

Recommended principles to guide actions concerning children on the move and other children affected by migration (adopted June 2016).

June 2016

EXPLANATORY COMMENTS

INTRODUCTION

In May 2016 representatives of international organizations and non-governmental organizations met in Geneva to comment on the RECOMMENDED PRINCIPLES which are reproduced below. The resulting list of PRINCIPLES was not branded or intended to be formally endorsed by the participating organizations. Rather the PRINCIPLES were adopted to remind the international community of a concise set of fundamental principles that should underpin all migration-related policies applicable to children who migrate or are otherwise affected by migration.

The PRINCIPLES listed below are derived from existing international human rights law, humanitarian law, and refugee law.¹ The phrase ‘children on the move’ refers to children who move for a variety of reasons, voluntarily or involuntarily, within or between countries, with or without their parents or other primary caregivers. The phrase ‘other children affected by migration’ refers to children who do not move themselves, but remain in their country of origin after a parent has migrated internationally, and to children living with their parents in a country to which their parents migrated period.

Previous lists of child-specific principles have focused on children involved in international migration and on children who are unaccompanied or separated². Of particular note are the recommendations set out in the Committee on the Rights of the Child’s 2012 Day of General Discussion Report on *The Rights of All Children in the Context of International Migration*. These PRINCIPLES, by contrast, also apply to children who move within their own country, to children who migrate with their parents, and to children who remain behind when one or both parents migrates.

Each of the PRINCIPLES listed below is followed by short italicized comments. They are intended to assist the range of actors, including governments, inter-governmental organizations, and non-governmental agencies, engaged with children on the move. The expanded commentary presented here includes two sets of supplementary clarifications, one citing the primary international law source of each principle, and the other expanding on the implications of respecting the principle.

In 2016 the numbers of refugees and international migrants reached levels unparalleled since World War 2. At the same time, the severe human cost of displacement and migration and the human rights violations associated with these very large scale movements have been the object of unprecedented public attention and concern. These circumstances have prompted the United Nations and individual governments to search for better ways of supporting and integrating non-citizens on the move. They have also propelled the UN Secretary-General to propose two new “global compacts”: one for Safe, Regular and Orderly Migration, and another on Responsibility-Sharing for Refugees. These PRINCIPLES are intended as a concise and noncontroversial summary of well-established international norms regarding children on the move and other migration affected children. The goal of this synthesis is to encourage attention to and conformity with these fundamental rights benchmarks in order to reduce the incidence of their persistent violation.

¹ Sources for these PRINCIPLES include the UN Convention on the Rights of the Child (1989), the International Covenant on Civil and Political Rights (1966), the International Covenant on Economic, Social and Cultural Rights (1966), the Convention relating to the Status of Refugees (1951), the International Convention on the Elimination of All Forms of Racial Discrimination (1965), the Convention for the Elimination of All Forms of Discrimination Against Women (1979), the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990) and the Convention on the Rights of Persons with Disabilities (2006). Particular attention was paid to General Comments adopted by the Committee on the Rights of the Child, while general comments or recommendations made by other treaty-monitoring bodies were also taken into account.

² Unaccompanied children (also called unaccompanied minors) are children who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so. Separated children are children who have been separated from both parents, or from their previous legal or customary primary care-giver, but not necessarily from other relatives. Separated children may, therefore, include children accompanied by other adult family members.

Recommended principles to guide actions concerning children on the move and other children affected by migration³

1. Children on the move and other children affected by migration shall be considered children first and foremost⁴ and their best interests shall be a primary consideration in all actions concerning them⁵.

Children affected by migration should be ensured the same rights as all other children, including birth registration⁶, proof of identity, a nationality⁷ and access to education⁸, health care⁹, housing¹⁰, and social protection¹¹. Those responsible shall not assume that standard solutions work for all children; rather they are required to conduct individual and family assessments prior to making a durable decision about each child.¹² Children at the border shall not be refused entry without an adequate and individualized analysis of their request and due guarantees consistent with a best interests determination.¹³

Sources for this principle in international law: Sources for this principle are in adjoining footnotes 4 to 13.

Explanatory comment:

Children on the move, whether they cross an international border or not, are routinely denied rights accorded to other children. Though their rights, as children first and foremost, are guaranteed by the UN Convention on the Rights of the Child, in practice their human dignity and their access to non-discriminatory protection are regularly violated.

