



# UNHCR

United Nations High Commissioner for Refugees  
Haut Commissariat des Nations Unies pour les réfugiés

**Observations by the UNHCR Regional Representation for Northern Europe on the members of parliament's legislative motion concerning age assessment of children seeking asylum in Norway ("*Representantforslag 93 S (2015–2016) om nye og mer treffsikre metoder for alderstesting av barn som søker asyl*")**

1. UNHCR is grateful to the Standing Committee on Local Government and Public Administration for the invitation to submit comments on the recently submitted legislative motion regarding age assessments of unaccompanied and separated child asylum-seekers in Norway (hereafter "Proposal"),<sup>1</sup> which has been brought before the Committee.
2. UNHCR has a direct interest in law and policy proposals in the field of asylum pursuant to its mandate and supervisory responsibility. According to the UNHCR Statute, Article 35 of the 1951 Convention relating to the Status of Refugees, and Article II of the 1967 Protocol (collectively referred to as the "1951 Convention"), UNHCR fulfils its mandate, *inter alia*, by "[p]romoting the conclusion and ratification of international conventions for the protection of refugees, supervising their application and proposing amendments thereto [...]".<sup>2</sup> UNHCR's supervisory responsibility is exercised in part by the issuance of interpretative guidelines on the meaning of provisions and terms contained in the 1951 Convention, as well as by providing comments on legislative and policy proposals impacting on the protection of, and durable solutions for, refugees.
3. UNHCR's supervisory responsibility is exercised in part by the issuance of interpretative guidelines on the meaning of provisions and terms contained in international refugee instruments, in particular the 1951 Convention. Such guidelines are included in the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status and subsequent Guidelines on International Protection.<sup>3</sup>
4. UNHCR wishes to express its strong support for the Proposal to improve age assessments methods, including allocation of funds for research concerning the possibility of using psycho-social age assessment methods during the Norwegian asylum procedures. Furthermore, UNHCR appreciates the Parliament's request to the Government to issue instructions regarding the interpretation of Section 88 of the Norwegian Immigration Act<sup>4</sup> and clarify in which circumstances age assessments can be used. In addition, UNHCR appreciates the Parliament's recommendations to the Government to introduce measures ensuring that i. age assessment opinions issued by case-workers within the Norwegian

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<sup>1</sup> Legislative motion, available at: <https://stortinget.no/no/Saker-og-publikasjoner/Publikasjoner/Representantforslag/2015-2016/dok8-201516-093/>.

<sup>2</sup> UN General Assembly, *Statute of the Office of the United Nations High Commissioner for Refugees*, 14 December 1950, A/RES/428(V), available at: <http://www.refworld.org/docid/3ae6b3628.html> ("UNHCR Statute").

<sup>3</sup> UNHCR, *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, December 2011, HCR/1P/4/ENG/REV. 3, available at: <http://www.refworld.org/docid/4f33c8d92.html>.

<sup>4</sup> The Norwegian Immigration Act, available at: <https://www.udiregelverk.no/PageFiles/1720/Immigration%20act%20-%20updated%20as%20of%201%20april%202014%20.pdf>.

Immigration Police and the Norwegian Directorate of Immigration are of adequate quality, ii. the assessment conducted regarding the children's age is sufficiently addressed in the decision and iii. age assessment opinions issued by experts from child care centers ("omsorgssentre") and asylum reception centers ("asylmottak") are submitted to a greater extent.<sup>5</sup>

5. UNHCR welcomes that Norway is seeking to research further complementary methods for age assessments. Both UNHCR and its Executive Committee (hereafter "ExCom") recommend that age assessments are part of a comprehensive assessment that takes into account both the physical appearance and the psychological maturity of the individual.<sup>6</sup> As it is widely recognized that there is no one method that can determine age in a reliable way, a holistic approach that takes into account factors such as age, gender, maturity, capacity, vulnerability, health, community integration and specific needs can help improve accuracy. Further, as noted in the EASO report on age assessment practices in Europe, "one way to improve the reliability of age assessment could be to include different methods as part of the process, so that the decision is based on a wider range of evidence. ... The decision on which methods to use, should be based on the aim of improving the overall accuracy of the assessment by taking into consideration a range of factors and evidence. This could include: physical, psychological, developmental, environmental and cultural factors."<sup>7</sup>
6. UNHCR also considers it important to assess the actual situation of the person concerned and avoid a sole focus on the chronological age, as also young people above the legal age of majority may need support based on their individual vulnerabilities and needs. The field research conducted by UNHCR and the Council of Europe in 2014 points to the importance of facilitating young people's transition into adulthood and to take into account the situation both before and after the cut-off date at the age of 18 years.<sup>8</sup> The guiding principle should be whether an individual demonstrates an immaturity and vulnerability that may require more sensitive treatment.<sup>9</sup>
7. Age assessments further need to be conducted in a safe, child- and gender-sensitive manner with due respect for human dignity, and with the best interest of the child in the forefront.<sup>10</sup> In this context, UNHCR wishes to recall the recommendations of the UN Committee on the Rights of the Child, who in its General Comment No. 6, calls for age

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<sup>5</sup> See Proposal conclusions: Forslag av 11 mai 2016.

