migration contexts. EU Member States should have in place procedures to identify durable solutions (integration in the member state, return to the country of origin or resettlement in a third country) for children in migration, based on a consideration of their best interests. UN agencies and civil societies organisations coined the term 'best interests of the child procedure' in 2019, when publishing guidance on how governments identify a durable solution and, if the durable solution is in another country, implement it in accordance to the child's rights.[6] The obligation to take into account a child's best interests also applies when issuing and implementing a return decision against a parent.[7] A comprehensive best interests procedure should include a formal, individualised and fully-documented examination of all aspects of a child's situation, considering all options to identify which durable solution is in the child's best interests and taking account of the view of the child.[8] However, **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, accompanied or unaccompanied, in their migration laws**. Importantly, return decisions concerning children are typically not subject to review or reassessment when enforcement is deferred, for example, until the age of 18.[9]

> There is ongoing debate as to whether best interests procedures should take into account the long-term impact of a migration decision beyond the age of 18.

6 IOM, UNICEF, UN Human Rights, PICUM, ECRE, Save the Children, and Child Circle 2019. Guidance to respect children's rights in return policies and practices. Focus on the EU legal framework

7 ECtHR, Üner v the Netherlands, App. no. 46410/99, 18 October 2006 (*Üner*), para. 58; ECtHR, *Kolonja v Greece*, App. No. 49441/12, 19 May 2016; ECtHR, *Rodrigues de Silva and Hoogkamer v. The Netherlands*, App. no. 50435/99, 31 January 2006; and CJEU, *OB v Procura della Repubblica presso il Tribunale di Bologna* (KInsa), Case C-460/23, 3 June 2025, para. 48.

8 PICUM, 2022, Turning 18 and Undocumented: Supporting Children in their Transition into Adulthood (Turning 18), p. 36.

9 PICUM 2022. *Turning 18*. See also Communication from the Commission to the European Parliament and the Council, *The Protection of Children in Migration*, COM(2017) 211 final (2017 Communication on the Protection of Children in Migration), p. 14.

In most Council of Europe member states, unaccompanied children should be entitled to state support and access to alternative care, while children in undocumented families receive more limited safeguards. In some countries children, particularly those who are unaccompanied, are issued residence permits that expire at the age of 18. This leads to them 'ageing out' of the protection system, often becoming undocumented overnight and losing access to fundamental rights such as healthcare, education, housing and protection from forced return – a sharp and disruptive transition into adulthood.[10] The consequences are far-reaching, as most aspects of adult life, including further education, employment and housing, require a valid residence permit. As Allsopp and Chase observe, unaccompanied migrant and refugee young people occupy 'a unique position in relation to the welfare state [and] the immigration regime', experiencing a 'sudden transition from privileged rights holders as "children"... to "adults"'.[11]

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. Current practice suggests a narrow interpretation of 'durable solutions'. As Sedmak, Sauer and Gornik note, 'despite the fact that best interests determination assumes various solutions for unaccompanied minor migrants ... it often seems that eventually only one durable solution is available – namely, return'.[12] This points to the ineffectiveness of the principle and raises further questions about whether best interests procedures that do not consider post-18 consequences can truly identify durable solutions.

Purpose of this report

This report addresses the legal ambiguity around best interests and the requirement to take into account the impacts after a child turns 18, looking at the international regional and legal framework and advancing 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, so that children and young people do not age out into adulthood without a secure residence status.

10 PICUM 2022. *Turning 18*, p.9. See also Parliamentary Assembly Resolution 1996 (2014) 'Migrant Children: What Rights at 18?'

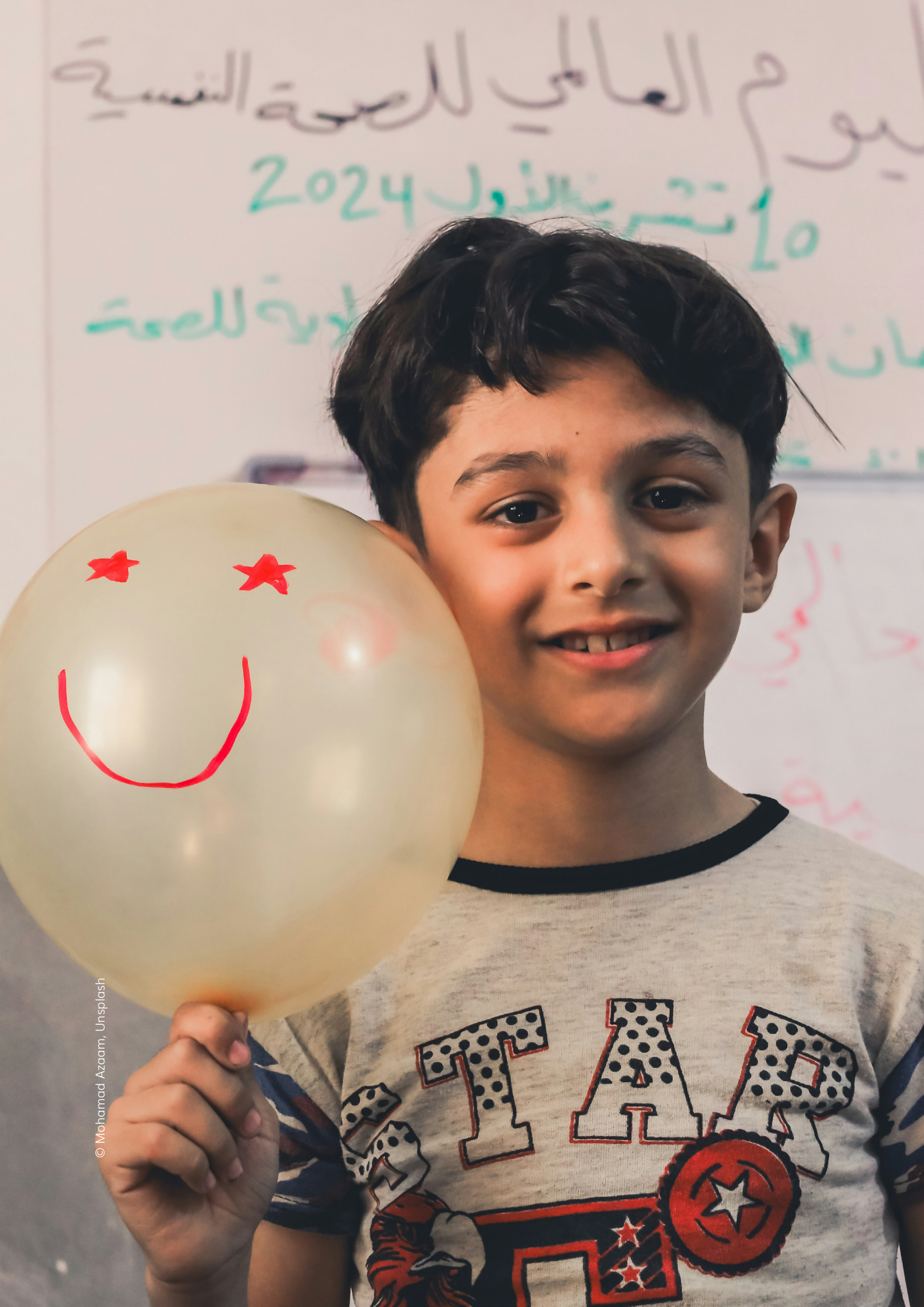
11 Allsopp and Chase 2020. Youth Migration and the Politics of Wellbeing: Stories of Life in Transition (Bristol University Press), p. 30.