Proof of identity is of critical importance for all children on the move, whether they cross an international border or not. The absence of such proof increases the risk of reliance on smugglers and traffickers to facilitate mobility. It also impedes children's access to education or health systems, even where eligibility for service delivery is stated to be universal. To address this serious risk factor, States should remove legal and practical barriers to birth registration for all children born on their territory (including children of migrants, indigenous peoples, and minorities). In situations where parents commonly fail to register new births (e.g. when parents are in irregular or undocumented status), States should review ways of encouraging birth registration, including by making the process easier and cheaper, by providing targeted information about the process to communities where registration rates are low, and also by introducing firewalls between birth registration and immigration enforcement agencies.

To encourage the taking up of education, health care and other public services by children on the move, whatever their or their families' legal status, State officials must refrain from using service delivery facilities as sites for immigration enforcement, such as identifying or detaining parents with an irregular status.

Any migrant child who is identified as unaccompanied or separated in a country other than their own should take part in a formal best interests determination, following procedures outlined by the Committee on the Rights of the Child¹⁴ and the UN High Commissioner for Refugees.¹⁵ Such children should be the responsibility of a national childcare or child protection agency charged with reaching a durable solution for the child. No such child should be the primary responsibility of an immigration agency.

3. The term 'children on the move' refers to children moving for a variety of reasons, voluntarily or involuntarily, within or between countries, with or without their parents or other primary caregivers. 'Other children affected by migration' refers to children remaining in the country of origin after their parents have migrated, and to children living with their parents in the destination country.

4. Resolution 12/6 of the UN Human Rights Council (Human rights of migrants: migration and the human rights of the child, 12 October 2009, para. 1 (a)) underlines "that the international legal framework for the protection of the child applies irrespective of his/her migration status and that of his/her parents or family members, and calls upon States to respect and ensure the protection of the human rights of every child within their jurisdiction, without discrimination of any kind". The Recommended Principles and Guidelines on Human Rights at International Borders (UN doc. A/69/ CRP.1, 23 July 2014) emphasize (Principle 6) that "States shall ensure that children in the context of migration are treated first and foremost as children and ensure that the principle of the child's best interest takes precedence over migration management objectives or other administrative considerations".

5. Convention on the Rights of the Child (CRC), article 3.

6. International Covenant on Civil and Political Rights (ICCPR), article 24.2; CRC, articles 7 and 8.

7. CRC, art. 7.

8. CRC, art. 28.

9. CRC, art. 24.

10. CRC, art. 27.3.

11. CRC, art. 27.3.

12. Committee on the Rights of the Child, General Comment (GC) No. 14. The right of the child to have his or her best interests taken as a primary consideration (2013).

13. Committee on the Rights of the Child, GC No. 6. Treatment of unaccompanied and separated children outside their country of origin (2005); United Nations High Commissioner for Refugees (UNHCR) Guidelines on Determining the Best Interests of the Child (2008).

14. Ibid: CRC, GC No. 6.

15. UNHCR Guidelines on Determining the Best Interests of the Child, 2008. See also UNHCR, Field Handbook for the Implementation of UNHCR BID Guidelines, 2011.

2. All children have the right to life, survival and development.¹⁶

All children have a right to a standard of living adequate for their physical, mental, spiritual, moral, educational, and social development.¹⁷ States have a duty to anticipate and prevent harm, including with respect to the triggers of child migration and to invest in robust search and rescue operations to avert harmful migration outcomes.¹⁸ Sustained investment in material and social assistance and in livelihood opportunities is a critical prerequisite to forestalling life-threatening journeys and enabling the child to develop.¹⁹

Sources for this principle in international law: Sources for this principles are in adjoining footnotes 16 to 19. Please also refer to the Recommended Principles and Guidelines on Human Rights at International Borders (2014)

Explanatory comment:

States have a duty to assist parents and others responsible for the child to support the child's right to an adequate standard of living. This entails targeted development investment in supporting family life, quality education and health care, skill and vocational training, and employment opportunities in countries and regions which at present lack these essential elements. When children migrating alone or with family members are in need, States have a duty to provide material assistance and support, particularly with regard to nutrition, clothing, and accommodation.

3. Children have the right to liberty of movement²⁰, both within their State and to leave their State and any other.

Children have the right to migrate in search of family life, safety, or opportunity. In particular, they have a right to flee violence and danger.

