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# Age Matters! Exploring age-related legislation affecting children, adolescents and youth

Youth Policy Working Paper  
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This working paper is based on a literature review for a research piece commissioned by the UNICEF Regional Office for Central and Eastern Europe/Commonwealth of Independent States (CEE/CIS). The research explores the existing age-related legal provisions for children, adolescents and youth in 22 countries and across more than 70 domains. The literature review is published with the permission of the UNICEF Regional Office for CEE/CIS. The full research piece is expected to be published at a future date.



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## Abstract

Minimum age definitions directly influence the realities of children, adolescents and young people: when they can make independent health choices, be tried and held in adult courts and prisons, access financial credit for business, be heard in judicial proceedings, or consent to marriage.

However, there is a clear lack of uniformity. This makes it more complicated to fully understand, monitor, and improve the situation for children and adolescents – not least for them as individuals attempting to understand the laws for themselves.

This paper is timed to coincide with the forthcoming “General Comment on the implementation of the rights of the child during adolescence”, which will advocate for considerable change for age-related legislation.

This working paper discusses the foundational principles of minimum age legislation, beginning first with the principle of non-discrimination, followed by the best interests of the child, combined alongside the notions of protection and autonomy, and lastly, respect for the views of the child and evolving capacities.

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## Contents

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<b>1</b>	<b>Introduction</b>	<b>4</b>
<hr/>		
<b>2</b>	<b>Minimum ages: The international debate</b>	<b>4</b>
<hr/>		
<b>3</b>	<b>Rationales of minimum age legislation</b>	<b>7</b>
	- Non-discrimination and equity	
	- Best interests of the child: Protection versus autonomy	
	- Respecting views and evolving capacities of the child	
<hr/>		
<b>4</b>	<b>A renewed focus on minimum age legislation</b>	<b>11</b>

## 1 Introduction

In more than half of countries around the world, the legal age of majority is 18 years while the global average age of criminal responsibility is 12.1 years. In nearly a quarter of countries around the world, women's marriageable age is younger than that of men, and yet girls often lack the ability to make independent health choices before 18. Voting age is almost universally 18 years, but the average global age to stand as a candidate is 22.2 years. In short: Legal minimum age legislation is contentious, contextual and contradictory.

Yet, minimum age definitions directly influence the realities of children, adolescents and young people: when they can make independent health choices, be tried and held in adult courts and prisons, access financial credit for business, be heard in judicial proceedings, or consent to marriage. In setting minimum ages, States undertake a balancing act: between the need to protect and the desire to empower; considering the evolving capacities of the child with the call for specific age definitions in law; and deciding where rights are promoted or impeded by a legal minimum age.

In October 2016, the "General Comment on the implementation of the rights of the child during adolescence" (herein referred to as the General Comment) was published by the Committee on the Rights of the Child. It builds on the definitions outlined in the UN Convention of the Rights of the Child (herein referred to as the Convention) and advocates for specific minimum ages as well as for the removal of other age limits entirely.

This literature review forms part of research piece commissioned by the UNICEF Regional Office for CEE/CIS that explores the existing age-related legal provisions for children, adolescents and youth in 22 countries and across more than 70 domains<sup>1</sup>. The review is based on national legislation and reporting to the Committee on the Rights of the Child (CRC). The findings report (to be released at a fu-

ture date) illustrates how national minimum age legislation in the region and contradictions therein may weaken the realisation of both protective as well as emancipatory principles of the Convention on the Rights of the Child. It highlights inconsistencies, points to areas of potential reform, and introduces topics for future research.

The research comes at a time of increased focus on adolescence as a distinct area of programming and attention within UNICEF. This focus has provided a renewed impetus to explore the ways in which minimum ages impact of the ability of children to realise their rights, make decisions, express opinions, access services and be protected. While adolescents are affected by child and youth initiatives, both as actors and as targets of policies and programmes, they are seldom specifically mentioned. There thus is a lack of visibility of adolescents in much programming and policy-making.

