



“Between Protection and Punishment: a Critical Analysis of the UK’s Approach to Safeguarding the Rights of Unaccompanied Minors”

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Abstract

This paper aims to navigate the complex terrain of refugee law with a child-centric approach, evaluating whether the UK adequately safeguards the rights of unaccompanied children. Section One introduces the international legal framework and appraises the strengths and caveats of the UNCRF and 1951 Refugee Convention (‘the Convention’). Sections Two- Four focus on the UK’s domestic legal frameworks, which are essential for operationalising the protections envisioned by the international framework. Four barriers to protection are examined: (i) the criminalisation of unaccompanied children, (ii) citizenship and deportation, (iii) age assessment procedures and (iv) unsafe accommodation and detention practices. This paper will conclude that whilst the UK’s domestic legislation is in compliance with its international obligations, its asylum procedures ultimately fail to adequately safeguard unaccompanied children. A framework recognising vulnerability (as opposed to chronological age) as the appropriate threshold and determinative factor for safeguarding would better support the rights of unaccompanied minors and age-disputed individuals.

Keywords

Unaccompanied Minors – United Nations Convention on the Rights of the Child – The Refugee Convention – Nationality and Borders Act 2022 – Illegal Migration Act 2023

1 Introduction

The world's children stand in urgent need of better protection.¹

EGLANTYNE JEBB

The former Home Secretary, Braverman, warned that uncontrolled migration poses an 'existential challenge' to the West.² This sentiment is reflected by the current Prime Minister, Sir Keir Starmer, who stated that the UK risks becoming "an island of strangers."³ Statistics evince that children form over half of refugees worldwide.⁴ In 2023, 55,704 child migrants arrived in countries across Europe.⁵ Of these, 35,510 (64%) were unaccompanied children.⁶ In the UK, 772 unaccompanied children crossed the channel in the first five months of 2024.⁷ 'Unaccompanied' refers to children (individuals below the age of 18)⁸ who are separated from their relatives and not being cared for by a legally responsible adult.⁹ This presumption of minority triggers procedural guarantees and safeguards, pursuant to the United Nations Convention on the Rights of the Child ('UNCRC').¹⁰

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- 1 Ruth Brittle and Ellen Desmet, 'Thirty Years of Research on Children's Rights in the Context of Migration' 28 *IJCR* (2020) pp. 36–65.
 - 2 Nimo Omer, 'Why Suella Braverman' Attacked Refugee Rights in Washington' *The Guardian* (London, 28th September 2023) <<https://www.theguardian.com/world/2023/sep/28/thursday-briefing-why-suella-braverman-attacked-refugee-rights-in-washington>> accessed 11/04/2024.
 - 3 Gov UK, 'PM remarks at Immigration White Paper press conference' (2015) <<https://www.gov.uk/government/speeches/pm-remarks-at-immigration-white-paper-press-conference-12-may-2025>> accessed 10/09/2025.
 - 4 UNHCR, 'Figures at a glance' (2022) <<https://www.unhcr.org/about-unhcr/who-we-are/figures-glance>> accessed 12/03/2024.
 - 5 UNHCR, UNICEF and IOM, 'Refugee and Migrant Children in Europe Accompanied, Unaccompanied and Separated.' (2023) <<https://data.unhcr.org/en/documents/details/110153>> accessed 12/10/2025.
 - 6 *ibid.*
 - 7 Diane Taylor, 'Threefold Increase in Lone Child Asylum Seekers in UK, Figures Show' *The Guardian* (London, 7th June 2024) <<https://www.theguardian.com/uk-news/article/2024/jun/07/threefold-increase-in-lone-child-asylum-seekers-in-uk-figures-show>> accessed 12/03/2024.
 - 8 Home Office, 'Immigration Part 11: Asylum' (2016) <<https://www.gov.uk/guidance/immigration-rules/immigration-rules-part-11-asylum#:~:text=352ZD%20An%20unaccompanied%20asylum%20seeking,the%20asylum%20application%20is%20submitted.>>> accessed 11/04/2024.
 - 9 *ibid.*
 - 10 United Nations Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) ("UNCRC").

Many unaccompanied minors have endured significant trauma, which forced them to flee from their homes- including war, military conscription, and trafficking.¹¹ Undertaking journeys marked by risk and exploitation, unaccompanied children seek refuge in the UK for a variety of reasons, including language and community ties.¹² Such children face distinct challenges due to their traumatic experiences and separation from caregivers.¹³ Given this and the afore-stated statistics, it would be logical to assume that unaccompanied minors are a highly visible group within refugee law, policy and discourse. This, however, is not the case. This paper aims to navigate the complex terrain of international and domestic refugee law through a child-centric lens, evaluating whether the UK adequately safeguards the rights of unaccompanied minors pursuant to the UNCRRC theoretically and in practice. This paper is structured around four key barriers to protection, and each barrier will be analysed in light of the UK's international and domestic obligations.

Section One introduces the international legal framework and appraises the strengths and caveats of the UNCRRC and 1951 Refugee Convention¹⁴ ('the Convention'). The historical context of both instruments and the extent to which the UNCRRC informs procedural guarantees afforded to unaccompanied minors will also be discussed.¹⁵ Sections Two- Four focus on the UK's domestic legal frameworks, which are essential for operationalising the protections envisioned by the international framework. Four barriers to protection are examined: (i) the criminalisation of unaccompanied children, (ii) citizenship and deportation, (iii) age assessment procedures and (iv) unsafe accommodation and detention practices. Whilst critically examining these barriers, this author will delineate arguments for and against whether the UK adequately safeguards the rights of unaccompanied minors. The UK was selected given the contention surrounding the promulgation of the Nationality and Borders Act 2022 ('NABA') and Illegal Migration Act 2023 ('IMA'). Lastly, four recommendations will be submitted, including revision of the UK's domestic legislation,

11 Home Office, 'Immigration system statistics' (2023) <<https://www.gov.uk/government/statistics/immigration-system-statistics-year-ending-march-2023>> accessed 18/02/2024.

12 Amnesty International et al, 'Without My Family' (2019) <<https://www.refugeecouncil.org.uk/wp-content/uploads/2020/01/Without-my-family-report-AW-Jan2020-LoRes.pdf>> accessed 08/06/2024.

13 'Unaccompanied asylum seeking children Toolkit' (University of Birmingham, 2015) <<https://www.birmingham.ac.uk/research/superdiversity-institute/toolkits/unaccompanied-asylum-seeking-children-toolkit>> accessed 15/05/2024.

14 Convention relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) ('the Convention').

15 Pobjoy 'The Child in International Refugee Law' (2017).

and reform of the international framework to account for unaccompanied minors explicitly. This paper will conclude that whilst the UK's domestic legislation is in compliance with its international obligations, its asylum procedures ultimately fail to adequately safeguard unaccompanied children. A framework recognising vulnerability (as opposed to chronological age) as the appropriate threshold and determinative factor for safeguarding would better support the rights of unaccompanied minors and age-disputed individuals.

This paper does not engage with every facet of refugee law as applicable to unaccompanied minors. For instance, family reunification and guardianship will not be discussed. The author chose to focus on the aforementioned domains, as these topics have dominated public, legal, and political discourse around asylum in the UK, represent contested aspects of the UK's asylum system, and illustrate how the UK's domestic framework conflicts with its international obligations. By focusing on small boats, criminalisation, and detention/accommodation, the author sustains a coherent, thematic narrative arc: how unaccompanied children arrive, how they are criminalised, and how they are (mis)treated once in the UK's asylum system. 'Unaccompanied minors'/'children' will be used interchangeably.

2 The International Legal Framework

Following the atrocities committed in Nazi Germany during WWII, the 1951 Refugee Convention was established to reconcile the post-war refugee crisis.¹⁶ Initially, the Convention was limited in scope, applying only to those displaced in Europe before 1951. The limited applicability of the Convention was not accidental, reflecting that, since the very beginning, human rights have been subject to the fluctuating political interests of the most powerful UN States.¹⁷ Nonetheless, the international regime for refugee protection is embodied in the Convention and its companion 1967 Protocol. In 1959, nearly a decade after the Convention was written, the international arena discussed whether children were entitled to certain rights. The UNCRRC, promulgated in 1989, realised the inherent rights associated with childhood.¹⁸ It is the first

16 S Labman et al, 'Looking back, moving forward: the history and future of refugee protection' 10 *ICL* (2010) pp. 1–21.

17 Edwin Abuya et al, 'The Neglected Colonial Legacy of the 1951 Refugee Convention' 59 *IMJ* (2021) pp. 265–267.

18 Sarah Diaz, 'Failing the Refugee Child: Gaps in the Refugee Convention Relating to Children' 20 *GJGL* (2019) pp. 606–623.

treaty to recognise children as independent right holders.¹⁹ The UK ratified the UNCRC in 1991 and the Refugee Convention in 1954. This section will consider the benefits and shortcomings of both international instruments.

2.1 *Benefits of the Refugee Convention*

The Convention has been lauded as ‘the cornerstone of refugee protection,’²⁰ with enduring relevance and value.²¹ There is credence to this supposition for three reasons. First, the Convention offers a broad definition of a refugee. A refugee is defined as a person who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or unwilling to avail himself of the protection of that country.²² Thus, the Convention has a benevolent intent to safeguard forcibly displaced persons. The ‘well-founded fear of persecution’ imposes a burden of proof upon the applicant to establish both objective risk and subjective trepidation.²³ Whilst somewhat reasonable, this has been aptly critiqued by Pobjoy, who argues that ‘a child will often be unable to identify or articulate a prospective risk of harm.’²⁴ Further literature corroborates Pobjoy’s concerns; children may have difficulty articulating information for a range of reasons, including age, trauma, parental instructions, or fear of State authorities.²⁵ Against this background, this provision is ostensibly flexible: the Convention does not shed much light on the source of the persecution feared.²⁶ Whilst this enables Contracting States flexibility in according refugee status, the lack of definition sustains legal uncertainty, and promotes divergence in State implementation. However, as noted by Goodwin, ‘little purpose is served by attempting to list all known measures of persecution.’²⁷ Indeed, this allows States to take the idiosyn-

19 *ibid.*

20 UNHCR, ‘Conclusions on the Provision of International Protection Including through Complementary Forms of Protection’ (2005) <<https://www.unhcr.org/publications/conclusion-provision-international-protection-including-through-complementary-forms>> accessed 18/05/2024.

21 Jane McAdam et al, *The Oxford Handbook of International Refugee Law* (2021).

22 The Convention, art 1.

23 Pobjoy [n15].

24 *ibid.*

25 Emil Johansson, ‘Age Assessment of Unaccompanied Minors in Sweden and the Rights of Children’ (Graduate Thesis, Lund University 2019).

