

AGE IS ARBITRARY: SETTING MINIMUM AGES

CRIN wants to encourage a new debate on setting minimum ages. This paper draws out some general principles and criteria to ensure consistent and adequate respect for children's rights in setting such ages.

Join the discussion

We recognise the complexities involved in determining issues of capacity and that discussions evolve over time. We intend to keep the positions set out in this paper under review. A number of individuals and organisations have already commented on this paper. Email comment@crin.org to join the debate.

We welcome

Feedback on this paper

Information about:

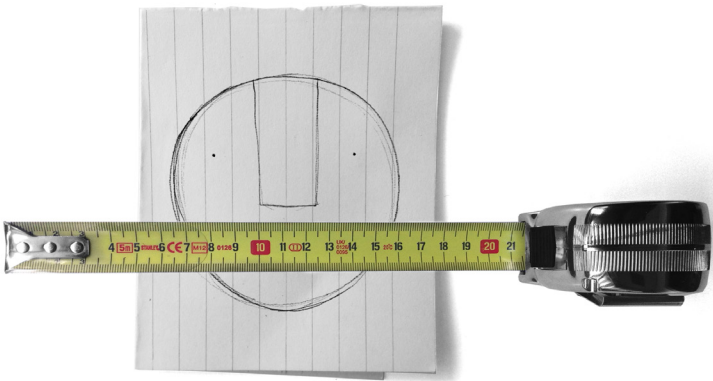
- relevant positive developments in state laws and policies
- case law
- case studies
- campaigns

CRIN believes that there are two justifications for setting minimum ages for specific purposes within the span of childhood (e.g. to get married, work). First: to provide children with a demonstrated need for protection from significant harm. Second: to provide a benchmark for presumed capacity, as without a minimum age the onus is always on the individual child to prove capacity. In some cases a system for determining capacity may be appropriate, but setting a minimum age in addition ensures that after that age children acquire an absolute right.

Minimum ages should, without exception, be consistent with all rights set out in the UN Convention on the Rights of the Child (CRC). This means that in areas where children's protection is at risk (e.g. in the justice system), all children under the age of 18 should be afforded special protection. Where minimum ages are necessary to correct for abuses of power (e.g. sexual consent), their enforcement should never run counter to children's rights. In areas where age restrictions serve no protective purpose and potentially curb children's development, freedoms, and even protection (e.g. the freedom to choose or leave a religion, access to complaints mechanisms), minimum ages should be avoided. Finally, where tensions are present between children's protection and autonomy (e.g. consent to medical treatment), children's capacity should be the deciding factor and should not be judged generally, but in relation to the issue at hand. This judgement should take into account the social and cultural norms in a given context, and the power imbalances at play in questions of consent.

It should be noted that policy decisions may sometimes be made for "children" as a whole rather than individual children. This means such decisions must cater both to those with more resilience - who may be the majority - and to those who are more vulnerable. Additionally barriers to protections and empowerments can be custom and practice-related rather than linked solely with minimum ages set in national law (e.g. informal, customary marriages) and therefore require attendant work on social norms.

The purpose of this paper is to draw out general principles, rather than cover an exhaustive list of issues. From these, we have devised criteria that can be used as a starting point for developing a position on other issues that may require a minimum age.



Criteria

Is a minimum age needed? Think about:

- The purpose (would a minimum age protect children or ensure their recognition as rights holders?)
- What other ways exist to achieve that purpose without resorting to age thresholds?
- What is the level of risk associated with the activity at hand?
- If protection is the objective, how effective is an age limit in achieving that protection?
- What is the potential for abuse of power by parents or others of not having an age threshold? (E.g. not having a minimum age for the end of compulsory learning could mean parents choose not to send their child to school and use them instead to help with chores.)
- Is a capacity assessment an option? If so, how and by whom could such an assessment be administered? (E.g. it would not be appropriate for a person selling cinema tickets to determine capacity.)
- What are the adverse consequences of not having a minimum age?

If yes:

- Is it in line with all other rights in the Convention?
- What age is most likely to achieve the purpose?
- Is this age in the child's best interests?
- Is the minimum age consistent with other laws and policies (or are these wrong)?
- How can a minimum age affect decision-making?
- Does this age discriminate against children on the ground of age?
- Will this age affect certain groups of children more than others?



Contents

Introduction - Page 3

The CRC and minimum ages - Page 4

A note on neuroscience and minimum ages - Page 4

What do we mean by capacity & free and informed consent? - Page 5

Specific issues - Page 6-24

Issues for which the minimum age should be 18

- Page 6-9

- Voluntary enlistment and conscription into armed forces; participation in hostilities
- Minimum age of criminal responsibility
- Hazardous labour (this is covered as part of admission to employment)

Issues for which there should be no minimum age

- Page 9-15

- Right to vote
- Access to justice
- Consent to non-therapeutic interventions
- Children's right to choose their own religion or no religion
- Access to information about a child's biological family
- Access to sexual and reproductive health services

Note: Access to information and advice about any issue should not have an age threshold, though this is covered as an aspect of various issues for the purposes of this paper.

Issues for which capacity and age should be considered

- Page 15-24

- Admission to employment
- Beginning and end of compulsory education
- Marriage
- Age of sexual consent
- Right to consent, or refuse consent, to medical treatment or surgery without parental consent
- Children's access to media and advertising (including the right to surrender personal data to third parties e.g. Facebook or to publish personal information about oneself, one's family or third parties)

Further resources - Page 25

Introduction

Article 1 of the UN Convention on the Rights of the Child (CRC) defines children as all human beings below the age of 18 "unless, under the law applicable to the child, majority is attained earlier" (in some countries majority is attained with marriage, military service or economic independence).

However, children face an array of minimum ages within this definition of childhood at which they are judged capable of making decisions for themselves or become subject to the same laws as adults in certain areas of their lives. The age at which children can get married or vote, for instance, or be dealt with in the criminal justice system, varies across and even within jurisdictions.

But simple age-based restrictions are not always the best approach. They rest on two general assumptions made by adults: first, that children lack the capacity to take responsibility for decisions about their lives and must therefore be protected; and second, that age limits are the best way to achieve that protection – even though childhood encompasses a wide range of skills and competencies. These assumptions not only ignore children's individual circumstances, in some cases they may in fact reduce a child's protection. For instance, what possible justification is there for setting any age threshold for children's right to lodge a complaint, or seek advice, without parental consent?

This raises the question of how else children's maturity to make decisions can be determined. While there is no "one-size fits all" answer, CRIN believes that the setting of minimum ages for specific purposes within the span of childhood should be consistent with all the rights guaranteed by the CRC. This means that in areas where children's protection is at risk (e.g. hazardous work), all children under the age of 18 should be afforded special protection. This is in line with the Convention's requirement that the child's best interests must be a primary consideration, of non-discrimination, and the child's right to maximum possible development (art. 6). A minimum age is also necessary for recognition of children's rights to guard against the possibility that their capacity will be denied arbitrarily. In areas where age restrictions serve no protective purpose and potentially curb children's development and civil rights (e.g. freedom to choose, practise or leave a religion, access to complaints mechanisms), minimum ages should be abandoned. Where some age boundary is necessary, its enforcement should not run counter to children's rights, such as the right to non-discrimination (art. 2), best interests (art. 3), respect for their evolving capacities (art. 5) and their right to be heard (art. 12), and instead consider their capacity in relation to the specific issue at hand, with all the complexities that this entails.

The CRC and minimum ages

The Convention on the Rights of the Child gives succour to this approach. It is resolute on the setting of minimum ages for certain issues, for instance it prohibits capital punishment and life imprisonment without the possibility of release for all under-18s (article 37).

Conversely, the Committee has asserted that all children must enjoy access to complaints mechanisms.¹

Nowhere does it say that this should be age-dependent.

On other issues the CRC requires States to set minimum ages themselves e.g. for admission to employment (article 32) and a minimum age below which children shall be presumed not to have the capacity to infringe the penal law (article 40). Article 28 alludes to the need to set a minimum age for the end of compulsory education. Although the Committee leaves States to determine these, it insists that they align with the basic principles of the Convention and be consistent within themselves. For example, the minimum age for admission to employment should not undermine that for the completion of compulsory education. It also bars discrimination so, for example the minimum age of marriage must be the same for males and females, and regardless of sexual orientation (art. 2).

In areas involving both protection and autonomy – such as consent to medical treatment, the Committee recommends a more flexible case-by-case approach on the basis of article 5 which recognises children’s evolving capacities and rejects arbitrary age restrictions. This states that parents or legal guardians “shall respect the responsibilities, rights and duties... to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognised in the present Convention”.

This does not mean that children’s rights depend on the ability to exercise these rights on their own behalf, or on legal age limits. It is simply about whether children themselves can exercise those rights or whether this responsibility is undertaken on their behalf by parents or other carers. In all cases, the child’s best interests should be at the forefront of decision-making.

This idea is bolstered by article 12, which recognises the value of a child’s views and the obligation to give them weight in accordance with the age and maturity of the child – including in determining whether children have the capacity to make decisions about their own lives.

A note on neuroscience and minimum ages

Neuroscience is increasingly used to bolster arguments about when children acquire the competence to make certain decisions. Neuroscience does not point to definitive age boundaries in brain development, but it provides insight. Psychologist Laurence Steinberg² has put forward the concept of “hot” and “cold” cognition, based on what neuroscience tells us about changes undergone in the prefrontal cortex of the brain which usually occur for the first 20 years of life. “Cold cognition” refers to the fact that cognitive development is very rapid during adolescence, meaning at this stage of life, judgement in making decisions where this can be done at a measured pace and where consultation with others is possible (for instance voting³), matches the maturity attained in adulthood. Emotional development, on the other hand, occurs later, so decisions taken by adolescents in the face of time or peer pressure are unlikely to be as mature as those made by adults, such as whether to drive while under the influence of alcohol (“hot cognition”).

While this information supports the positions set out in this paper, science should not be a gateway to human rights - human rights principles must come first.



2 Steinberg, L., “Cognitive and affective development in adolescents”, in Trends in cognitive science, February 2005, Volume 9, Issue 2, p. 69-74.

3 Steinberg, L., “Let science decide the voting age”, New Scientist, 14 October 2014. Available at: <https://www.newscientist.com/article/mg22429900.200-let-science-decide-the-voting-age/>.

1 CRC General Comment No.5 (2003) on general measures of implementation, CRC/GC/2003/5, para. 24.

What do we mean by capacity & free and informed consent?

There is a presumption of capacity in adulthood and a presumption of incapacity in childhood. That is why the setting of minimum ages is the dominant way of determining when people acquire the capacity to make certain decisions. However, it is clearly harder to prove competence than incompetence, and age is an arbitrary way of determining capacity.

In addition, there is increasing recognition that considering a range of factors, such as experience, ability and context is a more sensitive indicator of capacity than a person's age. For example a child who has been through years of medical treatment is likely to understand better than any adult the consequences of their decisions in this area of their lives. For instance, many children with chronic medical conditions comply with a life-long regime of medication or a strict diet, including in their parents' absence.

The Scarman guidelines which arose from the case of *Gillick v West Norfolk 1982* are often used as a model because they define competence. They are based on the 1982 case in England in which Mrs Victoria Gillick took her local health authority and the Department of Health and Social Security to court in an attempt to stop doctors from giving contraceptive advice or treatment to under 16-year-olds without parental consent.

The Scarman guidelines, which are used for medical decision-making beyond the issue of contraception, state that "As a matter of law the parental right to determine whether or not their minor child below the age of 16 will have medical treatment terminates if and when the child achieves sufficient understanding and intelligence to understand fully what is proposed [and has] sufficient discretion to enable him or her to make a wise choice in his or her own interests."⁴

Although the CRC supports children's right to influence decisions made for them by adults, the *Gillick* case respects children's right to be the main decision maker. The ruling does not specify an age.⁵

Other cases have since undermined this standard (not to consent, but to refuse consent to medical treatment), e.g.

- *Re R 1991*: a 15 yr old girl who refused anti-psychotic medication
- *Re W 1992*: a 16 yr old girl with anorexia who refused to move to a new unit.

Social and cultural norms and the power dynamics these involve are another major determinant of how a law plays out in practice, and create a problem for establishing to what extent a choice can be said to be free and informed.

For example, a low minimum age of marriage in a society where marriage among young people is not actively encouraged and they have the possibility of leaving the marriage has very different implications for children compared with a low age of marriage in a society where children are pressured by their parents and society into marriage and where they lack information and opportunities to resist such pressure. Choice depends on the right to information, understanding and respect.

Capacity is therefore not just an innate state; it depends on external circumstances which can encourage or inhibit a child's autonomy. For example, on adults' willingness to respect children's views and encourage the development of capacity by recognising children's capacity to make rational decisions, ensuring their right to quality education, and allowing them to make mistakes (as adults often do!).

These should depend on the criteria listed in this paper (the level of risk involved, and possibility of getting out of a situation, etc.). After all, children often display very sophisticated decision-making abilities, for example when dealing with a bully at school or an abusive parent.