Sources for this principle in international law: Sources for this principle are in adjoining footnote 20

Explanatory comment:

States should take measures to ensure that children are able to migrate safely, both when they move with family members and when they do so alone. This obligation applies both to children and adolescents fleeing violence or to those who, for whatever reasons, chose to migrate alone. States should also address the causes of forced or distress child migration, supporting programmes that address violence and abuse against, and exploitation of, children.

Just as parents may place protective restrictions on their own children, so States and other actors routinely cite protective concerns to justify restrictions on the rights of unaccompanied or separated children. Whilst restrictive measures may on occasion be warranted, they must always be carefully tailored to the needs of the individual child. Restrictions that are appropriate to prevent a 10-year-old from leaving residential accommodation are unlikely to be appropriate for a 17-year-old. As with any limitations on human rights, restrictions imposed must not only conform with the principle of proportionality but must have a legal basis, and promote a public interest that justifies the restriction. In the case of a child, the child's best interests must be a primary consideration, the child's views must be heard and given due weight in accordance with the age and maturity of the child, and any restrictions must similarly take the child's age and maturity into consideration.

4. The detention of children because of their or their parents' migration status constitutes a child rights violation²¹ and always contravenes the principle of the best interests of the child²².

States should expeditiously and completely cease detention of migration affected children and allow children to remain with family and/or guardians in non-custodial, community-based contexts while their immigration status is being resolved.²³

Sources for this principle in international law: Sources for this principle are in adjoining footnotes 21 to 23

16. CRC, art. 6.

17. CRC, art. 27 and also art. 3.3.

18. CRC, art. 3.2. See also the statement by UN High Commissioner for Refugees, 12 February 2015, "We need a robust search and rescue operation in the Central Mediterranean, not only a border patrol". In June 2015 the UN Human Rights Council said it was "Deeply concerned at the large and growing number of migrants, including women and children, who have lost their lives or have been injured in attempting to cross international borders, and recognizing the obligation of States to protect and respect the human rights of those migrants, regardless of their immigration status", and called on States "To provide assistance to persons in distress at sea and to enhance cooperation for such purposes in accordance with applicable international law" (Resolution 29/2, para. 7(h), 29 June 2015).

19. CRC, Preamble (particularly references to the child's needs for special safeguards and care and recognition of the importance of international co-operation for improving the living conditions of children in every country, in particular in the developing countries).

20. ICCPR, art. 12; and Human Rights Committee, General Comment 27. Freedom of movement (1999), which notes that when protection measures restrict rights, they must conform to the principle of proportionality: they must be appropriate to achieve their protective function; they must be as unobtrusive as is compatible with achieving the desired result; and they must be proportionate to the interest to be protected.

Explanatory comment:

The detention of children with irregular migration status or without identification papers has been strongly criticized by the Committee on the Rights of the Child.²⁴ Detention of children with parents on the basis of the parents' irregular migration status is also unacceptable. States should adopt the Community Assessment and Placement model, developed to allow children to remain with adult family members and/or guardians in non-custodial, community-based contexts while their immigration status is being resolved.²⁵

5. Children during all phases of migration shall not be separated from their parents or primary caregivers (unless this is in their best interests)²⁶.

States shall not separate children from their families, for example by instituting onerous and protracted family reunification procedures, denying the portability of accrued social security benefits, detaining irregular migrants accompanied by children, deporting parents of minor citizens, or refusing to allow children to accompany migrant worker parents. Conversely, forced expulsion of a child should never be considered an acceptable means of family reunification or assumed automatically to be in the best interests of the child.²⁷ Any expulsion of a child must be safe, and in the child's best interests. Where the expulsion concerns a child separated from family, it shall be accompanied and monitored.

Sources for this principle in international law: Sources for this principle are in adjoining footnotes 26 & 27.

The right to family life is recognized in numerous conventions, such as: the CRC (arts. 8, 9, 10, 16); International Covenant on Economic, Social and Cultural Rights (art. 10); ICCPR (arts. 17, 23); Convention for the Elimination of All Forms of Discrimination against Women (art. 16); International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (art. 14). Guidance on preventing separation is found in the Inter-agency Guiding Principles on Unaccompanied and Separated Children (2004).