26 Christel Querton, ‘Non-State Actors of Protection and the Sliding Scale of Protection for Refugee Women’ 41 *RSQ* (2022) pp. 444–471.

27 Goodwin-Gill [n26].

crasies of each applicant into account, highlighting that the Convention is a 'living instrument.'²⁸

Second, the Convention's core principle is non-refoulement.²⁹ This crucial principle asserts that a refugee should not be returned to a country where they face serious threats to their life or freedom. This provides a critical safeguard for the safety, well-being, and survival of unaccompanied children. Third, the Convention contains a plethora of rights applicable to unaccompanied children. For instance, it prescribes freedom from penalties for illegal entry (art 31), and freedom from expulsion unless for grave grounds (art 32), such as national security (art 9). These rights, although not child-specific, are beneficial to unaccompanied minors, particularly those entering 'illegally.' Finally, articles 22 and 23 guarantee access to education and public relief, which are essential for the development and well-being of unaccompanied children. However, such provisions have led some academics to argue that the Convention is Eurocentric, due to the concentration on social and welfare rights and education.³⁰ Though, irrespective of the European undertones, such forestated rights, if effectively implemented by States, can significantly support the integration and protection of unaccompanied children.

2.2 *Shortfalls of the Refugee Convention*

Despite its accolades, the reverse of the coin contends that the Convention is an '*outdated relic*.'³¹ Regrettably, there are several gaps in the Convention regarding the protection of unaccompanied children. Diaz notes three pertinent shortcomings: a gap in the substantive law definition of 'refugee'; a lack of procedural guidance for States in applying the definition; and gaps in positive law obligations to integrate unaccompanied children.³²

Firstly, the scope of the refugee definition has long been identified as a limiting factor.³³ Scholars have nevertheless sustained that the Convention's

28 Jane McAdam, 'The Enduring Relevance of the 1951 Refugee Convention' 29 *IJRL* (2017) pp. 1–9.

29 *ibid.*

30 Chatham House, 'The Refugee Convention: why not scrap it?' (2005) <<https://www.chathamhouse.org/sites/default/files/public/Research/International%20Law/ilp201005.pdf>> accessed 12/03/2024.

31 Goodwin-Gill [n26].

32 Diaz [n18].

33 Erika Feller, 'The Refugee Convention at 60: Still Fit for its Purpose?' (2011) UNHCR <<https://www.unhcr.org/sites/default/files/legacy-pdf/4ddb679b9.pdf>> accessed 18/06/2024.

refugee definition is age-neutral.³⁴ Therefore, the rights contained within the Convention apply to *all*, irrespective of age. Despite this, the definition is traditionally interpreted in light of adult experiences.³⁵ Indeed, the substantive grounds for defining a “refugee” (race, religion, nationality, and political opinion) clearly do not contemplate the experiences of children.³⁶ Diaz concurs, warning that this may result in incorrect assessments of children’s eligibility for refugee status.³⁷ Conversely, other scholars have suggested that this ‘deficiency’ is expected, given the Convention’s historical context.³⁸ Indeed, during the Convention’s conception, children were viewed as property or ‘mini adults’.³⁹ The distinctive adult/child binary we know today was therefore once blurred. While it is certainly true that the Convention was conceptualised in response to a particular political and social climate,⁴⁰ it is, arguably, not entirely self-evident why this obviated the recognition that child refugees may require special protection. Nonetheless, considering this deficiency, the UNCRRC Committee (‘the Committee’) has urged adjudicators to take into account persecution experienced by children, including military recruitment, trafficking, and female genital mutilation.⁴¹

Likewise, the Convention, a document designed to protect refugees, fails to account for the special circumstances of childhood.⁴² The exclusion of child-specific provisions indicates that the Convention does not contemplate the child as an individual rights bearer, nor does it acknowledge the nuances or unique experiences of different subsets of refugee children (unaccompanied/accompanied). Additionally, the Convention provides no procedural guidance on assessing the claims of unaccompanied children.⁴³ This lack of specificity may, in turn, yield vague and watered-down international (and subsequently domestic) standards, ultimately enabling the marginalisation of unaccompanied children. This begs the question: without addressing the unique experiences of unaccompanied children- a particularly vulnerable subset of refugees- how can one then expect such children to be adequately

34 Pobjoy [115].

35 *ibid.*

36 Diaz [118].

37 *ibid.*

38 Guy Goodwin-Gill, ‘Unaccompanied Refugee Minors: The Role and Place of International Law in the Pursuit of Durable Solutions’ 3 *IJCR* (1995) pp. 405–416.

39 Aries, *L’Enfant et la Vie Familiale sous l’Ancien Regime* (1973).

40 J Hathaway, *The Law of Refugee Status* (1991).

41 Diaz [118].

42 *ibid.*

43 Pobjoy [115].

safeguarded by States in practice? Indeed, given the growing number of unaccompanied minors, it is undoubtedly necessary to classify them and address their vulnerability. Cognisant of lack of theoretical safeguards for unaccompanied children, revision of the Convention seems apt, and therefore, this author agrees that the Convention is outdated.

Moreover, the Convention allows States a high degree of discretion in the design and implementation of refugee status determination procedures.⁴⁴ In other words, the effectiveness of the Convention in protecting unaccompanied minors is largely contingent upon national implementation. Whilst this facilitates flexibility and pays homage to State sovereignty, legal certainty for unaccompanied children is ostensibly forfeited. The lack of child-specific provisions may lead to inconsistent application of protective measures across signatory States, fostering significant discrepancies.

2.3 *The UNCRC*

The paucity of safeguards for unaccompanied minors in the Convention may, however, be informed by the UNCRC. Pobjoy argues for the systemic interpretation of the Convention in light of the UNCRC.⁴⁵ Similarly, Goodwin-Gill champions utilising the UNCRC to fill the gaps and interpret the Convention from a child rights perspective.⁴⁶ This is a seemingly logical arc, given the Convention's lack of child-specific provisions and general rules on treaty interpretation.⁴⁷ Thus, the UNCRC complements the Convention, as a '*source of procedural guarantees*.'⁴⁸

The UNCRC is the most widely ratified human rights treaty in the world.⁴⁹ Its primary objective is to accord children additional protection by '*reason of their physical and mental immaturity*.'⁵⁰ Contracting States have positive obligations to take appropriate legislative and administrative measures to protect *all* children, irrespective of immigration status,⁵¹ from violence, abuse, and neglect.⁵² Accordingly, the UNCRC minimises the significance of a child's refugee status,

44 *ibid.*

45 Pobjoy '*The Child in International Refugee Law*' (2017).

46 Goodwin-Gill [n38].

47 Vienna Convention on the Law of Treaties 1969, art 31(3)(c).

48 Pobjoy [n15].

49 Congressional Research Service, 'The UNCRC' (2015) <<https://crsreports.congress.gov/product/pdf/R/R40484/25#:~:text=CRC%20entered%20into%20force%20in%2030/12/2024>> accessed 30/12/2024.

50 *ibid.*, preamble.

51 *ibid.*, art 22.

52 *ibid.*, art 19.

emphasising that refugee children should be treated the same as national children.⁵³ Specifically, Article 22 rightfully recognises that asylum-seeking children are owed ‘*appropriate protection and humanitarian assistance*’ as well as substantive rights within the international human rights framework.⁵⁴ Notably, ‘appropriate protection’ ensures *de facto* equality, as opposed to ‘special protection’, which was initially proposed in the Travaux Préparatoires.⁵⁵ Indeed, Article 22 accords formal equality to this group, placing them on a theoretical equal footing with national children. According to Pobjoy, Article 22 is ‘*the only provision in any human rights treaty that deals expressly with the situation of asylum-seeking children.*’⁵⁶ Brittle illustrates that this mandated inclusion is inherently valuable for children whose refugee-ness may be used to treat them as ‘alien others.’⁵⁷

Cognisant of these rights, unlike the Convention, the UNCRRC provides comprehensive safeguards for migrant children. As Serpell aptly delineates, the UNCRRC precipitates ‘*a broad range of rights in the civil, political, economic, social and cultural spheres.*’⁵⁸ Four ‘General Principles’ guide its interpretation: articles 2 (‘non-discrimination’), 3 (‘best interests of the child’), 6 (‘right to life’), and 12 (‘right to be heard’). The Committee has emphasised the implementation of the best interests principle throughout the asylum process,⁵⁹ and this is given effect in the UK through the Borders, Citizenship and Immigration Act 2009.⁶⁰ Other salient rights include the right to an adequate standard of living,⁶¹ protection,⁶² healthcare,⁶³ recovery from trauma and reintegration,⁶⁴

53 Jeanette Lawrence and others, ‘The Rights of Refugee Children and the UN Convention on the Rights of the Child’ 8 *Laws* (2019) pp. 1–22.

54 Christian Whalen, ‘Art 22: *The Right to Protection for Refugee and Asylum-Seeking Children*’ in *Monitoring State Compliance with the UNCRRC* (2022).

55 UNICEF et al, ‘Implementation Handbook for the UNCRRC’ (2007) <<https://digitallibrary.un.org/record/620060?ln=en&v=pdf>> accessed 12/05/2024.

56 Pobjoy [n15].

57 Brittle and Desmet [n1].

58 E Serpell, ‘Age Assessments of Young Asylum Seekers in the UK from a fact-based to a human rights-based approach’ (*RLI Blog*, 16th March 2023) <<https://rli.blogs.sas.ac.uk/2023/03/16/age-assessments-of-young-asylum-seekers-in-the-uk-from-a-fact-based-to-a-human-rights-based-approach/>> accessed 22/10/23.

59 Whalen [n55].

60 Borders, Citizenship and Immigration Act 2009, s55.

61 UNCRRC, art 27.

62 *ibid*, art 4.

63 *ibid*, art 24.

64 *ibid*, art 39.

knowledge of rights,⁶⁵ and freedom from torture.⁶⁶ Intriguingly, both the UNCRRC and the Refugee Convention protect the right to education.⁶⁷ However, the UNCRRC extrapolates this right, obligating States to ensure that higher education is accessible to every child. Consequently, unaccompanied minors possess greater educational rights pursuant to the UNCRRC than the Convention. Nonetheless, collectively, these aforementioned rights are crucial for a child's protection and development, providing credence to Pobjoy's claim that the UNCRRC provides refugee children with complementary protection.⁶⁸

However, despite these '*valuable and detailed*'⁶⁹ theoretical safeguards, implementation of the UNCRRC is often problematic,⁷⁰ and the extent to which it is enforced varies.⁷¹ In fact, many States fall short in implementing these rights within domestic frameworks.⁷² The incongruence between the UNCRRC's theoretical and practical realisation, as well as the lack of uniformity between States, fosters legal uncertainty. In turn, this may be a grave impediment to unaccompanied minors realising and enforcing their rights. Furthermore, echoing critiques of the Convention, the UNCRRC has been reprimanded as a 'western construct'.⁷³ This is because it qualifies a singular stance on childhood, one that is contingent upon an adult/child binary. This, as opined by Alexandropoulou, overlooks that childhood is a socially constructed phenomenon, comprehended differently depending on cultural and societal contexts in other countries.⁷⁴ Whilst this critique is viable, the normative rights enshrined in the UNCRRC are, nevertheless, indispensable. Such rights herald minimum legal standards, which should transcend social and cultural differences. This is substantiated by Gornik, who contends that '*it is difficult to argue that the*

65 *ibid*, art 42.

