

WORKING PAPER

AGE ASSESSMENT: A TECHNICAL NOTE

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**For every child
Health, Education, Equality, Protection
ADVANCE HUMANITY**

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Age Assessment: A Technical Note

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1. Introduction

1.1. What is in this Technical Note?

The technical note is a basic guidance to Country Offices on how to deal with age assessment issues and procedures. It aims to provide Country Offices with an overview and checklist of the essential standards that an age assessment procedure should meet, and to offer a more detailed commentary and analysis of the rationale of those standards and safeguards.

The technical note is not intended as a guide to the progress of age assessment processes in individual countries nor does it cover case studies of the procedures and processes used in any individual country.

1.2. Why do we need this Technical Note?

More than 85 UNICEF programme countries are working on birth registration and exploring cross-sectoral linkages on how to best achieve universal registration. The reality of low birth registration rates leads to the issue of age assessment for children who are not registered at birth. Over the last few years, there have been a number of queries and requests for assistance and guidance from UNICEF country offices on how to deal with situations of unregistered children whose age is disputed or despite having a birth certificate, a child's age is disputed by authorities.

All societies, whether developed or developing, tend to differentiate between children and adults in the way in which children are treated and the expectations that are placed upon them. Children are a distinct group who have particular rights, needs and entitlements. It is recognised that because of their emotional, developmental and educational needs and their relative immaturity and coping mechanisms, children are dependent upon adults for their protection and care. It is further recognised that children should hold lesser responsibilities than those held by adults. There are a host of variable factors that are often highly significant in differentiating children from adults, for example, the onset of puberty, rites of passage and initiation rites. The difference between childhood and adulthood is also invariably reflected in national legislation with a clear demarcation line whereupon children become adults. Commonly, though not exclusively, this line is drawn at 18 years. The Convention on the Rights of the Child (CRC) states that 'a child means every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier'¹. The CRC further sets out a range of protection, survival, developmental, and participation rights. While there are marked inconsistencies in practice between nations, States' national legislation invariably recognizes and seeks to protect some of these rights. Safeguards generally exist which, to a greater or lesser extent provide some form of protection, entitlements and concessions to children, and which enable and promote their development.

Chronological age and the construction of childhood have become increasingly significant for children as many rights and responsibilities are associated with legal age limits, not least with the adoption of the CRC and as translated into national legislation. Regardless of where the

¹ UN Convention on the Rights of the Child, 1989, Article 1

formal, age-defined, boundary of childhood is drawn by individual States, children acquire rights, have childhood-based concessions withdrawn, and have obligations placed upon them at various ages. These do not necessarily, and invariably do not, coincide with the reaching of adulthood. States may, for example, allow children to marry, to consent to sexual relationships and to consent to, or refuse, health care before they reach adulthood. Restrictions surrounding entry into the military are often lifted before adulthood is attained, as are minimum age restrictions regarding engagement in employment. The age at which criminal responsibility is acquired may precede the legal age based definition of adulthood and could range from a very low level of age 7 to a high level of 16². Procedural safeguards for children within criminal justice systems are similarly withdrawn at different ages and before adulthood is reached. State responsibility and duties to provide care to children without care-givers is also reduced or totally withdrawn before adulthood is attained. These changes, whether they are the acquisition of rights and entitlements or the withdrawal of protective concessions are once again often clearly defined in legislation with an age-defined boundary.³

Most countries provide safeguards and protective measures which impact on children of varying ages within their national legislation. While in many instances these may be little more than aspirational and have limited meaning for many children which are far removed from the well-meaning intentions of rights-based conventions and legislation, there are nonetheless advantages, benefits and safeguards associated with being a child or with being below a particular age. A child will only benefit from these entitlements and safeguards in so far as they are recognized as being at a particular age in their life. So where there is no clear record of a child's age or a child's perceived or stated age is called into question, the risk arises that the child is wrongfully determined to be an adult and deprived of the special protection that they are entitled to as children under the CRC and other international and national legal instruments.

While proof of age thus is of vital importance for the access of children to a range of rights, only half of the children under five have their births registered in the developing world.⁴ Without documentation to prove their age, children are more vulnerable to under-age recruitment into armed forces and groups, to hazardous forms of work and to early marriages. They are also at higher risk of being treated as adults in criminal and immigration processes. For example a child who has committed a criminal offence may be placed in a detention facility alongside adults, and a girl may be given as a bride even though she is too young to be married within the norms of her culture.

Governments and other agencies which need to know the age of a person declaring to be a child are using a variety of assessment methodologies, including medical, physical, psycho-social and other forms of assessments.⁵ Age assessments are also carried out in the asylum and migration context. Children may cross international borders for a variety of reasons; some children leave mostly for economic reasons while others flee their countries owing to

² Committee on the Rights of the Child General Comment No 10, Children's rights in juvenile justice.

³ For example, in the United Kingdom, children can join the armed services when they turn 16 years old, in Sierra Leone children reach the minimum age of criminal responsibility when they become 14 years old.

