Not a minor matter: at what age does childhood end?

Angela Melchiorre and Ed Atkins

Right to Education Project
ActionAid International
Focus and aim

- 4 minimum ages:
  - end of compulsory education
  - employment
  - marriage
  - criminal responsibility

- To evaluate efforts made towards identifying the point(s) of transition from childhood to adulthood
Outline

- Introduction
- Childhood and the definition of the child in the CRC
- Minimum ages
- Practical implications and examples from the CRC reporting process
- Conclusions
Sources and methodology

- CRC monitoring process
  - States Parties’ Reports
  - Committee’s Concluding Observations

- Synergies and contradictions
  - international trend towards uniformity
  - national legislation

- Link
  - notions of minimum ages
  - conceptions and legal interpretations of childhood
  - majority
Childhood

- Involves
  - physical
  - psychological
  - social
  - moral
  - legal
  - features

- Contrasts with legal and universal idea(l) of childhood set forth in the CRC whereby a child is every human being below 18 years of age
The child in the CRC

- Art. 1
  For the purposes of the present Convention, a child means every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier.

- 2 elements:
  - 18 (greater protection to the greatest number of children)
  - Majority (beyond age; civil, penal, political...)

**GLOBAL CAMPAIGN FOR EDUCATION**

actionaid

End poverty. Together.

**AMNESTY INTERNATIONAL**
Beyond age and art. 1

- If the level of maturity determines whether a person is adult or not, many adults (as defined by physical size or age) would probably have to be redefined as children. (Flekkøy and Kaufman)

- CRC general principles
  - Art. 2 (non-discrimination)
  - Art. 3 (best interests of the child)
  - Art. 6 (life, survival and development)
  - Art. 12 (respect for the views of the child)

- Art. 5 (evolving capacities of the child)
Minimum ages - I

Balance two concepts:

- the child as a subject of rights whose evolving capacities must be respected
- the State’s obligation to provide special protection
Minimum ages - II

- Clear lines
  - no capital punishment or life imprisonment for those under the age of 18 (art.37)
  - no recruitment into the armed forces or direct participation in hostilities for those under the age of 15 (art.38; raised to 18 in the Optional Protocol on the involvement of children in armed conflict)

- General minimum ages
  - for employment (art.32)
  - for criminal responsibility (art.40)
  - indirectly for compulsory primary education (art.28)
Minimum ages - III

- Legal and medical counselling without parental consent;
- Medical treatment or surgery without parental consent;
- End of compulsory education;
- Admission to employment or work, including hazardous work, part-time and full-time work;
- Marriage;
- Sexual consent;
- Voluntary enlistment in the armed forces;
- Conscription into the armed forces;
- Participation in hostilities;
- Criminal responsibility;
- Deprivation of liberty, including by arrest, detention and imprisonment, inter alia in the areas of administration of justice, asylum-seeking and placement of children in welfare and health institutions;
- Capital punishment and life imprisonment;
- Giving testimony in court, in civil and criminal cases;
- Lodging complaints and seeking redress before a court or other relevant authority without parental consent;
- Participating in administrative and judicial proceedings affecting the child;
- Giving consent to change of identity, including change of name, modification of family relations, adoption, guardianship;
- Having access to information concerning the biological family;
- Legal capacity to inherit, to conduct property transactions;
- To create or join associations;
- Choosing a religion or attending religious school teaching;
- Consumption of alcohol and other controlled substances; [...]
The reporting process under the CRC - I

Estonia

According to the Labour Contracts Act (RT I 1992, 15, 241), a person who has attained 18 years of age may be employed. In exceptional cases, with the written consent of a parent or guardian, a minor having attained 15 years of age may be employed if the work does not endanger the minor’s health, morals and acquiring of education and if the work is not prohibited for minors. A minor between 13 and 15 years of age may be employed with the written consent of a parent or guardian and the labour inspector of the employer’s location and for work included in the list approved by the Government of the Republic if the work does not endanger the minor’s health, morals and acquiring of education and if the work is not prohibited for minors.

(UN Doc. CRC/C/8/Add.45, 2002, para. 34)
The reporting process under the CRC - II

- **Czech Republic**
  
  Under section 13 of the Family Act a marriage can be concluded on attaining majority, i.e. upon reaching the age of 18. Minors older than 16 may get married only with the consent of a court.
  
