



UNHCR

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

UNHCR

Regional Representation for Northern Europe

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23 November 2016

Notre/Our code: 106/RRNE/2016

Re: **UNHCR Observations on the draft Law Proposal “Age
Assessment Earlier in the Asylum Procedure”**
(“Åldersbedömning tidigare i asylprocessen” Ds 2016:37)

The UNHCR Regional Representation for Northern Europe hereby presents its observations on the law proposal referred to above.

We remain at your disposal for any clarifications required.

Yours sincerely,

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Observations by the United Nations High Commissioner for Refugees Regional Representation for Northern Europe on the draft law proposal “Age Assessment Earlier in the Asylum Procedure” (“Åldersbedömning tidigare i asylprocessen”) Ds 2016:37

I. INTRODUCTION

1. The United Nations High Commissioner for Refugees (hereafter “UNHCR”) Regional Representation for Northern Europe (hereafter “RRNE”) is grateful to the Government of Sweden for the invitation to provide observations on the draft law proposal “Age Assessment Earlier in the Asylum Procedure” (“Åldersbedömning tidigare i asylprocessen”) Ds 2016:37, (hereafter “the Proposal”).
2. As the agency entrusted by the United Nations General Assembly with the mandate to provide international protection to refugees and, together with governments, seek permanent solutions to the problems of refugees,¹ UNHCR has a direct interest in law and policy proposals in the field of asylum. According to its Statute, 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[.]”² UNHCR’s supervisory responsibility is reiterated in Article 35 of the 1951 Convention³ and in Article II of the 1967 Protocol relating to the Status of Refugees⁴ (hereafter collectively referred to as the “1951 Convention”).⁵ It has also been reflected in European Union law, including by way of a general reference to the 1951 Convention in Article 78(1) of the Treaty on the Functioning of the European Union (hereafter “TFEU”).⁶
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 (hereafter “UNHCR Handbook”) and subsequent Guidelines on International Protection.⁷ UNHCR also fulfils its supervisory responsibility by providing comments on legislative and policy proposals impacting on the protection and durable solutions of its persons of concern.
4. The following comments are based on international refugee protection standards and international child protection standards, set out in the 1951 Convention, the United Nations Convention on the Rights of the Child⁸ (hereafter the “CRC”), Conclusions on International Protection of the UNHCR Executive Committee (hereafter “ExCom”), UNHCR guidelines and

¹ 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> (hereafter “UNHCR Statute”).

² *Ibid.*, para. 8(a).

³ UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, available at: <http://www.refworld.org/docid/3be01b964.html>.

⁴ UN General Assembly, *Protocol Relating to the Status of Refugees*, 31 January 1967, United Nations, Treaty Series, vol. 606, p. 267, available at: <http://www.refworld.org/docid/3ae6b3ae4.html>.

⁵ According to Article 35 (1) of the 1951 Convention, UNHCR has the “duty of supervising the application of the provisions of the 1951 Convention”.

⁶ European Union, Consolidated version of the Treaty on the Functioning of the European Union, 13 December 2007, OJ C 115/47 of 9.05.2008, available at: <http://www.unhcr.org/refworld/docid/4b17a07e2.html>.

⁷ 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>.

⁸ UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, available at: <http://www.refworld.org/docid/3ae6b38f0.html>.

General Comments of the United Nations Committee on the Rights of the Children (hereafter the “CRC Committee”). While neither UNHCR ExCom Conclusions nor UNHCR guidelines, or the guidance of the CRC Committee are binding on States, they contribute to the formulation of *opinio juris* by setting out standards of treatment and approaches to interpretation which illustrate States’ sense of legal obligation towards asylum-seekers and refugees.⁹ As a member of the UNHCR ExCom since its inception in 1958, Sweden has contributed extensively to the development of the Conclusions on International Protection, adopted unanimously by the ExCom.

