



HUMAN
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“Like a Lottery”

Arbitrary Treatment of Unaccompanied Migrant Children in Paris



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Printed in the United States of America

ISBN: 978-1-6231-36284

Cover design by Rafael Jimenez

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Glossary

ADJIE	Support and Defense for Young Isolated Foreigners (Accompagnement et défense des jeunes isolés étrangers), a group that provides legal support for unaccompanied migrant children
AME	State Medical Aid (Aide médicale d'État), health care for those with irregular migration status
ASE	Service de l'aide sociale à l'enfance, the child welfare service in France
Bulle	The "Bubble," a center in Porte de la Chapelle, in northern Paris, that offered 10 days of temporary shelter to adult migrants arriving in the city. The center closed at the end of March 2018.
Cité	The Paris metro station where the juvenile court, whose judges review age assessments done by the DEMIE, was formerly located. Until April 16, 2018, the court was located on Île de la Cité, the island in the Seine that is also the location of the Cathedral of Notre-Dame de Paris. After that date, the court moved to Porte de Clichy.
Couronnes	The Paris metro station closest to the DEMIE
DASES	Directorate for Social Action, Children, and Health (Direction de l'action sociale, de l'enfance et de la santé), the Paris child welfare agency
DEMIE	Evaluation Facility for Unaccompanied Foreign Children (Dispositif d'évaluation des mineurs isolés étrangers), run by the French Red Cross

Department	An administrative division of France. Paris is both a city and a department.
FTDA	France Terre d’Asile, a nongovernmental organization
MSF	Médecins sans Frontières, or Doctors Without Borders, a nongovernmental organization that runs a drop-in center and provides services for unaccompanied children in Paris
115	An emergency number that those who are homeless in France can use to find temporary shelter.

Summary

On a typical night, some 200 or more unaccompanied migrant children sleep on the streets of Paris. In large part, these children are homeless as a consequence of arbitrary procedures and inordinate delays in determining that they are under age 18, the first step to entry into the child protection system.

The French Red Cross does age assessments for unaccompanied children in Paris, delegated to do so by the department of Paris (a department is a local administrative division of France), and it has established an evaluation facility (Dispositif d'évaluation des mineurs isolés étrangers, DEMIE) for this purpose. But many children who seek legal recognition of their age report that they are turned away at the door by security guards. Others go through a short interview of approximately five minutes followed by a summary verbal denial. This treatment falls short of what is required by French law, violates international standards, and means that those who are turned away must fend for themselves or seek assistance from nongovernmental organizations to find shelter, food, and other basic necessities.

Those who are fortunate enough to receive full interviews receive a formal decision from the Paris child welfare agency, the Directorate for Social Action, Children, and Health (Direction de l'action sociale, de l'enfance et de la santé, DASES), based on the DEMIE's evaluation. They are often rejected if they do not have identity documents, even though international standards and French regulations note that documents—which may be lost during arduous journeys—are not required and that approximate age can be determined through questioning. But those who do have documents are also frequently rejected—child welfare authorities and French courts regularly question the validity of birth certificates, passports, and other identity documents, sometimes even when they have been authenticated by embassies.

Case files also reveal other arbitrary grounds on which child welfare authorities have decided that an individual is an adult and thus disqualified from the child protection system. In cases examined by Human Rights Watch, these include:

- Giving accounts that are too detailed—which examiners assess to be a sign of maturity.
- Giving accounts deemed imprecise, particularly if examiners find minor errors in dates.
- Travelling unaccompanied, even though many thousands of children travel on their own each year to France and other countries.
- Working, whether in home countries or at some point on the journey to France, even though work by teenagers is common and, for those travelling alone, often essential for their survival.

If they are not summarily turned away but are instead provided a written determination, children can seek review of negative age assessments in the juvenile courts. But some judges who review age assessments order bone tests and other medical examinations to establish age, even though such tests have been criticised as unreliable by medical bodies in France and elsewhere.

In addition, review by the courts can take months, with no emergency shelter or other assistance during this time. Moussa H., who said he was 15 years old and from Côte d'Ivoire, had been awaiting a decision from the judge for six weeks when Human Rights Watch spoke to him in February 2018. "In the meantime, I don't have food, a place to sleep, and I don't go to school," he told Human Rights Watch.

Protracted uncertainty takes a toll on children. "This situation is difficult for us. There is a lot of stress, and I don't know any way to make it better. I have no regular lodging, no stability, no security. There's nobody who is looking out for me," Azad R., a 16-year-old Afghan boy, said, telling us that he had cut himself as a way of coping with the stress he faced.

Delays in formal recognition as children can also mean loss of legal status upon majority because the fact and timing of being taken into care by the child welfare system affect eligibility for residence permits and French nationality. Children who are taken into care before the age of 16 are eligible at age 18 for residence permits, and those taken into care after age 16 may be able to obtain student or work permits when they turn 18. If they are taken into care before the age of 15, they can request French nationality at age 18.

The treatment of many unaccompanied minors in Paris seeking confirmation of their status as a child is arbitrary, denies children a fair hearing, and fails to uphold the obligation to prioritize the best interest of the child. As a result, their right to live with dignity and their rights as children to special protection and assistance, among other human rights, are undermined or violated. “I’ve spent many nights on the street. I didn’t expect this. It’s incredible to have to sleep on the street in a country like France. If you’re unaccompanied, you’re abandoned,” 16-year-old Souleymane G., a Guinean boy, told Human Rights Watch.

Ordinary citizens, on their own and working in groups, have stepped in to address some of these children’s needs, providing food and other services, organizing football clubs, improvisational theatre, and other activities, and in some cases opening their homes to give children a place to stay for a night or two, or even longer. “The people here help more than the government. There are people here with big hearts,” said Ramatoulaye S., a 17-year-old boy from Côte d’Ivoire.

But these laudable efforts, along with services provided by nongovernmental groups such as Médecins sans Frontières and Utopia 56, cannot meet the need and depend on voluntary action. In contrast, the French state has both the means and the obligation, under domestic law and its international commitments, to provide appropriate care and protection to all children within French territory, regardless of migration status.

Proposed revisions to France’s immigration and asylum laws do not address these shortcomings in the treatment of unaccompanied migrant children. Nor would the legislative reform change policies that allow for the detention of migrant children who arrive in France with their families, a practice the European Court of Human Rights found to violate the prohibition on inhuman or degrading treatment in six separate cases between 2012 and 2016. (The government announced in mid-April that it would form a separate working group to examine this issue.)

To address the serious concerns identified in this report, France should ensure that age assessments are used only when authorities have serious doubts about an individual’s claim to be under the age of 18. In such cases, they can take appropriate steps to determine age and establish eligibility for services, bearing in mind that all age assessments will be estimates. Age assessments should seek to establish approximate age through interviews and review of documents, as recommended by international

standards. Assessments should be undertaken with sensitivity by trained examiners. These procedures should afford the benefit of the doubt so that if there is a possibility that an individual is a child, that individual is treated as a child.

Human Rights Watch concludes that, in line with opinion of several French medical authorities who have repeatedly found that medical examinations are not reliable means of determining age, particularly for older adolescents, they should not be used for this purpose. Instead, France should end the use of bone tests and similar medical examinations as means to determine age.

Recommendations

To the French State

- Ensure that departments have sufficient resources to carry out their child protection functions.

To the Child Protection Service (Aide sociale à l'enfance, ASE), the Paris Departmental Council (Conseil départemental), and the French Red Cross

- Ensure that all those who are awaiting an evaluation from the Evaluation Facility for Unaccompanied Children (Dispositif d'évaluation des mineurs isolés étrangers, DEMIE) receive emergency shelter for the minimum period of five days or until the evaluation is completed, as required by article R.221-11 of the Code de l'action sociale et des familles. The period of emergency shelter should be extended to cover any period of appeal of an adverse age determination.
- Issue and implement clear guidance to staff at the DEMIE that age assessments should follow the November 17, 2016, order of the Ministry of Justice. In particular:
 - DEMIE staff should not turn away individuals at the door on the basis of appearance alone.
 - Summary or “flash” interviews are not permitted.
 - All interviews should be conducted with particular expertise and care, in a manner “characterized by neutrality and compassion.”
 - Birth certificates and other civil documents obtained abroad should be presumed valid in the absence of substantiated reason to believe they are not.
 - The absence of a photo or other biometric identifiers on a birth certificate or other civil documents should not be a basis for excluding those documents from consideration.
 - Every individual assessed by the DEMIE and found to be an adult should receive a written decision explaining the reasons for the decision.
- Investigate reports of noncompliance by DEMIE staff with the order of November 17, 2016, and take appropriate measures to discipline noncompliance.