It is also important to assess the competencies of those who are requesting consent. Are they sufficiently able to understand all the relevant information; to explain all the issues clearly; to support children and their parents in making decisions; and to respect their decisions, without putting pressure on them?

The onus is on adults to find ways of learning children's views, which extends to all children, including those who are very young and children with disabilities - through visual, or other non-verbal communication - by whatever means.⁶

Take for example the case of a six-year-old girl in the UK who accepted two liver transplants, but refused a third - not verbally, but through her body language and refusal to eat and drink. Her doctors and parents accepted this indication given the child's history and the two percent chance of success.⁷

⁴ *Gillick*, [1985], 2 WLR 480.

⁵ Age of Legal Capacity (Scotland) Act, s 2 (4) 1991.

⁶ The Committee on the Rights of the Child asserts the importance of respecting young children's evolving capacities in its General Comment No. 7 (2005) Implementing child rights in early childhood, para. 17.

⁷ Alderson, P., "Competent children? Minors' consent to healthcare, treatment and researchm Social Science and Medicine", 2007, p.7

Specific Issues

The positions set out below illustrate CRIN's evolving approach to minimum ages. While these focus on issues that are in particular need of clarification, the principles can be applied to all issues.

Issues for which the minimum age should unequivocally be 18

Voluntary enlistment and conscription into armed forces; participation in hostilities

The issue: The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (OPAC) is clear that under-18s should never be compulsorily recruited into the armed forces or able to participate directly in hostilities.⁸

It also prohibits the recruitment or use of under-18s by non-state armed groups.⁹ But international standards are less distinct on voluntary enlistment into a State's armed forces. In States where voluntary enlistment of under-18s continues to be legal, they are often recruited into supporting roles, rather than to participate directly in hostilities. However, even where children are not placed directly in the line of fire, they are still vulnerable to attack by opposing forces as, under international humanitarian law, all members of armed forces are regarded as legitimate military targets - whether aged 16 or 40, and whether they are on active duty or in training.¹⁰

In addition, the definition of direct participation in hostilities and its distinction from indirect participation is not set out in the OPAC, which means some States have interpreted these terms narrowly.¹¹ In any event, the rapidly evolving nature of conflict means that the boundaries between direct and indirect participation can collapse at any time. Similarly, where military schools are established (children in these schools may or may not be classified as civilians), there is no guarantee that children will not be drafted into hostilities in crisis situations.¹²

Data (including from military sources) from countries where children continue to be recruited for frontline roles (even if they are not routinely sent to war until they are 18), such as the UK, also suggest that the youngest and most disadvantaged recruits are at greater risk of long-term mental and physical health problems. These include the risk of death and maiming, as well as bullying, self-harm and sexual harassment while in the armed forces.¹³ In addition, the terms of enlistment in some instances disadvantage young recruits, for example by requiring them to serve for longer periods than those who join as adults.¹⁴

But even where the legal minimum age for voluntary enlistment is set at 18, in practice children below this age may still be recruited, because of challenges presented by low rates of birth registration,¹⁵ corrupt or informal recruitment practices, or a lack of oversight.

And, as stressed in the OPAC (art. 4), a State's armed forces are just one element of a State's military apparatus, but their obligations extend to scrutinising the recruitment practices of allied forces, such as paramilitary groups and intelligence services - many of which continue to use children.¹⁶

What the CRC says: The Optional Protocol to the CRC on the involvement of children in armed conflict (OPAC) establishes 18 as the minimum age at which an individual can be conscripted¹⁷ into a State's armed forces or participate directly in hostilities (article 2). The recruitment or use of under-18s by non-state armed groups is prohibited altogether.¹⁸ The minimum age for voluntary enlistment is 16 - raising by one year the minimum age of 15 set out in the Convention (article 3.1). However, a "straight-18" ban was supported by many government representatives, NGOs and the International Committee of the Red Cross during the drafting process

8 Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, article 2.

9 Ibid, art. 4.

10 See treaties referring to the Principle of Distinction between civilians and combatants on the website of the International Committee of the Red Cross: https://www.icrc.org/customary-ihl/eng/docs/v2_rul_rule1

11 According to Child Soldiers International, the United States has adopted a narrow interpretation of "direct participation" which excludes activities "such as gathering and transmitting military information, transporting weapons, munitions, or other supplies, or forward deployment..." Child Soldiers International, *Louder than Words*, September 2012, p. 47.

12 The Committee on the Rights of the Child has expressed concern to Mexico that "students in military schools have taken part in the fight against drug trafficking, by participating in the search for and destroying of illegal drugs, which seriously jeopardizes the rights and lives of children. The Committee is concerned that military schools are managed solely by the Ministry of Defence." CRC concluding observations to Mexico under the Optional Protocol, CRC/C/OPAC/MEX/CO/1, April 2011, para. 17.

13 Child Soldiers International, "Support us to raise the UK military recruitment age from 16 to 18 years", 24 April 2013. Available at: http://child-soldiers.org/news_reader.php?id=758.

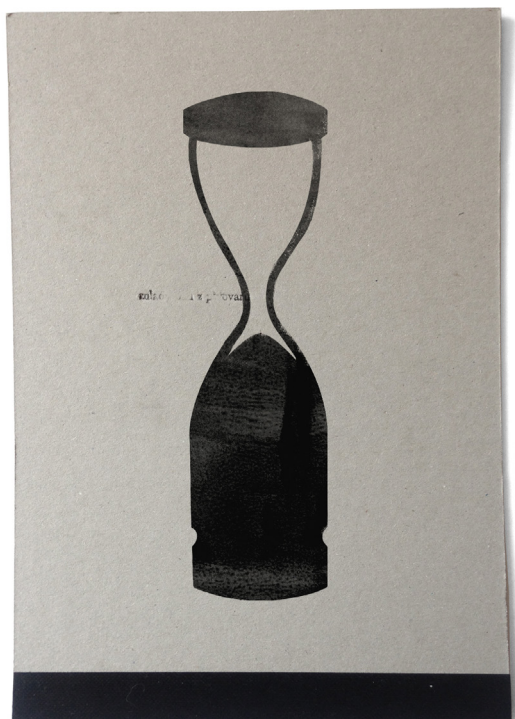
14 In the UK, the enlistment terms for minors who join the army require that they serve for longer than adults. They may be discharged before they turn 18 (the minimum age to join up is 16), but after that period they must serve until they are 22. So, a 16-year-old must serve 6 years, and a 17-year-old 5 years, whereas the minimum period an adult must serve is 4 years. ForcesWatch, "Stop recruitment at 16 petition", Available at: <http://www.forceswatch.net/content/stop-recruitment-16-petition>.

15 See, for example, the CRC's concluding observations on Uganda's initial report under the Optional Protocol to the CRC on the involvement of children in armed conflict, CRC/C/OPAC/UGA/CO/1, October 2008, para. 16.

16 Examples include paramilitary groups in Colombia: <https://www.crin.org/en/library/publications/armed-conflict-highlight-colombia> and the Arab Janjaweed militia in Sudan: <https://www.hrw.org/sites/default/files/features/darfur/fiveyearson/report4.html>.

17 A minority of States continue to conscript children, including Cuba and the United Arab Emirates. See CRIN, *Children's Rights and the UN Human Rights Committee: An analysis*, July 2015, p. 32.

18 Ibid, art. 4. This also says that States parties have a responsibility to "take all feasible measures to prevent such recruitment and use, including the adoption of legal measures necessary to prohibit and criminalize such practices."



of the OPAC.¹⁹ This position was defeated by a minority of States whose national laws and practices permitted recruitment of under-18s.²⁰ Nevertheless, in its concluding observations, the Committee consistently urges States to raise the minimum age of voluntary enlistment to 18²¹ and best practice by States shows a clear trend in this direction.²² Recruitment of children into the armed forces also fulfils the criteria to qualify as one of the worst forms of child labour prohibited under International Labour Convention 182.

CRIN believes that: Military recruitment of children - whether voluntary or compulsory - violates their human rights, including respect for their best interests (art. 3), their right to the maximum possible development (art. 6), the highest attainable standard of health (art. 24), protection from violence (art. 19) and protection in armed conflict (art. 38). Children may have powerful motivations for wanting to join the army, for instance, because they have seen their friends or relatives sexually attacked or killed, or because of risk factors such as displacement and their socio-economic circumstances. However, the State should never expect and train a child to kill and carry the psychological burden that such violence

entails by recruiting them into their armed forces, even if direct participation in hostilities is reserved until they reach adulthood.

If the aim is to protect children, the distinction between supporting and front line roles should be abandoned given the fact that all members of the armed forces - regardless of their role - are legitimate military targets under international humanitarian law.²³ Furthermore, the extent to which enlistment can be described as voluntary when some armies target children through misleading marketing materials²⁴ and data collected by schools,²⁵ including about a student's ethnicity and special educational needs, is questionable. This violates OPAC's requirement that recruitment is genuinely voluntary (article 3. 3(a)).

Information obtained from the UK's Ministry of Defence, for example, asserts that 74 percent of the youngest army recruits joining the main army training course in March 2015 were assessed as having the literacy skills expected of an 11-year-old or younger; seven percent had a reading age as low as five.²⁶ This means they are being legally bound to serve without having understood the enlistment paper, unless it is fully explained and discussed. There is a "safeguard" that parents should be involved in the recruitment process, but there is no requirement that the recruiters and child's parents should have direct contact,²⁷ and this policy does not factor in the possibility of parental abuse.

Even if a reasonable process were in place to seek informed consent, the purpose of military training is to overcome human beings' innate inhibition to killing through psychological conditioning - surely at odds with CRC article 29d. that children should be prepared for "a responsible life in a free society, in the spirit of understanding, peace, tolerance..."

23 This is supported by the case against Thomas Lubanga Dyilo at the International Criminal Court (ICC), which in March 2012 ruled that active participation in hostilities encompasses more activities than those generally covered under participation in hostilities. The ICC's verdict against Lubanga was the first ever on the war crime of enlisting and conscripting children under 15. Lubanga was found guilty of recruiting children into the Forces patriotiques pour la libération du Congo (FPLC) amid armed conflict in the Ituri region of the DRC between 2002 and 2003. He now faces a maximum sentence of life imprisonment. See CRIN's case summary: <https://www.crin.org/en/library/legal-database/situation-democratic-republic-congo-prosecutor-v-lubanga-dyilo>.

24 See for example British army website "Camouflage" aimed at 12-17-year-olds. Available at: <http://www.army.mod.uk/camouflage/>.

25 Vice, "How the [US] Military Collects Data on Millions of High School Students", 24 April 2014. Available at: <http://www.vice.com/read/how-the-military-collects-data-on-millions-of-high-school-students>
ForcesWatch "Targeted messaging" in schools about armed forces careers not for the 'well-being' of students", 5 June 2015. Available at: <http://www.forceswatch.net/blog/targeted-messaging-schools-about-armed-forces-careers-not-well-being-students-0>.

26 74% of recruits were assessed to have literacy skills at Entry Level 3 (equivalent to a reading age of a 9-11 year old); 7% were assessed at Entry Level 1 (equivalent to a 5-7 year old). Information obtained by Child Soldiers International under the Freedom of Information Act, Ref. FOI2015/03426, 21 April 2015. Available at: http://child-soldiers.org/research_report_reader.php?id=822.

27 G. David, Informed Choice? Armed forces recruitment practice in the United Kingdom, November 2007, p.9. Available at: https://www.essex.ac.uk/armedcon/story_id/000733.pdf.

19 See reports of the working group to draft the OPAC: E/CN.4/1995/96, 10 February 1995; E/CN.4/1996/102, 21 March 1996; E/CN.4/1997/96, 13 March 1997; E/CN.4/1998/102, 23 March 1998; E/CN.4/1999/73, 24 March 1999; E/CN.4/2000/74, 27 March 2000.

20 Ibid.

21 See the CRC's concluding observations on the initial reports under OPAC of Israel, CRC/C/OPAC/ISR/CO/1, 2010, para 11; Chile, CRC/C/OPAC/CHL/CO/1, 2008, para. 16; Germany, CRC/C/OPAC/DEU/CO/1, 2008, para. 11.

22 Child Soldiers International, *Louder than Words*, 2012, pp. 125-126.

Setting a legal minimum age of 18 for recruitment and deployment is just the first step towards guaranteeing children's rights in conflict. This must be combined with the implementation of strong standards on the way the recruitment process is designed, carried out and overseen, and the development of guarantees in all areas of children's rights - the only long-term way to guard against the recruitment of children should a conflict break out or resume in a country currently at peace.

To clarify CRIN's position on this subject in relation to other issues: CRIN supports children's right to join protest movements, such as the Soweto uprising, and the freedom to articulate their views. This is different to a State's deliberate recruitment of children for the purpose of killing.

In relation to other life-or-death situations, for example a situation in which a terminally ill child wishes to undergo euthanasia, the latter concerns an individual child's own life and is a decision based on their own choice with the knowledge that they have about their circumstances and condition. It can also be based on an individual capacity assessment carried out by a medical professional, according to a child's best interests.²⁸

States in which 17 year olds can enlist in the armed forces²⁹

Algeria, Australia, Austria, Azerbaijan, Bolivia, Brunei, Cape Verde, Chile, China, Cuba, Cyprus, France, Germany, Ireland, Israel, Jamaica, Lebanon, Malaysia, Malta, Netherlands, New Zealand, the Philippines, Sao Tome and Principe, Saudi Arabia, and the USA.