II. GENERAL OBSERVATIONS

5. At the outset, UNHCR takes note of the extensive research that the Swedish Government has commissioned in the area of medical age assessment, including the survey undertaken by the National Board of Health and Welfare,¹⁰ and the ethical assessment made by the Swedish National Council on Medical Ethics.¹¹ The National Board of Health and Welfare has also undertaken an ethical analysis of age assessment.¹² UNHCR is also aware of the Government’s designation of the National Board of Forensic Medicine as the authority in charge of undertaking medical age assessments of unaccompanied and separated children (hereafter “UASC”) in Sweden.¹³ To the understanding of UNHCR, the National Board of Forensic Medicine has decided to use as a method a combination of magnetic resonance imaging (MRI scans) of the knee joint, and x-rays of the third molar of UASC, based on the results of which the National Board of Forensic Medicine will determine the assessed age of the examined UASC.¹⁴
6. UNHCR appreciates the measures taken by the Government to ensure that the new medical age assessment method to be introduced in Sweden is as reliable, safe and ethical as possible. In this context, UNHCR recalls the recommendations of the CRC Committee, which in its General Comment No. 6 calls for age assessment methods to be fair, child and gender-sensitive, and avoid any risk of violating the individual’s physical integrity, giving due respect to his or her human dignity.¹⁵
7. UNHCR’s ExCom has, similarly, recommended that age assessments are conducted in a safe, child- and gender-sensitive manner with due respect for human dignity, and with the

⁹ Goodwin Gill/McAdam, *The Refugee in International Law*, Oxford University Press, 2007, p. 217.

¹⁰ Following a meta-analysis of 1,400 research articles, the National Board of Health and Welfare identified that by using an MRI-scans of the knee joint as a method for age assessment, the margin of error could be lowered to between 3 and 7 per cent. In comparison, the method predominantly used in Sweden at present, to use an x-ray of the third molar to assess the maturity of the tooth, has a margin of error of between 10 to 12 per cent.
<http://www.socialstyrelsen.se/publikationer2016/2016-7-4>.

¹¹ The Council stated that it is ethically acceptable to use medical age assessment under certain conditions, if the authorities following an assessment of other available evidence still finds reason to doubt the claimed age. The Council states: “Hence, the authorities should never resort to medical methods in order to assess age as a routine.” The ethical assessment is available in Swedish at: <http://www.smer.se/wp-content/uploads/2016/10/Uttalande-medicinska-%C3%A5ldersbed%C3%B6mningar-slutgiltig-61.pdf>.

¹² The National Board of Health and Welfare, *Åldersbedömning inom ramen för asylprocessen – en etisk analys*, May 2016, available at: <https://www.socialstyrelsen.se/Lists/Artikelkatalog/Attachments/20213/2016-5-28.pdf>

¹³ See the Governments commission to the National Board of Forensic Medicine, in Swedish, here: <http://www.regeringen.se/pressmeddelanden/2016/05/rattsmedicinalverket-far-i-uppdrag-att-genomfora-medicinska-aldersbedomningar/> See further, the latest update from the National Board of Forensic Medicine, in Swedish, here: <http://www.rmv.se/?id=462>.

¹⁴ Follows from the report of the National Board of Forensic Medicine to the Government: The National Board of Forensic Medicine, *Återrapportering avseende regeringsuppdrag till Rättsmedicinalverket att genomföra medicinska åldersbedömningar (Ju2016/03931/Å)*, 15 November 2016, available at: <http://www.rmv.se/fileadmin/RMVFiles/pdf/RMV-aterrapportering2016-11-15.pdf>

¹⁵ 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, para. 86, available at: <http://www.refworld.org/docid/42dd174b4.htm>.

best interest of the child in the forefront.¹⁶ The UNHCR Guidelines on International Protection on Child Asylum Claims, further recommend that age assessments should be holistic, and conducted in “a safe, child- and gender-sensitive manner with due respect for human dignity.”¹⁷

8. Of relevance is also the guidance document entitled “*Safe and Sound – What States Can Do to Ensure Respect for the Best Interests of Unaccompanied and Separated Children in Europe*” (hereafter “Safe and Sound guidance”) that UNHCR has developed together with the United Nations Children’s Fund, UNICEF.¹⁸ The Safe and Sound guidance aims to support States in identifying the optimal means to fulfil their responsibilities to protect the rights and best interests of UASC in Europe. It recommends that age assessments are undertaken only following a holistic assessment of the best interests of the child in line with Article 3 of the CRC.¹⁹
9. The Safe and Sound guidance refers to the recommendations concerning age assessments made in the Statement of Good Practice by the Separated Children in Europe Programme (hereafter “SCEP”),²⁰ which has been endorsed by UNHCR and UNICEF. The Safe and Sound guidance summarizes the recommendations 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.”²¹
10. The Guidelines on International Protection on Child Asylum Claims further emphasize that, “in case of uncertainty, the individual will be considered a child”, and that “[c]hildren need to be given clear information about the purpose and process of the age-assessment procedure

¹⁶ See e.g. 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.