To the juvenile court (Tribunal des Enfants)

- Judges should apply the presumption of validity of birth registration and other identity documents issued abroad, in line with article 47 of the Code civil.
- In recognition of consistent guidance from medical authorities that bone tests and similar medical examinations are not reliable means of determining age, particularly for older adolescents, judges should not order or rely on these tests.
- Judges should review negative age assessments without delay.

To the public prosecutor (procureur)

- Appoint a legal representative (*administrateur ad hoc*) without delay whenever a person claiming to be an unaccompanied child seeks to submit an asylum claim to the French Office for the Protection of Refugees and Stateless Persons (Office français de protection des réfugiés et apatrides, OFPRA).

To all department councils

- Respect the finding of another department (an administrative division of France) that an individual is an unaccompanied child under the age of 18 and refrain from subjecting him or her to another age assessment upon his or her transfer under the system of “national allocation” (*répartition nationale*).

To the Government, the National Assembly, and the Senate

- Amend the Code de l’action sociale et des familles and other legislation, as appropriate, to reflect the following:
 - Any age assessment should be a matter of last resort, to be used only where there are serious doubts about an individual’s declared age and where other approaches, including efforts to gather documentary evidence, have failed to establish an individual’s age.
 - Authorities should offer clear reasons in writing as to why an individual’s age is doubted before beginning an age assessment.
 - An end to the use of bone tests and other medical examinations for the purpose of age assessment, because of criticism by French and other medical authorities for their inherent unreliability.
 - Age assessment should afford the benefit of the doubt such that if there is a possibility that an individual is a child, he or she is treated as such.

- Amend the Code de l'action sociale et des familles and other legislation, as appropriate, to ensure that the finding of one department that an individual is under the age of 18 cannot be challenged by another department.
- Amend articles L.313-11 and L.313-15 of the Code de l'entrée et du séjour des étrangers et du droit d'asile and article 21-12 of the Code civil to ensure that children are not penalized by delays in the age assessment process. For the purpose of eligibility for residence permits and nationality upon reaching adulthood, children should be regarded as having been taken into care by the child welfare system (Service de l'aide sociale à l'enfance, ASE) as of the day they sought to be recognized as children at the DEMIE or at similar evaluation centers, regardless of how long the age assessment process takes.

Methodology

This report is based on 49 interviews with asylum seekers and migrants in Paris, all male, who identified themselves as children under the age of 18. The total comprised eighteen from the Republic of Guinea (often referred to as Guinea Conakry to distinguish it from Guinea-Bissau and Equatorial Guinea), twelve from Côte d'Ivoire, ten from Afghanistan, five from Mali, and one each from Bangladesh, the Comoros Islands, Niger, and Senegal. Four of these boys had been formally recognized as children at the time of our interview, two after evaluations by the French Red Cross and two after a juvenile judge reviewed their cases.

In addition, Human Rights Watch interviewed lawyers, health care providers, staff of humanitarian agencies, and volunteers who distribute food, assist with housing, or run activities for young asylum seekers and migrants in Paris. Human Rights Watch met with and shared our findings with the state authority that examines asylum claims, the French Office for the Protection of Refugees and Stateless Persons (Office français de protection des réfugiés et apatrides, OFPRA); the child protection team at the Paris City Hall; officials with the French Defender of Rights (Défenseur des droits); and the French Red Cross. Human Rights Watch also reviewed case files, including negative age assessments issued by the Paris Directorate for Social Action, Children, and Health (Direction de l'action sociale, de l'enfance et de la santé, DASES) based on evaluations done by the French Red Cross at its Evaluation Facility for Unaccompanied Foreign Minors (Dispositif d'évaluation des mineurs isolés étrangers, DEMIE). Human Rights Watch also wrote to the French Red Cross and to DASES with requests for written comment on our findings.¹ The French Red Cross sent us a written reply.² DASES did not respond to our findings in writing but agreed to meet with us immediately before the publication of this report.

¹ Letter from Bénédicte Jeannerod, France director, Human Rights Watch, and Michael Bochenek, senior counsel, Children's Rights Division, Human Rights Watch, to Thierry Couvert Leroy, national delegate, Children and Families, French Red Cross, June 6, 2018; Letter from Bénédicte Jeannerod, France director, Human Rights Watch, and Michael Bochenek, senior counsel, Children's Rights Division, Human Rights Watch, to Andres Cardenas, head of the Education Sector, Office of Child Welfare, June 19, 2018.

² Letter from Thierry Couvert Leroy, national delegate, Children and Families, French Red Cross, to Bénédicte Jeannerod, France director, Human Rights Watch, and Michael Bochenek, senior counsel, Children's Rights Division, Human Rights Watch, June 15, 2018.

Human Rights Watch researchers conducted interviews in French and English, with the assistance of interpreters in a handful of cases in which children did not speak those languages. All interviews for this report took place from February to May 2018. The researchers explained to all interviewees the nature and purpose of our research, including our intent to publish a report with the information gathered. They informed each potential interviewee that they were under no obligation to speak with us, that Human Rights Watch does not provide humanitarian services or legal assistance, and that they could stop speaking with us or decline to answer any question with no adverse consequences. The researchers obtained oral consent for each interview. Interviewees did not receive material compensation for speaking with Human Rights Watch.

All names of children used in this report are pseudonyms. Human Rights Watch has also withheld the names and other identifying information of humanitarian workers who requested that we not publish this information.

In line with international standards, the term “child” refers to a person under the age of 18.³ As the United Nations Committee on the Rights of the Child and other international authorities do, we use the term “unaccompanied children” in this report to refer to children “who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so.”⁴ “Separated children” are those who are “separated from both parents, or from their previous legal or customary primary care-giver, but not necessarily from other relatives,”⁵ meaning that they may be accompanied by other adult family members.

³ United Nations Convention on the Rights of the Child, November 20, 1989, 1577 U.N.T.S. 3 (entered into force September 2, 1990), art. 1.

⁴ UN Committee on the Rights of the Child, General Comment No. 6: Treatment of Unaccompanied and Separated Children Outside Their Country of Origin, U.N. Doc. CRC/GC/2005/6 (September 1, 2005), para. 7.

⁵ *Ibid.*, para. 8.

Unaccompanied Migrant Children in Paris

When Kamrul R., a 16-year-old boy from Bangladesh, arrived in Paris, he found an inexpensive hostel where he stayed for two nights. “Then my money was finished, so I stayed in the metro. Some people saw me and said, ‘What are you doing here?’ So I told them my whole situation. They asked me how old I was and gave me the address to go to in Couronnes,” he said, referring to the location of the reception and evaluation center run by the French Red Cross. He was scheduled for an age assessment and given emergency shelter for one week. At the end of the week, he received a letter notifying him that the Paris Directorate for Social Action, Children, and Health (Direction de l’action sociale, de l’enfance et de la santé, DASES) had determined that he was an adult. A nongovernmental aid group agreed to give him legal assistance. “My lawyer told me I had to take my case to the judge. I told her I had no place to stay. She told me I had to go to Porte de la Chapelle to ask Utopia [another aid group] for shelter. So then I came to Porte de la Chapelle. Utopia gave me a place for the night. I don’t stay in one place the whole time. Every night I go to Porte de la Chapelle, and a woman gives me a place to stay just for the night. It’s very hard for all of us, not only me. I am just walking on the streets during the day,” he told Human Rights Watch.⁶

It is not unusual for unaccompanied children to have to sleep on the streets in Paris, even in the winter. Youssouf T., a 15-year-old boy from Mali, told us he spent 15 nights on the streets when he arrived in Paris in December 2017.⁷ Similarly, when Oumar W., a 17-year-old from Mali, arrived in Paris, he spent two nights on his own at the Gare de Lyon before he went to Porte de la Chapelle and found assistance with shelter.⁸ Seydou L., a 16-year-old boy from Mali, also spent several nights at the train station when he arrived in Paris in January 2018, sleeping under a blanket someone gave him.⁹

Some are fortunate enough to find assistance quickly. Moussa H., a 15-year-old boy from Côte d’Ivoire, told us that when he arrived at Gare de Lyon, “I didn’t know anybody. I was

⁶ Human Rights Watch interview with Kamrul R., Paris, March 5, 2018.