⁴ UNICEF (2010) *Progress for Children: Achieving the MDGs with Equity* (No. 9). Available at http://www.unicef.org/publications/index_55740.html

⁵ UNICEF (2011) *Age Assessment Practices: A Literature Review & Annotated Bibliography; A discussion paper*. Available at http://www.unicef.org/protection/files/Age_Assessment_Practices_2010.pdf

persecution, conflict, serious human rights violations and other forms of serious harm.⁶ Age assessments are typically initiated when the children have no documentation and/or the authorities doubt that they are below 18 years, however, some countries apply them as a matter of routine to all unaccompanied or separated children. Practices vary from country to country, however, the assessments are usually performed within the initial period after arrival. Evidence, including age assessment, in the context of asylum is not a pre-requisite for international protection but may support the claim. Absence of evidence on the other hand may undermine the claim and the credibility of the claimant. As discussed above, incorrectly determining children to be adults can have significant consequences for their treatment during the immigration process as well as their right to stay and residence. Unaccompanied and separated children outside their country of origin are generally entitled to a range of child-specific safeguards and measures, such as to the appointment of a guardian and a legal representative.⁷ Asylum-seeking and refugee children should further receive “appropriate protection and humanitarian assistance” as set out in Article 22 of the CRC, including access to child-sensitive refugee status determination procedures.⁸ Unaccompanied refugee children may also benefit from resettlement under the criteria of “children and adolescents at risk”. In such instances, age assessment moves to the forefront in the protection of children.

Chronological age is often perceived as being much less significant by children than it is by the adults who are responsible for their care. Children are often bemused by the efforts and resources that are applied by officials in attempting to accurately establish their age. However, evidence also suggests that some children do find the process of an age assessment, following the dispute of their stated age, extremely distressing. Research has shown that it can have significant implications for the child’s mental health.⁹ This is because a dispute over a child’s age represents a challenge to the child’s identity and a denial of their history and a potential challenge to their integrity.

Age disputes arise and age assessments are initiated when the stated age of an individual is challenged and/or where the individual does not know his or her age. By definition there is doubt about whether the individual is, or is not, a child. Without implying prejudice to the outcome of the age assessment procedure, but for ease of reference, throughout this document an individual whose age is being disputed or assessed shall be referred to as a child.

⁶A refugee is a person who has fled his or her country of origin owing to a well-founded fear of persecution for reasons of their race, religion, nationality, membership of a particular social group or political opinion. See Article 1A(2) of the 1951 Convention and the 1967 Protocol relating to the Status of Refugees.

⁷ See CRC, General Comment No. 6.

⁸If an asylum-seeking child is incorrectly regarded as an adult, material aspects of the asylum-claim may be overlooked, leading to experiences of child-specific forms and manifestations of persecution not being properly considered and risk of *refoulement*. See further, UNHCR, [Guidelines on International Protection No. 8: Child Asylum Claims under Articles 1\(A\)2 and 1\(F\) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees](#), HCR/GIP/09/08, December 2009. See also, EU Qualification Directive, Article 9; EU Asylum Procedures Directive, Article 17. (NEED TO INSERT FULL TITLES OF THESE INSTRUMENTS).

⁹ See for example, Bhabha, J and Finch, N (2006) *Seeking Asylum Alone: unaccompanied and separated children and refugee protection in the U.K.*, London

2. Relevant international and regional law and policy regarding procedures for assessing age

Many, though not all, of the international instruments and standards that refer to age assessment concern the situation of children in migration, asylum-seeking, refugee and other children outside their country of origin. A selection of examples of the relevant legislative and normative standards follows. As noted most were primarily drafted to address the situations of children in “mixed migration flows” - complex population movements including refugees, asylum seekers, economic migrants and other migrants - however, the principles, guidelines and practices outlined within them are broadly transferable and therefore relevant in a wide range of situations where a dispute or uncertainty arises surrounding the age of a child.

○ International Law and Standards

The Convention on the Rights of the Child, 1989 (CRC)

While there are no specific references in the CRC to age disputes or the procedures that should be followed for assessing age, the Convention is nonetheless relevant regarding this subject. The ethos of the Convention recognises that children have particular rights that extend beyond the provisions of existing human right’s instruments. Children are entitled to a range of child-specific rights as set out in the CRC, which recognises their young age, dependency and evolving capacity, and which are fundamental for their protection, survival and development. The CRC stands out precisely because it is specific to children. As such it must demarcate between those who are children and those who are not. Article 1 effectively restricts the application of the rights contained within the CRC to those who are children, i.e. below the age of eighteen years unless under the law applicable to the child, majority is attained earlier. Setting an age for the acquisition of certain rights or for the loss of certain protections is a complex matter. It balances the concept of the child as a subject of rights whose evolving capacities must be respected (articles 5 and 14) with the concept of the State’s obligation to provide special protection. The text of the Convention allows states in which majority is attained before the age of 18 to substitute a lower age for particular purposes provided doing so is consistent with the whole of the Convention, and in particular with the principle of non-discrimination (article 2); as well as the principles of the best interests of the child (article 3) and the right to life and maximum survival and development (article 6). In any case, the age of majority should not be set unreasonably low and State Parties cannot absolve themselves from their obligations under the Covenant regarding persons under the age of 18, notwithstanding that they have reached the age of majority under domestic law or local customary law.¹⁰

Thus a failure to recognise a person as being a child may prevent them benefiting from the rights as set out in the Convention. This may have major implications for their protection, care and development and reinforces the need for state parties to treat the subject of age assessment with due diligence and sensitivity.

Article 2 of the CRC states that all the Articles contained within the Convention must be applied to all children without discrimination of any kind. It would thus be in breach of the Convention for a child to be denied their rights simply because they are unable to provide definitive evidence of their age. In light of Article 7 on the right to be registered immediately after birth registration, the

¹⁰ Committee on the Rights of the Child, General Comment No. 4 on “Adolescent health and development in the context of the Convention on the Rights of the Child”, 2003, CRC/GC/2003/4, para. 1.