¹⁷ 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.

¹⁸ 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>.

¹⁹ See e.g. Safe and Sound, pp. 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 p. 20.

²⁰ Separated Children in Europe Programme, SCEP *Statement of Good Practice*, March 2010, 4th Revised Edition, available at: <http://www.refworld.org/docid/415450694.html>.

²¹ Safe and Sound, p. 34.

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.”²²

11. It should be noted that UNHCR does not resort to medical age assessments in its operations, due to the uncertainty that is inherent to all medical age assessment methods. UNHCR finds that a holistic assessment of capacity, vulnerability and needs that reflects the actual situation of a young person, is preferable to reliance on age assessment procedures aimed at estimating chronological age.
12. As it is widely recognized that there is no one method that can determine age in a reliable way, UNHCR recommends that the forthcoming legislation on age assessment explicitly states that medical age assessments should only be undertaken as a measure of last resort, if other means of establishing the minority of a proclaimed UASC has failed.
13. Further, UNHCR recommends that medical age assessments are only used as one part of a holistic and multi-disciplinary assessment of the age that takes into account factors such as gender, maturity, capacity, vulnerability, health, and specific needs, which can influence the assessment of the age of the individual in question.
14. UNHCR finds it important to emphasize that despite the positive measures taken by the Swedish Government to ensure that the medical age assessment method to be employed in Sweden is as fair and ethical as possible, it must be recalled that age assessments cannot with certainty establish if a person is a child or an adult. It is particularly important, in UNHCR’s view, to note that the margin of error that will apply to a medical age assessment is based on a conclusion applicable to a sample population; this means that the same margin of error cannot automatically be applied to each individual asylum-seeker, as he or she may not be of the same ethnicity or socio-economic background as the sample population.
15. Below UNCHR presents its specific observations to the legislative changes suggested in the Proposal. UNHCR will present its comments in the same order as the legislative changes are presented in the Proposal.

III. SPECIFIC OBSERVATIONS

Temporary Decision concerning Age (Chapter 4.1 of the Proposal)

16. The Proposal suggests that, in situations where there are reasons to doubt that a proclaimed UASC who has applied for asylum is below the age of 18, while it is at the same time not obvious that the applicant is not a child, the Swedish Migration Agency (hereafter “the SMA”) shall as soon as possible undertake an age assessment and adopt a temporary decision about the UASC’s age. The decision shall be immediately applicable; however, a final decision about the UASC’s age shall be adopted in the asylum decision.
17. UNHCR considers that in most cases, age can be established via a personal interview and/or other available documentary evidence. Pursuant to Article 4(1) and (2) of the recast Qualification Directive,²³ age is one element in assessing the facts and circumstances of an application for international protection. The Court of Justice of the European Union has

²³ European Union: Council of the European Union, Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast), 20 December 2011, OJ L. 337/9- 337/26; 20.12.2011, 2011/95/EU, available at: <http://www.refworld.org/docid/4f197df02.html>.

stated that using the interview as a basis for the identification of the child is also in line with the child's right to express his or her views freely, as stipulated in Article 12 of the CRC, and the right to be heard, which is a general principle of EU law which "must apply fully to the procedure in which the competent national authority examines an application for international protection pursuant to rules adopted in the framework of the Common European Asylum System".²⁴

18. In line with Article 15(3)(a) of the recast Asylum Procedures Directive, the applicant's vulnerability must be fully taken into account when conducting the interview. Article 4(5) of the recast Qualification Directive makes it clear that in cases "where aspects of the applicant's statements are not supported by documentary or other evidence, those aspects shall not need confirmation" provided the statements fulfil credibility assessment criteria. In UNHCR's view, this principle also applies to the age of an asylum-seeker.
19. However, should the SMA continue to doubt the proclaimed age of an UASC, UNHCR agrees that the UASC's age should be established as soon as possible. It is important that adults are not accommodated with children and vice versa. An early age assessment can bring clarity on what reception placement and procedural safeguards should be provided for a particular individual. Early age assessment can also dispel or confirm any doubt about the proclaimed age of an UASC, and prevent undue and prolonged anxiety on the part of the UASC at having a vital aspect of his or her identity questioned. In this context, UNHCR recalls the advice provided in the Safe and Sound guidance, that before an age assessment is undertaken, it should be established if this would be in the best interest of the child.²⁵
20. The SCEP has provided specific guidance in a Position Paper, where it states that age assessments "shall be undertaken in a timely fashion, taking into account the child's perception of time. Whilst all decisions should be given thorough consideration, delay shall be presumed to be prejudicial to the child."²⁶ The SCEP however cautions that in order to build trust with the UASC, to "allow for proper recollection and sharing of information about the child's own story useful to establish his/her age", the UASC must be given time.²⁷