12 Sedmak, Sauer and Gornik (eds.) 2018. Unaccompanied Children in European Migration and Asylum Practices: In Whose Best Interests? (Routledge), pp. 10-11.

This report advances arguments why impacts during adulthood should be taken into account when assessing a child's best interest and identifying a durable solution. In doing so, it aims to inform work by all those working towards a safer transition into adulthood.

Methodology and structure

The report draws on desk research to provide an outline of key international and regional legal standards and case law relating to best interests of the child procedures, particularly in the migration context, noting the extent to which post-18 impacts are addressed. It then presents seven distinct arguments that can be used by child rights advocates to support its work on why best interests assessments should consider the long-term, post-18, impacts of a migration decision. The arguments draw on insights gathered through bilateral interviews with legal and policy experts from the fields of child rights, migration and disability rights as well as an online expert roundtable with child rights and migration experts to discuss the initial research findings. The interviews were conducted anonymously and the roundtable under Chatham House rule.



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International and Regional Legal Framework

This section provides an overview of key international and regional legal standards that relate to best interests of the child procedures in the migration context with a specific focus on durable solutions, as well as direct or indirect references to time horizons.

UN Standards

Article 3(1) of the UN Convention on the Rights of the Child (CRC) establishes that the best interests of the child must be a primary consideration in all actions concerning children.[13] The CRC Committee has elaborated this principle through its General Comments. Most central in the migration context are the following General Comments:

- No. 14 (best interests of the child)
- No. 6 (treatment of unaccompanied and separated children outside their country of origin)
- No. 22 (children in migration: general principles)
- No. 23 (children in migration: state obligations).

These clarify states' obligations to implement comprehensive assessment and determination procedures in all actions concerning children in migration.

Best interests assessments must be implemented on an ongoing basis, with periodic reviews of decisions, reflecting the child's evolving capacities and needs. The aim is to ensure full enjoyment of CRC rights, including the right to life, survival and holistic development. Best interests must be determined on a case-by-case basis, taking into account the specific situation, context, and needs of the child concerned.[14] The Committee sets out a non-exhaustive list of elements that should be considered in best interests assessments: the child's views, identity, family environment,[15] situations of vulnerability, rights to health and education, and care, protection and safety, which links to Article 3(2) CRC and the broader aim of ensuring the child's well-being and development.[16]

13 Child is defined in Article 1 CRC as meaning 'every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier'. Other CRC provisions particularly relevant to migrant children include Articles 9 (separation from parents), 20 (children deprived of family environment), 22 (refugee children), 27 (adequate standard of living), and 37 (deprivation of liberty).

14 General Comment No. 14, para. 32. See also CRC, Communication No. 012/2017, *YB and NS v Belgium*, CRC/C/79/D/12/2017, para. 8.3.

15 Family is to be interpreted widely to include biological, adoptive or foster parents, relatives or members of the community as provided for by local custom (General comment No. 14, para. 59, confirmed in CRC, *YB and NS v Belgium*, para. 8.11).

16 General Comment No. 14, paras. 52-79 and General Comment No. 6, para. 20.

While the UN Child Rights Committee General Comments do not expressly address the inclusion of post-18 considerations in best interests procedures, they do contain temporal dimensions:

- General Comment No. 6 emphasises the need to identify 'durable solutions' and refers to 'short and long-term solutions' (para. 84), 'long-term' prospects of local integration (para. 90), and 'long-term possibilities of family reunion' (para. 93).
- General Comment No. 14 specifies that account should be taken of 'short-, medium- and long-term effects' on the child's development (para. 16(e)). It further provides that decisions should look beyond the specific moment and consider 'the possibility of future risks and harm' (para. 74) and the short- and long-term 'possible scenarios of the child's development', assessing 'continuity and stability of the child's present and future situation' (para. 84).
- General Comment No. 22 reinforces this in the migration context, stating that best interests determination procedures should identify 'comprehensive, secure and sustainable' solutions that 'accommodate the long-term best interests and welfare of the child and support the child's development into adulthood' (para. 32(j)), thus explicitly linking best interests to longer-term developmental considerations.
- General Comment No. 23 highlights risks faced by adolescents with insecure migration (residence) statuses as they approach majority and calls for 'adequate follow-up, support and transition measures', including access to 'long-term' regular migration status,[17] education, employment and integration. It explicitly encourages states to extend protective measures beyond 18 years of age (para. 3).

Other general comments also contain relevant provisions:

- General Comment No. 12 (right to be heard) confirms the right of children to express their views on all aspects of immigration and asylum proceedings (para. 123).
- General Comment No. 20 (adolescence) requires states to follow procedures ensuring that the 'best interests of the child, including adolescents, are taken as a primary consideration in all actions concerning them' (para. 22), a standard also applicable to refugee and asylum-seeking children (para. 77), and further calls on states to support adolescents (including those ageing out of care) to 'successfully navigate the transition into adulthood' (paras. 16 and 53).
- General Comment No. 36 of the UN Human Rights Committee (right to life) requires states to adopt special measures of protection, 'guided by the best interests of the child, and by the need to ensure all children's survival, development and well-being' (para. 60).

17 Residence status.

UNHCR has also issued guidelines and policy documents relating to asylum-seeking and refugee children that are relevant to best interests procedures and the identification of durable solutions. The joint UNHCR-UNICEF 2014 publication *Safe & Sound: What States Can do to Ensure Respect for the Best Interests of Unaccompanied and Separated Children in Europe ('Safe & Sound')* defines a durable solution as one that ensures children can develop into adulthood in an environment that will meet their needs, fulfil their CRC rights, and protect them from the risk of persecution or serious harm. It highlights the 'fundamental long-term consequences' of solutions for the child's development.[18] Similarly recognising the fundamental and long-term impact of durable solution decisions, the 2021 *Best Interests Procedure (BIP) Guidelines: Assessing and Determining the Best Interests of the Child ('BIP Guidelines')* stress the need to assess short- and long-term implications when identifying durable solutions through a four-factor analysis of the child's views, family relationships, safety and protection, and developmental and identity needs, including 'prospects for a successful transition to adulthood'.[19]

Both documents recognise the risks faced by children turning 18. Safe & Sound describes the practice of allowing children to remain until 18 and then returning them as 'particularly troubling', noting that the absence of tailored reintegration plans undermines their development into adulthood.[20] It urges that procedures such as family reunification or asylum applications be initiated and, ideally, completed before majority, to respect the child's right to safely develop into adulthood.[21] The *BIP Guidelines* devote a specific section (3.6) to 'Young People and the Best Interests Procedure', acknowledging that abrupt changes in protection and support at age 18 can be harmful. According to UNHCR, BIP decisions for those nearing majority should be concluded before the 18th birthday and, exceptionally, continue up to age 21 in instances where proceedings were initiated but not finalised before majority or the young person is a primary caregiver, to ensure durable outcomes across the transition. They also require case plans for those nearing 18 to include transition support, developed ideally a year before the 18th birthday. Importantly, decisions must take account of 'the implications of the child reaching adulthood', with support continuing until sufficient self-reliance is achieved.