States which continue to permit the voluntary recruitment at the lower age of 16 years³⁰

Bangladesh, Brazil, Canada, Egypt, El Salvador, India, Iran, Jordan, Mauritania, Mexico, Pakistan (with exception of aero-technicians, see below), Papua New Guinea, Singapore, Tonga, Trinidad and Tobago, the United Kingdom, and Zambia. In a few states there is no minimum age or it has been set below 16 years. Such states include Barbados, Guinea Bissau, Guyana, Pakistan (aero-technicians only), and the Seychelles.

Minimum age of criminal responsibility

The issue: The minimum age of criminal responsibility (MACR) means the age below which a person cannot be charged with an offence and processed in the criminal justice system. However, in practice, the definition of the age of criminal responsibility is often blurred. This is because many States establish such an age, but then make exceptions e.g. for more serious crimes, or for situations where children are involved in these kinds of offences with adults. Indeed, evidence suggests that a number of States in all regions are criminalising more and younger children.³¹ But even where a MACR is in place States can establish a separate juvenile justice system below the MACR which allows punitive sentencing including custody. Worse still, in some States the age of criminal majority (the age at which children are treated as adults, tried in adult courts and put in adult prisons) remains below 18 years.

What the CRC says: CRC article 40(3)(a) requires "the establishment of an age below which children shall be presumed not to have the capacity to infringe the penal law". While the Convention does not state explicitly at what age this should be set, in its General Comment No. 10 on Children's rights in juvenile justice, the Committee urges States not to set this age at too low a level and to continue to raise the age to an internationally acceptable level, and that a minimum age below the age of 12 years is not considered...to be internationally acceptable.³² It has consistently urged States to raise this age³³ and criticised any State which has lowered its minimum age of criminal responsibility, whatever the lower age.³⁴ In addition, the Committee has consistently made clear to States in its recommendations that under-18s should never be tried as adults.³⁵ (The Convention is also explicit about the kind of treatment all children are entitled to receive in the justice system.)

CRIN believes that: We need to move beyond the idea of minimum ages, protect children from the negative process of criminalisation, and separate it from the concept of responsibility. Any juvenile justice system should be purely directed at rehabilitation and reintegration - and this should apply to all under-18s, not just to some. This position is in line with that of Thomas Hammarberg as former Commissioner for Human

28 CRIN, "Belgium: Age restrictions lifted on euthanasia", 13 February 2014. Available at: <https://www.crin.org/en/library/publications/belgium-age-restrictions-lifted-euthanasia>.

29 Child Soldiers International: http://www.child-soldiers.org/theme_reader.php?id=1.

30 Ibid.

31 CRIN, "States lowering age of criminal responsibility". Available at: <https://www.crin.org/en/home/what-we-do/policy/stop-making-children-criminals/states-lowering-age-criminal-responsibility>.

32 CRC/C/GC/10, para. 30.

33 See concluding observations on Singapore's second and third periodic report, CRC/C/SGP/CO/2-3, 2011, paras. 21 and 22.

34 See, for example, concluding observations on the fourth periodic report of Denmark, CRC/C/DNK/CO/4, 2011, paras. 65 and 66.

35 See concluding observations on Belgium's third and fourth periodic report, CRC/C/BEL/CO/3-4, June 2010, paras. 82 and 83.

Rights of the Council of Europe³⁶ and Paulo Pinheiro³⁷ in a report published in his role as Special Rapporteur on the rights of the child for the Inter-American Commission on Human Rights. Both assert that the only justification for the detention of a child should be that the child has been assessed as posing a serious risk to public safety. No child should ever be treated as an adult in the justice system. Even in extreme cases, children should not be detained in penal settings. This runs contrary to CRC article 3 establishing that the child's best interests must be a primary consideration and the child's right to maximum possible development (art. 6). The rights contained in the Convention on the Rights of the Child extend to all human beings below the age of 18. For more information, read our policy paper Stop making children criminals.³⁸

Issues for which there should be no minimum age

Right to vote

The issue: No country in the world allows under-16s to vote in national elections and only a minority allow suffrage to children aged between 16 and 18 in national or municipal elections, some with conditions such as being employed or married.³⁹

What the CRC says: The Committee on the Rights of the Child has yet to develop a position on the voting age. It has, however, commended States for lowering their voting age from 18 to 16⁴⁰ and has consistently emphasised the importance of children's involvement in democratic processes, for instance through children's parliaments.⁴¹

CRIN believes that: The fact that children are excluded from political processes which wield influence over elected representatives, including the vote, is a major reason why their rights continue to be unfulfilled. There is no protective reason for depriving children of the right to vote; on the contrary, it can encourage interest in the world around them and enhance their capacities.

Individuals should be allowed to vote as and when they choose to do so and are able to register for voting. Such a

method would eliminate the use of arbitrary age restrictions which ignore the wide range of skills and competencies possessed by different children. This should be done by increasing the opportunities for young people to register to vote through schools, at local authority level and through other institutions to ensure all children are included. In this connection, schools and other educational bodies should promote active citizenship education on democracy and politics.

Democracy requires that everyone should have a voice in making the decisions that govern their lives if they choose to do so - and that includes children. Children's parliaments and other organisations aimed at involving children in democratic processes are important but should not divert from the right to vote. While it is true that the electoral preferences of parents form a powerful influence on children's voting patterns, this is the case whether we are 10, 20, 50 or 80 years of age. In short, the arguments about capacity and judgement that are used to deny children the vote today are the same as those used to deny women the vote in the past (and present in some places), as well as people from racial and ethnic minorities.

Access to justice

The issue: Because of their lack of independence and full legal status, children often face many obstacles to accessing justice for violations of their rights. In most countries, children lack legal standing - that is, they are prevented by law from bringing court cases by themselves, and are required to bring or participate in legal proceedings through a representative such as a parent, guardian or other legal representative. Often there is no requirement for this adult representative to act in the child's best interests. In some countries, parental consent is required before proceedings can be brought on behalf of a child, so a parent or guardian can prevent their child from bringing a case altogether.

Another common obstacle to access to justice is having complaints barred due to the operation of statutes of limitations - that is, the laws that set out how soon after an event a particular kind of lawsuit must be brought. Statutes of limitations may include a section dedicated specifically to limitation periods as they apply to children, or children may also fall under a provision on disability as they are not considered full legal persons. Statutes of limitations in many countries begin to run as soon as the child's rights have been violated, despite the fact that the child is prevented by law from bringing legal proceedings. This means that lawsuits can be time-barred before the child becomes an adult.

Even if a case is brought on behalf of a child, some countries set a minimum age under which children cannot give evidence in court proceedings, therefore child victims and wit-

36 Thomas Hammarberg, former Commissioner for Human Rights at the Council of Europe, "Children should not be treated as criminals", 2 February 2009. Available at: http://www.coe.int/t/commissioner/Viewpoints/publication2009_EN.pdf.

37 Paulo Pinheiro highlighted the incompatibility of asserting an arbitrary age under 18 "with the right to non-discrimination enshrined in article 2 of the CRC and the principle of the best interests of the child contained in article 3".

38 CRIN, "Stop Making Children Criminals", January 2013. Available at: <https://www.crin.org/en/node/31378>

39 CRIN, "Countries where under-18s can vote": <https://www.crin.org/en/library/publications/right-vote-countries-where-under-18s-can-vote>.

40 See concluding observations for Nicaragua, CRC/C/NIC/CO/4, 2010, para. 43.

41 E.g. concluding observations for Slovenia's third and fourth periodic reports, CRC/C/SVN/CO/3-4 (CRC, 2013), para 32, and for Burkina Faso CRC/C/BFA/CO/3-4 (CRC, 2010).

nesses are denied an opportunity to be heard in proceedings that concern them.

What the CRC says: In the words of the Committee on the Rights of the Child, “for rights to have meaning, effective remedies must be available to redress violations”. States must therefore “ensur[e] that there are effective, child-sensitive procedures available to children and their representatives”. Most importantly, this means ensuring that children have meaningful access to the judicial system - including “access to a readily available, prompt and effective remedy in the form of criminal, civil, administrative or disciplinary proceedings” - and any other independent complaints procedures.

Article 12 of the CRC grants children the right be heard in any judicial and administrative proceedings affecting them either directly or through a representative. The Committee on the Rights of the Child recommends that children be given the opportunity to be directly heard in any proceedings that affect them. In no circumstances should there be age restrictions for giving evidence, as “even the youngest children are entitled to express their views”.

CRIN believes that: Children should be permitted to bring cases in any and all courts by themselves and in their own names. If the child wishes, a parent, guardian, lawyer or other suitable professional should be appointed to represent him or her in court proceedings. Importantly, a child’s chosen or appointed representative must act on the child’s views and in the child’s best interests, and not pose a conflict of interest that would interfere with his or her duties to the child. In general, there should be no limits on children or their legal representatives bringing cases to challenge violations of their rights, including no requirement for children to obtain the consent of their parent or guardian before pursuing legal action. Not only should children be able to claim compensation for harm suffered, but they must also be able to challenge laws, policies and public actions that violate or threaten to violate their rights. Children should be able both to initiate new proceedings seeking redress and to raise violations of their rights before the courts where the legal system mandates their involvement in proceedings as a victim, witness, defendant or otherwise.

Children should be permitted to bring complaints at any point after violations of their rights have occurred. However, the usual required time periods by which to do so (statutes of limitations) should not begin running until children have reached adulthood. This is especially critical if children lack legal standing to bring cases themselves. In accordance with the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, statutes of limitations should not

apply at all to serious violations of international human rights law. For other rights violations, time limitations should not be unduly restrictive.

Judicial proceedings should be designed to ensure that children’s right to be heard and other procedural rights are guaranteed, and that children are not prevented from giving evidence. Children should not be required to swear an oath where they do not understand the consequences of this, and should be permitted to give unsworn evidence so long as they can understand the importance of telling the truth. Children giving evidence should be offered legal assistance as required or be accompanied by a support person to help reduce anxiety and stress. Because children may be intimidated in their interactions with the legal system and have difficulty expressing themselves in formal, adversarial environments, States should also adopt child-sensitive procedures to fully facilitate children’s participation in all aspects of judicial proceedings. States must also ensure the privacy of children who give evidence in legal proceedings.

Legal standing and providing evidence in court

Most countries enshrine a general rule that children lack the standing to approach courts by themselves and require children to do so through a representative. This representative might be the child’s parent, litigation guardian, guardian ad litem or ‘next friend who instructs lawyers and makes decisions about how to proceed in court.⁴² Approaches among States vary as to how and when this representation is required. The simplest provisions often impose a blanket requirement that everyone under a certain age be represented in order to be heard in court. Reflecting the internationally agreed definition of a child, this age will usually be 18, but some countries have set a higher age, for example 21 in Liberia,⁴³ while Paraguay sets the age at 20,⁴⁴ though it can be reduced to 18 with parental consent. Other countries adopt a more graduated approach, granting children greater standing before the court as they get older and approach the age of majority.

Failing to secure the possibility for children to provide evidence in court, should they wish to do so, violates their right to participation and is contrary to their best interests. Though children should be allowed to give evidence in all types of proceedings if they would like to, regardless of their age,

⁴² Lebanon is an interesting exception to the rule that children must approach the courts through a representative, in that it permits courts to respond to complaints brought by a child of any age and regardless of whether the child makes the complaint orally, in writing or even by phone. For more information see CRIN’s Access to Justice report for Lebanon, March 2015. Available at: <https://www.crin.org/en/node/41093/>

⁴³ Liberian Code of Laws Revised, Title I - Civil Procedure Law, § 5.12.

⁴⁴ Civil Code, Article 36.

almost a quarter of States fall short of this standard, either by imposing a minimum age for appearing as a witness or attaching limited weight to the testimony provided by children. At the most restrictive end of the spectrum, Lao PDR prevents all children from giving evidence in court,⁴⁵ while Kosovo has adopted a less severe rule, preventing children under the age of 14 being called to testify unless it is “necessary to solve a case”.⁴⁶

Just under half of all States allow children to give evidence without taking an oath in certain circumstances and without being liable to any penalty for giving false evidence. However, the ability to give unsworn evidence is usually reserved for younger children, under the age of 12 in Pakistan.⁴⁷ Children in Kosovo⁴⁸ and Dominica⁴⁹ are never required to take the oath as a result of having reached a particular age.