⁷ Human Rights Watch interview with Youssouf T., Paris, March 6, 2018.

⁸ Human Rights Watch interview with Oumar W., Paris, March 12, 2018.

⁹ Human Rights Watch interview with Seydou L., Paris, March 6, 2018.

just there at the station alone, at 10:00 p.m. I went to the police and explained my problem. I told them I was a minor. They gave me an address to go to. They told me how to take the metro to Jaurès. I asked people along the way, and they showed me where to change. I found an association that works with minors, and a woman took me to a hotel and also gave me some food.”¹⁰ Safi D., a 16-year-old from Mali, said, “When I arrived in Paris, I found some other minors who took me to ADJIE [a nongovernmental organization that provides legal support for unaccompanied children]. They found a place for me to stay the night.”¹¹

All of these boys eventually found places to stay through nongovernmental groups or individuals. But the need far outstrips these group’s limited resources.

As a result, 400 or more unaccompanied migrant children were sleeping on the streets of Paris each night in February 2018, according to an estimate by a group of lawyers who provide legal assistance to these children.¹² We heard similar estimates during the winter months from other nongovernmental groups that work with unaccompanied children.¹³ Estimates for May and June 2018 were lower, in the range of 200.¹⁴

The number of unaccompanied migrant children has increased in recent years, in Paris as well as in France overall.¹⁵ France’s child welfare system took more than 25,000 unaccompanied migrant children into care in 2017,¹⁶ an increase of 92 percent from the

¹⁰ Human Rights Watch interview with Moussa H., Paris, February 15, 2018.

¹¹ Human Rights Watch interview with Safi D., Paris, March 5, 2018.

¹² Letter from Isabelle Roth and Catherine Delanoë-Daoud, heads of the Paris Bar initiative to address the needs of unaccompanied minors (the Pôle Mineurs Non-Accompagnés), and Emmanuel Daoud, member of the Paris Bar, to François Molins, public prosecutor, High Court of Paris, February 12, 2018, p. 2.

¹³ Human Rights Watch interview with Florian Guélard, Utopia 56, Paris, February 20, 2018.

¹⁴ Human Rights Watch interview with Agathe Nadimi, Paris, June 21, 2018.

¹⁵ Eléa Pommier, “Comment sont pris en charge les mineurs isolés étrangers en France?” *Le Monde*, October 23, 2017, http://abonnes.lemonde.fr/societe/article/2017/10/23/comment-sont-pris-en-charge-les-mineurs-isoles-etrangeurs-en-france_5204937_3224.html (accessed April 5, 2018).

¹⁶ Assemblée des Départements de France, “L’accueil des mineurs non accompagnés (MNA) dans les Départements,” February 2018, p. 1, <http://www.departements.fr/wp-content/uploads/2018/02/Fiche-info-MNA-270218.pdf> (accessed April 10, 2018). See also Maryline Baumard, “Accueil des mineurs étrangers: l’urgence d’une réforme,” *Le Monde*, November 30, 2017, https://lemonde.fr/societe/article/2017/11/30/mineurs-etrangeurs-l-urgence-d-une-reforme_5222613_3224.html (accessed April 5, 2018).

previous year.¹⁷ Nearly half of all unaccompanied migrant children who seek protection from the child welfare system do so in Paris.¹⁸

Some of these children stayed at an emergency shelter for adults in Porte de la Chapelle, known as the “Bubble” because of its inflatable roof, claiming that they were 18 to be able to enter.¹⁹ The Bubble closed at the end of March 2018.²⁰

Others have stayed in hostel rooms, with costs covered by Médecins sans Frontières or other groups. Volunteers have also opened their homes to young migrants, providing a place to sleep for a night or two and sometimes for longer periods.²¹

The remainder find shelter where they can, often with adult migrants who camp out on the streets. Over 1,800 people, mostly adults, were sleeping in tents in and around La Villette, in northeastern Paris, at the end of March, a census by the group France Terre d’Asile found. Another 400 people, primarily Afghan, were sleeping in tents along the Canal Saint-Martin, near the Jaurès metro station.²²

¹⁷ See Sénat, Séance du 17 janvier 2018 (compte rendu intégral des débats), <https://www.senat.fr/seances/s201801/s20180117/s20180117005.html> (accessed April 18, 2018). See also Maryline Baumard, “Accueil des mineurs étrangers: l’urgence d’une réforme.”

¹⁸ Human Rights Watch interview with Corinne Torre, head of France Mission, Médecins sans Frontières, Paris, May 25, 2018.

¹⁹ Human Rights Watch interview with Florian Guélard, February 20, 2018. See also Matt Broomfield, “Trail of Misery: Following Child Refugees Through the Streets of Paris,” *Independent*, April 14, 2017, <https://www.independent.co.uk/news/world/europe/child-refugees-paris-migrant-crisis-europe-a7684116.html> (accessed April 8, 2018).

²⁰ Maryline Baumard, “Le centre humanitaire pour migrants, une occasion manquée pour Anne Hidalgo,” *Le Monde*, April 3, 2018, http://www.lemonde.fr/societe/article/2018/04/03/le-centre-humanitaire-pour-migrants-une-occasion-manquee-pour-anne-hidalgo_5279948_3224.html (accessed April 3, 2018); Cécile Beaulieu, “Migrants à Paris : ‘La bulle était une expérience unique,’” *Le Parisien*, March 27, 2018, <http://www.leparisien.fr/paris-75/paris-la-bulle-etait-une-experience-unique-27-03-2018-7632399.php> (accessed April 8, 2018).

²¹ Human Rights Watch interviews with Corinne Torre, head of France Mission, Médecins sans Frontières, Paris, February 13, 2018; Florian Guélard, February 20, 2018; Agathe Nadimi, Paris, May 24, 2018. See also Adeline Sire, “In Paris, Volunteers Rally to Feed and House Young People Who Are Migrating to France on Their Own,” *The World*, PRI, March 29, 2018, <https://www.pri.org/stories/2018-03-29/paris-volunteers-rally-feed-and-house-young-people-who-are-migrating-france-their> (accessed April 10, 2018).

²² Maryline Baumard, “Sur les trottoirs parisiens, près de 2,000 migrants attendent de pouvoir déposer une demande d’asile,” *Le Monde*, April 3, 2018, http://www.lemonde.fr/immigration-et-diversite/article/2018/04/03/sur-les-trottoirs-parisiens-pres-de-2-000-migrants-attendent-de-pouvoir-deposer-une-demande-d-asile_5279765_1654200.html (accessed April 3, 2018).

Children come on their own to Paris for a variety of reasons. All are seeking a better future, but the impetus for leaving their homes is not necessarily solely economic. Many of the children we spoke with had fled abusive family situations, particularly at the hands of stepparents or extended family members after the death of a parent. Others had been subjected to labor exploitation.

Some fled after they were targeted for persecution or feared harm. For example, 17-year-old Abdoulaye D. told us he left Guinea after a group of people destroyed his family's home because they were politically opposed to his uncle, a local government official.²³ Joseph D., 16, also from Guinea, told us that his father had converted to Christianity; after his father's death, he and the rest of his family were threatened with harm if they did not return to traditional beliefs.²⁴ Youssouf T., a 15-year-old from Mali, left because of the presence of armed groups in the town where he lived; he explained to Human Rights Watch that he was afraid either the group or the government would assume he was associated with the other side.²⁵

Access to Shelter and Other Social Services

Unaccompanied migrant children receive emergency shelter and access to other social services after assessment at a “reception and evaluation hub” (*plateforme d'accueil et d'évaluation*). In Paris, the hub is the Evaluation Facility for Unaccompanied Foreign Children (Dispositif d'évaluation des mineurs isolés étrangers, DEMIE), run by the French Red Cross. Other departments handle reception and evaluation differently: some contract with other agencies, such as France Terre d'Asile, for this purpose, others conduct initial evaluations themselves, and some send unaccompanied children directly to the child welfare service (Aide sociale à l'enfance, ASE).²⁶

²³ Human Rights Watch interview with Abdoulaye D., Paris, March 13, 2018.