A challenge that is common to the definitions of adolescents as well as youth – and even that of children – is that the legal distinction between a minor (below the age of 18) and an adult (someone with full majority), is not as clearly drawn as it may seem at first glance: children acquire rights in various policy fields, such as health, education, criminal policy, prior to being fully recognised as an adult. These key controversies in the debate on minimum age legislation is the main focus of this literature review.

## 2 Minimum ages: The international debate

Debates on age-related barriers to accessing rights and services for adolescents are not new. For example, an early publication on adolescent health<sup>2</sup> shows that such debates were occurring even before the Convention on the Rights of the Child was adopted. Agreed by the United Nations General Assembly in November 1989, the Convention is

<sup>1</sup> At the time of publication, in October 2016, the research piece is not in the public domain. However, a forthcoming publication based on the findings is expected in late 2016.

<sup>2</sup> See: Packman, J., & Zuckerman, R. J., 1987, **Laws and Policies affecting adolescent health**, WHO, Geneva.

the “most rapidly and widely ratified international human rights treaty in history”<sup>3</sup> with 196 State Parties (including observer states of Palestine and the Holy See) signing up to the Convention<sup>4</sup>. In 2015, South Sudan<sup>5</sup> and Somalia<sup>6</sup> began the process of ratification, leaving the United States as the only country to have not ratified the Convention.

Since the Convention entered into force in 1990, it has been an important point of reference for minimum age legislation. The Convention clearly defines a child as “every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier” (Art.1). The Convention has been responsible for widespread consensus on the ban to impose life imprisonment or death penalty on children (Art. 37), and the prohibition to participate in hostilities for children under the age of 15 years (Art. 38). The latter, together with the definition of the child as “every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier” (Art. 1), are the two exceptional cases in the Convention that mention a specific age.

Other articles call for the introduction of minimum ages in additional fields without specifying what that age should be, e.g. Art. 32 requires an age for the admission to employment, Art. 40 imposes an obligation to establish a minimum age below which children cannot be held criminally responsible. More generally, Art. 37 requires that when children are deprived of their liberty, the needs of their age must be taken into account.

For these and additional fields, the Committee on the Rights of the Child (CRC), which monitors the implementation of the Convention, has made suggestions on specific minimum ages in its general

comments, which also draw on other international agreements:

- » In General Comment No. 10 the CRC recommends that the absolute minimum age of **criminal responsibility** should be 12 years, with encouragement for States to continue to raise it.<sup>7</sup>
- » In General Comment No. 4 the Committee recommends that States increase the minimum age for **marriage** with and without parental consent to 18 years, while allowing for exceptional circumstances, in which a mature and capable child over the age of 16 may marry.<sup>8</sup> General Comment No. 4 also entails the recommendation to set a minimum age for sexual consent, which should be equal for boys and girls, yet, without specifying at what age this should be set.
- » Additionally, the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (OPAC) calls for a minimum age of 18 for (compulsory) **recruitment into the armed forces** or direct **participation in hostilities**, and for a minimum age of 16 for **voluntary enlistment**.<sup>9</sup>

<sup>3</sup> United Nations, 2015, **UN Treaty Collection: Convention of the Rights of the Child**, <https://treaties.un.org/Pages/showDetails.aspx?objid=08000002800007fe>

<sup>4</sup> Ibid.

<sup>5</sup> CRIN, 2015, May 4, **South Sudan: Ratification of UN-CRC**, <https://www.crin.org/en/library/news-archive/south-sudan-ratification-uncrc>

<sup>6</sup> United Nations, 2015, January 20, **UN lauds Somalia as country ratifies landmark children’s rights treaty**, <http://www.un.org/apps/news/story.asp?NewsID=49845#.VRIZKZPF920>

<sup>7</sup> United Nations Committee on the Rights of the Child, 2007, **General Comment 10 – Children’s rights in juvenile justice**, <http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.10.pdf>, Art. 32.