Read more in CRIN, Rights, Remedies and Representation: Global report on access to justice for children, January 2016. Available at: https://www.crin.org/sites/default/files/crin_a2j_global_report_final_1.pdf

Consent to non-therapeutic interventions

The issue: Beyond medical interventions, children are vulnerable to non-therapeutic practices that amount to violations of their bodily integrity if they are carried out on people at an age when they are unable to give or refuse consent themselves. These may range from ear piercing to female genital mutilation, non-medical male circumcision, “corrective” surgery performed on intersex children, and sterilisation of people with learning disabilities. Cases are complicated when non-therapeutic or cosmetic surgery in one person’s view is much-needed treatment that will transform quality of life in another’s. Examples include leg-lengthening to increase the height of very short children, repeated facial or spinal surgery to correct deformities and aim towards a ‘normal’ appearance.⁵⁰

What the CRC says: Under article 12 of the Convention, children have the right to express their views and opinions freely, and for these opinions to be taken into account in all

matters affecting them, according to their age and maturity. Non-therapeutic procedures should only ever be carried out with the child’s consent. In this connection, the Committee on the Rights of the Child has condemned the use of religion as a justification for overruling the child’s right to refuse consent to practices that affect their physical integrity, through a negative interpretation of children’s best interests, both in its General Comment No.14 on best interests⁵¹ and General Comment No.8 on the right of the child to protection from corporal punishment.⁵²

The CRC addresses parents’ roles in relation to religion and their children in article 14.2: States must ensure respect for children’s freedom of thought, conscience and religion; and respect parents’ rights and duties “to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child”.

Forcing a child to undergo non-therapeutic processes which affect their physical integrity also raises questions around the rights to survival and development (art. 6), to protection from violence (art. 19) and to the highest attainable standard of health (art. 24).

On specific issues, during its review of Switzerland in February 2015, the Committee asserted for the first time that non-consensual intersex surgeries violate physical integrity and constitute a harmful practice.⁵³

On male circumcision, the Committee urged Israel to conduct a study into “reported short and long-term complications arising from some traditional male circumcision practices”.⁵⁴

CRIN believes that: Practices which interfere with children’s physical integrity, when carried out for no therapeutic reason and without the child’s free and informed consent - regardless of age - are a violation of the child’s physical integrity



45 Code of Civil Procedure, Article 30; Code of Criminal Procedure, Article 32. Second periodic report of Lao PDR to the UN Committee on the Rights of the Child, CRC/C/LAO/2, 10 August 2010, para. 25.

46 Law on Contested Procedure, Article 339.

47 Oaths Act 1873, Section 5.

48 Criminal Procedure Code, Article 340.

49 Children and Young Persons Act, Section 28(1). The oath can only be taken by a person that understands the nature of the oath, any child who does not is able to give evidence without doing so.

50 Parens, E. (ed.) Surgically shaping children: technology, ethics and the pursuit of normality, April 2008. Baltimore: Johns Hopkins University Press.

51 CRC General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), CRC/C/GC/14, para. 4.

52 CRC General Comment No. 8 (2006), The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (arts. 19; 28, para. 2; and 37, inter alia), CRC/C/GC/14, para. 29.

53 See concluding observations for Switzerland, CRC/C/CHE/CO/2-4, February 2015, paras. 42 & 43

54 CRC/C/ISR/CO/2-4, July 2013, paras. 41&42.

and dignity. When they are carried out by non-medically qualified people without adequate training, hygiene and pain relief, there are additional violations of the child's right to health, and in some cases, the right to life.

Children's right to practise or choose their own religion or no religion

The issue: People in many societies experience barriers to enjoying the right to freedom of religion or belief. Children face additional hurdles by virtue of their age and relative immaturity. Some countries establish a minimum age at which an individual can convert to a religion, regardless of capacity.⁵⁵ In other countries, religious education is compulsory, and while laws may allow parents (sometimes only from certain faiths⁵⁶) to request that their child be removed from religious education classes, children themselves may not be permitted to make this choice.⁵⁷ Elsewhere, the child's religion is automatically amended on their birth certificate without their consent, and in some cases against the wishes of the parent. The child is unable to change this until they reach a certain age and can apply for their own identity card.⁵⁸

What the CRC says: Article 14 establishes children's right to freedom of thought, conscience and religion. Previous international treaties have enshrined parents' liberty to educate children in accordance with their own beliefs. Article 14 of the CRC shifts this focus to children's right to determine and follow their own convictions under parental guidance - as opposed to control - in accordance with the child's evolving capacities (article 5).

Article 14 emphasises that the State must respect the rights and duties of parents or guardians "to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child". In this way the Convention makes it clear that "direction" refers to the child's right to freedom of religion. This means that parental direction must only be exercised in the context of the Convention

as a whole, i.e. with respect for the child's views, best interests and without resort to physical or mental violence.

CRIN believes that: Children should never be compelled to follow a belief system that they do not adhere to. In line with the CRC's assertion of evolving capacities, set out in articles 5 and 14, children should be able to choose to follow or leave their religion or belief as and when they decide. In addition, children should never be compelled to attend religious schools or religious education classes. Schools should promote respect for people of all faiths, encourage inter-faith understanding and work with students to challenge divisive, violent and fundamentalist versions of all religions.

Access to information about the child's biological family

The issue: Many States limit both the information made available to the child about their origins and the age at which this information is available. This has always been important for adopted children, particularly where jurisdictions allow 'secret adoptions' in which adoption records are off limits. But other scenarios in which children's legal parents are different to their biological parents are also important here, for example where children are born through assisted reproductive medicine and practices such as surrogacy and in vitro fertilisation. A conflict may also arise between a child's right to know and their parents' right to privacy, for instance, a mother may not wish to reveal that her child was conceived through rape including in circumstances in which she would be ostracised or otherwise at risk.

In addition, laws governing divorce, adoption or assisted reproduction often fail to consider children's wider family relationships, which means children do not always obtain information about these wider biological connections.

What the CRC says: A child has the right, "as far as possible... to know his or her parents" (CRC article 7); no distinction is made based on age. Article 8 protects children's right to preserve their identity, including their nationality, name and family relations, without unlawful interference. In addition, States are required not only to refrain from interfering in records, but also to actively assist children in establishing aspects of their identity. This includes helping children to regain any aspect of their identity that has been taken away from them illegally. Children's right to preserve their "family relations as recognised in law" (CRC art. 8.1) recognises that children's identity in relation to their family extends beyond their parents and immediate family, but this idea is seldom

55 Malaysian Digest, "A parent's dilemma - when your child's conversion is not your decision," 23 February 2015. Available at: <http://www.malaysiandigest.com/frontpage/282-main-file/542825-a-parent-s-dilemma-when-your-child-s-conversion-is-not-your-decision.html>.

56 Daily News, "Only Christian, Jewish children exempt from Turkey's religious education," 23 February. Available at: <http://www.hurriyetdailynews.com/only-christian-jewish-children-exempt-from-turkeys-religious-education-.aspx?pageID=238&nid=78180>.

57 In England & Wales there is a statutory right for 6th form students to withdraw themselves from religious education and or acts of worship. For all other children this is a parental right. Parliament's Joint Committee on Human Rights recommend that all children of sufficient maturity should be able to withdraw themselves but this is not protected by law. Available at: <http://www.publications.parliament.uk/pa/jt200506/jtselect/jtrights/241/24106.htm> Session 2005/06 25th report para. 2.6 (and Appendix 2 - letter from the National Secular Society to Secretary of State for Education, 16 June 2006) <http://www.publications.parliament.uk/pa/jt200506/jtselect/jtrights/241/24112.htm>.

58 Egyptian Initiative for Personal Rights, "In the name of the father: involuntary conversions," Available at: <http://eipr.org/node/273>.

reflected in national laws.⁵⁹

CRIN believes that: A failure to include sufficient information on a child's birth certificate and to make this accessible to the child as and when they request this constitutes a breach of articles 7 and 8. In all cases, children should at a minimum have the right to limited non-identifying medical information about their genetic parents. After all, the right to 'the highest attainable standard of health' under article 24, inevitably involves questions about family history.⁶⁰ Denying children relevant medical information could harm their standard of care and jeopardise their health. Where there are no countervailing concerns about invading a genetic parent's privacy, identifying information should also be provided to children without question. There should be no minimum age requirement here; this information should be available as and when a child requests it, with consideration for their capacity. In addition, States should not only grant children access to existing information about their origins, but also ensure that medical information is maintained on donors of gametes and people placing children up for adoption.

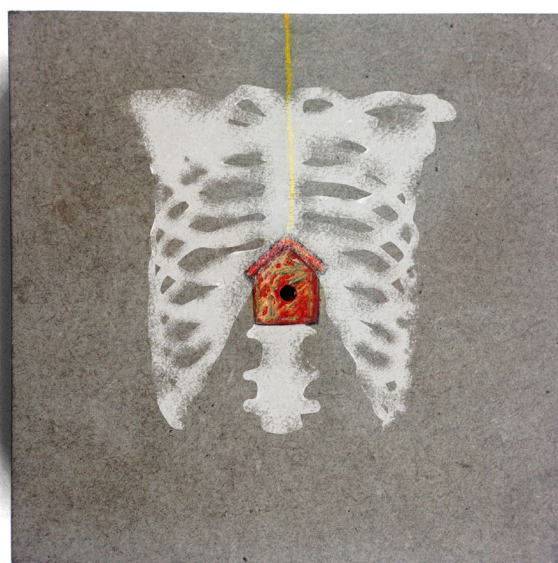
Where a conflict arises between providing children with identifying information about their origins and their parent's right to privacy, the level of access should depend on the circumstances. States should never enforce secrecy by condoning the falsification of birth certificates where single motherhood is frowned upon. In cases of assisted reproduction, a child should have access to identifying information at a time when they wish to obtain this information (the law can protect the genetic parent from maintenance obligations separately to allay any concerns here). Where there is a risk to the parent should their identity be revealed, for example, if a mother is likely to be ostracised or subject to violence by her community as a result of revelations, identifying information should be passed on at a time when the parent is able to grant permission or when there is no longer a risk posed to the parent in question.

As children's right to preserve their 'family relations as recognised in law' extends beyond a child's parents, this position also applies to other immediate family relations. In addition, States should provide appropriate assistance and not withhold information about their biological family from the descendants of children who have been adopted or born from

assisted reproduction in order to help them to re-establish elements of their identity which have been lost where there are no privacy concerns for the relatives in question,⁶¹ and always non-identifying medical information.

The Committee on the Rights of the Child has said that when the best interests of a child are in conflict with the rights of other persons, the relevant authorities and decision-makers must analyse and weigh the rights of all those concerned while bearing in mind their obligations to take the child's best interests as a primary consideration. This includes "viewing the best interests of the child as 'primary' requires [...] a willingness to give priority to those interests in all circumstances, but especially when an action has an undeniable impact on the children concerned."⁶²

A child's right to information about their biological family could also include a child's gestational mother where they are born from surrogacy. Although surrogacy may or may not imply a genetic connection, a growing body of scientific evidence suggests that the exchange of maternal-foetal cells and epigenetic processes during pregnancy (processes in the environment which alter the expression of genes even though there is no change in the underlying DNA structure) have a significant impact on the long-term health of the mother and child. Although these studies have largely been conducted with non-surrogate mothers, some commentators have argued that the biological connection between the foetus and surrogate and



59 Hodgkin, R. and Newell, P., Implementation Handbook for the Convention on the Rights of the Child, September 2007, p. 114. Available at: http://www.unicef.org/publications/index_43110.html.

60 See for example a law passed in the State of Victoria, Australia that will enable all donor-conceived people to receive identifying information about their sperm, oocyte or embryo donor(s). The law was passed in February 2016 in honour of a woman who had spent 15 years searching for her donor before dying from heritable bowel cancer. In Professor Allan, S. & Adams, D. "All donor-conceived people in Victoria now have the right to donor information", 16 February 2016. Available at: http://www.bionews.org.uk/page.asp?obj_id=621487&PPID=621376&sid=697.

61 See for example: <https://www.crin.org/en/home/what-we-do/crinmail/children-court-crinmail-39-0#H> and Constitutionality of Article 139 of the Family Code of Russian Federation and Article 47 of the Federal Law "On the Acts of Civil Status" on account of complaint lodged by the citizens G. F. Grubich and T. G. Guschina: <https://www.crin.org/en/library/legal-database/constitutionality-article-139-family-code-russian-federation-and-article-47>.

62 CRC General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), para. 40. Available at: http://www2.ohchr.org/English/bodies/crc/docs/GC/CRC_C_GC_14_ENG.pdf.

any associated health risks cannot be ignored.⁶³ While this area needs more research, this information suggests medical information at the very least should be made available to the child about the surrogate (and about the donor to the surrogate for whom there may also be health considerations). However, in order for the child to seek out information about their biological parents and gestational mother in the first place, they need to know the circumstances of their birth. Article 8 of the CRC asserts children's right to preserve all aspects of their identity and reestablish these where they have been lost. This, read together with article 7 on the child's right to know their family relations as far as possible and the best interests principle in article 3, suggests that children should be aware of these circumstances from the youngest age possible, provided this would not run counter to their best interests (for example where they may be ostracised, for instance because they were born from rape). The case for telling a child about the circumstances of their birth is further strengthened where their right to health is at stake, for example where a child's biological parents have heritable health concerns.