²⁴ Human Rights Watch interview with Joseph D., Paris, February 19, 2018.

²⁵ Human Rights Watch interview with Youssouf T., Paris, March 6, 2018.

²⁶ See generally InfoMIE, “Articulation dispositif national de mise à l’abri, d’évaluation et d’orientation des mineurs isolés étrangers et droit commun de la protection de l’enfance,” n.d., http://www.infomie.net/IMG/pdf/schema_dispositif_national_23092013.pdf (accessed April 8, 2018).

By law, any person stating that he or she is an unaccompanied child should receive emergency shelter pending an evaluation of the person's age.²⁷ The evaluation should take the form of a "multidisciplinary" interview that includes questions about the youth's family background, reasons for leaving the country of origin, and plans for the future.²⁸ A Red Cross official told us that the DEMIE may conduct a second interview if a more thorough evaluation is required,²⁹ and one youth told us he was interviewed twice before receiving a negative age assessment.³⁰ In practice, as discussed more fully in the following section, many youths are excluded from the protection of the child welfare system without a formal interview.

Referring to this period of emergency shelter, initially set at five days, Catherine Delanoë-Daoud, a lawyer who, together with a colleague, leads the Paris Bar's initiative to address the needs of unaccompanied children, remarked:

The five days of accommodation theoretically granted by the DEMIE are very important, because it is not possible to do a good interview without the chance to get some rest. But often, the interview takes place immediately or after only one night of sleep.³¹

During the five-day period, the departmental council (or the agency it has designated) should evaluate the youth's situation to confirm whether he or she is a child as well as his or her unaccompanied status.³² The five-day period for the evaluation may be extended; if so, emergency shelter should continue until the evaluation is completed.³³ If the youth is

²⁷ Code de l'action sociale et des familles, art. R.221-11(I) (added by Decree No. 2016-840 of June 24, 2016, art. 1, J.O., No. 0148 (June 26, 2016)). Emergency shelter is not necessarily provided by the same agency that conducts evaluations. In Paris, for example, where the French Red Cross handles reception and evaluation, France Terre d'Asile provides emergency shelter. Each agency provides these functions with the authorization of the Paris departmental council. Human Rights Watch interview with Thierry Couvert Leroy, national delegate, Children and Families, French Red Cross, May 31, 2018.

²⁸ See Code de l'action sociale et des familles, art. L.226-2-1; art. R.221-11 (. See also InfoMIE, "Dispositifs spécifiques aux mineurs isolés étrangers," October 22, 2016, <http://www.infomie.net/spip.php?rubrique272&lang=fr> (accessed April 8, 2018).

²⁹ Human Rights Watch interview with Thierry Couvert Leroy, May 31, 2018.

³⁰ Human Rights Watch interview with Moussa H., Paris, February 15, 2018.

³¹ Human Rights Watch interview with Catherine Delanoë-Daoud, Paris Bar initiative to address the needs of unaccompanied minors (the Pôle Mineurs Non-Accompagnés), Paris, February 14, 2018.

³² Code de l'action sociale et des familles, art. R.221-11(II).

³³ See *ibid.*, art. R.221-11(IV).

found to be an unaccompanied child, he or she is placed under the care of the child welfare system.³⁴

Those who are not found to be under the age of 18 as a result of this interview should receive a “reasoned decision” from departmental authorities.³⁵ They may seek review of adverse age assessments, a procedure before the juvenile judge that frequently takes months.³⁶

An unaccompanied child who is placed in care will not necessarily stay in the department where he or she sought recognition as a minor; unaccompanied children recognized in Paris, for example, are often sent elsewhere in France once they are placed in the care of the child welfare system, a procedure known as “national allocation” (*répartition nationale*).³⁷ Of the 1,263 persons recognized as unaccompanied children in Paris in 2017, 924, or 73 percent, were placed in the care of child welfare authorities in other departments.³⁸

Departmental authorities cover most of the costs of unaccompanied children’s care. In 2016, the Assembly of French Departments (Assemblée des Départements de France) estimated that the care of unaccompanied children cost 1 billion euros, with less than 10 percent covered by the national government. The government announced that it would set aside an additional 128 million euros in the 2018 budget to cover an expected increase in the number of unaccompanied migrant children arriving in France.³⁹ In May 2018, it reached an agreement with the Assembly of French Departments to provide additional funding for temporary shelter and age assessment of individuals who request placement in the child welfare system as unaccompanied migrant children, although the additional funding is relatively modest: 500 euros per youth evaluated along with support for accommodation and meals of 90 euros per day for 14 days, and 20 euros per day for the

³⁴ Arrêté [Order] of November 17, 2016, Implementing Decree No. 2016-840 of June 24, 2016, art. 9.

³⁵ Ibid.

³⁶ Code civil, art. 375-1. See generally AutonoMIE and InfoMIE, “Saisir le/la juge des enfants,” August 5, 2014, <http://www.infomie.net/IMG/pdf/autonomie-guide-fiche2.pdf> (accessed April 8, 2018).

³⁷ See Arrêté du 28 juin 2016 pris en application du décret n° 2016-840 du 24 juin 2016 relatif aux modalités de calcul de la clé de répartition des orientations des mineurs privés temporairement ou définitivement de la protection de leur famille, J.O. No. 0151 (June 30, 2016); Décision du 11 avril 2017 fixant pour l’année 2017 les objectifs de répartition proportionnée des accueils des mineurs privés temporairement ou définitivement de la protection de leur famille, J.O., Texte 39 (April 14, 2017).

³⁸ See Ministère de la Justice, “Rapport annuel d’activité 2017: Mission mineurs non accompagnés,” March 2018, pp. 9-10.

³⁹ Eléa Pommier, “Comment sont pris en charge les mineurs isolés étrangers en France?”

fifteenth through twenty-third day.⁴⁰ (Previously, the national government provided a flat amount of 250 euros per youth, intended to support the evaluation and five days of accommodation and meals.⁴¹) The government is also expected to issue a decision in the coming months on the respective responsibilities of departmental and national authorities.⁴²

Perhaps because each department is responsible for most of the cost of caring for unaccompanied children, some departments seek reevaluation of age for some unaccompanied children sent to their care.⁴³

Unaccompanied children do not need to apply for asylum in order to receive housing and other protection needs. Similarly, all children have the right to education, regardless of their migration status.⁴⁴ But formal recognition as a child is essential to have access to housing, education, and other services.

⁴⁰ Patrick Roger, “Vers un accord sur le financement de l'accueil des mineurs non accompagnés: en première ligne dans l'accueil des jeunes étrangers, les départements ont accepté les propositions du gouvernement,” *Le Monde*, May 18, 2018, http://www.lemonde.fr/politique/article/2018/05/18/vers-un-accord-sur-le-financement-de-l-accueil-des-mineurs-non-accompagnes_5300987_823448.html (accessed May 22, 2018); Human Rights Watch interview with Corinne Torre, May 25, 2018.

⁴¹ Patrick Roger, “Vers un accord sur le financement de l'accueil des mineurs non accompagnés.”

⁴² See Jean-Noël Escudié, “Mineurs non accompagnés: pas d'accord entre gouvernement et départements,” *Caisse des Dépôts*, March 12, 2018, <https://www.caissedesdepotsdesterritoires.fr/cs/ContentServer?pagename=Territoires/Articles/Articles&cid=125028075119> (accessed April 18, 2018).

⁴³ See Avis du Défenseur des droits n° 17-03 (February 7, 2017), p. 10. See also Maryline Baumard, “Le gouvernement face au défi de la prise en charge des mineurs étrangers non accompagnés,” *Le Monde*, March 8, 2018, http://abonnes.lemonde.fr/societe/article/2018/03/08/le-gouvernement-face-au-defi-de-la-prise-en-charge-des-mineurs-etrangers-non-accompagnes_5267354_3224.html (accessed April 5, 2018).