Medical Age Assessment before a Temporary Decision about Age (Chapter 4.2 of the Proposal)

21. The Proposal suggests that the SMA shall provide a proclaimed UASC the possibility to undergo a medical age assessment if they are considering to register the proclaimed child as an adult. A medical age assessment can be undertaken only if the applicant has given his or her written consent. The cost of the medical age assessment shall be borne by the State.
22. UNHCR's ExCom has recommended that age assessments are part of a comprehensive assessment that takes into account both the physical appearance and the psychological maturity of the individual.²⁸
23. 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

²⁴ M. M. v. Minister for Justice, Equality and Law Reform, Ireland, Attorney General, C-277/11, European Union: Court of Justice of the European Union, 22 November 2012, para. 89, available at: <http://www.refworld.org/docid/50af68c22.htm>.

²⁵ Safe and Sound, p.16 and 34.

²⁶ Separated Children in Europe Programme, *Position Paper on Age Assessment in the Context of Separated Children in Europe*, 2012, p. 14, (hereafter "the SCEP Position Paper") available at: <http://www.refworld.org/docid/4ff535f52.html>.

²⁷ Ibid.

²⁸ ExCom Conclusion on Children at Risk", at (g) ix.

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.”²⁹ UNHCR also notes that EASO is currently drafting a new report on age assessment, in the context of which UNHCR has advocated for a holistic and multidisciplinary age assessment procedure.

24. Finally, and as mentioned above, the SCEP Statement of Good Practices recommends that age assessments are undertaken only as a measure of last resort, when there are serious doubts about the minority of a proclaimed UASC, and other means to establish the individual’s age have failed.
25. The Proposal also suggests that before a medical age assessment is undertaken, the UASC must give his or her written consent. The Proposal also provides that the UASC shall be given a reasonable time to consider whether to agree to a medical age assessment. UNHCR welcomes this proposal.
26. UNHCR considers that the written consent of the UASC must be obtained before a medical age assessment is undertaken as it reflects the right of the child to freely express their views and have them taken into regard in all matters affecting the child, which follows from Article 12 of the CRC.
27. In this regard, the legal guardian will also have an essential role, to counsel and support the UASC, and provide the legal consent for the UASC to undergo the medical age assessment. UNHCR recommends that the legal guardian should attend the medical age assessment, if requested by the UASC. The UNHCR Guidelines on Child Asylum Claims emphasize that before an age assessment procedure is carried out, it is important that a qualified independent guardian is appointed to advise the child.³⁰
28. 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. In UNHCR’s Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum, UNHCR states that “The guiding principle should be whether an individual demonstrates an immaturity and vulnerability that may require more sensitive treatment. This may be particularly the case where persecution has hindered the applicant’s development and his/her psychological maturity remains comparable to that of a child.”³¹ Further, 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.³²

Information about Medical Age Assessment (Chapter 4.3 of the Proposal)

29. The Proposal suggests to amend the Alien’s Ordinance, to clarify that the SMA is responsible for providing information about the medical age assessment to an UASC who is offered the possibility to undergo a medical age assessment. The information should explain the examination method, the consequences the results of the medical age assessment could have for the application for residence permit, and that the effect of

²⁹ European Union: European Asylum Support Office (EASO), EASO Age assessment practice in Europe, December 2013, available at: <http://www.refworld.org/docid/532191894.html>, p. 74.

³⁰ Ibid.

³¹ UNHCR, *Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum*, February 1997, available at: <http://www.refworld.org/docid/3ae6b3360.html>, in para. 7

³² 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>.

refusing to undergo a medical age assessment could be that the UASC is considered to be above 18 years of age.

30. UNHCR welcomes the explicit obligation for the SMA to inform about the medical age assessment. UNHCR contends that a prerequisite for an UASC to form an opinion about whether to submit to a medical age assessment, or indeed for an UASC to participate effectively in any decision which concerns him or her, is that the UASC is provided with accurate, relevant and child-friendly information. The UNHCR Guidelines on Child Asylum Claims highlight that “[c]hildren need to be given clear information about the purpose and process of the age-assessment procedure in a language they understand.”³³ As participatory assessments, which UNHCR has conducted with children, reveal, it may be necessary to provide the information through several forms of communication, both written and oral, suitably adjusted to their individual circumstances.