Explanatory comment:

States and all other actors involved in the protection of children have an obligation, during all phases of migration, to ensure that children are not separated from their families. Separation occurs in a variety of circumstances. Sometimes protective entities contribute to the problem unwittingly. This may occur, for example, when families misguidedly entrust their children to organizations or travel professionals in order to secure better care, services or opportunities for them. States and other actors providing care to children have a duty to make the best interests of the child a primary consideration in all actions affecting children. These actions include formal decisions about the future of an unaccompanied child, also known as a best interests determination, or interception of a child or placement in residential care. States and other actors entrusted with the care of children have an obligation to document their assessment. This obligation is set out in the Committee on the Rights of the Child's General Comment No. 14, which explains the right of the child to have his or her best interests taken as a primary consideration (2013).

The assumption by State child protection or other officials that children living or working away from family members would benefit from being returned to them has often proved counter-productive for the children themselves. This is the case when children are returned to an unsafe family environment or when they are returned against their will, in circumstances which precipitate prompt re-departure, including by means of perilous travel strategies.

If a best interests determination concludes that it is in a child's best interest to return to his or her country of origin, the child must be accompanied throughout the return journey, with inter-state coordination to ensure this occurs. The returning State should monitor what happens to the child after he or she leaves the territory, as part of a wider policy of monitoring the effects of all such deportations. Data on the consequences of expulsions and deportations should be taken into account when such policies are reviewed or amended.

When a child is separated from one or both parents, States are required to respect that child's right to maintain personal relations and direct contact with the parent or parents on a regular basis, whatever the reasons for the separation, except if such contact is contrary to the child's best interests.²⁸

²⁴The Chair of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families issued a statement in 2014, noting that "The immigration detention of children has been shown to have long-lasting mental and physical health implications for children, even when used for very short periods of time". He called "upon States to cease the immigration detention of children, and to adopt alternatives to detention that fulfil the best interests of the child and allow children to remain with their family members and/or guardians in non-custodial, community-based contexts while their immigration status is being resolved" (Statement by Chair of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW) on Ending Immigration Detention of Children, 3 July 2014).

²⁵See <http://idcoalition.org/CAP/>.

²⁶ CRC, arts. 3, 8, 9.1, 10, 16. The right to family life is also recognized in numerous additional conventions, such as: the CRC (arts. 8, 9, 10, 16); International Covenant on Economic, Social and Cultural Rights (art. 10); ICCPR (arts. 17, 23); Convention for the Elimination of All Forms of Discrimination against Women (art. 16); International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (art. 14). The Inter-agency Guiding Principles on Unaccompanied and Separated Children (2004) contain guidance on preventing separation ([http://www.unicef.org/protection/IAG_UASCs\(2\).pdf](http://www.unicef.org/protection/IAG_UASCs(2).pdf)). See also the International Migration Law Information Note on The Protection of Unaccompanied Migrant Children (International Organization for Migration, 2011).

²⁷ See 'Family Reunification, Return and Other Forms of Durable Solutions' (paras. 79 - 94) in Committee on the Rights of the Child, GC No. 6. Treatment of unaccompanied and separated children outside their country of origin (2005). -

²⁸ CRC, art. 9.3.

6. No Child is Illegal²⁹ – Children should be protected against all forms of discrimination³⁰.

The criminalization and stigmatization of children on the move and other children affected by migration violate this principle. States and other actors should use non-discriminatory terminology when referring to migrants and their children.

Sources for this principle in international law: Sources for this principle are in adjoining footnotes 29 & 30.

Explanatory comment:

According to the CRC (art. 2), a child's rights may not be restricted by making distinctions on the basis of "the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status". This right is threatened by the criminalization and stigmatization of child migrants, and by negative public statements that categorize some populations, rather than their actions or situations, as "illegal". States have an obligation to respect the dignity and right to life and equal treatment of all children, irrespective of their migratory status.

7. Child protection systems shall protect all children, including children on the move and children affected by migration.

In their design and implementation, national child protection systems shall take into account the distinctive needs and views of children on the move and other children affected by migration. States shall protect children against exploitation³¹, violence³², abuse³³, and other crime, and against dependence on crime or sexual exploitation to meet their basic needs. States and regional organizations have a responsibility to ensure a continuum of protection between the various local government authorities and States through which children travel, and to promote harmonized protection practices developed by local communities where appropriate.