In summary, UN instruments call for best interests procedures to look beyond immediate circumstances and consider the long-term consequences of durable solution decisions and of the child reaching adulthood. This establishes a normative expectation that the transition into adulthood must be factored into migration-related best interests decisions.

18 UNHCR and UNICEF, *Safe & Sound*, pp. 22 and 45.
19 UNHCR *BIP Guidelines*, sections 2.4.2 and 4.1.5.
20 UNHCR and UNICEF, *Safe & Sound*, p. 49.
21 UNHCR and UNICEF, *Safe & Sound*, p. 40.

European Court of Human Rights judgments

The European Convention on Human Rights (ECHR) does not explicitly reference the best interests of the child, but the European Court of Human Rights has invoked the principle in its case law. In *Rahimi v Greece*, the Court confirmed that the child's best interests are a required consideration, holding that authorities violated Article 5(1) ECHR by detaining an unaccompanied asylum-seeking child without assessing his best interests or investigating that detention was implemented as a measure of last resort.[22]

In Article 8 (right to private and family life) cases, the Court has confirmed that the best interests of the child are of paramount importance, though not alone decisive, and must be afforded sufficient weight.[23] The factors that the Court has taken into account include the circumstances of the child, including age and dependence, situation in the relevant country/countries, family, social and cultural ties in the host country and country of origin, extent to which family life would be ruptured, obstacles to family life in the country of origin, and the cultural and linguistic environment in which the child has grown up.[24]

In *Maslov v Austria*, the Court confirmed that the obligation to consider best interests also applied where return orders had been adopted during childhood but implemented after majority. It further considered that, in cases where expulsion measures against a juvenile offender were concerned, the obligation to take best interests into account included an obligation to facilitate the young person's reintegration.[25] In *Osman v Denmark*, where an applicant applied for a visa three months before turning 18, the Court found her interests as a child had not been adequately considered and that refusing to reinstate her residence permit was disproportionate to the aim pursued.[26]

Although the European Court of Human Rights has not established a general obligation to assess post-18 impacts, cases show that measures decided in childhood but taking effect after majority can still engage the best interests principle, highlighting the need to take account of potential longer-term consequences in proportionality assessments.

Other cases such as *Neulinger and Shuruk v Switzerland*, *Jeunesse v The Netherlands* and *Üner v The Netherlands* emphasise stability, continuity of caregivers and ties, well-being and the child's development in a safe environment, all of which entail forward-looking assessments.

22 ECtHR, *Rahimi v Greece*, Application No. 8687/08, 5 April 2011. paras. 109-110.

23 ECtHR, *Jeunesse v. Netherlands*, Application no. 12738/10, 3 October 2014 (*Jeunesse*), paras. 109 and 118. See also ECtHR, *Neulinger and Shuruk v Switzerland*, Application No. 41615/07 (GC) 6 July 2010 (*Neulinger*), para. 135.

24 ECtHR, *Şen v. the Netherlands*, Application No. 31465/96, 21 December 2001, para. 40, ECtHR, *Tuquabo-Tekle v The Netherlands*, Application No. 60665/00, [2006] 1 FLR 798, para 44-50; *Jeunesse* paras. 118-120, ECtHR, *Osman v. Denmark*, Application No. 38058/09, 14 June 2011 (*Osman*), para. 60-61, Üner para. 58, ECtHR, ECtHR, *Maslov v Austria*, Application No. 1638/03, 23 June 2008 (*Maslov*), paras. 82-84, ECtHR, *De Souza Ribeiro v France*, Application No. 22689/07, 13 December 2012, p. 49.

25 *Malsov* paras. 82-83.

26 *Osman* para. 76.

Resolutions and recommendations

Council of Europe resolutions and recommendations explicitly address long-term needs and transition to adulthood. The 2011 Parliamentary Assembly Recommendation on undocumented migrant children[27] highlighted the need for 'continuous and reliable support beyond the age of majority', recognising that uncertainty about status at 18 can generate psychological pressure and undermine the right to development. The 2014 Parliamentary Assembly Resolution *Migrant Children: What Rights at 18?*[28] identified the need to help young people make a successful transition to adulthood and called for a transition period between 18 and 25, which would include access to welfare assistance, education, housing and healthcare. The related explanatory memorandum by the Committee on Migration, Refugees and Displaced Persons,[29] emphasises the importance of supporting the transition to adulthood to enable autonomy and independence as well as successful integration.

The Committee of Ministers' 2007 Recommendation on Life Projects[30] requires states to support individualised ways for unaccompanied minors, aimed at giving children future prospects (including beyond 18) through continuity in education, housing, and integration. Where a minor with a 'life project' reaches majority and shows serious commitment, a temporary residence permit should be granted to allow completion (para. 26). The 2019 Recommendation on 'supporting young refugees in transition to adulthood'[31] highlights the 'abrupt change' when refugee and asylum-seeking children lose CRC protections at 18 and urges Member States to ensure continuity of care. And the Council of Europe's 'Strategy for the Rights of the Child (2022-2027)'[32] refers to supporting the transition of children in vulnerable situations into adulthood, including children leaving care.

In summary, the Council of Europe framework strongly acknowledges the risks of abrupt loss of protection at 18. While the Court has not established a general obligation to assess post-18 impacts, its case law highlights the need to take account of potential long-term consequences.

Together with policy instruments showing consistent concern with long-term development and the ageing-out problem, this provides a persuasive basis for arguing that best interests procedures should include post-18 impacts when identifying durable solutions.

27 Parliamentary Assembly, Recommendation 1985 (2011): Undocumented migrant children in an irregular situation: a real cause for concern.

28 Parliamentary Assembly Resolution 1996 (2014).

29 Parliamentary Assembly Committee on Migration, Refugees and Displaced Persons, 'Report on Migrant children: what rights at 18? Doc. 13505, 23 April 2014.

30 Recommendation CM/Rec(2007)9 of the Committee of Ministers on Life Projects for Unaccompanied Migrant Minors, 12 July 2007.

31 Recommendation CM/Rec(2019)4 of the Committee of Ministers to Member States on supporting young refugees in transition to adulthood, 24 April 2019.

32 Council of Europe Strategy for the Rights of the Child (2022-2027) – 'Children's Rights in Action: from continuous implementation to joint innovation', March 2022, p. 23.

European Union

Article 24(2) of the Charter of Fundamental Rights provides that 'in all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration'. The best interests principle is included throughout the EU acquis on asylum and migration, including the Reception Conditions Directive, Return Directive, and Asylum Procedures Regulation. These instruments require that best interests be a primary consideration in migration procedures.

The 2008 Return Directive[33] establishes standards and procedures for returning irregular migrants, with specific safeguards for children. Article 5 requires Member States to take account of best interests, family life, and health, and to respect the principle of non-refoulement when implementing the Directive. Article 10 of the Return Directive contains additional safeguards for unaccompanied children, requiring the returning State to be satisfied the child will be returned to a family member, nominated guardian, or 'adequate reception facilities'.