⁴⁴ Code de l'éducation, art. L.111-1 (“The right to education is guaranteed to everyone in order to enable them to develop their personality, raise their level of initial and ongoing training, to integrate themselves into social and professional life, and to exercise their citizenship.”); Circulaire No. 2012-141 of October 2, 2012, Organisation de la scolarité des élèves allophones nouvellement arrivés, art. 1.2 (“School is a right for all children residing on the national territory, whatever their nationality, migration status, or previous journey”), http://www.education.gouv.fr/pid25535/bulletin_officiel.html?cid_bo=61536 (accessed April 8, 2018).

Arbitrary Age Assessment Procedures

[T]he vast majority of young people who come to the DEMIE are rejected on the basis of appearance, without the benefit of the multidisciplinary evaluation or the five days' temporary emergency shelter required by the 2016 law and its implementing regulations for all "persons declaring themselves to be minors and temporarily or permanently deprived of the protection of their family."

—Catherine Delanoë-Daoud and Isabelle Roth, heads of the Paris Bar initiative to address the needs of unaccompanied children, February 14, 2018

It's like a lottery: sometimes you win, but most of the time you lose, even if you're underage.

—Erick Deshors, a night manager for Utopia 56 at Porte de la Chapelle, May 24, 2018

In Paris, age assessments are done by the French Red Cross at its Evaluation Facility for Unaccompanied Foreign Children (Dispositif d'évaluation des mineurs isolés étrangers, DEMIE), with the formal decision taken by the Directorate for Social Action, Children, and Health (Direction de l'action sociale, de l'enfance et de la santé, DASES), the Paris child welfare agency.⁴⁵ Lawyers and humanitarian groups working with unaccompanied children report that those who seek recognition as children from the DEMIE are often turned away at the door by a DEMIE security guard based on appearance.

Alternatively, unaccompanied children may receive a "flash interview," a brief series of questions followed by a summary verbal denial—a flawed process that does not comply with the procedures set forth in regulations.

In such cases they are given a leaflet with basic information on the services available to adults and may be told to go to the juvenile judge to submit an appeal—a disingenuous response, because they cannot appeal without a written decision.

⁴⁵ The French Red Cross conducts age assessments in Paris with the authorization of the president of the departmental council. Examiners at the DEMIE send their reports and conclusions to the president of the council, who formally takes the decision to place a child into the care of the child welfare system (Service de l'aide sociale à l'enfance, ASE). Human Rights Watch interview with Thierry Couvert Leroy, May 31, 2018; Letter from Thierry Couvert Leroy, June 15, 2018.

Children who receive full interviews may face assessments that are seemingly capricious, without obvious basis in objective criteria, and that fail to apply international standards. For example, Human Rights Watch has reviewed cases in which youths were deemed adults simply because they did not have identity documents, or because they travelled on their own, or because they worked at some point during their journey. Accounts considered overly detailed were taken as evidence of maturity, seemingly without regard to the level of education a person reports. On the other hand, imprecise accounts, particularly errors in dates and inability to recall other details of experiences several years in the past, were apparently taken as indications that the individual was not telling the truth about his personal history, leading to the conclusion that he was not a child. Moreover, as described in the next section, birth records are often disregarded as unreliable, even when they are authenticated by courts in the country of origin or by consular officials.

Some judges who review disputed age assessments order bone tests and other medical examinations to establish age, even though such tests have such a wide margin of error for older adolescents that the National Consultative Committee on Ethics for Health and Life Sciences (Comité consultatif national d'éthique pour les sciences de la vie et de la santé), the National Academy of Medicine, and the High Council of Public Health (Haut Conseil de la Santé Publique), along with the French Defender of Rights, the Commission Nationale Consultative des Droits de l'Homme, the Human Rights Commissioner of the Council of Europe, and the UN Committee on the Rights of the Child, recommend discontinuing their use.

As a consequence, unaccompanied children may face considerable delays in the age assessment process. For example, Mahamadou Z., 16, saw the judge in November 2017, who ordered validation of his documents. When we interviewed him in mid-February 2018, he was still waiting for a ruling.⁴⁶ Similarly, Kodoké C., a 17-year-old Guinean boy, told us in May 2018 that he had seen a judge in late November, with no word on when he would hear the outcome of his case.⁴⁷ In a third case, Abdoulaye D., a 17-year-old from Guinea, said, “It’s been eight months since I’ve been on the streets like this, waiting.”⁴⁸ Catherine

⁴⁶ Human Rights Watch interview with Mahamadou Z., Paris, February 15, 2018.

⁴⁷ Human Rights Watch interview with Kodoké C., Paris, May 23, 2018.

⁴⁸ Human Rights Watch interview with Abdoulaye D., Paris, March 13, 2018.

Delanoë-Daoud and Isabelle Roth, lawyers who head the Paris Bar’s initiative to provide legal support to unaccompanied children, have seen cases that take as long as 12 to 14 months.⁴⁹ The French Defender of Rights heard of cases in which hearings were set 11 months after youths requested review or that were scheduled to take place after youths’ eighteenth birthday.⁵⁰

The significant differences in material benefits and legal status afforded to child migrants as compared with adult migrants, described more fully in the following chapter, create incentives for young adults to misrepresent their age. When authorities have serious doubts about an individual’s claim to be under the age of 18, they can take appropriate steps to determine age and, accordingly, eligibility for children’s services. In such cases, they should take care to do so within a framework that considers a range of factors, including psychological, developmental, and cultural factors, and ensure that assessments are undertaken with skill and sensitivity. The procedures used should afford the benefit of the doubt “such that if there is a possibility that the individual is a child, s/he should be treated as such.”⁵¹

Children Turned Away at the Door

When Ibrahim M., a 17-year-old Guinean boy, went to the DEMIE in early 2017, the guard at the door turned him away, telling him to go to the “Bubble,” the center at Porte de la Chapelle for adult migrants, even though he said he was 17. The staff at the Bubble sent him back to the DEMIE when he told them his age. On his return, he said, the guard told him, “You’ve already been here; don’t come back.”⁵²

Other children also recounted being turned away at the door to the DEMIE, and we heard from children and aid workers who witnessed others being turned away. In one such account, 17-year-old Ramatoulaye S., from Côte d’Ivoire, told us, “At the DEMIE, I saw people being refused directly, just like that, without being asked any questions. It hurt me a lot to

⁴⁹ Human Rights Watch interview with Catherine Delanoë-Daoud and Isabelle Roth, heads of the Paris Bar initiative to address the needs of unaccompanied minors (the Pôle Mineurs Non-Accompagnés), Paris, February 14, 2018.

⁵⁰ See *Décision du Défenseur des droits* n° MDE 2016-183 (July 21, 2016), p. 15. See also *Avis du Défenseur des droits* n° 17-03, p. 5.

⁵¹ Committee on the Rights of the Child, General Comment No. 6, para. 31(i).

⁵² Human Rights Watch interview with Ibrahim M., Paris, February 15, 2018.

see that. A man from the DEMIE told a youth, ‘You, get out, you, you’re not a kid!’ It was the first time this boy had come in. He [the official] is mean, he spoke a bit aggressively.”⁵³

The French Defender of Rights noted the practice of summarily turning youths away (“*refus guichet*”) at the DEMIE in July 2016, concluding that such summary rejections could only be based on appearance and were more frequent during times when large numbers of youths sought recognition.⁵⁴

MSF recorded nearly 160 summary rejections of this kind between early December 2017 and mid-February 2018.⁵⁵ When Human Rights Watch asked the French Red Cross about these reports, its national delegate for children and families replied that if people were turned away at the door, it was for a reason other than their apparent age.⁵⁶ In a subsequent written communication, he stated, “We have never refused a youth entry at the door.”⁵⁷

Summary rejections of this kind are contrary to French regulations, which require a comprehensive social evaluation by trained staff and a written report detailing the basis for the decision.⁵⁸

“Flash” Interviews

Of the children who made it through the door, many we interviewed told us that they were rejected after summary interviews at the DEMIE, rather than the full evaluation envisioned by French law. They did not receive a formal denial letter that would have informed them of the reasons for the denial and would also have allowed them to appeal the decision. Instead, DEMIE staff handed them a leaflet containing directions to the juvenile court and instructions on how to contact the emergency shelter system for adults. Such summary

⁵³ Human Rights Watch interview with Ramatoulaye S., Paris, February 16, 2018.