Question:

In February 2015, Members of Parliament (MPs) in the UK voted⁶⁴ to become the first country to allow the creation of babies with DNA from three people. The technique, which uses a modified version of IVF and involves swapping a fraction of the mother's DNA with that of an anonymous donor, aims to stop mitochondrial disease, a serious genetic disease that is passed from mother to child. MPs determined that mitochondrial DNA makes up 0.054 percent of a person's overall DNA and none of the nuclear DNA that determine personal characteristics and traits.

Should children have the right to obtain information about a donor in these circumstances?

Access to sexual and reproductive health services

The issue: Globally, more than seven million girls under the age of 18 give birth each year.⁶⁵ A survey of children in more than 30 countries found that 10 percent had had sex before the age of 15, including because of sexual violence and early marriage.⁶⁶ And young people aged 15-24 continue to be one of the age groups most affected by HIV.⁶⁷ Yet a refusal to recognise children's sexuality means 25 percent of sexually active girls are unable to access contraception.⁶⁸ Many countries fail to provide even the most basic sex education or confidential advice, particularly for sexual minorities.⁶⁹ And in some countries, abortion is criminalised even in the most extreme circumstances.⁷⁰ In some cases access to sexual and reproductive health services is inadequate because the law fails to stipulate whether minors may access these services which leads some health practitioners and children to believe they cannot lawfully access them. In others minimum ages serve as a barrier. Others still explicitly require parental consent (sometimes permission to access medical care must be sought from a male family member⁷¹). And in some States, the minimum age of sexual consent is lower than the minimum age for accessing sexual and reproductive health services, leading to confusion.⁷²

What the CRC says: Children should have access to the full range of sexual and reproductive health services,⁷³ including confidential advice, contraceptive information and services, safe abortion services, maternal health care and post-abortion care.⁷⁴ The Committee has also noted that children should have access to sexual and reproductive health care according to their evolving capacities, recognising that the requirement to secure parental consent can impede children's sexual and

65 UNFPA, *Motherhood in childhood: facing the challenges of adolescent pregnancy*, 2013, p. 1. Available at: <http://www.unfpa.org/sites/default/files/pub-pdf/EN-SWOP2013-final.pdf>.

66 Ibid: 24.

67 UNICEF, "Turning the tide against AIDS will require more concentrated focus on adolescents and young people", January 2015. Available at: <http://data.unicef.org/hiv-aids/adolescents-young-people>.

68 Ibid: 37.

69 Child Rights International Network (CRIN), *Access Denied: Protect children's right to information*, June 2014. Available at: <https://www.crin.org/en/library/news-archive/right-information-access-denied-protect-rights-unblock-childrens-access>.

70 Center for Reproductive Rights, *Marginalised, persecuted and imprisoned: the effects of El Salvador's total criminalization of abortion*, 2014. Available at: <http://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/El-Salvador-CriminalizationOfAbortion-Report.pdf>.

71 World Health Organization, *Comprehensive Cervical Cancer Control: a guide to essential practice*. 2nd edition, 2014, p. 81. Available at: http://apps.who.int/iris/bitstream/10665/144785/1/9789241548953_eng.pdf?ua=1.

72 International Planned Parenthood Federation and Coram's Legal Centre, *Overprotected and Underserved, A multi-country study on legal barriers to young people's access to sexual and reproductive health services, UK case study*, 2014, p. 5. Available at: http://www.ippf.org/sites/default/files/ippf_coram_uk_report_web.pdf.

73 See, e.g., Committee on the Rights of the Child, General Comment No. 15, paras. 56 & 69-70.

74 Ibid (generally)

63 Loike, J.D. & Fischbach, R., "Gestational surrogacy: medical and bioethical implications of bidirectional maternal-fetal cell exchange and epigenetics" in *Science-Based Bioethics: A Scientific Approach to Bioethical Decision-Making*, 2014, Center for Bioethics, Columbia University. First published in "Journal of In Vitro Fertilization", October 2013.

64 The Guardian, "MPs vote in favour of 'three-person embryo' law", 3 February 2015. Available at: <https://www.theguardian.com/science/2015/feb/03/mps-vote-favour-three-person-embryo-law>.

reproductive health.⁷⁵

The Convention's requirement that children's best interests are a primary consideration and the right to the maximum possible development support children's right to access sexual and reproductive health services. Clearly it promotes health and is in children's best interests (determined with respect for their own views) to receive as much support as possible to help them to make informed choices about their bodies and their lives. The Committee has stated that "pregnant adolescents must always be heard and respected in abortion decisions".⁷⁶ It has recommended that States review their legislation on abortion, to guarantee the best interests of pregnant teenagers and prevent them from resorting to clandestine abortions.⁷⁷

CRIN believes that: All children should have access to sexual and reproductive health services regardless of age. Even very young children are at risk of sexual abuse and infections. While children may be encouraged to discuss their situation with their parents, parental consent requirements are inappropriate and may discourage children from seeking help. A presumption should be made that a child seeking such services is capable and that access is in their best interests,⁷⁸ as the fact that a child is seeking such services to inform and protect themselves is in itself an indication of capacity. If the provider becomes concerned that the child lacks the necessary capacity while assessing their needs, a course of action which best fulfils their best interests should be taken, influenced heavily by the child's own views.⁷⁹

Even where it becomes apparent that a child is the victim of abuse, these services should not be denied because such a denial risks further harm to the child. As children are susceptible to delays in seeking abortion services including because they may take longer to realise they are pregnant, to seek help, and to greater health risks associated with pregnancy, there may be a need to examine gestational limits for abortion to ensure they do not undermine children's access.

Furthermore, if sexual and reproductive health services are to be accessible they should be affordable. In practice this means they should be free for children at the point of access (or at least a set of essential services could be agreed and made available free of charge) because they are generally financially dependent on their parents. Attaching costs to these services

for children amounts to a parental consent requirement which will deter many children from seeking these services.

Children's right to seek confidential sexual and reproductive health services should be made clear not only in law and policy but to health practitioners and children themselves so that the practical barrier of a perception that children lack this right does not supersede legal entitlements.

In some countries - in law and/or in practice, access to sexual and reproductive health services is available only to married women and girls,⁸⁰ so it is important that any increase in the age of marriage does not lead to a parallel and (inadvertent) increase in the age at which children can access these services. In addition, age-appropriate sexuality education should be mandatory throughout children's schooling to prepare them for safe and healthy sex lives.

However, children must never be forced to comply with sexual and reproductive procedures, such as virginity testing, sterilisation, etc. Such practices constitute a violation of children's physical integrity and freedom from torture.



⁷⁵ CRC General Comment No. 12 on the right to be heard, 2009, para. 102.

⁷⁶ See, for example, CRC concluding observations for Liberia and Ukraine, CRC/C/LBR/CO/2-4, 2012, paras. 66 and 67 and CRC/C/UKR/CO/3-4, 2011, paras. 56 and 57.

⁷⁷ See, for example, concluding observations for Liberia and Ukraine, CRC/C/LBR/CO/2-4, 2012, paras. 66 and 67.

⁷⁸ This concurs with a position first set out by the Center for Reproductive Rights (forthcoming paper).

⁷⁹ Ibid

⁸⁰ WHO Department of Maternal, Newborn, Child and Adolescent Health, Making Health Services Adolescent Friendly: Developing National Quality Standards for Adolescent-Friendly Health Services, Geneva: WHO, 2012, p.5.

Issues for which age and capacity should be considered

Admission to employment

The issue: Globally, some 168 million children work⁸¹, not including the millions of children in ‘hidden’ work. The majority of child workers are found in agriculture and domestic service, where they may be exposed to harmful chemicals, long hours and abuse. In many countries, this kind of work is exempt from laws governing child labour and occupational safety. But other children choose to work, many in part-time jobs or light work. However children in this position may not enjoy the same rights as adults, for example, an equal minimum wage.⁸²

Violations of children’s rights in the workplace are more visible in third party employment, but can take place in family enterprises too, where the informality of the relationship may lessen the likelihood that safeguards such as contracts and fair pay are complied with - or may not even apply. Moreover, other regulations prohibiting children’s participation in certain work defined as hazardous have been relaxed if it is carried out in the family sphere.⁸³

What the CRC says: Article 32 requires States to protect children from “any work that is likely to be hazardous or to interfere with the child’s education”, to set a minimum age or minimum ages for admission to employment, and to “provide appropriate regulation of the hours and conditions of employment”. It does not set a blanket prohibition on work for children. The CRC also recommends that States ratify the relevant International Labour Organization (ILO) conventions on minimum ages for employment to which it often refers on this issue.

The ILO draws a distinction between child labour, which it considers harmful, and the employment of children. The ILO Convention C138 on Minimum Ages, 1973, art. 3.1 states that “The minimum age for admission to any type of employment or work which by its nature or the circumstances in which it is carried out is likely to jeopardise the health, safety or morals of young persons shall not be less than 18 years.” It requires States to specify a minimum age for admission into employment but states in article 2.3 that this “shall not be less than the age of completion of compulsory schooling and, in

any case, shall not be less than 15 years.” But it also says that children from the age of 13 (or as young as 12 in countries at a lower level of development) should be able to perform light work (art. 7.1).

CRIN believes that: It is right that children are protected from work which is harmful to their health or wellbeing. But imposing a blanket ban on all work without addressing the economic conditions which push children to work in the first place often means that children will resume working the moment official eyes are averted, and risk becoming part of the illegal economy where abuse and exploitation are routine.

If children have to - or want to - work, it should be safe, fairly paid, and should not interfere with their other rights, especially their education and development (recognising that some work can be considered educational). In other words, instead of prohibiting children from working, governments should formalise and regulate their labour activities, establish safeguards to ensure their protection and that the decision to work is the child’s own. This includes affording them the same rights as adults, including the requirement of a legally binding employment contract between a child and an employer in order to provide guarantees of their basic employment rights. These include the right to join a union, equal pay for equal work, the right to be heard and have their views taken into account in the development of policies affecting them, timely payment, sickness pay, adequate rest breaks and clearly defined maximum working hours per week, among others.

Furthermore, where the child’s motivation to work is to supplement the family income, States should provide other kinds of support to families, such as financial assistance and child care support in line with CRC articles 4, 18 and 26, and invest in high quality education as a viable alternative to work as well as decent work opportunities for young people when they leave education to create incentives.

Question:

If we’re saying some work is educational, can children choose to work instead of go to school (in all countries)?

Case study: regulating child employment in Bolivia

CRIN will monitor how this law works in practice

In 2014 Bolivia overturned its no-exceptions ban on labour performed by under-14s, enacting in its place legal protections for working children from the age of 10. The new provisions came about thanks to the lobbying efforts and input of

81 International Labour Organisation, “Child labour”, <http://www.ilo.org/global/topics/child-labour/lang-en/index.htm>

82 In Greece for example, Law 4046/2012 provides for a reduction in the minimum wage of 22 percent in general and 32 percent for young people under 25 years of age. European Labour Law Network, March 2012. Available at: http://www.labourlawnetwork.eu/national_labour_law/national_legislation/legislative_developments/prm/109/v__detail/id__2622/category__14/index.html.

83 International Labour Organization, “ILO’s concerns regarding new law in Bolivia dealing with child labour”, 28 July 2014. Available at: http://www.ilo.org/ipec/news/WCMS_250366/lang-en/index.htm.

the country's largest union of child workers,⁸⁴ which argued that children start work at a much younger age and should therefore also enjoy labour guarantees.

The new Code for Children and Adolescents sets out rules for two groups of working children. The first keeps 14 as the minimum working age for children in third-party employment and stipulates that their salaries be no lower than the national minimum wage, and that their working day must not exceed eight hours, and two hours must be dedicated to studying. It then allows for the exception of 12- and 13-year-olds to be employed by others with prior approval from the office of the local children's ombudsperson through a needs assessment.

The second set of rules applies to children who are self-employed, with the minimum age being lowered in such cases to 10 years. For these children to work legally, however, the office of the children's ombudsperson must first verify that the nature of the work is not hazardous to the health and development of a child, does not exceed six hours daily, and does not interfere with their schooling.

For all child workers aged 10 to 18 years, they must have voluntarily decided to work, and consent from the parent or guardian is also required. National insurance contributions and entitlement to state benefits apply to all over-10s. The employment ministry is charged with organising workplace inspections to ensure working children's labour rights under the law are respected.