Committee on the Rights of the Child, has established that registration may be a means of securing children's other rights and provides protection by proving children are below legal age limits, for example for recruitment to the armed services or in the juvenile justice system, and reduces the risk that children are treated in a manner that is incompatible with the enjoyment of the rights provided in the Convention.¹¹ Children who are not registered have equal access to protection, health care, education and other social services and under no circumstances should the absence of evidence of age be used to punish children by denying them their basic rights.¹²

United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules") 1985

Rule 4.1 states that 'in those legal systems recognising the concept of the age of criminal responsibility for juveniles, the beginning of that age shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity.' The commentary to the Rule explains that the age of criminal responsibility differs widely according to history and culture and can range for 7 to 18 according to the political, social and economic arrangements of the particular state. The Commentary states that the modern approach is to consider whether a child can live up to the moral and psychological components of criminal responsibility; that is, whether a child, by virtue of her or his individual discernment and understanding, can be held responsible for essentially anti-social behaviour. The commentary further advises that in general there should be a close relationship between the notion of criminal responsibility and other social rights and responsibilities (such as marital status, civil majority, etc. The commentary to the Rules also states that efforts should be made to agree to a reasonable lowest age limit that would be internationally applicable. However, this has not yet been achieved.

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Committee on the Rights of the Child General comment No. 10 (2007), Children's Rights in Juvenile Justice

The General Comment No 10 responds to the Committee on the Rights of the Child's concerns primarily arising from, though not limited to, State parties' implementation of Articles 37 and 40 of the CRC. This is particularly so in areas of; procedural rights; the development and implementation of measures for dealing with children in conflict with the law without resorting to judicial proceedings; and the use of deprivation of liberty only as a measure of last resort. General Comment No.10 provides State parties with more elaborate guidance and recommendations for the establishment of juvenile justice systems, which are in compliance with the CRC.

Specifically, paragraph 35 states that 'if there is no proof of age and it cannot be established that a child is at or above the MACR (minimum age of criminal responsibility), the child shall not be held criminally responsible.' Paragraph 39 states that 'the Committee wishes to emphasize the fact that it is crucial for the full implementation of Article 7 of the CRC requiring, inter alia, that every child shall be registered immediately after birth to set age-limits one way or another,

¹¹ For instance, see the Concluding Observations by the Committee to the Rights of the Child to Peru's Initial Report on the situation of children without any identity documents and the risk of being suspected of involvement in terrorist activities; Peru CRC/C/15/Add.8, para. 8.

¹² Committee on the Rights of the Child, General Comment No. 7 on "Implementing child rights in early childhood", 2005, CRC/C/GC/7/Rev.1, para. 25

which is the case for all State parties. A child without a provable date of birth is extremely vulnerable to all kinds of abuse and injustice regarding the family, work, education and labour, particularly within the juvenile justice system. Every child must be provided with a birth certificate free of charge whenever he/she needs it to prove his/her age. If there is no proof of age, the child is entitled to a reliable medical or social investigation that may establish his/her age and, in the case of conflict or inconclusive evidence, the child shall have the right to the rule of the benefit of the doubt.'

Committee on the Rights of the Child General Comment N° 6 (2005), on the Treatment of Unaccompanied and Separated Children Outside their Country of Origin, 2005, paragraph 31(i)

The objective of General Comment No 6 is to draw attention to the particularly vulnerable situation of this group of children, to outline the multifaceted challenges faced in ensuring such children access and enjoy their rights and to provide guidance on the protection, care and proper treatment of unaccompanied and separated children based on the legal framework provided by the CRC.

The General Comment states that, identification measures include age assessment and should not only take into account the physical appearance of the individual, but also his or her psychological maturity. Moreover, the assessment must be conducted in a scientific, safe, child and gender-sensitive and fair manner, avoiding any risk of violation of the physical integrity of the child; giving due respect to human dignity; and, in the event of remaining uncertainty, should accord the individual the benefit of the doubt such that if there is a possibility that the individual is a child, she or he should be treated as such.

Report of the Special Rapporteur on the human rights of migrants (2009), paragraph 102

States should ensure that age-assessment processes comply with international standards and that the persons concerned are allowed access to effective remedies to challenge age-assessment decisions. States should also consider according the benefit of the doubt in age-determination procedures.

Study of the Office of the United Nations High Commissioner for Human Rights on challenges and best practices in the implementation of the international framework for the protection of the rights of the child in the context of migration (2010)

Safeguards surrounding the issue of age determination should include that such assessments only be carried out as a measure of last resort when the age of the individual is disputed, that the benefit of the doubt be given to the individual, that information about the process and possible consequences be provided to the individual in a child-friendly matter, that his or her informed consent be sought, and that the individual be protected from return while his or her age is being assessed. Age assessments should ideally be carried out by an independent panel of experts, and the individual should be given the effective opportunity to appeal the decision.

UNHCR – Guidelines on International Protection: Child Asylum Claims under Articles 1(A) 2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees (2009), paragraph 75

Age assessments are conducted in cases when a child's age is in doubt and need to be part of a comprehensive assessment that takes into account both the physical appearance and the psychological maturity of the individual. It is important that such assessments are conducted in

a safe, child and gender-sensitive manner with due respect for human dignity. The margin of appreciation inherent to all age-assessment methods needs to be applied in such a manner that, in case of uncertainty, the individual will be considered a child. As age is not calculated in the same way universally or given the same degree of importance, caution needs to be exercised in making adverse inferences of credibility where cultural or country standards appear to lower or raise a child's age. Children need to be given clear information about the purpose and process of the age-assessment procedure in a language they understand. Before an age assessment procedure is carried out, it is important that a qualified independent guardian is appointed to advise the child.