The 2017 Return Handbook,[34] which highlights the importance of durable solutions 'to establish normality and stability for all minors in the long term', notes that return is one option when identifying durable solutions but that it must be preceded by an individualised best interests assessment that includes consideration of the child's views, needs, family situation and the reception conditions. Where unaccompanied minors are not returned, their situation should be regularised through a temporary permit or postponement of removal, according to the Handbook.

The nine regulations that make up the EU Migration and Asylum Pact, which will come into effect in June 2026, confirm Member States are bound by CRC and Charter obligations and that best interests must always be a primary consideration.[35] The Regulation on Asylum and Migration Management includes temporal dimensions, requiring Member States to consider the child's 'well-being and social development in the short, medium and long term' and have 'regard for the need for stability and continuity in the social and educational care'.[36] The Common Implementation Plan requires Member States to review or establish workflows to ensure best interests are individually assessed at all stages.[37]

33 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, OJ L 348/98, 24.12.2008. Note that the directive is being replaced by a Regulation at the time of writing (2025).

34 Commission Recommendation (EU) 2017/2338 of 16 November 2017 establishing a common 'Return Handbook' to be used by Member States' competent authorities when carrying out return-related tasks, OJ L 339/83, 19.12.2017, Section 10.

35 See, for example, recital 46 and Article 23(1) of Regulation (EU) 2024/1351 of the European Parliament and of the Council of 14 May 2024 on Asylum and Migration Management, OJ L 2024/1351, 22.5. 2024.

36 Article 23(4) of the Regulation on Asylum and Migration Management. See also recital 46.

37 Communication from the Commission to the European Parliament and the Council, *Common Implementation Plan for the Pact on Migration and Asylum*, COM(2024) 251 final; see also PICUM, 2024, Children's rights in the 2024 Migration and Asylum Pact: Analysis of the Screening Regulation, the Asylum Procedures Regulation, the Return Border Procedure Regulation and Eurodac, New Migration Pact Series

In terms of case law, the Court of Justice confirmed in *Adrar* that best interests cannot be interpreted restrictively and must be taken into account at all stages of a return procedure.[38] The case of *K and L* affirmed the application of the best interests principle as a rule of procedure, the Court stating that best interests must not only be taken into account in the substantive assessment of applications, but must also influence the decision-making process leading to that assessment.[39] In this case, which concerned two applicants who were no longer minors when the case was being considered but had been under the age of 18 when lodging their applications for asylum, the Court confirmed the requirement to determine the child's best interest before taking a decision.[40] In *M.A. v Etat Belge*, the Court required that best interests be considered even when a return decision relates to the child's parent only, and that a proper assessment must weigh the child's age, development, emotional ties to both parents, and the potential impact of separation from one.[41]

In *TQ*,[42] the Court held that the Return Directive, read with Article 24 of the Charter, requires Member States to carry out an in-depth assessment of a minor's situation and ensure adequate reception facilities in the country of return exist before issuing a return decision. If adequate reception conditions are not available, a return decision cannot be issued against the minor. Crucially, if adequate reception facilities do exist, the state cannot refrain from removal until the child reaches 18, as this would undermine the safeguards in Articles 5 and 10. Before effecting a return decision through removal of a minor, a Member State must be satisfied that there are adequate reception facilities in the country of return, taking into account any changes in the situation that have occurred between the adoption of the return decision and the removal. If adequate reception facilities are no longer guaranteed, the return decision cannot be enforced.

In family reunification cases, the Court has expressly considered the ageing out issue. In *A and S*, it held that, for family reunification purposes, a refugee's underage status is determined by their age at the time of entry into the host country and of making an asylum application, not when refugee status was formally recognised. Otherwise, the outcome would depend on processing speed, which would undermine the Family Reunification Directive's[43] aim of protecting unaccompanied minors as well as the principles of legal certainty and equal treatment. This approach is also consistent with the obligation to take the best interests of the child as a primary consideration when applying the directive.[44] The Court applied similar reasoning in *B.M.M. and Others*, holding that 'minor status' is determined at the date of submission of application for entry and residence for the purpose of family reunification for minor children and not the date of the decision on that application.[45] In both cases, the Court noted that the opposite approach would not incentivise urgent treatment by the authorities of minors' applications, undermining the best interests principle.[46]

38 CJEU, *Adrar*, Case C-313/25 PPU, 4 September 2025, paras. 79 and 81.

39 CJEU, *K and L v Staatssecretaris van Justitie en Veiligheid*, Case C-646/21, 11 June 2024, para. 73.

40 CJEU, *K and L*, para. 71.

41 CJEU, *M.A. v Etat Belge (Return of the parent of a minor)*, Case C-112/20, 11 March 2021, paras 19, 26-27 and 31-43. See also CJEU, *Chavez-Vilchez and others*, Case C-133/15, 10 May 2017, paras. 71-72.

42 CJEU, TQ v Staatssecretaris van Justitie en Veiligheid, Case C-441/19, 14 January 2021.

43 Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, OJ L 251/12, 3.10.2003.

44 CJEU, *A and S*, Case C-550/16, 12 April 2018.

45 CJEU, *B.M.M & Others v Belgium*, Joined Cases C-133/19, C-136/19 and C-137/19, 16 July 2020.

46 CJEU, *A and S*, para. 58 and *B.M.M & Others*, para. 37.

Two EU policy documents reference transition into adulthood but in relation to unaccompanied minors only (not all undocumented children). The 2017 Communication on the Protection of Children in Migration emphasises that recently arrived children should receive guidance, support and opportunities for continuing education and training, and that mechanisms must be in place to help prepare children in state care for transition to adulthood. It calls on Member States to establish clear procedures for best interests determinations when identifying durable solutions to avoid leaving children 'in limbo as regards their legal status' and emphasises respect for the principles of non-refoulement, fairness and non-discrimination in return decisions.[47] It notes, however, that most states lack such procedures, emphasising that robust best interests determinations require additional safeguards, given the 'huge impact' of a durable solution decision on a child's future.[48] The 2021-2027 Action Plan on Integration and Inclusion notes that transition into adulthood can be particularly challenging as support often stops at 18 and encourages developing specific support programmes for unaccompanied minors on the transition to adulthood.[49]

The recent 2024 Commission Recommendation on developing and strengthening integrated child protection systems calls on Member States to ensure effective support for the transition to adulthood for unaccompanied minors and cross-refers to provisions on best interests and additional protections for minors in the Migration and Asylum Pact. It also calls on Member States to 'ensure the centrality of child protection and ongoing consideration of the best interests of the child' when implementing the Pact in their reception systems.[50]

In summary, EU law enshrines the best interests principle within all migration procedures and, as clarified in TQ, prohibits Member States from deferring return until the child's majority in order to avoid child-specific safeguards.[51]

The EU Migration and Asylum Pact includes some temporal framing regarding long-term well-being and social development, and Commission policy documents acknowledge the risk of ageing-out and call for transitional support. ***In family reunification contexts, the Court of Justice has recognised that child-specific protections continue despite ageing out during processing***. However, EU law and policies have not yet spelled out that best interests assessments in durable solutions procedures should take account of post-18 impacts.