Beginning and end of compulsory education

The issue: Learning is the basis of children's development as individuals and citizens. It also forms the foundation for democratic societies and economic growth. All children should have access to a learning environment that respects their rights and inspires an interest in learning. Yet nearly a billion people entered the 21st century unable to read a book or sign their names, and more than 75 million children are denied primary education.⁸⁵ There are various reasons for this, but they include a failure by States to provide access to free education (or at least beyond a certain age); these costs may be indirect (e.g. in the form of school uniforms and books), or direct, for instance with the spread of low-cost private schooling which is sometimes the only option because public schools are not available or offer low quality educa-

tion.⁸⁶ Other factors include low quality education, a negative, harmful and/ or violent school environment, and a minimum age for child labour which contradicts that of the end of compulsory education. Certain children, such as those with a disability or in detention are particularly likely to miss out on opportunities for learning.⁸⁷

What the CRC says: Article 28(1) (a) and (b) requires that primary education is free and compulsory for all children, and the development of different forms of secondary education are encouraged and made "available and accessible to every child". Higher education is also encouraged "on the basis of capacity". No specific ages or number of years are prescribed by the Convention, but the Committee has clarified that the age of admission to employment should not undercut the minimum age for ending compulsory education.⁸⁸ The UN Committee on Economic, Social and Cultural Rights has further clarified in its General Comment No. 11 on primary education that the aim of compulsion is to limit state and parental abuse of power: "The element of compulsion serves to highlight the fact that neither parents, nor guardians, nor the State are entitled to treat as optional the decision as to whether the child should have access to primary education."⁸⁹

Crucially, the Convention also sets out in detail what it means by education in article 29, recognising that a good quality education has to be about promoting rights not only in what is taught but also how it is taught. This recognises that children are individuals and education has to be directed towards each child's personality, talents and abilities. It should also prepare children for an active adult life in a free society and foster respect for the child's parents, the environment, their own cultural identity, language and values, and for the cultural background and values of others. In other words, it's about helping children to become well rounded people as well as teaching them how to write and add up. Article 29.2 also highlights the freedom of individuals and bodies to establish their own educational institutions.

CRIN believes that: States should provide free access to learning which is adapted to children's needs, as required by the CRC, and no exception should be made should a child

84 Liebel, Manfred, "Protecting the rights of working children instead of banning child labour: Bolivia tries a new legislative approach," 4 September 2014. Available at: http://www.europarl.europa.eu/meetdocs/2014_2019/documents/deve/dv/liebel_policy_paper_bolivia/liebel_policy_paper_bolivia_en.pdf.

85 Gauthier de Beco, Right to Education Project, Measuring Education as a Human Right - List of Indicators, 2013. Available at: <http://www.right-to-education.org/node/241>

86 Coalition of NGOs, The UK's support of the growth of private education through its development aid: Questioning its responsibilities as regards its human rights extraterritorial obligations, September 2015. Available at: <http://www.globaljustice.org.uk/sites/default/files/files/resources/the-uks-support-of-growth-of-private-education-through-aid.pdf>

87 Right to Education Project, "Marginalised groups". Available at: <http://www.right-to-education.org/issue-page/marginalised-groups>

88 See article 32 and CRC concluding observations, for example on Lao's second periodic report, CRC/C/LAO/CO/2, April 2011, paras. 63 and 64.

89 UN Committee on Economic, Social and Cultural Rights, General comment No. 11 on primary education, 1999, para. 6. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2FC.12%2F1999%2F4&Lang=en

get married, fall pregnant,⁹⁰ have a disability, be deprived of their liberty or for any other reason. However, while these are clearly unacceptable reasons for denying the right to education, they are also unjustifiable reasons for compulsion. Nevertheless, a minimum age is necessary firstly to place an obligation on States to ensure education is available to all children. (Parents and others have the freedom to found their own educational institutions, but the reality is that most parents are not in a position to do this - because of a lack of time or because they lack a certain level of education themselves.)

Secondly, an age threshold is necessary to limit the abuse of parental power, although research suggests that, while a minimum age is important in part to guard against parents coercing their children into working or keeping girls at home, the majority of parents want their children to receive an education, and that poverty is a greater barrier to education than parental resistance.⁹¹ With this in mind, the State should ensure sufficient support for families where a child may otherwise be needed to bring in extra income (and seek international assistance for this purpose where necessary - see CRC art. 4).

Research indicates that flexible learning that allows children to fit this around their other responsibilities - working, caring for relatives, etc. is the best model.⁹² But where a child has missed out on education, they should have the same number of years entitlement to education later in life.

Education policy aimed at keeping children in school should not be limited to minimum ages; it should focus equally on what is taught and how children are supported to learn. Ensuring education is infused with human rights principles and is relevant to their lives tackles many of the reasons why so many children are frozen out of education, beyond just reaching a certain age. For this reason, compulsory schooling, which takes place in a school environment, should be distinguished from compulsory education, which encompasses a far broader range of opportunities for learning, including some forms of work. Without these considerations, regardless of the minimum age for the end of compulsory education, children are likely to drop out for any number of reasons: because of discrimination, corporal punishment and other violence, to support their families, or simply because of uninspiring teaching.

Marriage

The issue: In many societies, the age at which children can marry without parental consent coincides with the age of majority. In some places children can marry earlier with parental consent. Marriage at an earlier age without parental consent may also be possible under certain circumstances, such as pregnancy, or where this is authorised by a court.⁹³ Furthermore, the minimum age for marriage continues to differ between boys and girls in many States.⁹⁴

A particular concern is the determination of the minimum age of marriage by 'personal status' laws. In other words, 'marriages' which are not formal or official marriages before a registrar with a certificate, but informal, customary practices. They are nevertheless 'marriages' to all intents and purposes under traditional law and custom and are perceived as such in the community by the couple and wider society. This can mean minimum ages differ within the same country for people belonging to different ethnic or religious groups.⁹⁵ But clearly affiliation with a particular group provides no indication of an individual's capacity to consent to marriage.

The minimum age of marriage is particularly important because in some societies majority is attained with marriage which means children may lose the protection of the Convention. In addition, a low minimum age of marriage raises sexual and reproductive health concerns - as it generally assumes sexual consent - and pregnancy-related deaths are the leading cause of mortality for 15-19 year old girls worldwide.⁹⁶ Furthermore, some criminal codes contain marital rape exemptions - that is, a provision which bars prosecution for rape committed within marriage.⁹⁷

Early marriage jeopardises children's other rights: they may be forced to leave education early - either through drop out or forced exclusion, they may also lose control over their own lives, particularly where a man is considerably older than his bride.

Finally, for many people, getting out of a marriage is not an option: because divorce is illegal,⁹⁸ because of the social

90 In Sierra Leone, thousands of pregnant girls have been excluded from school and barred from taking upcoming exams. See Amnesty International, *Shamed and Blamed: Pregnant girls' rights at risk in Sierra Leone*, 2015. Available at: <http://www.amnesty.ca/sites/amnesty/files/Report%20Sierra%20Leone%20PDF.pdf>.

91 Tafere, Y., *Young Lives, Education Aspirations and Barriers to Achievement for Young People in Ethiopia*, Working Paper 120, pp. 8 & 11.

92 Murray, H., *Young Lives, Is School Education Breaking the Cycle of Poverty for Children? Factors Shaping Education Inequalities in Ethiopia, India, Peru and Vietnam*, Policy Paper 6, September 2012, pp. 17-19. Available at: <http://www.younglives.org.uk/publications/PP/school-education-breaking-poverty-children/is-school-education-breaking-the-cycle-of-poverty-for-children>.

93 World Policy Analysis Center, "Marriage": <http://worldpolicycenter.org/topics/marriage/policies>.

94 Ibid.

95 See, for example the CRC's concluding observations on the combined third and fourth periodic reports of the Syrian Arab Republic, CRC/C/SYR/CO/3-4, February 2012.

96 UN Committee on the Rights of the Child, Joint general recommendation/general comment No. 31 of the Committee on the Elimination of Discrimination against Women and No. 18 of the Committee on the Rights of the Child on harmful practices, CRC/C/GC/18, para. 21.

97 See, for example, CRC concluding observations on Albania, CRC/C/ALB/CO/2-4, 2012, paras. 43 & 44 and Togo CRC/C/OPSC/TGO/CO/1, 2012, paras. 20 & 21.

98 Legalzoom, "Philippine Laws on Divorce, Separation & Annulment", available at: <http://info.legalzoom.com/philippine-laws-divorce-separation-annulment-20694.html>.

stigma attached to separation, or because the conditions of a marriage constitute slavery.

What the CRC says: The Committee has strongly criticised low minimum ages for marriage, consistently recommending that States increase the minimum age with and without parental consent to 18 years.⁹⁹ It considers child marriage (where at least one or both parties is under 18 years of age) a form of forced marriage because one or both parties have not expressed their full, free and informed consent. However, it does allow for some degree of autonomy in consenting to marriage, saying that in exceptional circumstances a mature and capable child over the age of 16 may marry “provided that such decisions are made by a judge based on legitimate exceptional grounds defined by law and on the evidence of maturity without deference to cultures and traditions.”¹⁰⁰

CRIN believes that: The Committee’s position on the minimum age of marriage as set out in its general comment provides an holistic interpretation of the CRC: it both allows for children’s protection and takes into account their evolving capacities. In other words it focuses on forced marriage as the problem, rather than marriage per se. That said, in practice, many cases that come before the courts are already enmeshed in a religious or cultural context that condones child marriage, the upshot of which is that courts are inclined to authorise such unions.¹⁰¹

It should therefore be emphasised that any exception to a minimum age of 18 should only be acceptable where judicial permission to marry rests on an individual assessment grounded in the Convention, with the individual’s best interests always at the forefront of decision making. Parental consent should not be a consideration, bearing in mind the high numbers of girls, and, to a lesser extent, boys, across the world who are forced into marriage by their parents, or prevented from developing relationships in the name of the family’s ‘honour’. The standard minimum age of marriage should be uniform across the State, regardless of religion, ethnicity, sexuality, or any other ground. In addition, in a rights-compliant justice system, the law on sexual consent and rape must be the same within and outside of marriage.

While this position sets out a ‘purist’ children’s rights perspective, CRIN acknowledges the reality that in many cultures children continue to be forced into marriage. In some of these cases, they may give consent, but the extent to which this can be described as free and informed when they are pressured

by society, their family, the stigma attached to children being born out of wedlock, and economic pressures is problematic.¹⁰²

In this context, we emphasise the importance of ensuring that all individuals entering into marriage have avenues to leave a marriage available to them. In addition, a list of points marriage should not imply should be noted. These include: sexual consent (as stated above, the law on sexual consent and rape should be the same within and outside of marriage, and the age of consent should be separated from that of marriage); situations which constitute slavery, including compulsion and a lack of autonomy.

Finally, any legislative changes or enforcement must be accompanied by measures to change social norms promoting child marriage, including in emergency settings which can lead to an increase in cases of child marriage as a survival mechanism for families.¹⁰³

Age of sexual consent

The issue: In most countries an age is established below which children are deemed incapable of consenting to sexual activity. Anyone who conducts sexual relations with a child below this age is liable to prosecution for sexual abuse or rape, even where this contact appears to be consensual.

On the other hand, laws prohibiting sexual offences in some States are so broad that they criminalise teenagers for engaging in consensual sexual activity with other teenagers – even kissing and hugging fully clothed.¹⁰⁴ And increasingly, the phenomenon of ‘sexting’ is seeing teenagers being prosecuted for manufacturing and possessing child pornography,¹⁰⁵ even where this is in the context of a relationship and in some

⁹⁹ CRC, General Comment No.4 on adolescent health and development in the context of the Convention on the Rights of the Child, CRC/GC/2003/4, para. 20.

¹⁰⁰ Ibid, CRC/C/GC/18, para. 20.

¹⁰¹ Z News, “Muslim girl can marry once she completes 15yrs of age: Gujarat High Court”, 6 December 2014. Available at: http://zeenews.india.com/news/gujarat/muslim-girl-can-marry-once-she-completes-15-yrs-of-age-gujarat-high-court_1510241.html.

¹⁰² Turner, C., Anti-Slavery International, Out of the Shadows: Child marriage and slavery, April 2013. Available at: http://www.antislavery.org/includes/documents/cm_docs/2013/c/child_marriage_final.pdf.

¹⁰³ UNICEF, “Child marriage”. Available at: http://www.unicef.org/protection/57929_58008.html.

¹⁰⁴ See South African Constitutional Court judgment on Sections 15 and 16 of the Sexual Offences Act; Peru: Tribunal Constitucional declaró inconstitucional el artículo 1º de la ley 28704 sobre delito de violación sexual contra adolescentes entre 14 y 15 años de edad. Available at: http://www.tc.gob.pe/notas_prensa/notas/2013/nota_2013_003.html.

¹⁰⁵ This example is from the UK. Government officials have publicly declared that this is not an attempt to criminalise the sharing of sexual images among consenting 16 and 17-year-olds (i.e. those who are over the age of sexual consent) but that the age was raised to 18 in this case because in practice it is hard for law enforcement to distinguish someone under-16 from someone over 16 so this was done to be more confident of catching and prosecuting images of those under 16. However, this practical rather than principled decision has the potential to generate significant injustices for people under 16. BBC, “Teen sexting prosecution prompts outrage”, 10 July 2014. Available at: <http://www.bbc.co.uk/news/blogs-echochambers-28255225>; The Guardian, “Teenagers who share ‘sexts’ could face prosecution, police warn”, 22 July 2014. Available at: <http://www.theguardian.com/media/2014/jul/22/teenagers-share-sexts-face-prosecution-police>

cases, where they are over the age of consent but below the age of majority.¹⁰⁶

Children have even been prosecuted for taking and storing explicit images of themselves, essentially being charged with exploiting themselves.¹⁰⁷ Such charges can result in imprisonment and even being registered as a sex offender.