<sup>8</sup> United Nations Committee on the Rights of the Child, 2003, **General Comment No.4 - Adolescent Health and Development in the Context of the Convention on the Rights of the Child**, <http://www.ohchr.org/Documents/Issues/Women/WRGS/Health/GC4.pdf>, Para. 20.

<sup>9</sup> United Nations, 2000, **Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict**, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPACCRCA.aspx>, Art. 2.

Furthermore, regarding admission to employment, the International Labour Organisation (ILO) has called for minimum age legislation:

- » In ILO Convention No. 138, 1973, the minimum age for admission to hazardous labour is set at 18, with a minimum age of 15 for general work – provided that it is not lower than the age at which compulsory education is completed. Light work is allowed earlier, at the age of 13 – and in countries in development, at the age of 12.<sup>10</sup>

Additionally, the Committee requests State Parties to provide information on age-related legislation in their periodical reports.<sup>11</sup> This request for information on minimum legal ages should not be mistaken for a call for a specific age: “[T]he Committee is simply seeking information on how domestic law defines the child”, argue Hodgkin and Newell.<sup>12</sup> An earlier version of the guidelines for State Parties reports (2nd revised edition from 2010) entailed a long list of minimum ages on which the Committee expected reporting. This included:

- » Legal and medical counselling without parental consent;
- » Medical treatment or surgery without parental consent;
- » End of compulsory education;
- » Admission to employment or work, including hazardous work, part-time and full-time work;
- » Marriage;
- » Sexual consent;
- » Voluntary enlistment in the armed forces;
- » Conscription into the armed forces;
- » Participation in hostilities;

- » Criminal responsibility;
- » Deprivation of liberty, including by arrest, detention and imprisonment, inter alia in the areas of administration of justice, asylum seeking and placement of children in welfare and health institutions;
- » Capital punishment and life imprisonment;
- » Giving testimony in court, in civil and criminal cases;
- » Lodging complaints and seeking redress before a court or other relevant authority without parental consent;
- » Participating in administrative and judicial proceedings affecting the child;
- » Giving consent to change of identity, including change of name, modification of family relations, adoption, guardianship;
- » Having access to information concerning the biological family;
- » Legal capacity to inherit, to conduct property transactions;
- » To create and join associations;
- » Choosing a religion or attending religious school teaching;
- » Consumption of alcohol and other controlled substances.

This list has been dramatically shortened in the latest guidelines from 2015 (3rd revision). Instead, there is a call to report on all fundamental rights of the Convention in the light of the principles of non-discrimination (Art. 2); best interests of the child (Art. 3); the right to life, survival and development (Art. 6); and respect for the views of the child (Art. 12). The new guidelines only specifically call for information on the minimum ages for: the admission to employment, marriage (boys and girls), criminal responsibility, voluntary enlistment into national forces, military conscription, and admission to military schools.

<sup>10</sup> International Labour Organization, 1973, **Convention concerning Minimum Age for Admission to Employment**, [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C138](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C138)

<sup>11</sup> United Nations Committee on the Rights of the Child, 2015, **Treaty-specific guidelines regarding the form and content of periodic reports to be submitted by States parties under article 44, paragraph 1 (b)**, of the Convention on the Rights of the Child, <http://goo.gl/JMVc5O>

<sup>12</sup> Hodgkin, R., & Newell, P., 2007, **Implementation Handbook for the Convention on the Rights of the Child**, UNICEF, [https://www.unicef.org/publications/index\\_43110.html](https://www.unicef.org/publications/index_43110.html), p.5.

### 3 Rationales of minimum age legislation

The CRC calls upon States to “take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse” (Art. 19). More generally, signatory States “shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention” (Art. 2 and 4). Therefore, they have to be guided by the principles of non-discrimination (Art. 2); best interests of the child (Art. 3); respect for the views of the child (Art. 12), and take into account the evolving capacities of the child (Art.5).