Sources for this principle in international law: Sources for this principle are in adjoining footnotes 31 - 33

Explanatory comment:

National child protection systems are expected to protect all children, to listen to their views and to take these views into account in designing and implementing protection measures. States have a duty to ensure such systems protect, promote and fulfil the rights of children on the move and children affected by migration, independently of their immigration status. These systems should include specific procedures and tools for children at risk of abuse or exploitation. Children on the move need protection and support mechanisms that are holistic, of good quality and coordinated between different regions or States, respectful (where relevant) of national systems and traditional child protection customs, and staffed by qualified child protection professionals. The protection mechanisms need to be monitored and modified when shown to be inadequate.

The methods appropriate to protect children on the move and other children affected by migration need to be accessible in the places where children are located and to be adapted to their needs and the threats they face. National child protection systems should be equipped to respond appropriately to the difficulties (including detrimental effects on psycho-social wellbeing) experienced by children on the move and other children affected by migration, including children whose parents have migrated.

In developing their protective systems, individual States should pay attention to their compatibility with systems used by States from or to which children, whether accompanied or not, travel. Regional organizations, as well as international organizations, play a special role in promoting the coherence of individual national systems, to ensure that there are no gaps or incompatibilities between such systems, both at borders or when children move between States without a common border. Neighbouring States could also take bilateral action to promote the compatibility of their national protection systems. Within States, national or regional authorities should similarly ensure the coherence of protection systems and measures in places under the authority of distinct local government authorities, including in areas where particular ethnic or other communities have legitimate concerns

²⁹. In accordance with UN General Assembly Resolution No. 3449 (9 December 1975), the term 'illegal' should not be used to refer to migrants in an irregular situation.

³⁰. CRC, art. 2.

³¹. CRC, art. 32 and art. 34. Convention concerning the Prohibition and Immediate Action for the

Elimination of the Worst Forms of Child Labour (International Labour Organization Convention No. 182).

³². CRC, art. 36.

³³. CRC, art. 36.

or preferences. The goal is to ensure a “continuum of protection”, both as children move within a State and when they cross a border into a neighbouring State.

The extent to which national child protection systems provide the necessary continuum of care requires monitoring at national, regional and international level, to identify gaps or weaknesses and, where appropriate, remedial mechanisms.

In some regions local communities host migrants on a temporary or long-term basis alongside local government authorities and play a major supportive and protective role. These community organizations require support from States. Where appropriate they should be encouraged to appoint ‘reference persons’ to whom children can turn for advice or assistance, particularly in contexts where it is not feasible to appoint temporary guardians for each unaccompanied or separated child. Members of communities in transit and border areas can provide migrant children with information about safe ways of crossing borders, thereby reducing their reliance on smugglers and the risk of being trafficked.

8. Migration management measures shall not adversely affect children’s human rights.

States shall respect the rights of children guaranteed by international human rights, refugee and humanitarian law, including the principle of non-refoulement³⁴, and any child specific protection measures. States have a duty to ensure accurate identification of children, to evaluate the impact of laws and policies on children on the move and other children affected by migration and to avoid adverse impacts. Deliberately making transport unsafe to deter migrants from travelling can never be justified. Children require security and stability for healthy development.³⁵ States that only consider the best interests of the child or grant children authorization to remain on their territory until age 18 have an adverse impact on children’s rights.

Sources for this principle in international law: Sources for this principle are in adjoining footnotes 34 & 35

Explanatory comment:

Policies adopted by governments, intergovernmental organizations or groupings of States concerning refugees or migrants are likely to impact children, even if children are not mentioned explicitly. States consequently have a duty to mainstream child rights within any legislation, policies and practices that may impact children on the move and other children affected by migration, ensuring that the best interests of any children likely to be affected are an explicit and primary consideration. States also have a duty to consider the impact on children of migration-related development frameworks, including those addressing the Sustainable Development Goals. To take account of the needs and views of children on the move and other children affected by migration, States should collect information from and about such children and avoid assumptions based on hearsay and stereotypes about their needs or the abuse they experience.

Children who are granted asylum or a leave to remain in a country other than their own require security and stability to flourish. Such security is denied by States that only grant children authorization to remain until they reach the age of 18. This approach implies that, once a child becomes an adult, the State is no longer required to make the child’s best interests a primary consideration, including in future decisions about whether the child will be allowed to remain or will instead be obliged to return to his or her country of origin. Such policies have numerous adverse effects on the children and young adults concerned. This is particularly relevant because this population typically confronts greater hardships and challenges than other young people of similar age. When conducting a best interests determination process with the child, States should support durable solutions that guarantee the protection and the personal development of a child beyond 18 years of age, to enable the child to make plans for education, vocational training or employment over the long-term. In effect, States should take appropriate measures to prepare and accompany children through the journey to adulthood, rather than threatening them with an abrupt change as soon as they reach the age of majority.

