Age Determination in Refugees and Asylum Seekers in Europe
An EAP Position Paper on the Forensic Involvement of Paediatricians
Bratislava, May 2015
(draft, 3.0, 8 May 2015)

Background
Paediatricians and other healthcare workers in Europe are at times asked by legal authorities to assist in identifying the age of an asylum seeker through forensic examinations in order to help determine if the person is an adult or minor (below the age of 18).

Currently there are no established medical means that can reliably differentiate age between late teenage minors and young adults. While x-rays can be used to determine bone density, and this can be charted against average bone density according to age, there are too many confounding factors that may prevent an accurate or correct age evaluation. Nutritional factors, past disease, genetics, and physical exercise can all play a role in the development of bone density, which may lead to advanced or delayed bone maturation.

In addition, there are ethical reasons why paediatricians (and all healthcare professionals) should avoid participating in forensic examinations requested by public authorities seeking to evaluate age according to medical criteria. Paediatricians cannot be compelled to engage in practices that undermine the deontology of their profession. Further, the European Academy of Paediatrics strongly recommends that paediatricians and other medical professionals refuse not to be involved in the age determination of individuals refugees or asylum seekers.

Introduction
Europe is confronted with a heavy burden of refugees, many of whom seek asylum from political and economic hardships in their home countries. The situation is often life-threatening for the asylum seeker, while also enormously challenging for European and national officials confronted with the need to find humanitarian and adequate solutions to displaced persons seeking to reside in Europe.

European regulations and member state countries often differentiate between adults and minors for the purpose of evaluating the acceptability of a request for asylum. Approximately four percent of the refugees seeking asylum claim to be minors. Immigration authorities at times find it difficult to confirm a refugee’s status as a minor or an adult because documentation of date-of-birth or chronological age are missing or cannot be confirmed. Thus, in questionable cases, authorities at times seek to have a determination of biological age through the use of forensic investigations performed by qualified medical professionals.

Evidence of age is often essential to the realization of an individual’s rights, as a child and as an adult. The importance of this for children is expressed in Article 7 of the United Nations Convention on the Rights of the Child: “The child shall be registered immediately after birth.” This fundamental right is still not satisfactorily realized: globally the births of nearly 230 million children under age five have never been recorded. In 2012 alone, 57 million infants (four out of every ten babies delivered worldwide that year) were not registered with
civil authorities.

The lowest levels of birth registration are found in sub-Saharan Africa and South Asia. Even when a birth has been registered, a registered child may not have received proof of registration (for example, a birth certificate), or the individual may have lost the documentation and have no way of replacing it, particularly in times of upheaval, such as war and social unrest. The unfortunate geographical coincidences of incomplete birth registration rates, wars, and poverty mean that refugees and asylum seekers often possess no evidence of age. Worldwide in 2008 there were approximately 827,000 asylum seekers, 44% of whom were children. Unaccompanied or separated children accounted for 4% of all asylum claims.

Age is a key determinant as to how an individual asylum seeker is viewed according to law and with regard to how judgements regarding the granting of asylum are made. The age of an asylum seeker often plays a determining role with regard to the success or failure of his or her asylum application. In addition, for refugee and asylum-seeking children, age may also be determining for entitlements to healthcare and/or education. Age may also be an important factor in keeping families together while in detention.

Three Key Considerations for Paediatricians

When paediatricians and other healthcare professionals are confronted by requests to help determine the age of a refugee or asylum seeker, three key questions need to be addressed:

1. The Medical Question

While there may be a legitimate interest to try to establish the age of a refugee or asylum seeker beyond what is claimed by an individual or family, the use of medical interventions that may be potentially harmful or detrimental to the health of the child/individual. Is it appropriate for a paediatrician or other healthcare professional (for example, a dentist) to administer ionizing radiation for the sole purpose of determining the age of a person?

2. The Efficacy Question

While x-rays in combination with a clinical examination of the teeth and hands may be considered largely accurate in determining dental and skeletal (bone) maturity, these methods have not been shown to conclusively determine a person’s age. The question arises: Are the medical technologies and interventions available to paediatricians and other health professionals reliable for accurately determining the age of a child/individual? If this question cannot be responded to with some degree of certainty, then the paediatrician risks having the authority of his/her findings misrepresented and incorrectly used to the detriment of his/her patient.

3. The Deontological Question

Paediatricians and other healthcare professionals are called on to promote and protect the health of their patients (WMA, Declaration of Helsinki, 2013). Is it appropriate for a paediatrician or other health professional to engage in procedures that may intrude on or compromise the health of a patient, physically or emotionally, when these procedures are not for health-related purposes? Further, within the medical environment, a paediatrician and other health professionals are required to promote the rights and well-being of their patients. Should the paediatrician or other health professional participate in a medical examination in a context of duress or in situations that give rise to potentially serious human rights questions?

The Position of the European Academy of Paediatrics (EAP)

The EAP recognizes the extreme geographic differences in economic wealth and political
stability that lead to large migrations of people, many of whom arrive in Europe seeking asylum and refugee status. They often arrive after long, harsh, and dangerous journeys, and their situation is frequently dire. At the same time, the EAP appreciates the commitment of European governments and officials to find humanitarian and economic solutions to the plight of refugees, particularly from impoverished and unstable environments. Given this background, the sole interest of the EAP in this position paper is to promote the highest ethical standards in forensic investigations among the European paediatric community and to promote and protect the health, rights, and well-being of its patients.

Given this background, and wanting to promote and protect the role of the paediatrician in European society, the EAP current finds the following:

1. Participating in medical interventions that are not specifically engaged in advancing the health of a child/individual are deontologically questionable and need to be avoided in nearly all cases. We are reminded of Article 3 of the European Council Directive 97/43, which states: “special attention shall be given to the justification of those medical [radiation] exposures where there is no direct health benefit for the person undergoing the exposure and especially for those exposures on medico-legal grounds.”

2. The current medical interventions for determining age are not sufficiently accurate or reliable in determining age. These interventions include dental and hand x-rays; physiologic examinations; puberty measurements; patient social or narrative histories; behavioural, psychological, and emotional evaluations. Even when used collectively, these interventions have a margin of error of two years.

3. Given the circumstances of detention, questioning, and processing, the free and fully informed consent of the child/minor/individual to a forensic investigation of age appears difficult to achieve or guarantee. Paediatricians should not engage in invasive, interview, or evaluative practices where there is no assurance of full consent and no potential for health promotion. Indeed, where consent seems to have been elicited because of emotional or psychological pressure, the paediatrician needs to consider firstly the rights of his/her patient. Finally, even if such consent could be considered to be freely given with a full understanding of its consequences, the paediatrician remains bound by points 1 and 2 above not to engage in such forensic investigations.

Therefore, the EAP expresses the position that it is medically, deontologically, and ethically inappropriate for paediatricians and others in paediatric (or medical) healthcare to engage in the forensic investigation of refugee and asylum seekers in Europe.

Acknowledgement

This position paper was drafted in the context of discussions within the Ethics and Advocacy Working Groups of the EAP between 2013 and 2015. The principle authors were Pieter J.J. Sauer (Department of Paediatrics, Beatrix Children Hospital/UMCG, Groningen, The Netherlands), Alf Nicholson (Department of Paediatrics, Children’s University Hospital, Dublin 1, Ireland), David Neubauer (Department of Child, Adolescent and Developmental Neurology, University Children’s Hospital, Ljubljana, Slovenia), and Francis P. Crawley (Good Clinical Practice Alliance – Europe [GCPA], Brussel, Belgium).

This position was approved by the General Assembly of the EAP in Bratislava, Slovak Republic, on 30 May 2015.