2.2 Regional Directives and Standards

Council of Europe Convention on Action against Trafficking in Human Beings (2005), Article 10(3)

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- When the age of the victim is uncertain and there are reasons to believe that the victim is a child, he or she shall be presumed to be a child and shall be accorded special protection measures pending verification of his/her age.

Council of Europe Parliamentary Assembly, Resolution 1810 (2011)

This Resolution established that an “age assessment should only be carried out if there are reasonable doubts about a person being underage. The assessment should be based on the presumption of minority, involve a multidisciplinary evaluation by an independent authority over a period of time and not be based exclusively on medical assessment. Examinations should only be carried out with the consent of the child or his or her guardian. They should not be intrusive and should comply with medical ethical standards. The margin of error of medical and other examinations should be clearly indicated and taken into account. If doubts remain that the person may be underage, he or she should be granted the benefit of the doubt. Assessment decisions should be subject to administrative or judicial appeal”.¹³

Separated Children in Europe Programme Statement of Good Practice (2009), paragraph D5

Age assessment procedures should only be undertaken as a measure of last resort, not as standard or routine practice, where there are grounds for serious doubt and where other approaches, such as interviews and attempts to gather documentary evidence, have failed to establish the individual's age. If an age assessment is thought to be necessary, informed consent must be gained and the procedure should be multi-disciplinary and undertaken by independent professionals with appropriate expertise and familiarity with the child's ethnic and cultural background. They must balance physical, developmental, psychological, environmental and cultural factors. It is important to note that age assessment is not an exact science and a considerable margin of uncertainty will always remain inherent in any procedure. When making an age assessment, individuals whose age is being assessed should be given the benefit of the

¹³ Council of Europe Parliamentary Assembly Resolution 1810 (2011) on unaccompanied children in Europe: issues of arrival, stay and return, paragraph 5.10.

doubt. Examinations must never be forced or culturally inappropriate. The least invasive option must always be followed and the individual's dignity must be respected at all times. Particular care must be taken to ensure assessments are gender appropriate and that an independent guardian has oversight of the procedure and should be present if requested to attend by the individual concerned.

The procedure, outcome and the consequences of the assessment must be explained to the individual in a language that they understand. The outcome must also be presented in writing. There should be a procedure to appeal against the decision and the provision of the necessary support to do so.

In cases of doubt the person claiming to be less than 18 years of age should provisionally be treated as such. An individual should be allowed to refuse to undergo an assessment of age where the specific procedure would be an affront to their dignity or where the procedure would be harmful to their physical or mental health. A refusal to agree to the procedure must not prejudice the assessment of age or the outcome of the application for protection.

2010 EU Action Plan on Unaccompanied Minors

In section 4.2 on age assessment and family tracing it is stated that the issue of age assessment is critical, triggering a number of procedural and legal guarantees in relevant EU legislation, as well as the obligation to respect data protection requirements when recording information on unaccompanied minors in databases such as EURODAC¹⁴. Age assessment procedures and techniques vary and concerns on their reliability and proportionality often arise. The possibility of appeal is not always guaranteed. As underlined by experts, the guardian should be present at all stages of the procedure and children should be treated as such until the contrary is proven.

Summary

This non-exhaustive list of relevant standards refers to many different aspects of an age assessment procedure. Notwithstanding that their focus and emphasis may differ and they may vary in the level of detail that they provide a, number of commonalities are apparent and certain references recur throughout a number of these standards. Namely;

- Individuals should only be requested to go through an age assessment process when there is serious doubt about their stated age
- Age assessments should only be initiated in the best interest of the child and uphold a child-centred and friendly perspective
- Age assessments should only be initiated as a measure of last resort
- Age assessments should be applied and undertaken without discrimination
- The child should have a guardian appointed to support them through the age assessment procedure
- Children should be given relevant information about the age assessment procedure
- Informed consent must be sought from the child before the assessment commences
- Assessments must uphold the dignity of the child at all times and must be sensitive to gender and culture
- Age assessments should take an holistic approach
- Where there is a margin of error this should be applied in favour of the child

¹⁴ EURODAC stands for *European Dactyloscopy* and is the European fingerprint database for identifying [asylum seekers](#) and irregular border-crossers.

- A right of appeal should exist should the child wish to contest the outcome of the assessment
- Age assessments should only be undertaken by independent and appropriately skilled professionals

3. Guidance Commentary

Standard 1. Individuals should only be requested to undergo an age assessment when it is considered to be in the best interests of the child

At best many children find an age assessment procedure daunting and confusing and in some instances they find it frightening and traumatising. Age assessments should thus be avoided where possible and always be balanced against the best interests of the child. Article 3 of the CRC addresses the issue of the best interests of the child and outlines that this should be a primary consideration in all actions concerning children. Thus age assessment procedures should only be initiated in relation to children when it can clearly be demonstrated that the decision to do so has been based solely on the best interests of the child. In assessing whether this 'best interests' threshold has been met, consideration should be given to a number of factors. These include, assessing whether the procedure is really necessary – will it, for example, assist in identifying a child so that they can be provided with targeted services for children that will serve to protect them or further their development. Is the child vulnerable and will an age assessment serve to protect them, for example from traffickers, from conscription or dangerous labour etc. Will undergoing an age assessment procedure cause or add to a child's level of trauma and have any risks associated with the procedure been properly assessed. Finally, what are the ascertainable wishes of the child and do they agree to the procedure. Where a decision is made to subject the child to an age assessment procedure this must be undertaken in a manner that is sensitive to the age and maturity of the child.