66 *ibid*, art 37.

67 *ibid*, art 28, Refugee Convention art 22.

68 Brittle and Desmet [m].

69 P Alderson, 'Common Criticisms of Children's Rights and 25 years of the IJCR' (2017) <https://discovery.ucl.ac.uk/id/eprint/10054153/3/Alderson_Common%20Criticisms%20of%20Children%E2%80%99s%20Rights.pdf> accessed 02/01/2024.

70 Arabella Lang, 'UN Convention on the Rights of the Child: A Brief Guide' (*House of Commons Library*, 28th November 2016) <<https://commonslibrary.parliament.uk/research-briefings/cbp-7721/#:~:text=The%20UK%20ratified%20it%20in,for%20endorsing%20only%20Western%20values.>> accessed 07/01/2024.

71 *ibid*.

72 Brittle and Desmet [m].

73 Anna Holzscheiter, '*Children's Rights in International Politics*' (2010).

74 Magdalini Alexandropoulou, 'Key issues in age assessment procedures of unaccompanied migrant children in Greece and Germany-Assessing age or children's needs?' in '*Children and Youth in Varied Socio-Cultural Contexts Theory, Research, Praxis*' (1st edn, 2018).

*UNCRC has a predominantly negative impact upon [unaccompanied minors].*⁷⁵ Be that as it may, in actuality, the UNCRC provides little oxygen to accompanied minors who are situated in unequal positions in comparison to nationals by virtue of the fact that they are migrants,⁷⁶ and unaccompanied children by virtue of the fact that they seek protection alone. Given this vulnerability, the UNCRC should include specific provisions addressing unaccompanied minors. Bhabha rightfully subscribes to this view,⁷⁷ as the lack of explicit rights for unaccompanied minors renders this subset largely invisible.⁷⁸ In a similar vein, Pobjoy remarks that the UNCRC does not specify whether it applies to age-contested individuals.⁷⁹ Troublingly, minors awaiting age assessment procedures may also have their rights compromised.

Interestingly, Gornik reveals that unaccompanied children possess two different subjectivities, which are weighted against one another—the subjectivity of an immigrant on one hand and that of a child on the other.⁸⁰ Despite the UNCRC's apparent gaps, it is axiomatic that it intends unaccompanied minors to be treated as children first and foremost and not as migrants per se. In other words, national immigration policy should not trump children's rights.⁸¹ Initially, the UK entered a general reservation on Article 22 of the UNCRC, as regards the entry, stay and departure of [refugee] children.⁸² Whilst this was overturned in 2008, this reservation alludes to the UK's migrant first, child second sentiment. Smyth concurs, identifying 'active negation' as the suppression of a children's rights agenda in favour of an immigration control agenda.⁸³ This author suggests that it is within this child versus migrant phenomena that the inherent rights of unaccompanied minors are not only negotiated by States (including the UK), but also ostensibly reduced and ignored. Therefore, it is not the UNCRC itself which prevents the realisation of unaccompanied minors' rights, but rather the (political) will of State parties to effectively implement it. Nonetheless, as it stands, an unaccompanied minor is entitled to the same

75 Barbara Gornik, 'A Child-Centred Asylum Policy: Building on Evidence and Unaccompanied Asylum-Seeking Children's Views' 37 *Children & Society* 6 (2022) pp. 2154–2170.

76 *ibid.*

77 Lawrence [n54].

78 Jason Pobjoy, 'Refugee Children' (2021).

79 *ibid.*

80 Gornik [n76].

81 Whalen [n55].

82 S Russell, 'Unaccompanied Refugee Children in the UK' 11 *IJRL* (1999) pp. 126–154.

83 Ciara Smyth, 'Migration, Refugees, and Children's Rights' (2019) In 'International Human Rights of Children' (2019).

local authority support in the UK as any other looked-after child.⁸⁴ By providing formal equality for unaccompanied children, the UK is arguably attempting to bridge the gap between national and refugee children.⁸⁵

Whilst the Refugee Convention provides an adequate framework for the protection of refugees, it does not explicitly address the unique needs of unaccompanied minors. The absence of specific clauses necessitates reliance on the UNCRC. The UNCRC, whilst not immune to analogous criticism, is pivotal in the protection of children's rights broadly. Though both instruments paint a clear picture, the international standard is somewhat inadequate for protecting the rights of unaccompanied minors.

3 The Criminalisation of Unaccompanied Children

The UK has enacted two divisive pieces of legislation: the Nationality and Borders Act 2022 ("NABA") and the Illegal Migration Act 2023 ("IMA"). Both Acts were promulgated with the aim of deterring illegal entry to the UK. Ironically, however, the number of arrivals across the Channel has continued to rise, whilst statistics reveal that asylum claims have also progressively increased.⁸⁶ As of September 2025, 30,164 people arrived in the UK via small boats, up from 22,440 for the same period in 2024.⁸⁷ The primary driver of small boat crossing is the absence of official, accessible channels for people to claim asylum in the UK. The NABA exacerbates this dynamic by prohibiting asylum claims unless individuals are physically present in the UK.⁸⁸ Therefore, arguably, small boat crossings are a symptom of restrictive legislation and policy decisions, not simply a matter of criminal facilitation. For unaccompanied children, the stakes are particularly stark. Many are escaping armed conflict, forced conscription, or trafficking, yet without documentation or family sponsors, they cannot

84 Children Act 1989, s20(1).

85 UNCRC, art 22.

86 'Illegal Migration Act Briefing' (2023) (*Migration Yorkshire*, 8th June 2023) <<https://www.migrationyorkshire.org.uk/illegal-migration-act-briefing-october-2023#:~:text=With%20anti%20asylum%20seeker%20demonstrations,receiving%20communities%20towards%20new%20arrivals>> accessed 03/07/2024.

87 BBC News, 'How Many People Cross the Channel in Small Boats?' *BBC News* (London, 10th September 2025) <<https://www.bbc.co.uk/news/articles/c8xgkx2odyvo>> accessed 19/09/2025.

88 NABA 2022, s14.

access so-called ‘safe and legal routes.’⁸⁹ For them, dangerous crossings are not a preference but the only conceivable means of reaching the UK, where they may have linguistic ties, diaspora communities, or the prospect of safety.

The NABA expanded the UK’s scope of immigration crimes with two key amendments to the Immigration Act 1971. First, the offence of ‘illegal arrival’ was introduced, with a maximum penalty of 4 years imprisonment.⁹⁰ Second, the offence of ‘facilitating arrival’ was expanded,⁹¹ increasing the maximum penalty to life imprisonment.⁹² In practice, age-disputed children have been charged as adults with these offences for their alleged role in steering dinghies across the Channel.⁹³ Age-disputed individuals are defined as individuals who require leave to enter or remain in the UK, and for whom the Home Office or a Local Authority has insufficient evidence to be sure of their age.⁹⁴ Nonetheless, both the CRC Committee and the CMW have emphasised that criminalising irregular entry leads to arbitrary detention.⁹⁵ Detention directly contradicts the UK’s international obligation to protect children from physical, sexual and psychological harm.⁹⁶ The use of criminal law as a migration deterrent is therefore fundamentally incompatible with the child-centred approach envisaged by the UNCR. However, considering the reason for these provisions (the supposed deterrent effect on illegal migration) one could argue that it is somewhat comprehensible why these punitive measures are in place. There are two caveats to this argument. First, as aptly acknowledged by the Court of Appeal, those prosecuted under these offences ‘*are unlikely to be deterred by the prospect of a custodial sentence.*’⁹⁷ Second, the NABA’s reductive approach fails to consider the nuances that cause minors to steer dinghies. As Taylor

89 Refugee Council, ‘*The Truth about Channel Crossings*’ (2023) <<https://www.refugeecouncil.org.uk/stay-informed/statistics-and-research/the-truth-about-channel-crossings/>> accessed 01/09/2025.

90 NABA 2022, art 40.

91 *ibid*, art 40(4).

92 Victoria Taylor, “No such Thing as Justice Here” The Criminalisation of People Arriving to The UK on Small Boats” (2024) <https://blogs.law.ox.ac.uk/sites/default/files/2024-02/No%20such%20thing%20as%20justice%20here_for%20publication.pdf> accessed 25/06/2024.

93 *ibid*.

94 NABA 2022, s49.

95 Joint General Comment – No. 4 of the CMW and No. 23 of the CRC on State Obligations Regarding the Human Rights of Children in the Context of International Migration in Countries of Origin, Transit, Destination and Return’ (2017) <<https://docs.un.org/en/CRC/C/GC/23>> accessed 08/10/2025.

96 UNCR, art 19.

97 NABA 2022, s49.

rightfully contends, there are numerous reasons, including children may have reduced financial means to pay for spaces on dinghies, which makes them vulnerable to exploitation by adults,⁹⁸ lack of access to legal routes, some may possess nautical experience, or, troublingly, some are coerced or threatened by adult counterparts, as in the case of Ibrahima Bah.⁹⁹ By disregarding the complex realities that force children onto small boats, the UK infringes its international obligations in two main ways. First, the UK effectively deprives children of an opportunity to be heard.¹⁰⁰ Accordingly, it is conspicuous that the child's best interests¹⁰¹ are not only subordinated to migration deterrence, but also seemingly invisible since the NABA fails to engage with the realities of forced displacement or unaccompanied minors' specific vulnerabilities adequately. In this respect, the UK's compliance with the UNCRC is arguably one that is formal rather than substantive, exposing children to punishment, adult carceral environments and prioritising deterrence over protection. Second, the NABA ostensibly criminalises the very act of seeking asylum.¹⁰² This is contrary to the Refugee Convention, which expressly prohibits penalisation of refugees for irregular entry or presence.¹⁰³ As Goodwin-Gill observes, article 31 of the Refugee Convention was designed precisely to protect refugees who have no choice but to resort to irregular entry, recognising that fleeing persecution rarely follows orderly legal pathways.¹⁰⁴ Therefore, in criminalising children for circumstances beyond their control, the NABA risks placing the UK in breach of its international obligations. More broadly, it sheds light on a troubling reality: the UK's domestic framework is not only reductive in its approach towards unaccompanied minors but also manifestly unjust, prioritising immigration enforcement over the protection of vulnerable children. In this respect, the UK's approach reflects a systemic incompatibility with the child-centred ethos of the UNCRC.