These principles are overlapping and mutually supportive, and the principles themselves share widespread recognition. However, it remains a delicate balance between children’s right to be protected and the recognition that they also have evolving capacities and should therefore have progressive autonomy in making decisions about their lives.<sup>13</sup>

It is this “balance” that makes age-related legislation a contested field. Below we discuss the foundational principles, beginning first with the principle of non-discrimination, followed by the best interests of the child, combined alongside the notions of protection and autonomy, and lastly, respect for the views of the child and evolving capacities.

#### Non-discrimination and equity

Non-discrimination is key where differences are made between sexes. Such regulations are easy to identify and have repeatedly been criticised by the CRC.

One such example is the difference in legal marriageable age between men and women. From the data collected as part of the Youth Policy Fact Sheets<sup>14</sup> – snapshots of the legal and policy situation for young people - there is a difference in the marriageable age between men and women globally. For males, the average age at which a man may marry without parental consent is 18.38. For women, it is 17.86. Women under the age of 18 years are permitted to marry in 40 countries, whereas for men it is only allowed in 15 countries. While in 45 countries, the marriageable age for women is younger than that of men, in no cases is it the other way around.

More generally, the establishment of legal minimum ages in legislation may serve as “an important tool for equity.”<sup>15</sup> In a recent report for UNICEF Latin America and Caribbean, the author Vanessa Sedletzki argues,

*available evidence shows that adolescents in situations or at risk of exclusion are the most vulnerable to having their rights violated and be exposed to risky situations. Child marriage disproportionately affects adolescents in rural areas, including indigenous girls. Children most at risk of dropping out of school or entering to employment at an early age are those from the most marginalized backgrounds. Adolescents from disadvantaged backgrounds may be more vulnerable to sexual abuse and to sexual exploitation in exchange for gifts or out of pressure from peers and families. Similarly, children in contact with the justice system are disproportionately from excluded groups, typically because the justice system tends to be harsher on them.*

Setting non-discriminatory equal minimum ages thus has an important function in realising all adolescents’ rights. However, it is clear that this remains a principle that is not universally adopted.

<sup>13</sup> Sedletzki, V., 2016, Legal Minimum ages and the realisation of adolescents’ rights - **A review of the situation in Latin America and the Caribbean, UNICEF Latin America and Caribbean Regional Office**, [http://www.unicef.org/lac/20160406\\_UNICEF\\_Edades\\_Minima\\_Eng\(1\).pdf](http://www.unicef.org/lac/20160406_UNICEF_Edades_Minima_Eng(1).pdf), p.13.

<sup>14</sup> Youth Policy Labs, 2014, **Youth Policy Fact Sheets**, <http://www.youthpolicy.org/factsheets>

<sup>15</sup> Sedletzki, 2016, p.7.

### Best interests of the child: Protection versus autonomy

A key function of the Convention is to protect children and is therefore a major aspect of age-related legislation:

*The primary objective of setting minimum ages in legislation is to protect adolescents from harm. Legal minimum ages aim to protect adolescents from making choices and/or from taking responsibility for actions that they do not have the capacity to understand in their entirety and comprehend the full consequences. The rationale is not to limit the exercise of adolescents' rights, but to ensure that adolescents are protected from actions that can potentially impair the current or future realization of their rights. It is not about protecting society from adolescents, but about ensuring that adolescents can develop to their full potential in a protective environment. For this reason, it is essential that the process of setting minimum ages be adolescent-centred and focused on the best interests of adolescents.<sup>16</sup>*

The above citation from Sedletzki illustrates how strong the protection argument is in minimum age legislation. Hodgkin and Newell also call for minimum age legislation that serves protective purposes to be “set as high as possible (for example, protecting children from hazardous labour, criminalization, custodial sentences or involvement in armed conflict).”<sup>17</sup> The forthcoming General Comment specifically calls for a high minimum age of 18 years for marriage, recruitment into armed forces, hazardous or exploitative work, and sale of alcohol and tobacco.<sup>18</sup>