Standard 2. Age assessments should only be initiated if serious doubt about the child's age exist and as a measure of last resort

Age assessments should only be performed where there are serious doubts about a child's age and never as a matter of routine. The age stated by the child should be taken as a starting point and normally be relied upon unless blatantly incorrect. If there is no serious doubt, an age assessment procedure is not necessary and the stated age of the child should be accepted. Factors that ought to be considered when determining whether there is serious doubt include:

- The physical and mental impression does not indicate an age clearly below or above 18;
- Lack of, or unreliable, documentation certifying the age/date of birth;
- The child does not know his/her age.

If there are doubts about the claimed age, the child should be informed of the reasons as to why the interviewer consider the claim to be false, including any reservations as regards the accuracy of submitted official documentation.¹⁵

¹⁵ Where there is mutual recognition agreement with the issuing country, the veracity of official identity documents are normally accepted. In cases where there is no such agreement and the age stated in the person's document is inconsistent with his or her physical appearance, age assessments are ordered in some countries.

Where there is serious doubt about a person's age, attempts should first be made to establish the age via interviews and the gathering and consideration of available documentary evidence. Proactive attempts should be initiated to seek out further information if it is not immediately available, for example checking with schools to establish whether or not admission records etc. exist. In the case of asylum-seeking and refugee children, as a general rule, the authorities of the country of origin should not be contacted as this may put the child at risk of harm. Examining the child's social history to establish age based on cyclical events, e.g. the child's recollection of rainy seasons and harvests, may be another possibility. Other methods, including for example, consideration of where a child fits within the family regarding older and younger brothers and sisters and anecdotal evidence should also not be dismissed.

The United Nations High Commissioner for Human Rights have issued a General Comment (No 16) regarding the right to respect of privacy, family, home and correspondence, and protection of honour and reputation. This outlines that every person has a right to be protected against arbitrary interference with their privacy. The General Comment further outlines that individuals have a right to ascertain what personal data are stored about them and for what purposes. This enforces the notion that age assessment procedures should not be initiated without due reason and also that a child should be advised of the age the State believe them to be and why they have reached this decision.

Standard 3. Age assessments should be applied without discrimination

The non-discrimination principle is a central pillar of the CRC, which calls upon all states to ensure that all the rights set out in the Convention are universally applied to all children within their jurisdiction. States cannot choose to treat some categories of children differently to others or to exclude categories of children from their responsibility. It would be wrong to discriminate against a child because of his or her, or their parents or carers, age, race, religion, colour, language, gender, national, ethnic or social origin, disability, sexual orientation, political or other opinion, or other status. Decisions about which children should be put forward to undertake an age assessment procedure should be based on objective factors only that are relevant for all children, for example where there is serious doubt about the child's stated age. It would be unacceptable to subject a child to an age assessment on subjective factors alone, for example, because of their nationality, ethnicity, and gender or perhaps because of their status as a street child or a child that has been involved in armed conflict. Decisions should not be based on preconceived ideas that certain categories of children give misleading information about their age.

Standard 4. Informed consent must be sought from the child before the assessment commences

Article 12 of the CRC outlines a child's right to participate in decision-making processes which impact upon them, to be consulted about their views and opinions on matters affecting them and to have these views considered in administrative or legal procedures. Thus informed consent must always be given by the child before an age assessment procedure is undertaken. In order to be truly informed children need accurate information about the process of the assessment, any risks to health that may arise during the assessment and the steps taken to minimise these risks, and the implications for the child arising from the various outcomes of the assessment. Bearing in mind the child's right to privacy, attempts to gather documentary evidence concerning the child should also be dependent on consent.

Children should be allowed to withhold consent if they believe the process would be physically or mentally harmful. Such a refusal should not prejudice the perception of the child's age. Specifically, it should never be assumed that just because a child refuses to undertake the assessment that they are not the age that they have stated or which they believe to be. The child may not understand the age assessment process, or they may be frightened by it. They may be worried about real or perceived effects upon their health, for example exposure to radiation during x-rays. In other instances there may be anxieties arising from gender or culture based issues. However, the child should also receive information of the ramifications if he or she chooses not to proceed with the age assessment. The positive effect may be that he or she is determined to be a child and therefore entitled to child-specific protection, whereas the negative effect may be a lack of evidence to support the child's stated age and/or the child's credibility is undermined.

Children within a family situation who are asked to undergo an age assessment procedure must have opportunities to consult with their parents, carer or (legal) guardian. Cultural and linguistic factors, which could serve as a barrier to engagement with the child, must be addressed and the child must be allowed to express their views, either directly, or through their parent or caregiver, guardian, legal representative or other representative such as a teacher, social worker or member of their community as appropriate.

In some instances X-rays, usually of wrist or collarbones and dental X-rays, are used as a tool in assessing age. Whilst it is generally accepted that the levels of radiation the child would be exposed to as part of these procedures is low, there is, nonetheless, a risk to the long-term health of the child if they undergo this type of examination. When balanced against the questions raised concerning the degree of exactness that X-rays can deliver in the context of age assessment and the ethical appropriateness for practitioners in using X-rays for administrative purposes – radiographers choose their profession so they can diagnose problems as part of the process of helping sick people get better rather than to assist non health professionals with their procedures. It thus follows that children should be able to withhold consent to an examination by X-ray without penalties and repercussions.