98 *ibid.*

99 *ibid.*

100 UNCRC art 12.

101 UNCRC, art 3.

102 PILC, 'Criminalised for Seeking Asylum: The Conviction of Ibrahima Bah' (2024) <<https://www.pilc.org.uk/blog/criminalised-for-seeking-asylum-pilcs-statement-on-the-conviction-of-ibrahima-bah/>> accessed 03/05/2024.

103 Refugee Convention 1951, art 31.

104 GS Goodwin-Gill, *The Refugee in International Law* (3rd edn, 2007).

4 Citizenship and Deportation

Moreover, the IMA introduced sweeping reforms to the UK's asylum system, many of which have profound implications for unaccompanied children. Its most controversial provision renders individuals arriving 'illegally' inadmissible to the asylum system, permanently excluding them from regularising their status or acquiring citizenship.¹⁰⁵ The IMA imposes a statutory duty on the Home Secretary to remove such individuals to their country of origin or a designated safe third country.² While unaccompanied minors are not automatically subject to removal,¹⁰⁶ the IMA permits their transfer in certain circumstances- such as family reunification or arrival from a deemed safe country.¹⁰⁷ Additionally, children who arrive illegally are denied the opportunity to lodge asylum claims and face automatic removal when they turn 18.¹⁰⁸ These measures have provoked harsh, yet apt, criticism. Stevens argues that the IMA violates the rights of unaccompanied minors,¹⁰⁹ while the UNHCR has condemned the IMA for eroding UNCRC protections by permanently denying access to citizenship.¹¹⁰ Admittedly, the UNCRC does not explicitly confer a right to legal status, and as Lelliott observes, the Refugee Convention does not prohibit temporary protection schemes.¹¹¹ Accordingly, one may argue that such criticism is unfounded since the UK is operating within the letter of its international obligations and exercising its sovereign right, as a de facto State, to regulate entry and removal.¹¹² However, a durable legal status is increasingly recognized as an integral element of a rights-based approach for unaccompanied minors.¹¹³ This has also been cast as a precondition to the realization

105 IMA 2023, s2(1).

106 *ibid*, s2(1)(a).

107 *ibid*, s2.

108 *ibid*.

109 Amy Stevens et al, 'The UK Illegal Migration Bill: A Child Rights Violation and Safeguarding Catastrophe' 7 *CAH* (2023) pp. 445-447.

110 UNHCR, 'The Illegal Migration Act' (2023) <<https://www.unhcr.org/uk/what-we-do/uk-asylum-and-policy-and-illegal-migration-act/uk-asylum-and-policy-and-illegal#:~:text=Illegal%20Migration%20Bill&text=UNHCR%20expressed%20profound%20concern%20in,Bill%20with%20the%20UK%20Government>> accessed 15/06/2024.

111 Joseph Lelliott, 'Unaccompanied Children in Limbo: The Causes and Consequences of Uncertain Legal Status' 34 *IJRL* (2022) pp. 1-30.

112 Samantha Besson, 'Sovereignty, International Law and Democracy' 22 *EJIL* (2011).

113 UNCRC Committee, 'Treatment of unaccompanied and separated children outside their country of origin' (2005) General Comment No. 6 <<https://www2.ohchr.org/english/bodies/crc/docs/gc6.pdf>> accessed 11/03/2024 ("CRC Committee").

of other rights, including health, education, and psychological recovery.¹¹⁴ Therefore, although the UK is duly exercising the long standing principle of State sovereignty, this is at the expense of potentially violating the safeguards enumerated within the UNCRRC.

Proponents of the IMA justify exclusion from citizenship as a necessary deterrence measure. Convincingly, one may argue that the child's best interests, while a primary consideration,¹¹⁵ need not be the paramount one where other legitimate State interests, such as border control, intervene. Against this background, it has been claimed that illegal entrants present a risk to the public due to the nature of their arrival, place pressure on the UK's public services, enable human traffickers, and undermine the UK's ability to control their borders.¹¹⁶ The Home Office has justified the IMA on precisely these grounds, claiming it 'sends a clear message that children cannot be exploited,'¹¹⁷ will take power out of the hands of the criminal gangs,¹¹⁸ and will discourage parents from placing children on dangerous small boats.¹¹⁹ From this perspective, deterrence is framed as protective: deterring criminal gangs and disincentivising the use of precarious small boats ultimately serves to safeguard the rights of unaccompanied children. Though there are two pertinent counterarguments to this claim. Firstly, empirical evidence provides no support for the claim that punitive asylum policies deter channel crossings.¹²⁰ On the contrary, denying asylum access to children may exacerbate their vulnerability, leaving them exposed to trafficking or disappearance. Secondly, case law suggests that children's welfare should not be subordinated in favour of immigration interests so easily. In *ZH (Tanzania)*,¹²¹ the Supreme Court established that the Home Office's mandate to make arrangements for the welfare of children¹²² requires consideration of the best interests principle. As opined by Lady Hale, the child's best interests must be a primary consideration, meaning that they must be considered first.¹²³ Although the child's best interests may be outweighed by the

114 J Bhabha, 'Child Migration and Human Rights in a Global Age' (2014).

115 UNCRRC art 3(1).

116 Home Office, 'Illegal Migration Bill: CRIA' (2023) <<https://bills.parliament.uk/publications/52110/documents/3774>> accessed 12/06/2024.

117 *ibid.*

118 *ibid.*

119 *ibid.*

120 Taylor [n93].

121 *SSHD [2011] UKSC 4.*

122 Borders, Citizens and Immigration Act 2009, s55.

123 Lady Hale at [26].

cumulative effect of other considerations,¹²⁴ it should not ‘melt away into the background’ of immigration considerations.¹²⁵ Rather, where the child’s best interests clearly favour a certain course, that course should be followed unless countervailing reasons of considerable force displace them.¹²⁶ Whilst the decision made in the a-forestated case is one that is meaningful, it is debatable whether the ruling has truly bolstered ‘the rights of children born to illegal immigrants’ as claimed.¹²⁷ Fortin argues that this decision is less novel than many suppose – and is in some ways disappointing.¹²⁸ By stressing the importance of immigrant children’s best interests, it fails to use this opportunity to promote the rights enumerated within the UNCRIC effectively.¹²⁹ Although Fortin cautions that the judgment may be less transformative than many assume, its central message is, nevertheless, clear: immigration control should not lightly outweigh the welfare of children. Though, in practice, this decision has not had any significant long-term influence on the development of children’s rights in this context.¹³⁰

Additionally, the IMA limits the number of safe ways to enter the UK by facilitating an annual cap on the number of refugees permitted through safe and legal routes.¹³¹ In doing so, the IMA may, as rightly conveyed by Ren, lead to the creation of clandestine and dangerous routes, since unaccompanied minors will inevitably seek other ways of entering the UK.¹³² This may endorse child trafficking.¹³³ The IMA also prevents unaccompanied minors from presenting human rights claims, no matter how compelling their circumstances.¹³⁴ In refusing to consider such claims, the UK arguably infringes upon the child’s right to be heard¹³⁵ and undermines safeguards for

124 *ibid.* at [33].

125 Lord Hope at [42].

126 Lord Kerr at [46].

127 A Wager, ‘Supreme Court bolsters rights of children in deportation cases’ (2011) UK Human Rights Blog <<https://ukhumanrightsblog.com/2011/02/01/>> accessed 01/12/2025.

128 Jane Fortin, ‘Are Children’s Best Interests Really Best? H (Tanzania) FC v Secretary of State for the Home Department’ 74 *MLR* (2011) pp. 947–961.

129 *ibid.*

130 *ibid.*

131 Migration Yorkshire [n87].

132 Julie Ren et al, ‘Missing Unaccompanied Asylum-Seeking Children in the UK’ (*University of Bristol Blog*, 16 November 2023) <<https://policystudies.blogs.bristol.ac.uk/2023/11/16/missing-unaccompanied-asylum-seeking-children-in-the-uk/>> accessed 11/05/2024.

133 *ibid.*

134 UNHCR, ‘UK Illegal Migration Bill’ (2023) <<https://www.unhcr.org/uk/news/press-releases/uk-illegal-migration-bill-un-refugee-agency-and-un-human-rights-office-warn>> accessed 18/05/2024.

135 UNCRIC, art 12.

victims of child trafficking and exploitation.¹³⁶ For this reason, the Children's Commissioner duly condemns the IMA, noting that such provisions denude salient protections for victims,¹³⁷ and that such children must be permitted to make asylum claims.¹³⁸ As such, despite the Supreme Court's decision in *ZH (Tanzania)*,¹³⁹ it is axiomatic that the child's best interests are ostensibly considered through an immigration prism,¹⁴⁰ whereby deterrence of illegal migration is favoured over the safeguarding of unaccompanied children. For these reasons, the IMA's justifications are, at best, tenuous.

Furthermore, the IMA criminalises necessity: most unaccompanied minors fleeing persecution lack the means to access 'safe and legal routes,'¹⁴¹ being unable to secure passports, visas, or sponsorship.¹⁴² The UK's hard-line approach neglects the contemplation of structural and coercive factors, such as war, trafficking or lack of documentation, that often compel children to resort to irregular means of entry, instead criminalising the very act of seeking asylum. Watts has persuasively criticised this approach as 'rooted in othering,'¹⁴³ where the mode of arrival dictates access to protection.¹⁴⁴ Consequently, these provisions may violate the child's best interests¹⁴⁵ and right to non-discrimination,¹⁴⁶ reducing children to immigration cases rather than independent rights-holders. Similarly, the UK risks breaching the Refugee Convention, including non-penalisation of refugees for unlawful entry,¹⁴⁷

136 Ren et al [n125].

137 Children's Commissioner, 'Illegal Migration Bill-UASC' (2023) <<https://www.childrenscommissioner.gov.uk/blog/illegal-migration-bill-unaccompanied-children-seeking-asylum/>> accessed 11/05/2024.

138 *ibid.*

139 [2011] UKSC 4.

140 UNHCR and UNICEF, 'What the UK can do to ensure respect for the best interests of Unaccompanied and separated children' (2018) <<https://www.unhcr.org/uk/sites/uk/files/legacy-pdf/5756e8c07.pdf>> accessed 03/05/2024.

141 UNCRC Committee, 'Treatment of unaccompanied and separated children outside their country of origin' (2005) General Comment No. 6 <<https://www2.ohchr.org/english/bodies/crc/docs/gc6.pdf>> accessed 11/03/2024 ("CRC Committee").