47 Communication from the Commission to the European Parliament and the Council, *The Protection of Children in Migration*, COM(2017) 211 final, pp. 11-13.

48 Communication, Protection of Children In Migration, p. 14.

49 Communication from the Commission to the European Parliament and the Council, *Action plan on Integration and Inclusion 2021-2027*, COM(2020) 758 final.

50 Commission Recommendation of 23.4.2024 on developing and strengthening integrated child protection systems in the best interests of the child, OJ L, 14.5.2024, in particular paras. 55-58.

51 CJEU, TQ v Staatssecretaris van Justitie en Veiligheid, Case C-441/19, 14 January 2021

Seven Arguments for Assessing Post-18 Impacts

This section includes seven legal arguments why best interests of the child assessments (or procedures) to identify a durable solution should include what happens post-18. These 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

Article 6 CRC requires states to ensure the 'development of every child'. General Comment No. 14 provides that the purpose of best interests procedures is to ensure the child's holistic development and the full enjoyment of all Convention rights (paras. 4 and 42). Holistic development encompasses the child's physical, mental, spiritual, moral, psychological and social development,[52] and is closely linked to protection and care and other rights in the CRC, including in particular the rights to identity, education and health. General Comment No. 20 (on adolescence) underlines that the foundations established during adolescence have 'profound implications, not only for individual optimum development, but also for present and future social and economic development', highlighting the continuity between childhood and adulthood (para. 2). In the migration context, a durable solution must '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'.[53] Development does not stop at 18. It is inherently forward-looking, with a key aim of the CRC being to fully prepare the child to live an individual life in society.[54] General Comment No. 14 contains numerous references to the forward-looking nature of best interests procedures, including the need to 'consider the possible scenarios of the

52 General Comment No.14, para. 4, referring to General Comment No. 5, para. 12.

53 PICUM 2019. *Guidance to respect children's rights in return policies and practices: Focus on the EU legal framework* (September), p. 2 and 27. See also UNHCR and UNICEF, *Safe & Sound*, p. 22 and Goodwin-Gill 1995. 'Unaccompanied Refugee Minors: Role and Place of International Law' 3 *The International Journal of Children's Rights* 405-416 at pp. 412-414, who comments that durable solutions must contribute to the survival, protection and development of the child.

54 Preamble, CRC. See also Peleg 2019. *The Child's Right to Development* (Cambridge University Press), p. 88 who refers to the right to development as being a 'forward-looking right' that addresses the 'long-term needs' of the child and focuses on the child's 'course of growth and on the child's future. It aims to provide for the child's maturation process and for the adult that the child will eventually become'.

child's development, and analyse them in the short and long term.'[55] In the migration context, General Comment No. 22 explicitly links best interests to longer-term development considerations. It provides that a best interests determination procedure should aim to identify 'comprehensive, secure and sustainable' solutions, adding that such solutions should accommodate the long-term best interests and welfare of the child and support the child's development into adulthood (para. 32(j)). The *UNHCR BIP Guidelines* similarly require consideration of the child's development and identity needs, and his/her prospects for successful transition into adulthood.[56] The right to development thus requires an assessment of how decisions will affect a child's transition to adult life.

The UN Guidelines for Alternative Care, which apply to migrant children in care settings, indicate, when paragraphs 58 and 147 are read together, that a best interests procedure for an unaccompanied or separated child should assess the child's 'immediate safety and wellbeing as well as his/her longer-term care and development'. The assessment should consider the child's risk, personal and developmental characteristics, medical history, any special needs, background, and family and social environment, including conditions in the country of habitual residence.

Case law from the European Court of Human Rights provides further support for the right to development argument. In *Maslov v Austria*, the Court confirmed that measures decided in childhood but taking effect after majority engage the best interests principle. It also emphasised that, in cases where expulsion measures against a juvenile offender are concerned, the obligation to take best interests into account includes an obligation to facilitate reintegration, which implies the need to take account of potential longer-term consequences. Cases such as *Neulinger and Shuruk v Switzerland, Jeunesse v The Netherlands* and *Üner v The Netherlands* emphasise stability, continuity, well-being and the child's development in a safe environment, all of which entail forward-looking assessments. EU policy, legislation and case law are also helpful. In M.A. v Etat Belge, the Court of Justice of the EU confirmed that the child's development was an important factor to be considered in best interests assessments. The Migration and Asylum Pact requires consideration of the child's long-term well-being and social development and regard for the need for stability and continuity in social and educational care.

Domestically, Norway provides an example of good practice. During the process planning stage, reception staff work with children to develop a long-term development plan that 'reaches beyond the milestone of turning 18, well into adulthood', recognising that decisions taken in childhood have 'consequences for the lifetime of the individual' and must be linked to possible durable solutions outcomes.[57] This example also illustrates that forward-looking assessments are feasible.

55 Para. 84. See also paragraph 74 which provides that the precautionary principle requires 'assessing the possibility of future risk and harm and other consequences of the decision for the child's safety'. A best interests assessment model developed by the Study Centre for Children, Migration and Law in the Netherlands in accordance with General Comment No. 14 includes a forward-looking assessment of the child's prospective safety, continuity and stability in future life circumstances as well as current situation, with a view identifying the best solution for the child's holistic development in the short and long term (Kalverboer et al. 2017. 'The Best Interests of the Child in Cases of Migration' 25 *International Journal of Children's Rights* 114, pp. 122-123).

56 UNHCR *BIP Guidelines*, section 2.4.2.

57 UNHCR and UNICEF, *Safe & Sound*, p. 40.



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A child rights expert interviewed for the report argued that 'although the best interests assessment and determination is, to a great extent, about the child here and now, it is also about giving the child the opportunities to develop in the best possible way'. Decision-makers must therefore 'take into account how the child will develop under various solutions'. Life planning is 'part of the right to development' under Article 6 CRC, and not knowing what will happen after turning 18, because a residence permit expires at 18 for example, can have a devastating effect on the child's mental development and sense of security. Such uncertainty causes 'psychological pressure' that undermines the right to development.[58] Children cannot develop properly without knowing what their future holds: their current well-being is directly affected by anticipated post-18 consequences. The relevance of post-18 consequences increases as children approach majority. A child of 17.5 years old would be acutely aware of impending deportation and its consequences, making consideration of post-18 impacts essential to assessing their present psychological well-being and development.

Another expert similarly referred to the impact of having an uncertain residence status on a child and highlighted the importance for the child of knowing what future opportunities would be available to them. Having opportunities made available only up to the age of 18, without any consideration of a decision's impact on future opportunities, would take away part of their future and have profound consequences on their development. Additionally, as noted above, an aim of the CRC is to prepare the child to live an individual life in society. This includes contributing to society, economically and socially. From the state's perspective, having already invested substantially in a child's care, education and healthcare, it would be rational to consider how that investment may be realised after the age of 18, thus providing a policy rationale for considering post-18 impacts in best interests assessments.