Children have been placed on sex offender registries for years, and even a lifetime, for consensual sexual activity with another child, despite the negative impact this has on a child's education and employment opportunities in later life.¹⁰⁸

What the CRC says: The Committee on the Rights of the Child has asserted the need to set a minimum age for sexual consent, stating that below that age a child's consent should not be considered valid.¹⁰⁹ It adds that: "These minimum ages should be the same for boys and girls (article 2 of the Convention) and closely reflect the recognition of the status of human beings under 18 years of age as rights holders, in accordance with their evolving capacities, age and maturity (arts. 5 and 12 to 17)." The Committee has also expressed concern where this age differs for heterosexual and same-sex activities and where it considers the age of sexual consent for all children to be too low.¹¹⁰

CRIN believes that: The law should state an age below which children are not deemed capable of sexual consent. But the aim of a minimum legal age should be purely protective; it should not aim to control children's sexuality, for example by criminalising consensual sex between children of similar ages.¹¹¹ The legality of consensual sex between children should depend on the relative ages of those involved (allowing close in age exemptions), the power dynamics,¹¹² and the kind of sexual activity prohibited should also be specified to avoid situations in which kissing is off-limits to 13-year-olds, for example. But in line with the position set out on page 8 above children should never be criminalised and should be detained only where they pose a demonstrated risk to the public or themselves, as a last resort, for the shortest possible time, and

in a non-penal setting. Otherwise, far from serving its purpose of protection, such laws traumatised children by exposing them to the criminal justice system and in some cases media attention. The effects can remain for life, particularly where children's names are added to and remain on a national register for sex offenders.¹¹³

In this vein, the enforcement of sexual consent laws should not run counter to children's rights, for instance, by denying their evolving capacities (CRC art. 5), establishing different ages of consent according to gender or sexuality (CRC art. 2), or applying the law inconsistently, for example with a racial¹¹⁴ or gender¹¹⁵ bias. It should instead take into account children's individual circumstances, including the power imbalances that exist between individuals, as well as the meaning of free and informed consent e.g. by considering access to and quality of sex and relationships education; what gendered expectations exist where young girls are sexualised in popular culture and advertising, and men are portrayed as sex-crazed.

The use of laws on sexual consent to enforce social norms about appropriate behaviour, rather than to prosecute cases of abuse is particularly problematic in countries where impunity for sexual violence is rife and other sexual and reproductive rights are lacking. Such laws can criminalise the people they purport to protect. El Salvador's high age of consent, for example, coupled with impunity for sexual violence and restrictive abortion laws, has led to myriad children's rights violations. For instance, girls who become pregnant as a result of sexual abuse are rarely able to seek justice, but may face decades in prison if they are accused of terminating their pregnancies.¹¹⁶

In essence, a distinction should be drawn between policing morality and children's sexuality versus protecting them from sexual abuse. The former not only limits children's autonomy, but impedes their access to sexual and reproductive health information and services. Access to sexual and reproductive health advice which is appropriate to the age and circumstances of the child should be available to all children. Furthermore, where mandatory reporting of sexual relations is in place, counsellors, teachers, friends and family members, and others are liable to be prosecuted if they fail to report. This constitutes a violation of children's right to privacy, limits

106 The Guardian, "Sexting could see teenagers branded as sex offenders", 4 May 2015. Available at: <http://www.theguardian.com/uk-news/2015/may/04/sexting-teenagers-selfie-criminal-record-sex-offenders-register>

107 CRIN, "Criminalising children for sexting", 9 September 2015. Available at: www.crin.org/en/home/whatwedo/crimmail/crimmail1445#crim

108 Human Rights Watch, "The Irreparable Harm of Placing Children on Sex Offender Registries in the US", May 2013. Available at: <https://www.hrw.org/report/2013/05/01/raised-registry/irreparable-harm-placing-children-sex-offender-registries-us>

109 CRC, General comment no. 4 on "adolescent health and development in the context of the Convention on the Rights of the Child".

110 CRC, concluding observations on the Philippines' initial report under the OPSC on 12 as the age of consent, CRC/C/OPSC/PHL/CO/1, 2013, para. 9.

111 Switzerland for example, where the age of consent is 16, has a close in age exemption, allowing minors to consent to partners up to three years older. See AgeOfConsent.net, "Age of consent in Switzerland". Available at: <https://www.ageofconsent.net/world/switzerland>.

112 Many countries have higher minimum ages where sexual activity involves a relationship of trust, e.g. see Canada: <https://www.ageofconsent.net/world/canada>.

113 Human Rights Watch, "The Irreparable Harm of Placing Children on Sex Offender Registries in the US", May 2013. Available at: www.hrw.org/report/2013/05/01/raised-registry/irreparable-harm-placing-children-sex-offender-registries-us.

114 Alternet, "Genarlow Wilson's Tragic Sentencing for Consensual Oral Sex", 18 June 2007: http://www.alternet.org/story/54413/genarlow_wilson's_tragic_sentencing_for_consensual_oral_sex.

115 The Daily Beast, "The Teen Rape Double Standard", 19 March 2009. Available at: <http://www.thedailybeast.com/articles/2009/03/19/the-teen-rape-double-standard.html>.

116 Amnesty International, On the Brink of Death: Violence Against Women and the Abortion Ban in El Salvador, 2014. Available at: <http://www.amnestyusa.org/research/reports/on-the-brink-of-death-violence-against-women-and-the-abortion-ban-in-el-salvador>.

their access to confidential advice, does not serve the best interests of the child, and undermines relationships based on trust.

Right to consent, or refuse consent, to medical treatment or surgery without parental consent

The issue: Many court cases have dealt with tensions between children's right to make decisions about their own bodies and what others perceive to be in their best interests. Many such cases have life or death consequences, for instance in decisions about children's right to die, whether they wish to undergo chemotherapy, etc. Usually, doctors, parents and children accept advice from medical professionals and agree on the best course, but in a minority of complex and extreme cases, conflict may arise. In some cases these tensions emerge from a conflict between children's rights and parents' rights - for instance where a child is not old enough/ mature enough to consent or refuse consent - and parents from various religious backgrounds reject life-saving medical interventions on the ground that they are forbidden by their faith.¹¹⁷ In other cases, there may be a division between the views of the child (and their own religious beliefs) and their family versus those of medical professionals.¹¹⁸ In still others, a child may be judged to have capacity to make a decision, but others believe that decision is not in the child's best interests.

What the CRC says: Children are entitled to be actively involved in their own health-care from the earliest possible age. Article 12 of the CRC recognises the value of a child's views and the need to give them weight in accordance with the age and maturity of the child. This approach clearly requires that the individual capacity of the child is taken into account, not just their age (an idea also set out in CRC article 5 on evolving capacities). This approach is also promoted by the UN Committee on the Rights of the Child in its General Comment No. 4 on adolescent health and development,¹¹⁹ General Comment No.12 on children's right to be heard¹²⁰ and General Comment No. 15 on the right of the child to the enjoyment of the highest attainable standard of health.¹²¹

CRIN believes that: Capacity, based on a range of factors including psychological maturity, experience and context,

rather than age alone, should be the determining factor in evaluating if a child has the capacity to consent or reject treatment and care. In addition, this should consider whether the child has the capacity to make the particular decision at hand, rather than judge their capacity in general. Children should be listened to, their views taken seriously and their right to privacy and respect for confidentiality should be recognised (though this can be complicated when children are treated by large teams of healthcare staff). The appropriate method of ensuring that a child's views are heard in health-related matters will vary from child to child and should be assessed on a case by case basis. A key element of this right involves access to impartial, appropriate and sensitive counselling to support the child to make informed decisions and avert parental pressure. A minimum age should nevertheless be set above which everyone has this right regardless of capacity. This ensures that in practice such a position cannot be used to deny children access until they reach adulthood by arguing that they do not have capacity.

Age restrictions on euthanasia lifted in Belgium

In February 2014 Belgium amended its 2002 euthanasia law extending the right to die to children who are incurably sick and suffering extreme pain. This was an initiative by doctors and legislators who worked together to remove parts of the existing legislation that discriminated against children.¹²² The Constitutional Court rejected a challenge to this right in October 2015, confirming that there are enough safeguards to ensure respect for a child's rights when the procedure is requested.¹²³

Here are the criteria for considering such a request:

- the request to die must be voluntary and made on repeated occasions in writing or dictated;
- a child must be conscious at the moment of the request/s;
- a treating physician will assess if a child's physical condition is grave and hopeless enough (close to death) to warrant euthanasia (the condition must be terminal, and the child suffering great pain with no treatment available to alleviate their distress), and confirmed by an outside paediatrician;
- a paediatric psychologist or psychiatrist must interview the child and evaluate his/her "capacity

117 Canadian Medical Association, "Too much leniency on 'faith healing parents'", 7 July 2013. Available at: <https://www.crin.org/en/library/news-archive/united-states-too-much-leniency-faith-healing-parents>.

118 See, for example, Reuters, "Connecticut top court rejects teen's plea to end cancer treatment", 8 January 2015. Available at: <http://www.reuters.com/article/2015/01/08/us-usa-connecticut-cancer-idUSKBN0KH11Z20150108>.

119 CRC General Comment No. 4, CRC/GC/2003/41, July 2003.

120 CRC General Comment No. 12, The right of the child to be heard, CRC/C/GC/12, July 2009.

121 CRC General Comment No. 15 on the right of the child to the enjoyment of the highest attainable standard of health, CRC/C/GC/15, April 2013.

122 CRIN, "Age restrictions lifted on euthanasia", 14 February 2014. Available at: <https://www.crin.org/en/library/publications/belgium-age-restrictions-lifted-euthanasia>.

123 CRIN case summary of ASBL "Jurivie", ASBL "Pro vita" and ASBL "Jeunes pour la vie" v. Belgium, 29 October 2015. Available at: <https://www.crin.org/en/library/legal-database/asbl-jurivie-asbl-pro-vita-and-asbl-jeunes-pour-la-vie-v-belgium>.

of discernment”, if they are mentally sound (to test them to confirm they understand the gravity of the situation and what they are doing.)

- approval is required from a child’s legal guardians.

NB: To date no requests to die have been made by child patients in Belgium since the law came into effect.

Children’s access to media and advertising

The issue: Efforts have always been made to limit children’s access to films and television containing ‘harmful information’. This typically refers to material containing scenes of a sexual or violent nature. Age rating systems are the traditional method of achieving this - systems which can be controlled by adults, whether cinema staff, parents, teachers or others. In addition, watersheds force broadcasters to show programmes with such content after a certain hour.¹²⁴ Digital media present new hurdles for balancing children’s protection and autonomy and are much harder to regulate, particularly because children are also producers of content, which raises additional privacy concerns. The issue can be divided into the treatment of illegal content (illegal for adults as well as children) and the treatment of ‘child-inappropriate’ content.

Illegal content: The UK’s Internet Watch Foundation (IWF) receives reports of child abuse images located on the internet anywhere in the world. It arranges for any images hosted in the UK to be removed, typically within 60 minutes of discovery. For images located on servers outside the UK the IWF notifies the relevant authorities and, pending deletion, maintains a list which Internet Service Providers (ISPs) and other online service providers deploy on their networks. Similar arrangements exist in over 45 countries around the world. In the UK and elsewhere



¹²⁴ In some cases, however, age restrictions can limit adults’ access to information because they effectively prevent programmes from being broadcast - not because of illegal content, but because all films banned for under-18s can only be shown on pay-for-access networks at certain hours, meaning that free channels will not invest in a film they will not be able to broadcast. See Conseil Supérieur de l’audiovisuel, “Recommandation n°2004-7 aux éditeurs et distributeurs de services de télévision diffusant en métropole et dans les départements d’outre-mer des programmes de catégorie V”, 15 December 2004. Available at: <http://www.legifrance.gouv.fr/lopdf.do?id=JORFTEXT000000785725>.

other avenues also exist to deal with other forms of unlawful content, such as copyright infringement and terrorist related activity.

Illegal activities such as ‘grooming’ of children for sexual purposes, and more recently the targeting of children by extremist groups, clearly violate children’s protection rights. However, some of the methods used to achieve this protection have resulted in unacceptable limits on children’s other rights, for example access to information¹²⁵ and the right to privacy, for example through the surveillance of children’s online activities in schools.¹²⁶

‘Child-inappropriate’ content: How to decide what constitutes ‘inappropriate’ material for children and how to regulate it is more challenging as there is a hazy line between well-intended efforts to protect children and censorship. Some governments informally pressure ISPs to establish filters to prevent under-18s from accessing certain kinds of content. Different levels of filtering may be in place for different devices, so the situation may vary for mobiles, home networks and public wi-fi networks. In the UK, for example, filters on public wi-fi networks which block pornography cannot be lifted. On home networks, most Internet Service Providers offer ‘family friendly filters’ which treat users as children by default and require subscribers to actively opt out by asking for an ‘adult’ service,¹²⁷ breaching adults’ privacy.