142 *ibid.*

143 TwMC, 'Statement on Announcement for Home Office to Become a Corporate Parent' (2023). <<https://www.togethertomorrowchildren.org.uk/post/statement-on-announcement-for-home-office-to-become-a-corporate-parent>> accessed 11/03/2024.

144 *ibid.*

145 UNHCR, 'The Illegal Migration Act' (2023) <<https://www.unhcr.org/uk/what-we-do/uk-asylum-and-policy-and-illegal-migration-act/uk-asylum-and-policy-and-illegal#:~:text=Illegal%20Migration%20Bill&text=UNHCR%20expressed%20profound%20concern%20in,Bill%20with%20the%20UK%20Government>> accessed 15/06/2024.

146 UNCRC, art2 and The Convention, art 3.

147 *ibid.*, art 31.

and the principle of non-refoulement.¹⁴⁸ Interestingly, non-refoulement obligations apply irrespective of whether serious violations of Convention rights originate from non-State actors.¹⁴⁹ The importance of this principle in the context of unaccompanied minors has also been emphasised by the CRC Committee.¹⁵⁰

Moreover, the provision mandating deportation at 18 years old is particularly troubling. First, given the unreliability and inaccuracy of age assessment procedures (as will be discussed *infra*), unaccompanied minors may be erroneously assessed as adults and repatriated, as was the case for Samir.¹⁵¹ This means that minors could be left with little to no support, contradicting their best interests.¹⁵² Second, deportation disregards the reality that unaccompanied minors may become settled and integrated in the UK, only to be uprooted to another “safe third country” where they may not have any (linguistic or familial) connections. This, alongside the fact that research has confirmed that unaccompanied minors have high rates of depression and PTSD during the resettlement process,¹⁵³ indicates that deportation at 18 may re-traumatise unaccompanied children. This gravely undermines the UK’s obligation to protect children from harm,¹⁵⁴ including harm that would jeopardise a child’s right to life, survival and development.¹⁵⁵ Thus, although the IMA provides exceptions to the deportation at 18 rule, cognisant of the deleterious effects on unaccompanied minors, this author is inclined to suggest that this provision should be repealed. Indeed, the CRC Committee urged the UK to repeal all IMA provisions that would violate the UNCRC.¹⁵⁶ Third, Stevens rightly delineates that deportation directly contravenes domestic duties pursuant to the Children Act 1989,¹⁵⁷ which requires Local Authorities to secure permanence for children in care.¹⁵⁸ This legislative duty would be difficult to adhere to in

148 The Convention, art 33.

149 *ibid.*

150 CRC Committee [n142].

151 TCS, ‘Children at Risk under New Asylum Policies’ (2023) <<https://www.childrenssociety.org.uk/what-we-do/blogs/children-at-risk-under-new-asylum-policies>> accessed 08/05/2024.

152 UNCRC, art 3.

153 Ketil Eide and Anders Hjerm, ‘Unaccompanied Refugee Children – Vulnerability and Agency’ 102 *Acta pædiatrica* (2013) pp. 666–668.

154 UNCRC, Preamble, art 22, and art 39.

155 CRC Committee [n142].

156 UNCRC Committee, ‘Concluding Observations’ (2023) <https://crae.org.uk/sites/default/files/fields/download/CO_BRIEFING3_24_D.pdf> accessed 11/12/2025.

157 Stevens [n108].

158 CA, s 17.

practice if unaccompanied minors are deported at 18.¹⁵⁹ Fourth, deportation is likely to, as suggested by Butler, create “*an incentive for children to run away before they turn 18 into the arms of exploiters and traffickers to avoid being [repatriated]*”.¹⁶⁰ This is strongly supported by UNICEF.¹⁶¹ This risk, if materialised, is a serious affront to the UK’s duty to safeguard children.¹⁶² Fifth, it has been gleaned that the very threat of deportation and the feelings of uncertainty this incites may give rise to an ‘enforced state of limbo’.¹⁶³ This, in turn, exacerbates toxic stress¹⁶⁴ as it requires unaccompanied minors to live in constant fear and anxiety that they will be removed at 18.¹⁶⁵ The negative impacts on children’s well-being of having a precarious or insecure migration status have been highlighted by the CRC Committee,¹⁶⁶ and are evident in the case of *R (ABC) (a minor) (Afghanistan) v Home Secretary*.¹⁶⁷ Here, the High Court described the psychological damage inflicted on a child living under the threat of deportation at 18 as ‘very deleterious to his mental well-being’.¹⁶⁸ As a result, the UK risks reneging on the right to safeguard minors from mental harm.¹⁶⁹ This author readily infers that, collectively, these concerns underscore how child welfare is, yet again, subordinated to immigration control.¹⁷⁰

Conversely, it may be contended that since unaccompanied minors are deported at 18, the UK is not acting contrary to the UNCRC, since this framework is not applicable to individuals who are 18 and older.¹⁷¹ Legally speaking, this supposition is feasible. Indeed, the law encapsulates, as Rosen coins it, a ‘straight 18’ approach, whereby whether or not safeguards are applicable to an individual is wholly contingent upon their chronological age. This begs the question: Is chronological age a sufficient marker of adulthood and the cessation of an individual’s vulnerability? This author is unconvinced. As cogently

159 Patrick Butler, ‘UK’s Migration Bill Could Put Thousands of Children “into Arms of Criminals”’ *The Guardian* (London, 24th March 2023) <<https://www.theguardian.com/society/2023/mar/24/uk-migration-bill-could-thousands-children-arms-criminals>> accessed 11/04/2024.

160 *ibid.*

161 Lelliott [n12].

162 UNCRC, arts 6, 19, 22, 34.

163 Pobjoy [n15].

164 Stevens [n108].

165 Pobjoy [n15].

166 Joint General Comment [n96].

167 [2011] EWHC 2937 (*Admin*).

168 *ibid.*, at [58].

169 UNCRC, art 19.

170 House of Lords et al, ‘The UK’s Compliance with the UNCRC (2015)’ <<https://publications.parliament.uk/pa/jt201415/jtselect/jtrights/144/144.pdf>> accessed 10/03/2024.

171 UNCRC, art 1.

elucidated by Rosen, *'adopting a single universal definition of childhood ignores the fact that there is no universal experience or understanding of childhood.'*¹⁷² Indeed, the 'straight 18' approach is an inadequate (and artificial) indicator of an individual's ongoing vulnerability, ignoring the diversity of childhood experiences. The case of *H v Newham LBC 2023*¹⁷³ provides oxygen to the claim that age is an insufficient marker of maturity, vulnerability or resilience. In this case, the High Court acknowledged that although C was 18 years old, he remained vulnerable due to illiteracy, isolation, and lack of English.¹⁷⁴ Subsequently, it was duly held that the Local Authority should accommodate C.¹⁷⁵ As a matter of non-legal but of moral sagacity, a more principled approach is required whereby protections are extended beyond the age of majority. This would recognise vulnerability, rather than chronological age, as the appropriate threshold and determinative factor for safeguarding.

5 Flawed Age Assessment Procedures

Whether or not unaccompanied children are the age they claim to be could be uncertain to the Home Office and Local Authorities. This may be because there is a lack of robust birth registration processes in the country of origin (as in Afghanistan and Eritrea),¹⁷⁶ or age-identifying documents were forged¹⁷⁷ or lost in transit to the UK.¹⁷⁸ Accordingly, age assessment procedures are conducted to determine chronological age.¹⁷⁹ Age determination is salient for three reasons. Firstly, the presumption of minority triggers safeguards, pursuant to the

172 D Rosen, 'Child Soldiers, International Humanitarian Law and the Globalization of Childhood' 109(2) *American Anthropologist* (2007) pp. 296–306.

173 Ceylan Kahya, 'Asylum Seeker Wins Right for Support and Accommodation' (*Southgate solicitors*, 11th July 2024) <<https://southgate.co.uk/asylum-seeker-wins-right-for-support-and-accommodation/>> accessed 11/07/2024

174 *ibid.*

175 *ibid.*

176 Helen Bamber Foundation, Humans for Rights Network and the Refugee Council, 'Forced Adulthood' report (2024) <<https://www-media.refugeecouncil.org.uk/media/documents/Forced-Adulthood-joint-report-on-age-disputes-January-2024.pdf>> accessed 11/12/2025.

177 DoE, 'Care of Unaccompanied Migrant Children and Child Victims of Modern Slavery Statutory Guidance for Local Authorities' (2017) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/656429/UASC_Statutory_Guidance_2017.pdf> accessed 12/05/2024.

178 'The Rights of Refugee Children' (Children England Blog, 2016). <<https://www.childrenengland.org.uk/blog/the-rights-of-refugee-children>> accessed 20/04/2024.

179 Ranit Mishori, 'The Use of Age Assessment in the Context of Child Migration: Imprecise, Inaccurate, Inconclusive and Endangers Children's Rights' 6 *Children* (Basel) (2019) pp. 1–5.

UNCRC and the Children Act 1989. Secondly, such assessments determine how the UK accommodates unaccompanied children. If an unaccompanied child is found to be an adult, they will be assigned a date of birth making them over 18, dispersed in adult accommodation and thereafter left with little support in the adult asylum system.¹⁸⁰ This places unaccompanied children at serious risk of trafficking and exploitation, contrary to the UK's positive obligation to safeguard them.¹⁸¹ Thirdly, age could be the difference between remaining in the UK or being repatriated to a third country.¹⁸² Cognisant of these grave ramifications, age determination is pertinent. Troublingly, however, should an individual refuse to undergo an age assessment without 'reasonable grounds',¹⁸³ he/she is automatically classified as an adult. Not only does this damage the individual's credibility, but it also raises issues regarding consent. Namely, is a minor's consent to an age assessment procedure truly freely and meaningfully given, or is there a sense of coercion to oblige?¹⁸⁴ Where refusal may result in detention in adult accommodation, loss of child-specific protections or an adverse credibility finding, the notion of free and informed consent is largely illusory. This undermines meaningful participation, violating the child's right to be heard or have their views respected.¹⁸⁵

Furthermore, although children erroneously treated as adults can challenge an age assessment decision via judicial review,¹⁸⁶ evidence suggests that they may not be provided with any information as to how to do so.¹⁸⁷ This is adverse to the child's best interests¹⁸⁸ and their right to access information.¹⁸⁹ Indeed, access to justice is a fundamental right in itself and a prerequisite for the protection and promotion of all other rights.¹⁹⁰ Consequently, it is significant that every child is empowered to claim his/her rights.¹⁹¹ Additionally, such

180 F Sella, 'Age Assessments: what happens when a child arrives in the UK?' (*Free Movement*, (Free Movement, 2023) <<https://freemovement.org.uk/age-assessments-what-happens-when-a-child-arrives-in-the-uk/>> accessed 15/06/2024.