Approaching the right to development from a combined CRC and CRPD (Convention on the Rights of Persons with Disabilities) perspective, a disability rights expert argued that the intersection of the standards creates 'a framework for ongoing obligations on states, both in relation to the status of the person as a child, but also as a person with a disability'. The CRC's express right to development intersects with the CRPD's rights to habilitation and rehabilitation which develop individual capacities to exercise human rights and prepare the child or young person for the transition to independent living in adulthood, where a cut-off at age 18 would be meaningless. This demonstrates a broader principle that children's development is a continuous process, the long-term implications of which must be considered when making best interests assessments.

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. 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, 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. The UK High Court confirmed the need to look forward, commenting: '"Best interests" for a 17 year old are not confined to looking no further ahead than the child's 18th birthday. If one were advising a 17 year old about (say) what educational courses to study, be it to A level or to a technical qualification or otherwise, one would take into account what could happen after the age of 18 in advising on the choices s/he had to make.'[59] What is in the best interests of the child must therefore include decisions and actions whose effects will continue or be felt after the age of 18.[60]

58 Parliamentary Assembly Recommendation 1985 (2011).

59 R (AA) v The Upper Tribunal and the Secretary of State for the Home Department [2012] EWHC 1784 (Admin) (19 July 2012) para. 44.

60 Goodwin-Gill 2012. 'The United Nations Convention on the Rights of the Child and its Application to Child Refugee Status Determination and Asylum Processes' — Introduction' 26 *Journal of Immigration, Asylum and Nationality Law* 226-231 at p. 227.

Possible concerns about legal uncertainty and inconsistent application misunderstand the nature of best interests assessments. Best interests assessments are required to be an individualised assessment of a child's specific circumstances and developmental needs. As a number of experts noted, legal certainty can be achieved through the application of a consistent and transparent methodology to assess the child's best interests and identify a durable solution. Frameworks can (and have been) be designed to provide certainty while accommodating individualised assessments.

2. Right to identity

The UNHCR refers to the need to consider the child's right to identity in best interests procedures in decisions on durable solutions.[61] 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.[62] An expert noted that migrant children's identity formation can be significantly grounded in the host country's norms and values, which can make acceptance in the country of origin difficult. This is echoed in the K and L case, where the Court of Justice of the EU recognised that a migrant's identification with the social, moral or legal norms of the host country, such as gender equality, can 'result in that value constituting an integral part of someone's identity' and, in this particular case, could lead to a fear of persecution if returned to their home country. The Court further commented that a long stay in a host country, especially during a critical period of identity formation, may, when read together with Article 24(2) of the Charter (bests interests of the child), be taken into account when assessing an asylum application.[63]

Residence status influences identity formation. Migrant children are provided with additional support and granted enhanced protection by virtue of being minors. They may internalise these as recognition of their inherent value and as basic rights. When such protection and support abruptly end at the age of 18, young people can experience this as a loss of value: as one expert noted, they feel as if they were important enough to be taken care of as minors and they lose this importance simply by ageing. This creates a rupture in identity that best interests procedures should anticipate: decisions made during childhood that ignore the foreseeable removal of support at majority fail to protect continuity of identity across the developmental transition to adulthood. Additionally, children with precarious residence status frequently compare themselves to their peers (citizens), who are able to travel freely, live in ordinary homes rather than reception centres and are able to make future plans. This differential treatment based on migration/residence status can have a deeply negative impact on their self-worth and thus on their developing sense of self and of belonging.

61 UNHCR *BIP Guidelines*, sections 2.4.2 and 4.1.5.

62 European Court of Human Rights case law confirms the relevance of these issues in best interests procedures (see section 2.2 above).

63 CJEU, *K and L*, para. 63.

Migration decisions affect not only a child's current identity but also their future identity and sense of belonging. Return or deportation could disrupt established connections, with impacts extending well beyond childhood.[64] In best interests assessments undertaken by the Study Centre for Children, Migration and Law in the Netherlands, it is considered that the child's development would be endangered if they were deported after a residence period of more than five years.[65] In YB and NS v Belgium, the CRC considered that seven years of living with a family would be a material factor when considering family ties in the context of a best interest assessment.[66] Local integration can also pose risks to the child's right to their own identity in relation to their country of origin, particularly in the case of unaccompanied or separated children.[67]

In other areas of child rights, the CRC Committee has recognised the lifelong consequences of some decisions. In the adoption context, the Committee notes that decisions can have an 'important impact on the life and development of the child',[68] implicitly recognising that such impacts are not confined to childhood. Scottish law makes this explicit, requiring courts and adoption agencies to have as the paramount consideration[69] the best interests of the child throughout his or her life, including after childhood. Best interests procedures must take account of 'the likely effect on the child, throughout his or her life' of the making of an adoption order.[70] This reflects a recognition that adoption irreversibly changes a child's identity, family relationships, and legal status.[71]

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.

64 In *Üner* (para. 58), the ECtHR stressed the importance of taking into account the duration of a person's stay in the host country when making an expulsion decision, given the strong ties the person would have with that country. See also *ZH (Tanzania) v Secretary of State for the Home Department* [2011] UKSC 4 (1 February 2011), in which the UK Supreme Court found removal of the mother (a Tanzanian national) would be disproportionate, considering that the British citizen children had lived in the UK their whole lives, were being educated there, had social links with the community and a good relationship with their British father. In *OM v Denmark*, Communication No. 145/2021, CRC/C/94/D/145/2021, the CRC Committee held that, given the potentially significant impact on children of decisions relating to the deportation, with a 6 year entry ban, of their father, a detailed best interests assessment would have been 'paramount'.

65 Van Os et al. 2017. 'Methodology for the assessment of the best interests of the child for recently arrived unaccompanied refugee minors' in Sedmak, Sauer and Gornik (eds.), *Unaccompanied children in European migration and asylum practices: In whose best interests?* (Routledge) 59-85 at 65.

66 CRC *YB and NS v Belgium*, Communication No. 012/2017, CRC/C/79/D/12/2017, paras. 8.12 and 9.

67 UNHCR *BIP Guidelines*, section 4.1.5.

68 General Comment No. 14, para. 29.

69 In accordance with Article 21 CRC.

70 Adoption and Children (Scotland) Act 2007 (2007 asp 4), Section 14 (and explanatory notes).

71 Interview with a child rights expert.

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. Although Article 1 CRC defines a child as a person below 18, this establishes the scope of who benefits from the Convention's protections rather than the temporal scope of what must be considered when determining a child's best interests. 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 paragraph 74 (requiring the assessment of the possibility of future risk and harm and other consequences for the child's safety) and paragraph 84 (requiring decision-makers to 'consider the possible scenarios of the child's development, and analyse them in the short and long term' and to 'assess continuity and stability of the child's present and future situation') of General Comment No. 14.

Domestically, the region of Flanders in Belgium and Ireland provide examples of good practice. In Flanders, former unaccompanied children placed in care before the age of 18 continue to receive support from a government-subsidised youth care organisation after they reach majority. In Ireland, from the age of 16½ (or immediately for older arrivals), young people are assigned an aftercare worker who supports them until they turn 21, or 23 if they remain in full-time education, training, or apprenticeship.[72] This continued support reflects a recognition of young people's continuity of personhood.