⁵⁴ Décision du Défenseur des droits n° MDE-2016-183, p. 6. See also Avis du Défenseur des droits n° 17-03, p. 4.

⁵⁵ Human Rights Watch interview with Corinne Torre and Caroline Douay, Médecins sans Frontières, Pantin, February 13, 2018.

⁵⁶ Human Rights Watch interview with Thierry Couvert Leroy, May 31, 2018.

⁵⁷ Letter from Thierry Couvert Leroy, June 15, 2018.

⁵⁸ Arrêté du 17 novembre 2016, arts. 2, 4, 9.

interviews are contrary to the applicable regulations, which call for a comprehensive social evaluation and written report.⁵⁹

For example, when Moussa H., a 15-year-old boy from Côte d'Ivoire, went to the DEMIE, "They told me I would have to see a judge directly." Asked how long the Red Cross officials at the DEMIE spent with him, he replied, "They asked my age, what country I was from, the name of my family. They gave me a paper and told me to go to the judge. They talked to me for five minutes."⁶⁰

We heard many such accounts. Azad R., a 16-year-old Afghan boy, told Human Rights Watch, "I went to the DEMIE. They just asked me some questions quickly. Then they gave me a paper with directions on it and told me I should go to the judge. The paper didn't say anything special. It just told me where I could get meals and how I could reach the judge. There was nothing on it about my age."⁶¹

Similarly, 16-year-old Dalir A., from Afghanistan, told us that the DEMIE gave him a negative age assessment in February 2018 after an interview of about 20 minutes. "They gave me a paper and told me to go to the judge. The paper just had addresses on it, in English," he said.⁶² Issa B., a 16-year-old boy from Mali, also said that he was rejected at the DEMIE without receiving a letter.⁶³ Youssouf T., a 15-year-old boy from Mali, said that officials at the DEMIE told him he was not under the age of 18 after a seven-minute interview, without giving him a written decision.⁶⁴ Sékou D. and Damany K., both 15, one from Côte d'Ivoire and the other from Guinea, told us they were rejected without written decisions in May 2018 after interviews that lasted two to three minutes each.⁶⁵

These accounts are not unusual, we heard. "The approach is often, 'You have no proof of age, so we cannot say you are a minor.' But it is very difficult to prove a negative, to prove

⁵⁹ Ibid., arts. 6, 9.

⁶⁰ Human Rights Watch interview with Moussa H., Paris, February 15, 2018.

⁶¹ Human Rights Watch interview with Azar R., Paris, February 20, 2018.

⁶² Human Rights Watch interview with Dalir A., Paris, March 6, 2018.

⁶³ Human Rights Watch interview with Issa B., Paris, March 6, 2018.

⁶⁴ Human Rights Watch interview with Youssouf T., Paris, March 6, 2018.

⁶⁵ Human Rights Watch interviews with Sékou D., Paris, May 24, 2018; Damany K., Paris, May 24, 2018.

you are not an adult. Often the only proof is their own testimony,” Florian Guélard of Utopia 56 told Human Rights Watch. “It’s a kind of elimination, not an evaluation,” he added.⁶⁶

Statistics provided by Paris City Hall officials to one group showed that of approximately 6,700 individuals seen at the DEMIE in 2017, about 45 percent received summary evaluations and rejections, often with no written decision.

When we asked Paris City Hall officials about these reports, they conceded that full interviews did not always take place. “In an ideal world, we would like to see two-hour interviews, but this is not possible,” they said, but they disputed accounts of five-minute interviews. “Generally our interviews wouldn’t last five minutes; they might take 30 minutes,” they told us.⁶⁷

Children who follow the instructions of DEMIE staff find that the court will not take their cases without a written decision from the DEMIE. Souleymane G., a 16-year-old Guinean boy, said that after an interview of approximately half an hour at the DEMIE, “they gave me a paper with the address for the juvenile judge in Cité [the former location of the juvenile court]. They didn’t write the reasons why they rejected me. When I went to Cité, they told me I had to return to Couronnes [the location of the DEMIE] for another interview.”⁶⁸

His experience is typical, humanitarian workers told us. “The official will tell the kid to go see the judge, without any formal notification. But the kid cannot see the judge if he doesn’t have the written results of the assessment. The kids end up going back and forth between the DEMIE and the court,” Florian Guélard of Utopia 56 told us.⁶⁹

The French Red Cross official told us that short interviews of the kind described above were only possible in cases where a person had been seen before; in such cases, he said, it would still be possible to seek review of the decision before a judge. When we described cases in which judges refused to accept review without a written decision, the official said that the French Red Cross had instructed DEMIE staff in May 2018 that written decisions

⁶⁶ Human Rights Watch interview with Florian Guélard, Utopia 56, Paris, February 20, 2018.

⁶⁷ Human Rights Watch interview with Paris City Hall officials, Paris, February 19, 2018.

⁶⁸ Human Rights Watch interview with Souleymane G., Paris, March 6, 2018.

⁶⁹ Human Rights Watch interview with Florian Guélard, Utopia 56, Paris, February 20, 2018.

were mandatory.⁷⁰ Despite this positive step, we heard from youths and volunteers that DEMIE staff were still rejecting youths in late May after very short interviews and without written decisions.⁷¹

Mishandling of Interviews

Children who did receive full interviews reported that the experience was stressful and that they did not always understand what was being asked of them or why. Some children said they assumed the officials conducting the interviews were trying to keep them off balance—which would be contrary to the regulation requiring that interviews be conducted in a manner “characterized by neutrality and compassion.”⁷²

For example, Joseph D., a 16-year-old from Guinea, told us, “There were many questions, so many questions. I didn’t know the answers to all of the questions they asked. I was panicking, trying to answer everything they were asking me. All the questions were really putting pressure on me.”⁷³

“It was a bit hard, you have the impression they don’t believe you. You feel lost, on edge. He [the official] wanted to scare me,” said Ramatoulaye S., a 17-year-old boy from Côte d’Ivoire. He continued, “He asked me questions that I myself could not understand. For example, ‘Tell me the major neighborhoods of [the boy’s town]’ or ‘what is the trade in [the town] based on?’ I did not know how to answer, it was hard for me. And I don’t have a good memory for dates.”⁷⁴

Asked about these accounts, the French Red Cross official wrote to Human Rights Watch, “The objective of the examiners is not to destabilize the youths but to collect their remarks in the most objective way possible.”⁷⁵

⁷⁰ Human Rights Watch interview with Thierry Couvert Leroy, May 31, 2018. The Red Cross official also stated in a written follow-up to our interview, “We never speak of ‘short’ or ‘flash’ interviews: the interviews are conducted with respect for the regulatory framework.” Letter from Thierry Couvert Leroy, June 15, 2018.

⁷¹ Human Rights Watch interviews with Sékou D., Paris, May 24, 2018; Damany K., Paris, May 24, 2018; Agathe Nadimi, Paris, May 24, 2018; Association Timmy, Paris, May 29, 2018.

⁷² Arrêté du 17 novembre 2016, art. 3.

⁷³ Human Rights Watch interview with Joseph D., Paris, February 19, 2018.

⁷⁴ Human Rights Watch interview with Ramatoulaye S., Paris, February 16, 2018.

⁷⁵ Letter from Thierry Couvert Leroy, June 15, 2018.

If these accounts reflect the norm, the handling of age assessment interviews falls short of international standards, which call for such interviews to be conducted in a “safe” environment and a “fair manner,” in a way that is sensitive to the child’s age, gender, psychological maturity, and emotional state.⁷⁶

Arbitrary Refusals

In our review of refusal letters issued by the Paris child welfare authorities on the basis of the DEMIE evaluation, we found that many gave reasons that appear to be subjective and arbitrary. In these cases, it also appeared that the decisions failed to afford the benefit of the doubt “such that if there is a possibility that the individual is a child, she or he should be treated as such,”⁷⁷ as required by international standards.