181 UNCRC art 34, 19.

182 IMA 2023, s2.

183 NABA 2022, s 52(6) and (7).

184 Gregor Noll, 'Junk Science? Four Arguments against the Radiological Age Assessment of Unaccompanied Minors Seeking Asylum' 28 *IJRL* (2015) pp. 1–15.

185 UNCRC, art 12.

186 NABA 2022, s54 and 55.

187 Helen Bamber Foundation [n177].

188 UNCRC, art 3.

189 *ibid*, art 17.

190 Joint General Comment [n96].

191 *ibid*.

individuals may be removed from the UK during proceedings.¹⁹² Again, this renders the right to be heard as somewhat ineffective, as removal extinguishes any opportunity for children to meaningfully participate in or challenge the assessment process. This is also a serious affront to the UK's obligation to protect refugee children,¹⁹³ as removal may expose children to unsafe conditions. It is therefore submitted that the government should repeal IMA provisions which would leave children at risk of being removed from the UK, abandon the notion that children are automatically treated as adults simply for refusing to consent to age assessment procedures,¹⁹⁴ and provide accessible legal advice and guardianship throughout the assessment. This would ensure that children are not punished for evidential uncertainty or for exercising their autonomy, and will align the UK's practice more closely with the spirit and substance of its obligations pursuant to the UNCRC.

Traditionally, age assessments in the UK were solely the responsibility of local authorities. However, the National Age Assessment Board (NAAB)-comprising social workers- now supports local authorities with age assessment decisions. Two primary standards guide age assessments in the UK: (i) a full age assessment must be 'Merton compliant',¹⁹⁵ and (ii) the assessment must adhere to Home Office guidance. The latter dictates that officials will treat a claimant as an adult "*if their physical appearance and demeanour very strongly suggests that they are significantly over 18.*"¹⁹⁶ If doubt persists, then a full 'Merton' compliant age assessment will be conducted. This assessment is conducted by two qualified social workers, and the individual is supported by an appropriate adult (and an interpreter if necessary), to ensure they are treated fairly.¹⁹⁷ Nonetheless, in the first instance, "wrinkles" around the eyes, "old skin", or "white hair" are considered sufficient indicators of age.¹⁹⁸ The World Health Organisation has identified this method as *'universally*

192 Home Office [n117].

193 UNCRC, art 22.

194 Helen Bamber Foundation [n177].

195 *R (B) v London Borough of Merton* [2003] EWHC 1689 (Admin).

196 Amelia Gentleman, 'Child asylum seekers in UK forced to share hotel rooms with adults' *The Guardian* (London, Monday 30th October 2023 <<https://www.theguardian.com/uk-news/2023/oct/30/child-asylum-seekers-in-uk-forced-to-share-hotel-rooms-with-adults>> accessed 8/10/2023.

197 UK Parliament POST, 'The use of Biological Methods in Asylum Age Assessments' (2022) <<https://researchbriefings.files.parliament.uk/documents/POST-PN-0666/POST-PN-0666.pdf>> accessed 10/12/2025.

198 Alexandropoulou [n75].

applicable, inexpensive and non-invasive'.¹⁹⁹ Whilst this may ring true, ascertaining chronological age solely on physical appearance disregards other factors which may have impacted outward appearance. For instance, minors may appear aged due to exhaustion, malnutrition, or physical/psychological adversity during the migration process.²⁰⁰ Whilst potentially inaccurate, at first glance, such methods do not appear contrary to the UNCRF. However, assessing age solely upon physical appearance is inherently subjective and, therefore, potentially biased. Interestingly, Ursin asserts that age could be conceptualised by cultural preconceptions of a child's physical development.²⁰¹ Indeed, this method does not deliberate variations according to ethnicity, race, and socioeconomic background.²⁰² In disregarding these significant factors, assessors may sustain a reductive and ethnocentric analysis of what a child of a certain age 'should' look like. As such, this method may conflict with a child's right to non-discrimination.²⁰³ Further, the unreliability of this method leads to a high risk of misclassifying a child as an adult. Not only are these children missing out on the care and protection of local authorities and child protection experts to aid in reintegration,²⁰⁴ but they are also exposed to heightened risks of exploitation, (physical and sexual) abuse, and psychological harm,²⁰⁵ directly contradicting their enshrined right to be protected²⁰⁶ and their best interests.²⁰⁷

Disputedly, appropriate guidelines or legislation may ensure the consideration of extraneous factors by the assessor. For instance, the UK provides detailed guidance on misleading indicators of age (including the effects of poverty and illness on physical appearance).²⁰⁸ Though, despite these policies, unaccompanied minors are still erroneously assessed (*S, R (on the application of) v London Borough of Croydon*).²⁰⁹ Further, statistics glean that in 2023, where 847 age assessments were concluded, 57% were found to be children –

199 Vincenzo Sanctis et al, 'Pros and cons for the medical age assessments in unaccompanied minors: a mini-review' 8 *Acta Biomed* (2015) pp. 121–131.

200 Gentleman [n197].

201 Aurora Sørsveen and Marit Ursin, 'Constructions of 'the Ageless' Asylum Seekers: An Analysis of How Age is Understood among Professionals Working within the Norwegian Immigration Authorities' 35 *Children & Society* (2020) pp. 1–15.

202 *ibid.*

203 UNCRF art 2.

204 *ibid.*, art 39.

205 Helen Bamber Foundation [n179].

206 UNCRF, art 19

207 *Ibid.*, art 3.

208 *BF (Eritrea) v Secretary of State for the Home Department* [2021] *UKSC* 37 at [92].

209 [2017] *EWHC* 265.

meaning that in just 6 months, at least 485 children had been wrongly placed in adult accommodation or detention at significant risk.²¹⁰ This emphasises the inaccuracy of such procedures. Hence, whilst Home Office guidelines are conceptually viable, in practice, they are somewhat futile. Perhaps, focusing on a more multidimensional approach (with regard to ethnic diversity), and conducting a two-fold mandatory procedure involving both a physical and psychological assessment (taking into account one's maturity) would fortify the credibility of age assessments. Indeed, the latter has been recommended by the CRC Committee with emphasis on avoiding the risk of violating the physical integrity of the child and with respect to human dignity.²¹¹ Further, these assessments should be conducted by specialist paediatricians or other trained professionals to increase their accuracy.²¹²

Moreover, the Immigration (Age Assessments) Regulations 2023 specify four scientific methods under section 52 of the NABA: radiographs assessing (a) maturation of the molars; (b) hand and wrist bones; and MRI to assess (c) the distal femur and proximal tibia; and (d) the medial end of the clavicle. At first glance, one would assume that these 'science' based methods possess an aura of objectivity, reliability, and, ultimately, accuracy. Indeed, the most potent justification in favour of these medical methods is to minimise the inherent subjectivity of physical assessments.²¹³ For this reason, Mishori recognises that, in the medical context at least, 'there is merit to such testing.'²¹⁴ However, upon further examination, there is a large body of literature – both scientific and academic – which contradicts this. The accuracy of scientific methods has been repeatedly challenged, owing to a large margin of error.²¹⁵ For instance, skeletal age heralds a 5-year margin of error.²¹⁶ This significant margin of error increases the likelihood that a child will be erroneously assessed as an adult, and highlights that doubt as to age is never entirely dispelled. Thus, this author suggests that medical methods of assessing age allude to a logical fallacy which is highly paradoxical: the utilisation of scientific and accurate means produces highly inaccurate results. As such, Mishori rightfully concludes that the use of age assessment procedures is '*imprecise, inaccurate,*

210 Helen Bamber Foundation [n177].

211 CRC Committee [n142].

212 Joint General Comment [n96].

213 Samir Hamdoud and Sarah Bunn, 'The Use of Biological Methods in Asylum Age Assessments' (UK Parliament, 2022) <<https://post.parliament.uk/research-briefings/post-pn-0666/>> accessed 21/06/2024.

214 Mishori [n180].

215 *ibid.*

216 *ibid.*

and endangers children's rights.²¹⁷ Particularly, such procedures may violate the privacy²¹⁸ and dignity²¹⁹ of unaccompanied minors who may already be severely traumatised.²²⁰ It is therefore unsurprising that the CRC Committee have recommended that States refrain from utilising such methods.²²¹ Subsequently, the UK's move towards adopting these scientific/biological methods of assessing age is concerning.

Another tenable argument which calls into question the effectiveness of medical methods concerns the UK's use of reference images: the Greulich and Pyle atlas for hand and wrist bones.²²² Radiographs of the applicant are compared to radiographs from reference studies whose age is known to ascertain skeletal age and bone maturation. Such assessments are premised on the notion that reference groups do not differ from one another. This is inherently problematic. Notably, in countries with little to no civil registration, it is impossible to discern the ages of a reference group accurately.²²³ Hence, this method lacks validity and reliability. Furthermore, this procedure presumes that skeletons across the world develop identically, again disregarding significant environmental and socioeconomic factors, such as disparities in nutrition, living standards and/or ethnicity.²²⁴ For instance, studies have demonstrated that there is a substantial difference in the development of third molars between White and Bangladeshi children from London, and Black African children in South Africa.²²⁵ This heavily challenges the assumption that human development is uniform, suggesting that such methods lack relevance and credibility when applied to non-Western populations. Thus, there is a palpable risk that

217 *ibid.*

218 UNCRC, art 16.

219 *ibid.*, preamble.

220 WMA, 'WMA Statement on Medical Age Assessment of Unaccompanied Minor Asylum Seekers' (2019) <<https://www.wma.net/policies-post/wma-statement-on-medical-age-assessment-of-unaccompanied-minor-asylum-seekers/>> accessed 26/12/2024.

221 Joint General Comment [n96].

222 Home Office, 'Biological Evaluation Methods to Assist in Assessing the Age of Unaccompanied Asylum-Seeking Children' (2023) <<https://www.gov.uk/government/publications/methods-to-assess-the-age-of-unaccompanied-asylum-seeking-children/biological-evaluation-methods-to-assist-in-assessing-the-age-of-unaccompanied-asylum-seeking-children-accessible>> accessed 11/04/2024.