Case law from the Court of Justice of the EU provides further support for this argument. In *A and S* and *B.M.M. and Others*, the Court held that a person's minor status for family reunification purposes is determined at the time of application, not at the time of the decision, even if they age out during the process. This implies a recognition that the applicant is the same continuous rights-bearing person across the age threshold and that turning 18 does not nullify their prior status: rights held during childhood continue to influence future decisions on rights in adulthood, needs and procedural guarantees. Although general human rights protections apply after majority and may thus provide alternative avenues to address violations, they do not address the developmental impacts of decisions made during childhood that best interests assessments are designed to cover.

72 PICUM 2024. Stepping up: A collection of projects and practices helping migrant children transition into adulthood, pp. 22-27.

4. Fundamental rights continuity

Children do not lose their human rights when turning 18. As a migration law expert noted, 'it's not that every form of protection ceases to exist when the child becomes 18; they are still entitled to the full range of general human rights protections'. For example, they continue to have the right to private and family life, healthcare, housing and work. 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'.[73] Decisions made during childhood cannot be based on immediate impacts alone: they may have long-term effects that could undermine the child's capacity to exercise future adult rights, such as political or economic participation.

Existing legal doctrine in migration law supports a forward-looking approach: non-refoulement assessments (for both adults and children) require an evaluation of the probability that an individual will face the risk of violations of certain fundamental rights upon return. While experts noted that the temporal scope of such assessments varies across jurisdictions, with some refugee status determinations focusing primarily on immediate consequences only, the principle itself demonstrates that migration law already incorporates forward-looking assessments as a standard practice. This precedent supports including foreseeable post-18 impacts in best interests procedures, maintaining consistency with established international law principles that require anticipation of future harm.

This forward-looking approach does not blur the age boundary established by Article 1 CRC or extend child-specific protections to adults and thus risk diluting the best interests principle and undermining the CRC. Rather, it recognises that, while young adults retain human rights protections and (should) have access to legal mechanisms, including non-refoulement assessments, such mechanisms do not capture the broader welfare and developmental concerns that best interests procedures are designed to address. This forward-looking approach strengthens rather than dilutes child protection by ensuring comprehensive consideration of reasonably foreseeable impacts.

73 Interview with a migration law expert.

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. The CRC explicitly refers to the Universal Declaration of Human Rights and International Covenants on Human Rights and thus clearly operates within the broader international human rights framework. Whilst children have additional protections under the CRC, all human rights apply equally to children. As confirmed by the Vienna Declaration,[74] all human rights are universal, indivisible and interdependent and interrelated. 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. As a migration law expert noted: 'If you take [an] integrated human rights approach, then in a way it becomes obvious that you should take into account post-18 developments to make a best interests assessment because the child doesn't stop developing at the age of 18'.

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. Recognising that children's rights operate within the broader human rights framework strengthens protection by requiring consideration of how childhood decisions affect the full scope of the child's rights across their developmental trajectory. This approach maintains the special protections afforded to children while ensuring continuity with the general human rights protections that continue after they turn 18.

74 Vienna Declaration and Programme of Action, adopted 25 June 1993, A/CONF.157/23, 12 July 1993, para. 5.

6. State responsibility does not end at age 18: lessons from care leavers

The UN Guidelines for Alternative Care recommend that states provide comprehensive aftercare to young people, including access to social, legal and health services, and financial support, and that preparation for aftercare should take place 'well before the child leaves the care setting' (paras. 131-136). They also confirm that unaccompanied or separated children should enjoy the same level of protection and care as national children of the host country (para. 141). In line with these Guidelines, the CRC Committee's General Comment No. 20 (adolescence) emphasises the need to ensure the realisation of the rights of children approaching adulthood and calls on states to 'support the independence and improve the life chances' of adolescents in alternative care, while addressing the vulnerabilities they face as they 'age out' of protection (para. 53). In the migration context, General Comment No. 23 (children in migration), referring to the Guidelines, requires states to 'provide adequate follow-up, support and transition measures' for children approaching 18, particularly those leaving care, including access to 'long-term regular migration status' and to education, employment and integration opportunities. It also encourages states to introduce protective and supportive measures beyond the age of 18 years. The UNHCR *BIP Guidelines* require case plans for children nearing 18 to include transition support, developed ideally a year before the 18th birthday, and stipulate that decisions must account for 'the implications of the child reaching adulthood'.

Some states have recognised ongoing responsibility for care experienced young people:[75] the UK provides support to age 21 (or 25 for higher needs);[76] Ireland does so until 21 (or 23 if the young person is in full-time education, training or apprenticeship)[77] and Norway recently extended aftercare from 23 to 25.[78] However, one expert noted that in the UK, migrant children who reach the age of majority are not entitled to the same care leaver protections as British citizens. The same goes for Ireland: former unaccompanied children with and without a secure (refugee) status are given different support from each other, with those with refugee status receiving financial support.[79] It is clear that children in the care system, regardless of their nationality or migration/residence status, should be treated equally, in line with the principles of equal treatment and in accordance with the UN Guidelines. Extended care provision is based on a recognition that people leaving care require enhanced support to make a successful transition towards independent living[80] and also reflects that the states stood in loco parentis ("*instead of the parent*"[81]).[82] It can be argued that the State's exercise of authority creates responsibility for foreseeable consequences, including those manifesting after majority.[83] Additionally, the requirement to plan for aftercare before the child leaves the care setting clearly mandates consideration of post-18 outcomes 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. As Bolton notes in relation to refugee children, the risk of harm 'does not end automatically on reaching adulthood',[84] and the uncertainty about post-18 status 'can often undermine or arrest the

75 'Care experienced' refers to an individual who is living, or has lived, in care at any stage in their life.

76 Interviews with a child rights and a disability rights expert.

77 PICUM 2024, Stepping up: A collection of projects and practices helping migrant children transition into adulthood

78 Interview with a child rights expert.

79 PICUM 2024, Stepping up: A collection of projects and practices helping migrant children transition into adulthood

80 Interview with a disability rights expert.

81 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]

82 Interview with a child rights expert.

83 A participant in the Expert Roundtable noted that vulnerability theory (Martha Fineman) may be helpful in supporting this argument. Fineman argues that vulnerability is a universal and constant aspect of the human condition and that the state must provide the support and protections needed for individuals to thrive.

84 See also *KA (Afghanistan) & Ors v Secretary of State for the Home Department* [2012] EWCA Civ 1014 (25 July 2012): 'There is no temporal bright line across which the risks to and the needs of the child suddenly disappear.'

child's psychological recovery and development' during childhood itself.[85].

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.

Implementing this forward-looking approach would require adequate resources and clear guidance. However, examples from the UK, Norway, Belgium and Ireland in the care context illustrate that it is feasible and administratively achievable.



85 Bolton 2012. 'Promoting the Best Interests of the Child in UK Asylum Law and Procedures' 26 *Journal of Immigration, Asylum and Nationality Law* 232, pp. 246-247.