A protective approach can also aim to protect young people from harm by keeping them away from risky situations. Sedletzki claims that,

*minimum ages do not seek to restrict children's ability to exercise their rights. Rather, they aim to enhance their protection. They keep children from having to make choices which consequences they do not have the experience or capacity to fully understand, or for which they risk being taken advantage of due to uneven balance of power and authority.<sup>19</sup>*

Although the intention of protection is recognised as useful and in many instances needed, other organisations and authors, such as the Child Rights International Network (CRIN)<sup>20</sup> as well as Hodgkin and Newell<sup>21</sup>, point out that some minimum age legislation – while aiming for protection – can be obstacles for children to fully realise their rights:

*Some 'minimum age' issues relate both to increased autonomy and to protection. For example, the child's right to seek legal and medical counselling and to lodge complaints without parental consent, and to give testimony in court, may be crucial to protection from violence within the family.*

Hodgkin and Newell conclude that “[i]t is not in the child's interests that any minimum age should be defined for such purposes.” Hence, in cases where rights are primarily enabling or emancipatory, the authors suggest that fixed minimum ages may not be in the best interest of children. The forthcoming General Comment calls for no age barriers for access to medical advice and counselling.<sup>22</sup> Similarly CRIN calls for no minimum ages when it comes to the right to vote, access to justice, consent to non-therapeutic interventions, the right to choose one's religion, access to information on the bio-

<sup>16</sup> Sedletzki, 2016, p.11.

<sup>17</sup> Hodgkin, R. & Newell, P., 2007.

<sup>18</sup> United Nations Committee on the Rights of the Child, 2016, **Draft General Comment on the Implementation of the Rights of the Child during Adolescence**, CRC/GC/20, [http://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/1\\_Global/INT\\_CRC\\_INF\\_7964\\_E.doc](http://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/1_Global/INT_CRC_INF_7964_E.doc), Para. 44.

<sup>19</sup> Sedletzki, 2016, p.7.

<sup>20</sup> Child Rights International Network (CRIN), 2016, **Age is arbitrary - Discussion Paper on Setting Minimum Ages**, [https://www.crin.org/sites/default/files/discussion\\_paper\\_-\\_minimum\\_ages.pdf](https://www.crin.org/sites/default/files/discussion_paper_-_minimum_ages.pdf)

<sup>21</sup> Hodgkin R. and Newell, P., 2007.

<sup>22</sup> CRC/GC/20, 2016.

logical family, and access to sexual and reproductive health services.<sup>23</sup> But, the call for no minimum ages is not univocally shared in the child rights community.

An on-going argument is whether setting minimum ages should be aspirational or realistic. In an ideal world, where all families have sufficient resources and States provide quality education to all, the question of a relatively high minimum legal working age, for example, may be much less contested. Whereas today, where work is a reality for many children around the globe, it can – and is – argued that setting a high minimum age for admission to employment denies children access to labour protection and legal avenues to contribute to household income. This issue has been an area of contention during the debate on the draft General Comment.<sup>24</sup>

### Respecting views and evolving capacities of the child

Balancing the need for protection with autonomy in fixed minimum ages is complicated by the *evolving capacities* of children. The concept of evolving capacities is introduced in Art. 5 of the Convention:

*[D]irection and guidance, provided by parents or others with responsibility for the child, must take into account the capacities of the child to exercise rights on his or her own behalf. This principle – new in international law – has profound implications for the human rights of the child. It establishes that as children acquire enhanced competencies, there is a reduced need for direction and a greater capacity to take responsibility for decisions affecting their lives. The Convention recognises that children in different environments and cultures who are faced with diverse life experiences will acquire competencies at different ages, and their acquisition of competencies will vary according to circumstances. It also allows for*