The Right to Appeal a Temporary Decision about Age (Chapter 4.4 of the Proposal)

31. The Proposal suggests that the temporary decision about the age shall be possible to appeal to the Migration Courts. However, the Proposal suggests that the appeal should not have a suspensive effect on the temporary decision about the age, nor on the processing of the asylum claim. The Proposal further clarifies that the general possibility for administrative courts to suspend an appealed decision would likely not be applicable, because, as a general rule, such a suspension is only justified if it is highly likely that the appealed decision will be changed. The Proposal continues, that in situations when there is a result from a medical age assessment, the possibility to suspend the decision about the age would likely in practice be very limited, unless the applicant submits evidence such as reliable identity documents.
32. Although UNHCR welcomes the proposed possibility for appeal, the fact that the appeal does not have suspensive effect is concerning to UNHCR. The decision to assess a proclaimed child as an adult will have significant impact in the individual case. The individual concerned would likely lose their right to a legal guardian, the right to education, the right to be accommodated in a special care home, as well as the procedural safeguards that are available to child asylum-seekers. Given the potentially severe consequences of an age assessment decision, it is important to ensure that there is an effective possibility to appeal such a decision.
33. In its technical note on age assessment, UNICEF has expressed that “a robust and accessible route of appeal must be part of the administrative process of assessing a child’s age”,³⁴ while the SCEP Position Paper advises that the appeal should have suspensive effect on the consequences of the age assessment decision.³⁵
34. UNHCR considers that an appeal of an age assessment decision should have suspensive effect in order for it to be effective, meaning that the proclaimed child shall be considered a child until the appeal has been finally decided. At a minimum, UNHCR considers that an appeal should have the effect that the consequences of the age assessment decision are suspended until the appeal has been finally decided, meaning that the particular rights afforded to children, such as the right to a legal guardian, are maintained throughout the appeal process.

³³ UNHCR Guidelines on Child Asylum Claims, para. 75.

³⁴ UN Children's Fund (UNICEF), Age Assessment: A Technical Note, p. 17, January 2013, available at: <http://www.refworld.org/docid/5130659f2.html>

³⁵ The SCEP Position Paper, p. 14.

Conclusions and Recommendations

35. UNHCR welcomes the proposal to undertake age assessments early in the asylum procedure, if the minority of a proclaimed UASC is in serious doubt. UNHCR also welcomes that the age assessment is adopted through an independent, temporary decision, which is possible to appeal. UNHCR also takes note of, and welcomes, the fact that a proclaimed UASC will be represented by a legal representative throughout the process.
36. Although UNHCR thus finds that large parts of the Proposal are to be welcomed, UNHCR would nonetheless wish to provide a number of recommendations to the Government.

UNHCR recommends that:

- I. Age assessments are undertaken only following a holistic assessment of if the age assessment would be in the best interests of the child in line with Article 3 of the CRC.
- II. Age assessments are multi-disciplinary, and involve child protection experts and are conducted in “a safe, child- and gender-sensitive manner with due respect for human dignity.
- III. Medical age assessments are only used as one part of a holistic assessment of the age.
- IV. Medical age assessments are used as a measure of last resort, if other means to establish the individual’s age have failed.
- V. The preparatory works that will accompany the forthcoming legislation on age assessment clearly state that regardless of the medical age assessment method used, certainty about a person’s age cannot be obtained through a medical age assessment.
- VI. The preparatory works of the upcoming legislation include further reasoning around the problems inherent to medical age assessment, drawing *inter alia* from the ethical analysis of age assessment of the National Board of Health and Welfare. Such reasoning could prevent that medical age assessments are seen as proof of chronological age, rather than estimation of if the individual asylum-seeker in question has reached the age of majority.
- VII. It should be emphasized in the preparatory works that in case doubt about an individual asylum-seekers age remains after an age assessment, the asylum-seeker should be given the benefit of the doubt and be considered to have the age proclaimed.³⁶
- VIII. An appeal of an age assessment decision should have suspensive effect, and the proclaimed child shall be considered a child until the appeal has been finally decided. At a minimum, UNHCR considers that an appeal should have the effect that the consequences of the age assessment decision are suspended until the appeal has been finally decided.

UNHCR Regional Representation for Northern Europe

23 November 2016

³⁶ 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.