223 Johannsson [n25].

224 Noll [n185].

225 A Aynsley-Green et al, 'Medical, Statistical, Ethical and Human Rights Considerations in the Assessment of Age in Children and Young People Subject to Immigration Control' 102 *BMB* (2012) pp. 17–42.

the age of unaccompanied minors is determined through a Eurocentric lens, potentially violating the right to non-discrimination.²²⁶

Although age assessment procedures risk impinging upon the rights of unaccompanied children, arguably, the necessity of these procedures trumps any so-called ‘violations.’ It has been articulated that such procedures are necessary to prevent adults from “masquerading as children”²²⁷ in order to access Local Authority support.²²⁸ Indeed, from 2016–2023, there were 8,611 asylum cases which were resolved via an age assessment, of which approximately 47% were found to be adults.²²⁹ Lelliott denotes that unaccompanied minors are shielded from the harsher aspects of the UK’s approach to immigration.²³⁰ This is part and parcel due to the fact that they are (arguably) accorded a higher standard of care than their adult counterparts.²³¹ There is credibility to Lelliott’s supposition. The Borders, Citizenship, and Immigration Act 2009 stipulates a duty to ensure that asylum functions are discharged regarding the need to safeguard and promote children’s welfare.²³² An analogous duty is included in Children Act 1989, which articulates that unaccompanied minors are ‘children in need.’²³³ Further, unlike their adult counterparts, unaccompanied children care generally devolves to Local Authorities. Such authorities plan for children’s care considering health, education, and development,²³⁴ including providing accommodation in foster care or residential children’s homes.²³⁵ Therefore, although the UNCRC is not directly incorporated into UK domestic law, reassuringly, the Children Act 1989 ensures that children’s best interests are considered.²³⁶ Cognisant of these theoretical safeguards, it is no surprise that adults seek to ‘game’ the system, and masquerade as children. As such, one may argue that the only way to tackle this is to conduct age assessment procedures. Further, if age assessments are not conducted, more

226 UNCRC, art 2.

227 Gentleman [n197].

228 Christine Mougne and Amanda Gray, ‘A new approach to age assessment of Unaccompanied and Separated Children: Current practices and challenges in the UK’ (2010) <<https://amerainternational.org/wp-content/uploads/2023/08/A-new-approach-to-age-assessment-of-Unaccompanied-and-Separated-Children-Current-practices-and-challenges-in-the-UK-.pdf>> accessed 12/12/2023.

229 Home Office [n117].

230 Lelliott [n112].

231 *ibid.*

232 s55.

233 s17.

234 Children Act 2004, s10.

235 Children Act 1989, s 20 (‘CA’).

236 *ibid.*

adults would be placed in children's accommodation. This produces inevitable safeguarding issues, as evidenced in the case of Ahmad Otak, who murdered two teenagers.²³⁷ Consequently, one may contend that the very concept of age assessments are in the child's best interests as it seeks to preclude such safeguarding risks. Yet, the validity of this argument is weakened, cognisant of the fact that age assessments are highly unreliable, and there is a high likelihood of erroneous determination. Perhaps, there being no other feasible way to determine age or circumvent safeguarding risks, age assessments are deployed for want of a better alternative.

It has been recommended by several organisations (including the Refugee Council) that where a person has claimed to be a child but is being treated as an adult and moved into adult accommodation/detention, the Home Office should notify the relevant local authority so that they are aware that there is a putative child in their area, and vice versa; where a person in adult accommodation/detention claims to be a child, the Home Office should make a referral to the relevant local authority, so that they are aware that there is a putative child and can assess accordingly.²³⁸ Whilst there is merit to this recommendation as it may better safeguard children erroneously determined to be adults, it does little to prevent adults from posing as children. By stronger reason, this author suggests that focusing on vulnerability as the determinant factor for safeguarding as opposed to chronological age would prevent adults from gaming the system. Indeed, an approach rooted in vulnerability rather than rigid age thresholds would be more consistent with the protective aims of both the UNCRC and the Children Act 1989. Chronological age offers a blunt tool for determining entitlement to safeguards. It assumes that the risks and needs of an individual change abruptly at 18, an assumption contradicted by evidence highlighting that young people remain vulnerable well into early adulthood. Indeed, developments in neuroimaging indicate that the adolescent brain continues to develop into the 20s,²³⁹ throwing the 'straight 18 approach' that the law codifies into doubt. This, in turn, indicates that our conception of the adult/child binary is one that is artificial, and not as clear cut as the law makes it seem. A vulnerability-based model, by contrast, would capture the nuanced realities of unaccompanied minors, recognising that trauma, isolation, lack of language skills, and exposure to exploitation are better indicators of need than age alone. This shift would not only reduce reliance on inaccurate age

237 *R v Ahmad Otak* [2012].

238 Helen Bamber Foundation [n177].

239 E Cave and H Cave, 'Skeleton keys to hospital doors: adolescents who refuse life-sustaining medical treatment' 86 *MLR* (2023) pp. 984-1010.

assessments but also mitigate the perverse outcomes of the current system, where erroneous determinations can either deny children protection or compromise the safety of genuine minors.

6 Unsafe Accommodation and Detention Practices

Both unaccompanied minors arriving by small boats and those awaiting age assessments are routinely placed in adult accommodation or, more troublingly, detained in adult prisons.²⁴⁰ Accommodation for unaccompanied minors is governed by a fragmented regime. The IMA empowers both local authorities and the Home Office to provide or arrange accommodation.²⁴¹ While this dual responsibility appears to alleviate the burden on overstretched local authorities, in practice, it has created significant ambiguity. As Ren observes, the IMA fails to clarify which body bears primary care responsibility for unaccompanied minors, generating a dangerous accountability gap.²⁴² This is compounded by the National Transfer Scheme (NTS), designed to distribute unaccompanied minors more evenly among local authorities. While reasonable in theory, the NTS grants the Home Office authority to discontinue the provision of accommodation, effectively diluting the central safeguarding obligations enshrined in the Children Act 1989. The catastrophic consequences of this two-tiered system became evident in 2021, when unprecedented numbers of unaccompanied minors arrived in the UK. Pending NTS transfers, the Home Office placed these children in hotels rather than referring them to statutory child protection systems.²⁴³ Despite assurances of ‘robust safeguarding procedures,’²⁴⁴ these hotels lacked social workers, child welfare oversight, and even basic vetting of staff.²⁴⁵

240 Adam Forrest, ‘Children Arriving on Small Boats “Held in Jail alongside Sex Offenders”’ *The Independent* (27 August 2023) <<https://www.independent.co.uk/news/uk/politics/asylum-seekers-small-boats-children-prison-b2400195.html>> accessed 11/07/2024.

241 IMA 2023, s16.

242 Ren [n133].

243 UK Parliament, ‘Unaccompanied Asylum-Seeking Children (2024)’ <<https://hansard.parliament.uk/commons/2023-01-24/debates/290AF292-5D7E-411C-8FB8-A6E0F288365C/UnaccompaniedAsylum-SeekingChildren>> accessed 21/06/2024.

244 *ibid.*

245 TCS, ‘Children at Risk under New Asylum Policies (2023)’ <<https://www.childrensociety.org.uk/what-we-do/blogs/children-at-risk-under-new-asylum-policies>> accessed 14/06/2024.

As a direct consequence of these procedural failings, approximately 200 children subsequently went missing.²⁴⁶ The High Court later ruled that the use of hotels to house unaccompanied minors was unlawful, holding that responsibility is vested solely with local authorities.²⁴⁷ However, rather than curtailing these unsafe practices, the IMA entrenched the Home Office's role in accommodating unaccompanied children. The Children's Commissioner for England condemned this approach as antithetical to child welfare, remarking that such provisions should never have been law.²⁴⁸ This criticism is well-founded for three main reasons. First, the Children Act 1989 is the cornerstone of child protection in the UK and ought to have primacy in safeguarding unaccompanied children, who are a particularly vulnerable subset of child migrants. Second, entrusting accommodation to the Home Office—an agency oriented towards immigration enforcement rather than child welfare—raises the risk of unsuitable and unsafe placements, as underscored by children's charities.²⁴⁹ Third, the placement of unaccompanied minors in hotels without proper care arrangements created conditions ripe for exploitation, violating not only the Children Act 1989 but also the best interests principle.²⁵⁰ The consequences of these practices go beyond individual harm. They represent a structural abdication of the State's *parens patriae* role as the ultimate guardian of children unable to protect themselves. As Maioli argues, the disappearance of hundreds of unaccompanied children is not an aberration; it is 'emblematic of a systemic and longstanding neglect of children's safeguarding needs.'²⁵¹ The High Court's affirmation that only local authorities may house children within the statutory care system offers some reassurance against future recurrence. However, it does little to mitigate the serious dereliction of duty which caused so many vulnerable children to vanish under State supervision. Additionally, when minors are placed in adult accommodation, they are at higher risk of psychological

246 UK Parliament, 'Unaccompanied Asylum-Seeking Children (2024) <<https://hansard.parliament.uk/commons/2023-01-24/debates/290AF292-5D7E-411C-8FB8-A6E0F288365C/UnaccompaniedAsylum-SeekingChildren>> accessed 21/06/2024.

247 R (ECPAT UK) v Kent CC, SSHD [2024] EWHC 1353 (Admin).

248 Children's Commissioner, 'Unaccompanied Children in Need of Care' (2023) <<https://www.childrenscommissioner.gov.uk/resource/unaccompanied-children-in-need-of-care/>> accessed 26/07/2024.

249 Migration Yorkshire [n87].

250 UNCRC, art 3.

251 Susanna Maioli et al, 'International Migration of Unaccompanied Minors: Trends, Health Risks, and Legal Protection' 5 *TLCAH* (2021) pp. 882–895.

distress;²⁵² violence (notably sexual exploitation and abuse); trafficking²⁵³ and forced labour.²⁵⁴ Indeed, the European Court of Human Rights found that the right to freedom from torture²⁵⁵ and private life²⁵⁶ had been violated when two minors were placed in adult accommodation.²⁵⁷ Though this does not involve the UK specifically, this judgment nevertheless reveals the extent to which the rights of the child may be impinged when children are placed in adult accommodation.

Likewise, the detention of unaccompanied minors in adult prisons fosters serious safeguarding concerns which may compromise their rights. Whilst not explicitly prohibited in international law, detention is codified as a measure of last resort,²⁵⁸ permissible only in exceptional circumstances.²⁵⁹ In practice, however, age-disputed individuals and unaccompanied minors are routinely detained in adult facilities, whether through the duration of the age assessment procedure,²⁶⁰ pending a decision to remove an unaccompanied minor from the UK,²⁶¹ or upon arrival on a small boat. Worryingly, as Taylor illustrates, despite safeguarding requests being made to prisons, it is unclear what steps were taken, including whether unaccompanied minors were indeed referred for an age assessment.²⁶² The discrepancy between the UK's international obligations and its current practice again indicates a systemic issue. Indeed, similarly to children placed in adult accommodation, detained children are at risk of sexual exploitation, exposure to drugs, violence, and trafficking.²⁶³ Disconcertedly, unaccompanied minors were held in Emley prison alongside adult sex offenders.²⁶⁴ This directly contradicts the UNCRRC, which explicitly precludes children from being placed in prison with adults,²⁶⁵ the

252 Marianne Jakobsen et al, 'The Impact of the Asylum Process on Mental Health: A Longitudinal Study of Unaccompanied Refugee Minors in Norway' 7 *BMJ* (2017) pp. 1–8.