*the fact that children’s capacities can differ according to the nature of the rights to be exercised. Children, therefore, require varying degrees of protection, participation and opportunity for autonomous decision-making in different contexts and across different areas of decision-making.*

Yet, minimum age legislation essentially relies on chronological, linear definitions of childhood and adolescence. Such chronological age definitions miss out on important differences in the individual development and experience of these phases in life<sup>25</sup>, which may be more adequately captured by relational or social definitions of age. For example, R. Huijsmans et al.<sup>26</sup>, who argue for a relational approach to age, point out that “chronological age is a form of ‘state simplification.’”

An additional critique towards the chronological age definition of children and young people is that “it reflects primarily western legal traditions and traditional psychological development discourses that imply universal and monolithic qualities of childhood and youth (...). In reality, the experiences of children and young people vary widely in relation to social, political and environmental conditions, and individual characteristics.”<sup>27</sup> Such a view hence questions the viability of global minimum ages from both an individual and a cultural perspective.

Based on the arguments of children’s evolving capacities and the need for states to respect children’s civil rights, Hodgkin and Newell call for “a more flexible system [than fixed legal minimum

<sup>23</sup> CRIN, 2016, p.3.

<sup>24</sup> CRC/GC/20, 2016.

<sup>25</sup> See e.g. UNICEF 2011, 8f c.o.

<sup>26</sup> Huijsmans, R., George, S., Gigengack, R., & Evers S., 2014, Theorising Age and Generation in Development: A Relational Approach, **European Journal of Development Research**, <http://dspace.uvu.vu.nl/bitstream/handle/1871/51268/Generationing%20Development%202014.pdf?sequence=1>, citing: Scott, J.C, 1998, *Seeing Like a State: How Certain Schemes to Improve the Human Condition Have Failed*, New Haven, London: Yale University Press.

<sup>27</sup> Clark-Kazak, C.R., 2008, Towards a Working Definition and Application of Social Age in International Development Studies, **Journal of Development Studies**, <http://www.tandfonline.com/doi/abs/10.1080/00220380902862952>, Vol 45, (8), P.1307-1324.

ages], sensitive to the needs of the individual child.”<sup>28</sup> Other forms of legal frameworks that respect children’s right to participate in decision-making according to their evolving capacities, while providing appropriate protection, are listed by Lansdown<sup>29</sup>:

- » Removal of all age-limits, substituting a framework of individual assessment to determine competence to exercise any particular right;
- » Presumption of competence, with the onus on adults to demonstrate incapacity in order to restrict a child’s rights<sup>30</sup>;
- » Providing age-limits but allowing a child to demonstrate competence and acquire the right at an earlier age;
- » Providing age-limits only for those rights that are at risk of being abused or neglected by adults and introducing a presumption of competence in respect of other rights.

However, the majority of age-related legal definitions still are fixed minimum ages.

One difficulty found as part of the research piece is that many laws which state that capacity tests apply, rarely outline how capacity is established. Additionally, in capacity tests, it is usually adults assessing the capacities of children. Hence, even when legislation includes a lower age than is typical but includes a capacity test, power remains vested in the adult decision-makers. Consequently, doing away with minimum age legislation altogether is contested – even among children’s rights advocates.

Besides capacity, consent is another frequently mentioned concept in minimum age legislation, both in the form of the child’s consent, as well as parental or judicial consent. This could include the

consent of the child in the cases of adoption, fostering or change of name and citizenship. Sedletzki argues that “the establishment of a minimum age to undertake certain acts or to be responsible for certain actions is the legal recognition of the child’s ability to consent – hence the validity of this consent.”<sup>31</sup>

In other fields, a child’s decision needs the consent of others – e.g. parents, guardians or judges:

*When considering the notion of consent in relation to minimum ages, one crucial question is whether someone else can give consent in the name of the child. While the Convention recognizes the right of children to be heard in all matters affecting them, it also acknowledges that others will make decisions on their behalf. As the child’s legal representatives, parents and legal guardians are entitled to take a number of actions on behalf of the child.*<sup>32</sup>

The right of parents to decide for their children is thus also acknowledged. Yet, Sedletzki cautions that such “exceptions to legal minimum ages providing for the possibility for others to give consent on behalf of the adolescent usually undermine the protection legal minimum ages provide. [...] The very requirement of parental consent may put children at risk, for example with respect to marriage and in relation to sexual and reproductive health.”<sup>33</sup> Transferring the consent from the child to parents weakens “the protection the law offers.”<sup>34</sup>

<sup>28</sup> Hodgkin R. and Newell, P., 2007.

<sup>29</sup> Lansdown, G., 2005, The evolving capacities of the Child, UNICEF & Save the Children, <https://www.unicef-irc.org/publications/pdf/evolving-eng.pdf>, **Innocenti Insight**, Florence, P.49.

<sup>30</sup> This form of regulation could often be found for petty dealings or limited economic autonomy of children, which was in general granted but could be restricted if parents or guardians showed that children lacked the capacity.

<sup>31</sup> Sedletzki, 2016, p.12.

<sup>32</sup> Sedletzki, 2016, p.12.

<sup>33</sup> Ibid.

<sup>34</sup> Ibid.

## 4 A renewed focus on minimum age legislation

The ages at which children and adolescents can claim rights, access services and independently make choices is receiving considerable attention and renewed impetus in 2016. This includes:

- » A study for UNICEF Latin America focussing on six minimum ages in all countries of the region;
- » UNICEF headquarters engaging in an in-depth study on HIV/AIDS related age barriers in a selected number of countries;
- » European Fundamental Rights Agency (FRA) commissioning its partners in FRANET to do an extensive review on the rights of children to protection and to participation in all European Union Member States;
- » CRIN has produced a policy paper on minimum age legislation, entitled “Age is Arbitrary”.<sup>35</sup>

The forthcoming General Comment on Adolescents will go further than the CRC and advocate for specific minimum ages in some areas, as well as the removal of minimum age limits entirely in others.

While discussions on minimum age legislation are underway and minimum age setting remains contested and challenged from a number of perspectives, it is also important to take stock of the ages at which they are currently set. The minimum-age research explored 70 age-related barriers across 6 domains in 22 countries and territories of the CEE/CIS region. The full findings will be published in a forthcoming report, however it is clear that across policy domains, minimum ages clearly show a lack in uniformity.

Minimum ages are riddled with exceptions, additions, and considerations. This makes it more complicated to fully understand, monitor, and improve the situation for children and adolescents – not least for them as individuals attempting to understand the laws for themselves. And yet, numerous child rights advocates lobby for less strict minimum ages in several domains, allowing for flexible mechanisms that take into account children’s

different capacities at a given age. Hence, not all exceptions and considerations are necessarily bad – but equally, some are also problematic for equity reasons.

A nuanced review of the minimum ages debate, in the light of the different principles of child rights – protection, participation, equity, evolving capacity – and including a greater degree of analysis (e.g. different modes by which capacity is established), are needed. The larger research piece that this literature reviews forms part of, as well as the initiatives by child rights organisations and in the publication of the forthcoming General Comment, are all examples of the renewed interest in age-related legislation – but they also highlight the general lack of awareness, understanding and complexity of exploring this field.

Future research needs to explore the reality for children, adolescents and youth – both where their rights may be violated, such as through early marriage, or where there are emancipatory practices below the legal age, such as doctors and NGOs providing contraception advice to young people unofficially. The next step of future research on age barriers should thus explore with children, adolescents and youth, how legal age barriers – together with customary, societal, political, psychological, or other barriers – discourage them from or enable them to realise their rights.

35 CRIN, 2016.

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