  (UN Doc. CRC/C/11/Add.11, 1996, para. 34)

- **Spain**
  
  Depending on their degree of maturity and subject to the law, minors aged 14 years or older may act in the following matters: (a) They may marry, provided that a competent court, with just grounds and on the application of the party concerned, waives the age impediment (arts. 46.1 and 48, second para., of the Civil Code). **Marriage produces the de jure emancipation of a minor.**
  
  (UN Doc. CRC/C/70/Add.9, 2001, para. 431)
The reporting process under the CRC - III

- Committee on the Rights of the Child’s CO on Lesotho
  The Committee recommends that the State Party review, and amend as appropriate, existing legislation in order to harmonize the age of majority and the overall definition of the child, to introduce one minimum legal age for marriage, to increase the minimum age for criminal responsibility, to address concerns related to the minimum age for consulting a doctor without parental consent and to establish one minimum age for sexual consent.
  (UN Doc. CRC/C/15/Add.147, 2001, para. 24)

- Marshall Islands
  In response to the Committee’s concern regarding the minimum age for marriage being different from boys, the Birth, Registration and Marriage Registration Act has been amended. This Act raises the legal age of marriage for girls from 16 years to 18 years, consistent with the age requirements for boys.
  (UN Doc. CRC/C/93/Add.8, 2005, para. 48)
Gender discrimination in marriageable age

<table>
<thead>
<tr>
<th>Europe</th>
<th>Asia-Pacific</th>
<th>Middle East and Northern Africa</th>
<th>Africa</th>
<th>Latin America &amp; the Caribbean</th>
</tr>
</thead>
<tbody>
<tr>
<td>Albania 16/18</td>
<td>Cambodia 18/20</td>
<td>Algeria 18/21</td>
<td>Angola 15/16</td>
<td>Argentina 16/18</td>
</tr>
<tr>
<td>Armenia 17/18</td>
<td>China 20/22</td>
<td>Egypt 16/18</td>
<td>Benin 15/18</td>
<td>Bolivia 14/16</td>
</tr>
<tr>
<td>Austria 16/18</td>
<td>DPRK 17/18</td>
<td>Iran 13/15</td>
<td>Botswana 14/16</td>
<td>Colombia 12/14</td>
</tr>
<tr>
<td>Kyrgyzstan 17/18</td>
<td>Fiji 16/18</td>
<td>Jordan 15/16</td>
<td>Burkina Faso 15/18</td>
<td>Guatemala 14/16</td>
</tr>
<tr>
<td>Luxembourg 16/18</td>
<td>India 18/21</td>
<td>Kuwait 15/17</td>
<td>Cameroon 15/18</td>
<td>Nicaragua 14/15</td>
</tr>
<tr>
<td>Poland 16/18</td>
<td>Indonesia 16/19</td>
<td>Morocco 15/18</td>
<td>DRC 15/18</td>
<td>Panama 14/16</td>
</tr>
<tr>
<td>Rep. Moldova 14/16</td>
<td>Japan 16/18</td>
<td>Ethiopia 15/18</td>
<td>Namibia 15/18</td>
<td>Peru 14/16</td>
</tr>
<tr>
<td>Romania 15/18</td>
<td>Rep. Korea 16/18</td>
<td>SaoTome&amp;Pri. 14/16</td>
<td>St Vincent&amp;Gr. 15/16</td>
<td>St Vincent&amp;Gr. 15/16</td>
</tr>
<tr>
<td>Turkey 14/15</td>
<td>Timor-Leste 15/18</td>
<td>Senegal 16/?</td>
<td>Suriname 13/15</td>
<td>Suriname 13/15</td>
</tr>
<tr>
<td>Uzbekistan 16/17</td>
<td>Vanuatu 16/18</td>
<td>South Africa 12/14</td>
<td>Trinidad&amp;Tob. 12/14</td>
<td>Trinidad&amp;Tob. 12/14</td>
</tr>
<tr>
<td></td>
<td>Vietnam 18/20</td>
<td></td>
<td>Uruguay 12/14</td>
<td></td>
</tr>
</tbody>
</table>
Conclusions

- Lack of coherence for the end of childhood
- Uniformity = long process barely begun
- Age not the only factor
- Conformity with CRC, its general principles and Art. 5

More flexible approach
Thank you!

angela.melchiorre@actionaid.org

ed.atkins@actionaid.org

For more information, please visit
www.right-to-education.org