253 UNCRRC, art 35.

254 *ibid*, art 32.

255 *ibid*, art 37.

256 *ibid*, art 16.

257 *Darbou and Camara v. Italy* [2002] *ECHR* 286.

258 UNCRRC, art 37(b).

259 *ibid*, and IMA s12(b).

260 *Mahamed Jama v Malta* [2015] *ECHR* at [147].

261 IMA 2023, S11 (c)(iv).

262 Taylor [n93].

263 *ibid*.

264 Adam Forrest, 'Children Arriving on Small Boats "Held in Jail alongside Sex Offenders"' *The Independent* (London, 27th August 2023) <<https://www.independent.co.uk/news/uk/politics/asylum-seekers-small-boats-children-prison-b240195.html>> accessed 11/04/2024.

265 UNCRRC, art 37.

fundamental right to liberty,²⁶⁶ and the right to an adequate standard of living.²⁶⁷ Moreover, detention itself heralds significant negative effects, including cumulative trauma, stress, fear, and hopelessness.²⁶⁸ Psychiatrists have also built an evidence base of children's adverse developmental delays.²⁶⁹ Thus, detention risks violating a child's 'full and harmonious development,'²⁷⁰ and undermines the UK's obligation to protect children from harm.²⁷¹ Detained children also reported struggling to access medical services.²⁷² This is an affront to their right to access healthcare²⁷³ and dignity.²⁷⁴ The right to access healthcare should be tantamount to that of nationals, and includes all health services, whether preventive or curative, and mental, physical or psychosocial.²⁷⁵ States also possess a duty to ensure that an unaccompanied minor's health is not diluted as a result of discrimination.²⁷⁶ Additionally, the right to education²⁷⁷ is transgressed when a child is detained. Interestingly, Roth advocates for a cosmopolitan design of education, which protects and recognises both the legal and moral right to education.²⁷⁸ This is persuasive, since refugee flows permeate all societies within the international sphere; thus, there is an increasing need to build capacity for refugee education so as to protect and realise the rights of unaccompanied minors.²⁷⁹ The right to access (formal and informal) education is emphasised by the CRC Committee: unaccompanied children should be registered with appropriate school authorities as soon as possible to maximise learning opportunities.²⁸⁰ Therefore, the challenge, it seems, lies not in the inadequacy of the UNCRC to safeguard unaccompanied children's rights, but rather in the UK's fidelity to its international obligations.

266 Joint General Comment [n96].

267 *ibid.*, art 24

268 Ehntholt et al, 'Mental Health in UAS Adolescent's Previously held in British Detention Centres' 23 *CCPP* (2010) pp. 238–257.

269 Lawrence [n54].

270 UNCRC, Preamble.

271 *ibid.*, and art 22.

272 Taylor [n93].

273 UNCRC, art 24.

274 *ibid.*, Preamble.

275 Joint General Comment [n96].

276 *ibid.*

277 UNCRC, art 28, and The Convention, art 22.

278 K Roth and Rönström N, 'Welcoming Refugee Children with a Moral, Rather Than Merely Legal, Right to Education: Ideas for a Cosmopolitan Design of Education' o *Policy Futures in Education* (2024) pp. 724–740.

279 *ibid.*

280 CRC Committee [n142].

In response to the small boat's phenomenon, deterring illegal entry and facilitating removals for unaccompanied minors entering the UK without permission is seemingly viable. However, considering the paucity of safeguards for unaccompanied minors in the UK's domestic legislation and in praxis, on balance, such measures are not compatible with the UNCRRC. Therefore, the UK's approach towards unaccompanied children is not entirely justifiable.

7 Recommendations

This author submits four recommendations. First, revision of the international framework is required to better account for (and, therefore, better safeguard) unaccompanied minors. Whilst the Refugee Convention and UNCRRC enumerate fundamental rights, their effectiveness is undermined by the absence of explicit provisions for unaccompanied minors: how can one expect the UK to adequately safeguard the rights of unaccompanied children when the international apparatus itself does not sufficiently address the challenges unaccompanied minors face? Indeed, the legal uncertainty fostered by the lack of explicit provisions is, disputedly, the primary reason as to why pushbacks in the UK are proliferating.²⁸¹ By recognising unaccompanied minors' needs and specific vulnerabilities,²⁸² the international framework can provide adequate standards for their protection. In turn, this conspicuous standard of care will be incumbent upon the UK to implement.

Second, the UK's asylum system requires reform in three main areas. First, the UK should clarify which of the two – the Home Office or the Local Authority – is responsible for accommodating and caring for unaccompanied minors. This would ensure certainty for unaccompanied minors and would enable the government to hold the appropriate body accountable if standards of care are subpar. One way in which accountability can be ensured is through the promulgation of an independent body which provides checks and balances on authorities. Its framework for scrutiny should be based on adherence to the UNCRRC to ensure that the approach taken by authorities is child-focused and trauma-informed. Second, it has been reasonably proposed that children

281 Council of Europe, 'Pushed Beyond Limits' (2022) <<https://rm.coe.int/pushed-beyond-the-limits-urgent-action-needed-to-end-human-rights-viol/1680a5a14d>> accessed 05/03/2024.

282 University of Birmingham, 'Unaccompanied Asylum Seeking Children Toolkit' (2015) <<https://www.birmingham.ac.uk/research/superdiversity-institute/toolkits/unaccompanied-asylum-seeking-children-toolkit>> accessed 15/03/2024.

should '*never be detained whilst age assessments are pending.*'²⁸³ This author would expand this germane proposition to include prohibiting detention of unaccompanied minors altogether, including in adult prisons. The cessation of detention is substantiated by scholars²⁸⁴ as this will ensure that other rights, including the right to health services,²⁸⁵ are sufficiently upheld.

Third, concerningly, there are no reliable, scientifically verified methods for assessing age.²⁸⁶ Yet, ironically, legal safeguards are contingent upon it. The lack of reliable methods increases the likelihood of being erroneously assessed. The human cost of an erroneous age assessment is palpable in the case of 'Miss T'.²⁸⁷ Placed in adult accommodation, Miss T was sexually abused, a trauma that will persist for the rest of her life. This directly conflicts with the UK's obligation to protect children from all forms of sexual exploitation and abuse.²⁸⁸ This case also illustrates another flagrant violation: the apparent inconsistencies in 'Miss T's' story influenced the judgment on her age, without her having the opportunity to clarify matters. Therefore, the child's right to be heard, and '*their views considered and taken seriously*'²⁸⁹ has also been contravened. This practical example provides veracity to the contention that the UK's current age assessment procedures do not adequately safeguard unaccompanied minors. Though what, if any, is the solution to this? This author suggests that, considering the sheer unreliability of age assessment procedures, a more nuanced approach ought to be embraced whereby the benefit of the doubt is accorded to the asylum seeker from the outset.²⁹⁰ This means that an alleged minor should be recognised as a *de facto* child. This approach ensures that vulnerable unaccompanied children, who have already suffered hardship, do not endure further detriment.²⁹¹ However, admittedly, this approach would negate instances whereby children, having been threatened by traffickers, declare themselves to be adults, or adults masquerading as children.

283 Council of Europe, 'Age Assessment for children in migration. A human rights-based approach' (2019) <<https://rm.coe.int/ageassessmentchildrenmigration/168099529f>> accessed 01/09/2025.

284 Ren[n133].

285 UNCRC, art 24.

286 E Ortiz, '*Age Assessments of Unaccompanied Minors: Observations from an Appropriate Adult*' in '*Social Work with Refugees, Asylum Seekers and Migrants: Theory and Skills*' (2009).

287 Mougne [n229].

288 UNCRC, art 34.

289 *ibid*, art 12.

290 Joint General Comment No.3 (2017) <<https://www.refworld.org/reference/research/cmw/2017/en/119568>> at [32(h)] accessed 08/05/2024.

291 Mougne [n229].

Although these are trepidations which persist whether or not the benefit of the doubt is accorded. Perhaps, by stronger reason, the protections and safeguards accorded to minors should be extended to adults, contingent upon whether or not they are classified as ‘vulnerable.’ This vulnerability model, as opposed to the current focus on chronological age, would certainly remove any incentive for adults to “masquerade” as children, and would also safeguard age-disputed individuals who are genuine minors.

Lastly, this author proposes repositioning refugee children into the centre of the UK’s protection dialogue and practice. As such, deportation at 18 should be prohibited, cognisant of the harmful impact this has on unaccompanied minors. This recommendation recognises that the status of the minor is one of a child first and foremost, and a refugee second. These fundamental reforms would therefore address inherent deficiencies and allow for an asylum system that is fair, humane and serves to protect unaccompanied minors.²⁹²

8 Conclusion

Whilst the UK has (to some extent) acted in compliance with its international obligations by incorporating some safeguards for child refugees within its legislative architecture (particularly within the Children Act 1989), practical challenges, including ineffective implementation of the UNCR, severely undermine these safeguards. The criminalisation and deportation of asylum seekers, unreliable age assessment procedures, and the detention of unaccompanied minors in adult prisons highlight significant areas where the UK’s implementation falls short of international standards. It is axiomatic that there is an underlying tension between State sovereignty, particularly the UK’s prerogative to decide on the entry, residence and expulsion of non-nationals,²⁹³ and the rights of unaccompanied minors. Disconcertingly, the UK’s practice indicates that unaccompanied minors’ rights are forfeited or diluted in favour of the former. By aligning its implementation more closely with the spirit and letter of the UNCR, the UK can better fulfil its obligations to unaccompanied minors— one of the most vulnerable subsets of individuals seeking refuge within its borders. Although the adequacy of the Refugee Convention and UNCR in safeguarding the rights of unaccompanied minors is intrinsically linked to the

292 ECPAT UK, ‘Joint Statement on the Treatment of Unaccompanied Children in Response to Chief Inspectorate Reports’ (2024) <<https://www.ecpat.org.uk/joint-statement-treatment-of-unaccompanied-children-inspectorate-reports>> accessed 11/05/2024.

293 Brittle and Desmet [n].

UK's political will, arguably, the effectiveness of international refugee law is undermined by the absence of explicit provisions and procedural guidance for the treatment of unaccompanied minors and age-disputed individuals. After all, children – no matter where they come from – are children first and foremost, and their welfare should be the most important consideration.²⁹⁴ Lastly, given the unreliability of age assessment procedures, safeguards should be accorded depending on an individual's vulnerability as opposed to their chronological age. This shift would reduce the number of adults from masquerading as children, and mitigate the perverse outcomes of the current system, where erroneous age determinations can either deny children protection or compromise the safety of genuine minors.

294 UNICEF, 'a child is a child' (2017) <https://www.unicef.org/media/49571/file/UNICEF_A_child_is_a_child_May_2017_EN.pdf> accessed 18/04/2024.