Some letters cited factors that interviewers did not appear to have raised in the interview. As one example, Kamrul R., 16, showed us a denial letter that based the rejection in part on the fact that his clothes were clean even though he had spent four days on the street. “They didn’t ask me about this in the interview. I spent two days in the metro, but also two days before that in a hotel that I paid for. In the morning before my interview, I took a shower—someone let me wash up at her house. They didn’t ask me at the interview about any of this,” the boy said.⁷⁸

In other cases, the letters recited elements that youths told us were inaccurate. “They change what you say; they mix things up. Lots of minors complain about this,” said Souleymane G., a 16-year-old boy from Guinea.⁷⁹ “On the decision, there are words and statements I didn’t say,” 15-year-old Moussa H., from Côte d’Ivoire, told us.⁸⁰

⁷⁶ See Committee on the Rights of the Child, General Comment No. 6, para. 31(i); Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and Committee on the Rights of the Child, Joint General Comment No. 4 (Committee on Migrant Workers) and No. 23 (Committee on the Rights of the Child): State Obligations Regarding the Human Rights of Children in the Context of International Migration in Countries of Origin, Transit, Destination and Return, U.N. Doc. CMW/C/GC/4-CRC/C/GC/23 (November 16, 2017), para. 4.

⁷⁷ Committee on the Rights of the Child, General Comment No. 6, para. 31(i). See also Joint General Comment No. 4 (Committee on Migrant Workers and Members of Their Families) and No. 23 (Committee on the Rights of the Child), para. 4.

⁷⁸ Human Rights Watch interview with Kamrul R., Paris, March 6, 2018.

⁷⁹ Human Rights Watch interview with Souleymane G., Paris, March 6, 2018.

⁸⁰ Human Rights Watch interview with Moussa H., Paris, February 15, 2018.

All of the children we interviewed said they travelled from their home countries without parents or caregivers; many said they made the decision to do so on their own rather than at the behest of an adult. Most of these children said they had worked in their home countries and at some point on their journey to France. These experiences are credible and are shared by children Human Rights Watch has interviewed across the globe.⁸¹

However, even though working and travelling alone are common experiences of children who come to France and other countries, screeners often took these facts as evidence of adulthood. For example, in one case reviewed by Human Rights Watch, a 16-year-old Malian boy received a negative age assessment based in part on his decision to leave his country on his own: “You have demonstrated significant autonomy and maturity by deciding on your own to leave your country and travel alone.”⁸² Child welfare authorities rejected another 16-year-old Malian boy’s claim to be underage in part because he had worked while en route to Europe to be able to continue his journey: “You have demonstrated proven independence by working as a laborer at several construction sites during your [nine-month] migratory journey.”⁸³

Similarly, a 15-year-old Afghan boy received a negative age assessment in part because the fact that he had worked for one year in Turkey before he was able to continue his journey through Greece and Italy to France.⁸⁴ Officials judged another Afghan boy to be at least 18 based in part on the following factors:

You have demonstrated definite independence and maturity by working during your migratory journey, by organizing your own journey from Iran to Turkey, and by travelling alone from Iran to France.⁸⁵

⁸¹ See generally Human Rights Watch, “Child Labour,” <https://www.hrw.org/topic/childrens-rights/child-labor>.

⁸² DASES Denial Letter, December 21, 2017 (on file with Human Rights Watch). Other denial letters viewed by Human Rights Watch base negative age assessments in part on similar grounds. See, for example, DASES Denial Letter, January 9, 2018 (on file with Human Rights Watch) (“The degree of maturity and independence you have shown including by taking the decision on your own to leave your country and organizing your trip to France on your own is incompatible with that of a minor.”); DASES Denial Letter, December 21, 2017 (on file with Human Rights Watch) (“You have shown considerable independence and maturity by deciding on your own to leave your country and travelling alone.”).

⁸³ DASES Denial Letter, December 1, 2017 (on file with Human Rights Watch).

⁸⁴ DASES Denial Letter, January 17, 2018 (on file with Human Rights Watch).

⁸⁵ DASES Denial Letter, December 18, 2017 (on file with Human Rights Watch).

Other denial letters reviewed by Human Rights Watch reached similar adverse conclusions because of work during the journey to Europe.⁸⁶

In other cases, examiners appear to rely on the assumption that all unaccompanied children will have a disheveled appearance. “After asking me a lot of questions, the lady told me to my face that I was not unaccompanied because I was well-dressed, clean, and had a good phone,” Abdoulaye D., a 17-year-old Guinean boy, told us. He was particularly aggrieved at an additional factor she mentioned, that his French was too educated. He said:

That’s what hurt me the most, that the fact that my French is good is the reason for my failure [to be recognized as under age 18]. That’s a total injustice. I come from Guinea, a French-speaking country. Of all the things [the officials] told me, that’s the only thing that hurts me. I regret having learned French.⁸⁷

We heard from other children who said they received denial letters or were turned away without written decisions by examiners who told them they spoke French too well to be under age 18. For example, Imrane O., a 15-year-old from Côte d’Ivoire, said that he went to the DEMIE shortly after his arrival in Paris in November 2017:

When I presented myself at the DEMIE, a woman there started yelling at me. She said, “How can I believe you?” She said that I was answering her questions too well. Because I could answer her questions, I couldn’t be a minor. How is that? I did eight years of schooling, in French. Of course I

⁸⁶ See, for example, DASES Denial Letter, February 7, 2018 (on file with Human Rights Watch) (“You worked during your migratory journey, which indicates a degree of maturity incompatible with the age declared.”); DASES Denial Letter, February 15, 2018 (on file with Human Rights Watch) (“You have demonstrated a high level of maturity in working during your migratory journey.”); DASES Denial Letter, February 5, 2018 (on file with Human Rights Watch) (“The high degree of independence and maturity you have shown during your migration journey by working on your journey is not compatible with the age you report.”); DASES Denial Letter, December 29, 2017 (on file with Human Rights Watch) (“You have demonstrated independence and maturity by working during your migratory journey and traveling alone.”).

⁸⁷ Human Rights Watch interview with Abdoulaye D., Paris, March 13, 2018.

could answer her questions. They didn't give me a formal letter. They just told me I was rejected and said I should go to the judge.⁸⁸

Similarly, a Guinean youth who had lived for a time in Sierra Leone, an English-speaking country, received a negative age assessment based in part because he was able to speak both English and French without having gone to school.⁸⁹

“Behavior,” “bearing,” and similar subjective elements are also sometimes given as among the bases for a negative age assessment. “My letter said something like, ‘in light of your behaviour, the way you hold yourself and express yourself, you cannot be a minor.’ This made me feel bad. It’s not right,” Ramatoulaye S., 17, said.⁹⁰ In another case, a 16-year-old Malian boy received a negative age assessment in part, his letter said, because “[y]our bearing during the interview does not correspond to that of an adolescent.”⁹¹

Some denial letters suggest that youths simultaneously have the confidence and bearing of an adult along with other characteristics that appear to contradict that conclusion.⁹²

Other denial letters mention specific behaviors that do not appear to provide a basis to determine that a person is not a child. “You were annoyed by the questions relating to your journey and your age,” the letter to a 16-year-old Guinean boy stated.⁹³ In another case, the denial letter to a 15-year-old Afghan boy concluded that his “affirmative and demanding mode of communication with adults,” among other behavior, was inconsistent with the age he claimed to be.⁹⁴

⁸⁸ Human Rights Watch interview with Imrane O., Paris, February 16, 2018.

⁸⁹ DASES Denial Letter, December 12, 2017 (on file with Human Rights Watch).

⁹⁰ Human Rights Watch interview with Ramatoulaye S., Paris, February 16, 2018.

⁹¹ DASES Denial Letter, December 21, 2017 (on file with Human Rights Watch). See also DASES Denial Letter, January 31, 2018 (on file with Human Rights Watch) (“Your overall bearing, behavior, and mature communication do not match the age you report.”); DASES Denial Letter, January 26, 2018 (on file with Human Rights Watch) (“Your overall bearing does not correspond with the age you claim.”); DASES Denial Letter, February 17, 2018 (“Your overall bearing and your degree of maturity are inconsistent with the alleged age.”).

⁹² See DASES Denial Letter, December 2017 (on file with Human Rights Watch); DASES Denial Letter, January 2018 (on file with Human Rights Watch).

⁹³ DASES Denial Letter, January 31, 2018 (on file with Human Rights Watch).

⁹⁴ DASES Denial Letter, January 17, 2018 (on file with Human Rights Watch).