<sup>6</sup> 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*, 22 December 2009, HCR/GIP/09/08, available at: <http://www.refworld.org/docid/4b2f4f6d2.html> (hereafter "UNHCR Guidelines on Child Asylum Claims"), para. 75; UNHCR, *Conclusion on Children at Risk*, 5 October 2007, No. 107 (LVIII) - 2007, available at: <http://www.refworld.org/docid/471897232.html> (hereafter "ExCom Conclusion on Children at Risk"), at (g) ix.

<sup>7</sup> European Union: European Asylum Support Office (EASO), *EASO Age assessment practice in Europe*, December 2013, available at: <http://www.refworld.org/docid/532191894.html>, page 74.

<sup>8</sup> UNHCR, *Unaccompanied and Separated Asylum-seeking and Refugee Children Turning Eighteen: What to Celebrate?*, March 2014, available at: <http://www.refworld.org/docid/53281a864.html>.

<sup>9</sup> UNHCR, *Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum*, February 1997, <http://www.refworld.org/docid/3ae6b3360.html>, para. 5.11.

<sup>10</sup> See e.g. ExCom Conclusion on Children at Risk, at (g) ix: UNHCR Guidelines on Child Asylum Claims, para. 75.

assessment methods to be fair, child and gender-sensitive, and to avoid any risk of violating the individual's physical integrity, giving due respect to his or her human dignity.<sup>11</sup>

8. The Safe and Sound guidance ("What States Can Do to Ensure Respect for the Best Interests of Unaccompanied and Separated Children in Europe") that UNHCR has developed together with the United Nations Children's Fund, UNICEF, aims to support States to identify the optimal means to fulfil their responsibilities to protect the rights and best interests of unaccompanied and separated children in Europe. In this guidance, UNHCR and UNICEF recommends that age assessments are undertaken only when there is doubt about the stated age.<sup>12</sup> The recommendations are summarized as follows:

- In cases of doubt, a person claiming to be under the age of 18 should provisionally be treated as such.
- Age assessment procedures are only to be undertaken as a measure of last resort when there are grounds for serious doubts and where other approaches have failed to establish the individual's age.
- Informed consent is obtained.
- The procedure is multidisciplinary and draws on relevant expertise.
- Examinations should never be forced or culturally inappropriate and must respect the individual's dignity at all times.
- The least invasive option is followed and balances physical, developmental, psychological, environmental and cultural factors.
- Assessments are gender appropriate.
- Assessments are overseen by an independent guardian who is present if requested to attend by the individual concerned.
- The procedure, the outcome and consequence are explained to the individual in a language they understand.
- There is a procedure to appeal against the decision as well as the necessary support to do so.<sup>13</sup>

9. In UNHCR's view, 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 also need to be given clear information about the purpose and process of the age-assessment procedure in a language they understand. 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.<sup>14</sup>

10. In summary, age assessments need to be conducted in a holistic manner with the necessary safeguards in line with the best interests of the child. Correct age assessments can prevent arbitrary detention of children, placement of young children in reception

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<sup>11</sup> UN Committee on the Rights of the Child (CRC), General comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin, 1 September 2005, CRC/GC/2005/6, available at: <http://www.refworld.org/docid/42dd174b4.html>, paras. 31(i) and 86.

<sup>12</sup> UNHCR, Safe & Sound: what States can do to ensure respect for the best interests of unaccompanied and separated children in Europe, October, 2014, (hereafter "Safe and Sound") available at: <http://www.refworld.org/docid/5423da264.html>, e.g. pages 16 and 28. Safe and Sound also elaborates on the meaning of a best interests assessment, (BIA), as differentiated from a best interests determination, (BID); see page 20.

<sup>13</sup> Safe and Sound, page 34.

<sup>14</sup> UNHCR Guidelines on Child Asylum Claims, para. 75.

centers for adults, and the deprivation of children of adequate reception conditions adapted to their age and vulnerabilities, including guardianship arrangements.

**UNHCR Regional Representation for Northern Europe  
8 November 2016**