Standard 5. An unaccompanied or separated child should have a guardian appointed to support them through the age assessment procedure

Age assessment procedures are invariably complex and difficult to navigate. They can be confusing for children and frightening too, particularly if the child has already experienced trauma or distress. For this reason it is vital that the child is supported through the procedure by an adult who is independent from the authority undertaking the procedure or from any other authority with a vested interest in the outcome of the procedure and whose primary function is to promote the best interests of the child in all aspects of the assessment. The guardian also has a key role in ensuring that the child's views are heard and that the child fully understands the process. The guardian or this person should also ensure that the procedure is undertaken appropriately, fairly and without risks or abuse. The guardian's role should be separate from that of a legal representative, which is to provide advice on the legal issues associated with the procedure. Whilst guardians do not have to hold specific qualifications they must have expertise in child and adolescent behaviour, be skilled in child-friendly communication and should be able to liaise effectively with a range of professionals. They should also hold strong advocacy skills and be prepared to challenge practices and decisions that are contrary to the best interests of the child.

Standard 6. Assessments must follow the least intrusive method which upholds the dignity and physical integrity of the child at all times and be gender and culturally appropriate

Age assessment procedures must follow the least intrusive method which is sensitive to the individual's gender and culture and maintains the individual's dignity and physical integrity at all times. Assessments should never be forced and preferably be undertaken by practitioners who are familiar with the child's culture and ethnicity and who are knowledgeable about the impact of cultural lifestyles on a child's physical, emotional and psychological development. Where children will be asked to undertake a physical examination they should be allowed to decide on the gender of the practitioner who will undertake the assessment. In case of either a girl or a boy child, there should be an option to have a female or male practitioner attending such as the guardian. Consideration should be given to the cultural differences regarding the significance of different body parts for children and their understanding, which may be limited, of the practicalities of the procedure. Physical examinations must respect the child's dignity. To ensure the respect of the dignity of the child, nudity and examination of genital and breast development should be avoided. Physical examinations must be undertaken in privacy though a second practitioner as well as the child's guardian must be involved to the extent that they can 'chaperone' the child, thus serving to guarantee that safeguards and impartiality are upheld during the examination process as well as to ensure that the child is not submitted to abuse whilst similarly protecting the examining practitioner from allegations of abuse either through misunderstandings or malice.

Assumptions about age should not be based on the 'assessor's' own culture, for example children in some countries may have undertaken physical work from an early age generally unlike their peers in the more industrialised nations – in such instances it would be wrong to consider calloused worn hands as evidence of maturity. Age assessments should not be based on socially or culturally constructed ideas of what a child should look like, or how they should behave or respond to particular situations.

Standard 7. Where there is a margin of error this should be applied in favour of the child

The assessment of age is not an exact science and it must be recognised that a margin of error will always exist that will invariably fail to provide an absolute determination of the child's age. Opinions vary, however, as to the margin of error (both above and below the assessed age) that should be applied. In such situations the child should be given the benefit of any doubt and treated as a child until subsequent evidence of age comes to light. Consistent with the principle of the best interests of the child, if doubts about the age remain, the child should be given the benefit of the doubt and the stated age of the child be relied upon. In consequence, he or she should be treated as a child unless subsequent evidence of age comes to light.

A failure to apply the benefit of the doubt in favour of the child is likely to deny them the specific care, protection and support that children require and may place responsibilities and expectations upon them that they are too inexperienced to meet and cope with. They may be at risk because they do not have the necessary self-help skills that they need to appropriately look after themselves and they could be at risk of abuse and exploitation if placed in unsupervised or unregularised settings. This is especially so if placed with adults, for example, in prisons or in reception centres for asylum-seekers or migrants. Adults seeking to exploit children may also

find it easier to engage with children who are outside the child protection system. In the asylum context, not applying the benefit of the doubt can also mean that a child is denied access to a child-sensitive asylum procedure, e.g. prioritised processing (i.e. reduced waiting periods).

Standard 8. Age assessments should take an holistic approach

The assessment of age will need to balance a range of physical, psychological, developmental, environmental and cultural factors. Advocates often outline incidents of brief, singular discipline assessments being undertaken that amount to little more than a quick consideration of physical appearance. This is not a comprehensive or conclusive *assessment* of a child's age but is perhaps more an opinion or statement about a child's age. A broad set of factors need to be considered and balanced when making an assessment of a child's age and with this in mind a range of specialised practitioners should input into the process.

Circumstances often dictate that children have experiences and routines thrust upon them that fall outside our socially constructed definition of childhood. For example, where parents have died of AIDS older girls will often take on household responsibilities and parent their younger brothers and sisters, young men may be conscripted and forced to engage in armed conflict where their role models are often brutalised adult men, children trafficked for sexual exploitation may behave in sexually provocative ways because they have been taught to do this in order to attract or satisfy clients. The rate of children's physical development varies owing to variable factors such as their diet, access to health care, living and environmental conditions, opportunities to exercise and their genes and innate physiology – some children are just big, others are small. Developmental opportunities are clearly not universal for all children and opportunities for formal education are similarly varied in the extreme. Cultural expectations around the responsibilities placed upon children are also varied, as are the expectations of behaviour, especially in the presence of adults.