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

In its General Comment No. 24 on children's rights in the child justice system,[86] the CRC Committee does not interpret the threshold of 18 as a barrier to considering long-term consequences. Rather, it acknowledges that protecting children's rights requires anticipating and preventing harms that will manifest throughout their lives. The Committee refers to the need for 'lifelong protection from publication regarding crimes committed by children', explicitly reasoning that 'publication causes ongoing stigmatization, which is likely to have a negative impact on access to education, work, housing or safety' after the age of 18 (para. 70). In a similar vein, the Committee recommends removal of criminal records when children reach 18 (para. 71). These provisions **illustrate an understanding that events in childhood should not create permanent barriers to adult opportunities**. Of significance is the Committee's application of best interests across the age threshold. The Committee states that children turning 18 in child facilities need not be transferred immediately to adult facilities if continuation in the facility for children 'is in his or her best interests' (para. 93). Additionally, the Committee states that a person who comes into conflict with the law when under 18 but who turns 18 during the relevant procedure remains entitled to all child-specific rules and commends states that apply the child justice system beyond the age of 18. **The Committee bases these extended child justice protections on 'developmental and neuroscience evidence that shows that brain development continues into the early twenties'** (paras. 31-32).

Some domestic jurisdictions have operationalised these principles.[87] Scotland's Sentencing Guideline for Sentencing Young People requires courts to consider the best interests of young persons (defined as under the age of 25) in every case, with best interests being a primary consideration for those under 18 in accordance with the CRC.[88] The Guideline also provides that, in assessing culpability, courts should take account of the cognitive and emotional maturity of the young person at the time of the offence, recognising that research shows young people are not fully developed (para. 10). Scotland has also reformed its criminal records disclosure regime: from April 2025, most childhood convictions need not be disclosed when applying for most jobs. The aim is to prevent criminal records from before age 18 limiting young people's future employability, thus reducing the long-term impact of early mistakes and giving young people 'greater opportunities to move on with their lives'.[89] Scotland's approach demonstrates how developmental evidence and concern for post-18 consequences can be integrated into legal frameworks that extend protections beyond 18 while maintaining the CRC's primacy for children.

The CRC Committee's approach demonstrates that the age boundary established in Article 1 CRC does not preclude the consideration of long-term consequences of childhood decisions beyond the age of 18, recognising that adequate protection of children requires addressing foreseeable lasting impacts. Far from diluting child-specific protections, this approach strengthens them by ensuring decisions made during childhood adequately account for their enduring consequences.

These principles transfer directly to migration contexts: **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.**

86 General Comment No. 24: Children's rights in the child justice system, CRC/C/GC/24, 2019.

87 A participant in the Expert Roundtable noted that Greek criminal law applies mitigating factors to criminal liability for young adults (into the early twenties). While the statutory provisions could not be verified for this report, this approach is consistent with developmental evidence.

88 Scottish Sentencing Council 2021. *Sentencing young people: Sentencing Guideline*, para. 8.

89 Clan Childlaw 2025. Disclosure of Childhood Criminal Convictions - 2025 briefing paper, June 2025.

Analysis

Article 1 CRC establishes a clear age boundary for the treaty's application, but questions arise as to whether this 'bright line' approach can adequately serve the forward-looking, developmental purposes of best interests procedures. To address this tension, the arguments presented here make the case that best interests should consider post-18 impacts, drawing on mutually reinforcing sources and illustrative analogies.

Among the arguments, the right to development, firmly grounded in Article 6 CRC, was unanimously identified by experts consulted for this report as the most compelling. It is inherently future-oriented, as reflected in the authoritative guidance provided by the Committee in General Comment No. 14. The right to development, well established as continuing beyond the age threshold, is universally acknowledged across all jurisdictions and directly addresses the temporal question: if development continues beyond 18, assessments of children's development cannot artificially stop at that threshold. The right to identity complements the developmental argument by recognising that a child's sense of self is moulded by the environment in which the child lives and develops over time, and that some decisions (including on residence status) can have significant lifelong consequences. Together with the interrelated arguments on continuity of personhood, fundamental rights continuity and integrated human rights approach, these arguments underscore that the child and adult are the same rights-bearer on a developmental trajectory, and that failing to account for long-term consequences risks fragmenting protection across a continuous life.

The analogies from other sectors are useful for informing migration practice. Experts noted that, within the child rights context, migration law takes a narrower temporal approach compared to other areas such as juvenile justice and the care sector, where systems and structures routinely incorporate forward-looking assessments. The care leaver analogy is particularly compelling. Enhanced protection for care leavers is firmly embedded in some jurisdictions and increasingly recognised across the EU, providing clear evidence that 18 is not a bright line cut-off for state responsibility. This analogy is powerful because it demonstrates existing recognition of vulnerability, ongoing needs and continuing responsibilities beyond legal majority and the requirement to consider post-18 outcomes when making childhood decisions: an analogy that applies equally to children in migration systems. The consistency argument is also powerful: states cannot provide extended protection in social care contexts while limiting protection in migration contexts without undermining the principle of treating all children equally.

The juvenile justice example provides valuable evidence of the CRC Committee looking beyond age 18 in General Comments, with Scotland illustrating how to operationalise this principle in practice. However, experts noted this argument may be more context-specific than the care leaver analogy or arguments such as continuity of personhood. Given differing domestic approaches to youth justice systems – a politically contentious area – countries with less progressive systems may be less receptive to extending bests interests assessments to include post-18 considerations based on this example.

The arguments relating to continuity of personhood, fundamental rights continuity and integrated human rights approach were seen as less independently persuasive but nonetheless valuable as complementary arguments. Experts suggested merging these in advocacy and lobbying efforts as they reflect similar conceptual frameworks and are quite technical. It was further noted that these arguments may be harder to advance in hostile political climates, as they require a general respect for human rights principles beyond child-specific protections.

While the normative and analogical arguments are strong, practical implementation considerations arise. A qualifying principle was suggested by a child rights expert that addresses concerns about temporal scope: post-18 impacts must be relevant to the child's development before turning 18. Consideration of such impacts is warranted only where anticipated consequences materially affect the child's present development and well-being. Thus the focus should be on what the child can realistically envisage and how this influences their current psychological stability, sense of security or ability to make life plans. A 17-year-old facing deportation experiences **present** harm from this **anticipated** outcome and its resulting consequences. This principle limits speculation about distant impacts while maintaining focus on the child's current interests, consistent with General Comment 14's requirement to assess 'continuity and stability of the child's present and future situation'.

Concerns about legal certainty can be addressed through a structured and transparent methodology. As noted, best interests assessments are inherently individualised: a framework drawing on that provided by General Comment 14 or by the Study Centre for Children, Migration and Law in the Netherlands with the addition of an explicit requirement to include reasonably foreseeable post-18 impacts would provide certainty while accommodating individualised assessments. Questions about administrative feasibility also arise, but examples from the care sector demonstrate that forward-looking assessments are administratively workable when adequately resourced.

Political realities, however, cannot be ignored. Experts who were interviewed for this paper indicated that enhanced protections for children and young people might be interpreted by policy makers as a pull factor for migrants - despite any evidence proving this. Legal arguments that promote post-18 considerations, however principled, risk being discounted in practice if they are perceived as exceeding what states are realistically prepared to do in the contested migration context. Nonetheless, experts identified significant benefits of including post-18 considerations: more durable and rights-respecting solutions; support to live an independent life; better-coordinated services bridging child and adult systems; and enhanced security and stability for children enabling children to plan for the future, form lasting friendships and choose educational pathways.

Annex

Case Law

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