These filters go beyond illegal material to encompass ‘objectionable material’ and are meant for all under-18s, despite the spectrum of ages and levels of competence this group comprises (though some devices allow the possibility of creating individual user profiles and setting the filters to individual needs). This may be compounded by a lack of transparency as to what or why a given site is blocked, or how to request an ISP to unblock it. This means they may cordon off websites (sometimes inadvertently) with honest, objective and age appropriate information about sex and relationships, LGBT issues, politics - a range of subjects which help children to make informed choices.¹²⁸ In addition, while parents can turn filters off, this solution does

¹²⁵ Report of the Special Rapporteur to the General Assembly on the right of the child to freedom of expression, A/69/335, August 2014. Available at: http://ap.ohchr.org/documents/dpage_e.aspx?si=A/69/335.

¹²⁶ The Guardian, “Schools monitoring pupils’ web use with ‘anti-radicalisation software’”, 10 June 2015. Available at: <http://www.theguardian.com/uk-news/2015/jun/10/schools-trial-anti-radicalisation-software-pupils-internet>; Alternet, “The FBI Has a New Plan to Spy on High School Students Across the Country”, 2 March 2016. Available at: <http://www.alternet.org/grayzone-project/fbi-has-new-plan-spy-high-school-students-across-country>; Electronic Frontier Foundation, “Spying on students: school-issued devices and student privacy”. Available at: <https://www.eff.org/issues/student-privacy>.

¹²⁷ Hirst, D. Online safety: Content filtering by UK Internet Service Providers (ISPs), 21 November 2014. Available at: researchbriefings.files.parliament.uk/documents/SN07031/SN07031.pdf.

¹²⁸ Ibid; Consumer Affairs, “Kid-friendly search engine, “Kiddle,” sparks controversy”, 4 March 2016. Available at: <https://www.consumeraffairs.com/news/kid-friendly-search-engine-kiddle-sparks-controversy-030416.html>.

not address the situation of children who disagree with their parents' decisions, for whom there is no redress.

In the UK, industry is working with civil society organisations to unblock inappropriately restricted sites, but balancing children's protection and autonomy in this area remains a challenge for everyone involved.

Commercial advertising and marketing: Another complication is the proliferation of commercial advertising and marketing practices targeting children, both as consumers in their own right and to influence their parents' purchase decisions.¹²⁹ Furthermore, it is increasingly difficult to distinguish advertising from content. The UN Special Rapporteur in the field of cultural rights, Farida Shaheed,¹³⁰ has drawn attention to the increasingly hazy line between commercial advertising and other content, such as recreation and education, and the disproportionate presence of commercial advertising and marketing in public spaces. She has recommended a ban on commercial advertising and marketing in public and private schools. Other concerns include the promotion of stereotypes, junk food and the sexualisation of children.

The right to surrender personal data to third parties e.g. Facebook or to publish personal information about oneself, one's family or third parties

The issue: On this note, Facebook is compelled by the US Children's Online Privacy Protection Act of 1998 (COPPA)¹³¹ to set 13 as the minimum age for creating an account (though Facebook's Chief Executive Mark Zuckerberg has stated publicly he wishes there were no age limit¹³²). COPPA was designed to prevent advertisers from reaching under-13s without parental consent. In fact, the company has come under fire for failing to implement this rule because of concerns that abusers are increasingly trawling social networking sites to identify likely victims, and has been sued for this reason; the company reached a confidential settlement with the family before the trial.¹³³ More recently the European Union determined that children under the age of 16 years (the minimum age used to be 13) may

need parental permission to transfer data to third parties under a newly approved rule that aims to strengthen children's data protection and privacy online, but which digital rights advocates say places restrictions on children's online freedoms.¹³⁴ In practice Member States may be able to choose 13, 14 or 15 instead, but with the climate of public fear around sexual abuse and "radicalisation", that may be unlikely.

What the CRC says: Article 13 provides that children have a right to hold and express opinions, and to seek and receive information through any media. This imposes an obligation on States parties to "refrain from interference in the expression of those views, or in access to information, while protecting the right of access to means of communication and public dialogue."¹³⁵ Article 17 requires States to "recognise the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health."

There are some limitations placed on children's right to receive information: the Convention encourages States 'to ensure the development of guidelines to protect children from information and material injurious to [their] well-being' (CRC art. 17e). The definition of what constitutes information injurious to children's well-being is not altogether clear. However, the Travaux Préparatoires (the official record of negotiations) of the Convention¹³⁶ indicate that concerns about harmful information stem from children's exposure to violence, but also in part from exposure to racist and other ideologies promoting prejudice - in other words, this article is meant to shield children from prejudice, not teach it to them. Reflecting this, the Committee's recommendations to States on this article often refer explicitly to violence, child pornography (i.e. images of child abuse) and racism.

Article 16 provides that 'no child shall be subjected to arbitrary or unlawful interference with his or her privacy ... or correspondence', so in some cases children's right to freedom of expression online will need to be balanced against their rights to privacy and protection.

On advertising, the Committee has stressed States' responsibility to ensure that business activities and operations do

129 MediaSmarts, Canada's Centre for Digital and Media Literacy, "How marketers target kids." Available at: <http://mediasmarts.ca/marketing-consumerism/how-marketers-target-kids>.

130 UN Special Rapporteur in the field of cultural rights, The impact of advertising and marketing practices on the enjoyment of cultural rights, A/69/286, August 2014, Available at: http://ap.ohchr.org/documents/dpage_e.aspx?si=A/69/286.

131 Children's Online Privacy Protection Act of 1998 (COPPA) <https://www.ftc.gov/enforcement/rules/rulemaking-regulatory-reform-proceedings/childrens-online-privacy-protection-rule>.

132 ZDNet, "Mark Zuckerberg: Facebook minimum age limit should be removed", 20 May 2011. Available at: <http://www.zdnet.com/article/mark-zuckerberg-facebook-minimum-age-limit-should-be-removed/>.

133 The Sunday Times, "Facebook sued over use by girl under 13", 13 September 2015. Available at: http://www.thesundaytimes.co.uk/sto/news/uk_news/Society/article1606611.ece.

134 Livingstone, S., "No more social networking for young teens", 18 December 2015. Available at: <http://blogs.lse.ac.uk/mediapolicyproject/2015/12/18/no-more-social-networking-for-young-teens/>.

135 UN Committee on the rights of the Child, General Comment No. 12: The right of the child to be heard, 2009, para. 81. Available at: <http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC-C-GC-12.pdf>.

136 UN Office of the High Commissioner for Human Rights and Save the Children Sweden, Legislative History of the Convention on the Rights of the Child, Volume 1. New York and Geneva: 2007, p. 483, para 39. Available at: <http://www.ohchr.org/Documents/Publications/LegislativeHistorycrc1en.pdf>.

not have an adverse impact on children's rights, especially marketing to children of products with a potential long-term impact on their health (it specifies some of these products as cigarettes and alcohol, food high in saturated fats, sugar, salt or additives). It notes that children may believe marketing and advertisements to be truthful and unbiased, and recommends that States adopt appropriate regulations, encourage business enterprises to adhere to codes of conduct and use clear and accurate product labelling and information that enable parents and children to make informed consumer decisions.¹³⁷

CRIN believes that: Age ratings should be imposed for cinema screenings for protection purposes because there is no administrative capacity for assessing a child's competence. Digital media, however, present a bigger challenge. Age restrictions here are a blunt and ineffective way of ensuring children's protection from 'inappropriate' content. Where age restrictions are in place, for example, to create a Facebook account, they have been shown to be patently ineffective. In addition, a child's own parents are sometimes responsible for breaching their child's privacy by sharing their photographs.¹³⁸

Evidence suggests that well-informed and engaged parents who discuss the internet with their children are the most effective means of protection.¹³⁹ Furthermore, the gulf that exists between adults' and children's knowledge of the internet means that children will often find ways around technology or gather information by other means, potentially exposing them to greater risks.¹⁴⁰ Therefore, where filters are in place, they should never be a replacement for face-to-face communication and discussion. Children must be supported to think critically.

The need to protect children from violence, obscenity and incitement to hatred, across the range of electronic devices, particularly where they risk the consequences of laying bare their private lives to strangers, goes without saying. And it is true that the distinction between illegal and harmful content can be subjective, often inadvertently bleeding into censorship. However, it is crucial for an open and just society that any labelling systems for online content are:

- opt-in;
- not overly broad (proportionate to a legitimate goal and set out in law);
- applied to individual user profiles on a digital device, rather than the device in general, and adjustable to an individual's capacity and different age groups rather than 'children' or 'users' in general;
- transparent (as to what is being blocked and why, and how to request a given site is unblocked), with an accessible means of redress;
- and combined with efforts to promote open communication, critical thinking and the right to privacy.

It must be remembered that children often demonstrates their own strategies for protection including consulting friends, siblings and changing their privacy settings, among other tactics¹⁴¹).

Some additional safeguards should be in place. Children should be made aware that anything they post may be available worldwide and have consequences in the immediate or long-term. They should have control over this information, for instance, their informed consent should be obtained before any transfer of data is made. It should be possible for under-18s (and adults who were under 18 at the time of posting) to have information removed on request, with respect for confidentiality. This is in line with the 'right to be forgotten' as determined by the European Court of Justice¹⁴² (currently available only for Google search results within the European Union except for revenge porn which is possible worldwide - the documents themselves are not removed, but they are removed from a particular name search - and a broader draft EU regulation on this subject,¹⁴³ which builds on the 1995 Data Protection Act¹⁴⁴).

On commercial advertising CRIN, in line with the Special Rapporteur in the field of cultural rights, urges a ban on commercial advertising and marketing in public and private schools. The content of adverts should be regulated, so that no false claims are made and no advertising should target children. Instead an emphasis should be placed on helping children to develop critical thinking skills where the media and marketing are concerned in schools and elsewhere.

¹³⁷ CRC General Comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights, CRC/C/GC/16, paras. 19 and 59.

¹³⁸ Yeniasafak, "Children can sue parents over photos posted on Facebook", 2 March 2016. Available at: <http://www.yeniasafak.com/en/technology/children-can-sue-parents-over-photos-posted-on-facebook-2427772>; Hiniker, A., Schoenebeck, Sarita, Y. & Kientz, J.A., University of Washington, Not at the Dinner Table: Parents' and Children's Perspectives on Family Technology Rules, March 2016. Available at: http://media.wix.com/ugd/a0f093_3ca344c37a2a4271a32a8670ecec5abf.pdf.

¹³⁹ UNICEF, Global Safety Online: Global Challenges and Strategies, May 2012, p. 45. Available at: http://www.unicef-irc.org/publications/pdf/ict_techreport3_eng.pdf.

¹⁴⁰ A survey in Brazil, for example, revealed that slightly more than two thirds of children believed they knew more than their parents about the internet regardless of their socio-economic status. Barbosa, A., O'Neill, B., Ponte, C., Simões, J.A., and Jereissati, T., Risks and safety on the internet: Comparing Brazilian and European children, 2013. LSE, London: EU Kids Online. Available at: <http://www.lse.ac.uk/media@lse/research/EUKidsOnline/EU Kids III/Reports/Brazil-report-21 nov-final.pdf>.

¹⁴¹ Pew Research Internet Project, "Where teens seek online privacy advice", 15 August 2013. Available at: <http://www.pewinternet.org/2013/08/15/where-teens-seek-online-privacy-advice/>.

¹⁴² This means that while the original content remains on the website in question, but it is no longer be indexed by Google's search engine. European Commission, "Right to be forgotten" and online search engines ruling," 3 June 2014. Available at: http://ec.europa.eu/justice/newsroom/data-protection/news/140602_en.htm.

¹⁴³ See the general approach: <http://data.consilium.europa.eu/doc/document/ST-9565-2015-INIT/en/pdf> and European Parliament's first reading: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2014-0212+0+DOC+XML+V0//EN>.

¹⁴⁴ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31995L0046:en:HTML>.

We want this paper to trigger debate, guard against arbitrary divisions within the span of childhood, and promote an ideal rather than pragmatic vision of how to balance children's protection and autonomy.

We don't claim to have all the answers, but believe a serious debate considering general principles and research about what works is the best starting point.

Further resources

- Find pages for each issue tackled here, highlighting existing campaigns by CRIN or others, starting points for accessing justice on each of these issues, and additional resources: <https://www.crin.org/en/node/42453>.
 - Case studies of issues not addressed here - test out the criteria detailed at the beginning of the paper: www.crin.org/en/node/42511.
-

About CRIN (www.crin.org)

Our goal: A world where children's rights are recognised, respected and enforced, and where every rights violation has a remedy.

Our organisation: CRIN is a global research, policy and advocacy organisation. Our work is grounded in the United Nations Convention on the Rights of the Child.

Our work is based on five core values:

- We believe in rights, not charity
- We are stronger when we work together
- Information is power and it should be free and accessible
- Societies, organisations and institutions should be open, transparent and accountable
- We believe in promoting children's rights, not ourselves.

The Child Rights International Network (CRIN) is registered in the United Kingdom and regulated by Companies House and the Charity Commission (Company Limited by Guarantee No 6653398 and Charity No 1125925).

Illustrations by Miriam Sugranyes Coca
Designed by Remember Creative