Standard 9. Children should be given relevant information about the age assessment procedure

Children must be provided with reliable information about the age assessment procedure in their own language and in such a way that they fully understand the process and consequences of the procedure. As a basic starting point information must be communicated in a language that the child fully understands. For children with learning and development needs or for younger children a range of communication methods, for example the use of drawings, video technology, role-play etc. may be necessary and appropriate. Children will need information on the mechanics of the procedure, what will happen and who will undertake the assessment; the length of time the assessment will take; when they will hear the outcome and which other actors will be informed; what are the consequences of the various outcomes arising from the assessment, the procedure for lodging and pursuing an appeal.

Contrary to the above many advocates outline that States seem to routinely enter children into an age assessment procedure without ensuring that the individual fully understands the procedures. Guardians have an important role in informing the child about the procedure and facilitating the child's decision-making process.

Standard 10. A right of appeal should exist should the child wish to contest the outcome of the assessment

Assessment decisions should be subject to administrative or judicial appeal. Given the serious negative consequences for a child whose age is wrongly assessed, it is a necessary safeguard to allow a child to challenge the outcome of 'their' age assessment and thus a robust and accessible route of appeal must be part of the administrative process of assessing a child's age. The appeals process should allow challenges to be made regarding both the process of the assessment and/or the outcome of the assessment. In order to be meaningful the child must understand the process of lodging and pursuing the appeal and they should be offered the support of a lawyer, at no cost to the child, to assist them.

Standard 11. Age assessments should only be undertaken by independent and appropriately skilled practitioners

The practitioners who undertake age assessments should be independent from the authorities and organisations that will provide services to the child if they are indeed assessed as such. This should serve to prevent the outcomes of assessments being compromised by resource issues, for example the lack of places at a juvenile detention facility or the additional costs of the provision to detainees in such centres should not influence an outcome that would favour placement in an adult facility. Similarly the assessment of an age contested asylum seeker should not be prejudiced by a desire to avoid the child entering a status determination procedure. The examination should be attendant by an independent guardian and there should be an option to request for a female or male adult in case of a girl or boy child.

Age assessment outcomes are not exact but this does not mean that the procedures are not technically detailed or that they do not need to be applied without skill and sensitivity. To this end age assessment procedures must only be undertaken by professionals with an appropriate specialist training, knowledge and expertise in a relevant field. It is not appropriate for officials involved in the decision-making or lacking expertise, amongst others, the police, immigration officials, prison officers, judges or other lay personnel etc. to undertake assessments.

ANNEX - CHECKLIST

Assessments of age undertaken in the field usually consider the child's,

- Presentation and demeanour at interview
- Account of their past history
- Growth, physical or sexual development
- Mental and cognitive development
- Emotional and 'abstract' thought development.

However it is important to recognise that the assessment of age is not an exact science. It is a process within which there will always be an inherent margin of error and a child's exact age cannot be established through medical or other physical examinations. However there are situations where it is deemed that an age assessment process is necessary and in those instances the following guidelines should be upheld.

UNICEF field staff should make sure that the following practices are adhered to during the age assessment process

Pre procedure

- Ensure that the age assessment is being undertaken because relevant actors have *serious* doubts about the stated age of the child; ensure that the assessment is not being initiated as a routine or standard procedure. **Is the procedure really necessary?**

Indicators

- Have the factors that may indicate that the child's age is inconsistent with that which is stated been given full consideration?
 - Have cultural, environmental, developmental and physical factors been properly considered?
 - Have attempts been made to gather a picture of the child's individual circumstances and compile a social history and have these been fully considered?
 - Has more than one person expressed serious doubt about the child's age?
 - Has there been due, measured and objective consideration of whether there is any possible doubt that the stated age is correct?
 - Has the decision to submit the child to an age assessment procedure been approved by a senior official?
- Ensure that a plan to undertake a physical examination is a measure of last resort taking place because other attempts e.g. the gathering of documentary evidence, interviewing the child, etc., have failed to establish age. **Is a physical examination the only method of assessing age?**

Indicators

- Have all alternative avenues to establish the child's age been fully explored?
- Has the child been given an opportunity to respond to any doubts on the age stated by the child?
- Could others involved in the child's life, a teacher, community elder etc. offer an indication of age?
- Has documentary evidence – current and historical, country of origin, been robustly sought and considered?

- Have 'structural' factors been given due consideration, for example the use of different calendars in some countries such as in Ethiopia where a 13 month year can lead to confusion in relation to a child's stated age?
 - If documentary evidence is not accepted, has the child been informed of the reasons why and allowed to respond and provide other evidence if possible?
 - Can others collaboration of anecdotal evidence or is there circumstantial collaboration?
 - Has an accurate social history been compiled and considered?
 - Has consideration been given to 'family positioning', cyclical events or other similar factors?
- Ensure that informed consent to undertake the age assessment has been secured from the child or the guardian. It is extremely unlikely that genuine informed consent can be forthcoming at a time of 'crisis' and consent should only be sought when a child has had time to recover from traumatic or unsettling episodes – this may take considerable time in some instances. In circumstances where there is no consent, it cannot be used against the person and the person should be considered a child. **Has the child given informed consent to a physical examination?**

Indicators

- Has there been an assessment of any trauma the child may be experiencing - has it been ascertained that the child is in a state of wellbeing sufficient so that they can give informed consent?
- Has the child agreed to the age assessment?
- Has specific consent been secured for a physical examination where this will be part of the age assessment?
- Is it clear that the child has not been coerced, incentivised or threatened into agreeing to the assessment?
- Has the procedure and implications of the outcome been explained to the child?
- Does the child understand what will happen – if appropriate have special communication aids been used?
- Has the procedure been demonstrated to the child if necessary?
- If the child has not consented has it been accepted that there will be no age assessment and/or physical examination and have guarantees been sought and secured that this will not influence the perception of the child's age?

