



The dilemma of age estimation of children and juveniles in South Africa

To the Editor: Requests for medical practitioners to perform age estimations in children and juveniles without formal documentation in South Africa (SA) are usually made by the courts or social workers in line with the provisions of the Child Justice Act.^[1] The involved individuals may be undocumented SA children – possibly abandoned or in conflict with the law, or, more commonly, unaccompanied or separated foreign minors with no proof of their chronological age.

Age defines the relationship between an individual and the state and, in turn, the protection and/or support to which an individual may be entitled.^[2] The possible ramifications of age estimations are quite serious and may, and do, often infringe on the involved individual's rights, including the possibility that a child will not receive support from the state if deemed an adult. There may be no protection for a child from detention or their wrongful incarceration with adults. Conversely, an adult, incorrectly assessed to be a child, may expose children to risk when placed in a children's environment.^[2]

There is no consistency in the practice of age estimation throughout the world and it may consist of non-medical methods only (i.e. an interview and/or review of documentation), various medical methods (skeletal assessment, dental assessment with or without dental radiography, skeletal radiographic assessment, physical assessment or psychological assessment), or a combination of these methods.^[2-4]

In SA, it is stated in section 13 of the Child Justice Act that if, during an assessment of a child, the age of the child is uncertain, the probation officer must make an age estimation. It further states that the probation officer can use certain information such as previous age determinations, statements by the parents or the child, school documents, baptism or other religious certificates, or age estimations by medical practitioners. The probation officer must submit the age estimation on a prescribed form to the inquiry magistrate and the estimation can be changed before the child is sentenced, if more information regarding the child's age arises.^[1] No further guidance with regard to the experience or qualifications of the medical practitioner or how and where these assessments should be done is provided. This leaves the procedure open for individual and subjective interpretation and the application thereof. There is no consistency in this practice across SA.

In Cape Town, when children and juveniles are referred to medical practitioners for an age estimation, these assessments are usually done by clinical forensic practitioners, and consist of a physical examination and completion of a set form: Form 7 – Medical report and age assessment of child in terms of section 48(2) of the Children's Act, 2005 (Act no. 38 of 2005).

Requests for age estimations are increasing with regard to the increased number of immigrants. From January to June 2016, 37 children were referred for age estimations to the Clinical Forensic Unit at Victoria Hospital, Cape Town. No published data are available on the estimated number of foreign undocumented children in SA. According to the United Nations High Commissioner for Refugees (UNHCR) September 2015 factsheet, there are 112 192 refugees and an estimated 463 940 asylum seekers in SA, Lesotho and Swaziland,

with the majority originating from Zimbabwe, Somalia, Ethiopia, Democratic Republic of the Congo, Rwanda and Burundi.^[5]

These age estimations are often complicated by various factors such as non-availability of collateral information, language barriers, children fearful of providing any information because of the dread of deportation, and a lack of population-specific charts to use to compare anthropometric measurements.

Despite these complicating factors, the court expects the medical practitioner to come to a 'scientific' conclusion regarding an approximate or even an exact date of birth or chronological age, and will in most cases accept the estimated age without question.

Age estimation is especially difficult when it comes to the assessment of young persons (aged 15 years to early 20s) where physical maturity does not necessarily equate to being an adult.^[2]

The difficulties and ethical dilemmas underlying these assessments have been recognised internationally and led to controversial debates and attempts to address these concerns, particularly in the context of increasing human migration, and it is clear that more discussions are needed to determine what is 'ethically and morally acceptable in terms of the error margin in assessing age'.^[2,3] It is recommended that age assessment is only employed as a last resort, and if it is performed, a holistic approach is recommended.^[2,3]

In the SA milieu, discussions between the various role players (Department of Health, including dentists, paediatricians and clinical forensic practitioners, immigration control, SA Police Service, Department of Justice and Department of Social Development) and further research and training are urgently indicated to protect the rights of the affected individuals.

A holistic and multidisciplinary approach, with clear guidelines for the management of these vulnerable individuals, should be established, taking into account the inherent margins of error in these medical assessments, and ensuring that the assessments are done in a safe child- and gender-sensitive manner,^[6] by experienced and trained role players.

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