³⁴. Convention relating to the Status of Refugees (1951), art. 33; UN Convention against Torture (1984), art. 3; CRC, art. 22. See also Human Rights Committee, General Comment No. 31, The nature of the general legal obligation imposed on states party to the Covenants (2004), noting that article 2 of the ICCPR “entails an obligation not to extradite, deport, expel or otherwise remove a person from their territory, where there are substantial grounds for believing that there is a real risk of irreparable harm... either in the country to which removal is to be effected or in any country to which the person may subsequently be removed”.

³⁵. CRC, art. 39 (referring to measures to promote the physical and psychological recovery and social reintegration of children who have been victims of various forms of exploitation, abuse and neglect).

9. Children have a right to express their views freely in all matters affecting them³⁶ and to have their views taken into consideration in accordance with their age, maturity and understanding of the options available.

States shall ensure that children affected by migration, whether or not in their State of origin, have effective access at all stages of migration to quality information and free of charge legal representation, translation, and, if they are unaccompanied or separated, to guardianship.

Sources for this principle in international law: Sources for this principle are in adjoining footnote 36

Explanatory comment:

Children have the right to express their views freely in all matters affecting them and to have their views taken into account in accordance with their age and maturity. This is particularly important in the context of decisions which personally concern them, whether taken by state officials or other organizations providing care. To ensure that children's views are understood, quality interpretation must be available to children who do not speak the decision maker's language. States should solicit and consider the views and experiences of all children affected by migration when drafting policies on migration. The CRC requires States and other actors to recognize and support the agency of children. Children should never be treated only as victims of circumstances, but always also as agents of their own future.

Children arriving in a new place, whether in their own or another State, should be provided with accurate information about their options, including with regard to their legal status and their access to educational facilities and other public services. States and international organizations should make it a priority to ensure that telephone and internet service are available to children and their families, both while they are in transit and on arrival in a new place. This connectivity promotes access to quality advice and close family contact.

States have responsibilities to protect children on the move and other children affected by migration who are not in contact with their primary care-givers, wherever they are located. Such children should be the responsibility of a national childcare or child protection agency, rather than an immigration agency. Children who are displaced within their own country should similarly be the responsibility of the relevant child protection agency in their new location. Once a young person is identified as (a) unaccompanied or separated, and (b) possibly a child, he or she should be registered. A legal guardian³⁷ should be promptly appointed, to accompany the young person and interact with others to ensure that the young person's views are known and that his or her best interests are always a primary consideration in relevant actions or decisions.

In the course of identifying whether a young person is a child, a process to determine his or her age may be required in the absence of identity papers. The Committee on the Rights of the Child notes that, "Such identification measures include age assessment and should not only take into account the physical appearance of the individual, but also his or her psychological maturity. Moreover, the assessment must be conducted in a scientific, safe, child and gender-sensitive and fair manner, avoiding any risk of violation of the physical integrity of the child; giving due respect to human dignity; and, in the event of remaining uncertainty, should accord the individual the benefit of the doubt such that if there is a possibility that the individual is a child, s/he should be treated as such".³⁸ If an age assessment is thought to be necessary, it should be conducted by independent professionals with appropriate expertise and familiarity with the child's ethnic or cultural background. Examinations should never be forced or culturally inappropriate.

³⁶ CRC, art. 12. Also Committee on the Rights of the Child, GC No. 12. The right of the child to be heard (2009), particularly section C.9, "In immigration and asylum proceedings", paras. 123 and 124.

³⁷ "In the case of a separated child, guardianship should regularly be assigned to the accompanying adult family member or non-primary family caretaker unless there is an indication that it would not be in the best interests of the child to do so..." (Committee on the Rights of the Child, GC No. 6. Treatment of unaccompanied and separated children outside their country of origin (2005), para. 34).

³⁸ Committee on the Rights of the Child, GC No. 6. Treatment of unaccompanied and separated children outside their country of origin (2005), para. 31. See also UNHCR. Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum. February 1997, particularly Guideline 5.11).