During the Procedure

- Ensure that the age assessment procedure is multi-disciplinary and that it draws on a range of appropriately skilled professionals; ensure the assessment does not rely solely on a physical examination. **Is a range of approaches being used in the age assessment?**

Indicators

- Are a varied range of relevant professionals contributing to the assessment, for example, social worker, child psychologist, teacher or other educational professionals?
- Are these professionals qualified in their field and are they experienced in their work?
- Are the questions that are put to the child open-ended as opposed to leading?
- Have other sources contributed to the assessment (see above)?

- Have other's been consulted, for example those who know the child, relatives, cultural mediators where appropriate?
- Have 'second opinions' been sought if appropriate?
- Ensure that the professionals undertaking the age assessment have no vested interest and are independent from the agencies and actors that would provide services or support to the child or would in some other way acquire responsibility for the child if they are assessed as being a child; **Are the professionals engaged in the assessment independent?**

Indicators

- Who employs the practitioners undertaking the assessment (social workers, police officers, medical doctors) – are they independent from potential or actual services providers to the child?
- Are the practitioners bound by a professional or ethical code that guides their work?
- Have any other potential or actual conflicts of interest been considered and addressed?
- Is it clear that the practitioners do not hold personal opinions that could unduly influence their assessment?
- Ensure that, subject to their wishes, the child is supported and informed in a language it understands by a legal representative or guardian or other representative of their choice throughout the entire age assessment process. **Is the child supported throughout the procedure?**

Indicators

- Has the child had the opportunity to arrange for someone of their choice to accompany them to the assessment?
- Is a guardian present or on hand during the assessment?
- Is the mandate of the guardian clear and accepted by all – can they stop the assessment if they feel it is abusive or inappropriate in some other way?
- Has the child received legal advice in preparing for the assessment and will they have legal advice in response to the outcome of the assessment?
- Ensure that the age assessment is culturally and gender sensitive and that the practitioners undertaking the assessment are fully familiar with the child's cultural and ethnic background. **Is the assessment sensitive to cultural and gender needs?**

Indicators

- Has the child's opinion about the gender of the practitioners undertaking the assessment been sought and respected?
- Do the practitioners understand the child's culture and ethnicity?
 - Can the practitioners and the child communicate directly in a shared language?
 - If necessary is a trained interpreter available who has been briefed about the assessment process?

- Do the practitioners have an understanding of the culture and ethnicity of the child and can they apply this within the context of an age assessment?
- Ensure that there is no infringement of the child's dignity.

Indicators

- Will the assessment use the least intrusive methods possible?
- Will physical examinations respect the child's physical integrity?
- Will the assessment be undertaken in private and is there any female or male police officer and/or another non-police affiliated female or male adult present in case of a girl or male child?
- Is the child addressed politely and treated with respect throughout the procedure with delays kept to a minimum?
- Are discussions in the presence of the child between professionals avoided, or if not, is the child involved in the discussions in a meaningful way?
- Is there a confidentiality agreement?
- Ensure the age assessment is undertaken in an environment that is safe for children and which supports their needs and is child appropriate.

Indicators

- Are the practitioners trained in recognising and responding to the abuse of children?
- Is a chaperone present during physical examinations (note a girl must always have a female chaperone)?
- Is the environment child friendly – for example a quiet area free from adults possibly with toys, books and magazines as appropriate?
- Are children offered food and drink and allowed toilet and other breaks?
- Is it a confidential environment (e.g. separate room)

Post procedure

- Ensure that services and support relevant to the outcome of the assessment are provided to the child without delay.

Indicators

- Is the outcome of the assessment accepted by all the relevant stakeholders in an objective manner?
- Are immediate changes made to provision where required, for example the release or transfer of a child held in an adult detention facility?
- Are relevant child appropriate referrals made as appropriate?
- Are these referrals made promptly?
- Is paperwork issued recognising, confirming or changing age status?
- Does subsequent document outline that age is 'assumed'?
- Where, following the age assessment procedure, doubt remains about the age of the child ensure that this is applied to the advantage of the child.

Indicators

- Do all the relevant stakeholders accept in an objective manner the outcome of the assessment?
 - Do these stakeholders agree to treat the individual as if she/he is a child with due consideration of maturity?
 - Are immediate changes made to provision where required, for example the release or transfer of a child held in an adult detention facility?
 - Are relevant child appropriate referrals made as appropriate?
 - Are these referrals made promptly?
 - Is paperwork issued recognising, confirming or changing age status?
 - Does subsequent document outline that age is 'assumed'?
- Ensure the outcome and the consequences of the outcome are explained to the child as promptly as is reasonably practical.

Indicators

- Is the outcome and consequences of the assessment explained to the child in a language and in a manner they understand using age appropriate or specialist forms of communication where necessary?
 - Are guarantees secured that the child understands the outcome and consequences of the assessment?
 - Is the outcome and consequences including any practical arrangements or changes to the child's situation given to the child in writing?
- Ensure that where appropriate the child is able to challenge a decision, which they disagree with.

Indicators

- Has the child been informed that they can submit new information at any time in the future and that, following this, a new assessment could be triggered?
- Is there a right of appeal against the outcome?
- Is the child aware of their appeal rights?
- Does the child have a legal representative to assist them with their appeal and advise them about submitting new information?
- Is the appeal procedure available to the child at no cost to them?