In some cases, negative age assessments appear to set an inappropriately high bar for the level of detail that can be reasonably expected of a teenager who has undergone an arduous journey, may be living on the streets, and is facing a stressful interview. For example, the denial letter issued to a 16-year-old Chadian boy who had lived in Libya for most of life gave the following summary of the boy's account:

You left [Libya] to flee the war as well as the mistreatment inflicted by your mother-in-law. You financed your journey yourself with money you had set aside. You paid 500 dinars [305 euros] to a smuggler and embarked on a Zodiac [an inflatable boat] to Italy. You took a train to Ventimille and then to Paris. You arrived in the capital on [date withheld], ran into some Sudanese migrants who told you to go to Porte de la Chapelle, and from there you went to the DEMIE.⁹⁵

Despite these details, the letter concluded, “[Your account of] your migratory journey lacks precision.”⁹⁶

The identical phrase appears in the denial letter for a 15-year-old Afghan boy, even though he had provided a reasonably specific account of his journey to France:

You left your country about 15 months ago. You crossed Iran, then Turkey, Bulgaria, Serbia, Croatia, and Italy with smugglers and other migrants. You crossed the French border on foot and arrived in France on [date withheld]. You changed trains several times and arrived in Paris [the following day]. You do not remember the towns you passed through in Italy and then in France. In Paris you met some compatriots. You slept in a park for three nights, and then some Afghans told you to go to the DEMIE on [date withheld].⁹⁷

⁹⁵ DASES Denial Letter, September 29, 2017 (on file with Human Rights Watch).

⁹⁶ Ibid.

⁹⁷ DASES Denial Letter, October 3, 2017 (on file with Human Rights Watch). See also DASES Denial Letter, September 26, 2017 (on file with Human Rights Watch) (reaching a negative decision based on “inconsistencies” of an account that, as summarized in the letter, is detailed, sequential, and internally consistent).

In other cases, officials drew adverse conclusions from youths' failure to describe specific aspects of their journey, without appearing to ask them directly about these elements or to consider the possibility that a child might not want to discuss particularly traumatic experiences with a person he or she has just met. For example, one denial letter included the statement, "You did not talk about the desert at all, nor of the difficulties encountered during your journey, particularly in Libya."⁹⁸

Some refusals were based on minor inconsistencies in dates. "I've seen one letter that said the kid's account wasn't coherent because he told them he was 16 but the details he gave suggested he was 14 instead," a volunteer told Human Rights Watch.⁹⁹ In another case, the denial letter issued to a Guinean boy stated:

Your account of your schooling is inconsistent. If you started school in 2008 and have been in school for five years, you should have stopped attending school in 2013 and not in 2010.¹⁰⁰

In a third case, a 16-year-old boy from Guinea received a negative age assessment based in part on a question about his last year of school even though he would have been under age 18 in either case:

[The account of] your schooling is not coherent. You indicate that you began your schooling at the age of six and continued your schooling for six years. You should therefore have interrupted your studies in 2013 and not 2015 as you say.¹⁰¹

⁹⁸ DASES Denial Letter, December 2017 (on file with Human Rights Watch).

⁹⁹ Human Rights Watch interview with humanitarian worker (name withheld at his request), Paris, February 20, 2018. See DASES Denial Letter, January 9, 2018 (on file with Human Rights Watch).

¹⁰⁰ DASES Denial Letter, February 15, 2018 (on file with Human Rights Watch).

¹⁰¹ DASES Denial Letter, January 31, 2018 (on file with Human Rights Watch). Similarly, the denial letter issued to a 16-year-old boy from Côte d'Ivoire stated, "Your [account of your] school journey is not coherent: you should have stopped school in 2015 and not in 2014 as you say." DASES Denial Letter, February 19, 2018 (on file with Human Rights Watch). The denial letter issued to a 15-year-old Malian boy included this basis for reaching a negative age assessment: "You claim to have started school at the age of six, in 2007, and stopped in 2013, at the age of 11, but that year you must have been 12 or 13 years old and not 11." DASES Denial Letter, February 7, 2018 (on file with Human Rights Watch).]

Similarly, a 15-year-old Afghan boy was not recognized as a child in part for the following reason:

The story of your schooling is incomplete: you state that you left school at the age of 12 but did not specify in which year.¹⁰²

Many denials were based in part on the child's failure to provide identity documents, even though many people leave their homes without identity documents or lose them in transit. For instance, the denial letter for a 15-year-old Guinean boy indicates that he recounted in detail his education, family situation, month of departure from his home town, and journey to France, and concludes, as the sole basis for rejecting his claim to be under the age of 18:

You are not in possession of any identity document. You have not offered any tangible evidence to support the minority and isolation that you claim.¹⁰³

Human Rights Watch researchers saw other denial letters that used identical or similar terms as the sole basis for a negative age assessment, disregarding detailed personal histories provided by applicants.¹⁰⁴

When we asked about these bases for negative age assessments, the French Red Cross official told us that we would have to speak to the head of the child welfare agency, the authority that issues the formal decision. (The child welfare agency agreed to meet with us just before publication of this report.) We asked what weight DEMIE staff would give to factors such as working during the trip to Europe and comportment or "bearing." In response, the official told us that working during the journey would not be taken as the sole means for determining that an individual was not a child. With respect to a person's comportment, he replied, "A person's attitude and manner of interacting with others can

¹⁰² DASES Denial Letter, January 17, 2018 (on file with Human Rights Watch).

¹⁰³ DASES Denial Letter, September 7, 2017 (on file with Human Rights Watch).

¹⁰⁴ See, for example, DASES Denial Letter, November 9, 2017 (on file with Human Rights Watch); DASES Denial Letter, September 14, 2017 (on file with Human Rights Watch).

be a factor in determining majority.”¹⁰⁵ But when we asked if DEMIE officials used a validated assessment tool or other systematic means of evaluating attitude and comportment, he said they did not,¹⁰⁶ meaning that these criteria are assessed subjectively and potentially arbitrarily.

We heard of some cases in which the child welfare agency issued a negative decision even though the DEMIE recommended recognition.¹⁰⁷ The French Defender of Rights has also documented such cases.¹⁰⁸

More generally, the Defender of Rights has sharply criticized negative age assessments based on “negative, insufficient or even nonexistent bases.”¹⁰⁹ The Defender of Rights has also cautioned that evaluators should take care to ensure that their assessments are not based on stereotypes—for example, that self-assurance is an indication of adulthood, or that hesitation or confusion in relating events is an indication that the account is not credible.¹¹⁰

Routine Rejection of Birth Documents

Child welfare officials and judges regularly question birth certificates and other identity documents, even though under French law, birth registration and similar documents obtained abroad carry a presumption of validity.¹¹¹

Denial letters frequently describe birth records as “not secure” (*non-sécurisé*) and “not directly relatable” to an individual (*non rattachable*), presumably because they do not ordinarily bear photos, fingerprints, or similar biometric identifiers.¹¹² For instance, a letter

¹⁰⁵ Human Rights Watch interview with Thierry Couvert Leroy, May 31, 2018.

¹⁰⁶ *Ibid.*

¹⁰⁷ Human Rights Watch interview with Association Timmy, May 29, 2018.

¹⁰⁸ Décision du Défenseur des droits n° MDE 2016-183, p. 9; Avis du Défenseur des droits n° 17-03, p. 5.

¹⁰⁹ Défenseur des droits, *Droits de l'enfant en 2017* (Paris: Défenseur des droits, November 2017), p. 37. See also Décision du Défenseur des droits n° MDE 2016-183, p. 12.

¹¹⁰ Décision du Défenseur des droits n° MDE-2014-127 (August 29, 2014), p. 10.

¹¹¹ Code civil, art. 47; Order [Arrêté] of November 17, 2016, Implementing Decree No. 2016-840 of June 24, 2016, art. 6(l) (“The evaluator applies the presumption of authenticity of civil status records issued by foreign authorities as provided by the terms of article 47 of the Civil Code.”). See also Serge Durand, coord., *L'accueil et la prise en charge des mineurs isolés étrangers en France* (Paris: France Terre d'Asile, October 2017), p. 11 (noting that article 47 of the Civil Code includes a presumption of authenticity for documents relating to civil status that are issued by another country).

¹¹² National identity cards, which do include biometric identifiers, are available only to adults in many of the countries of origin of the children we interviewed. See, for example, Immigration and Refugee Board of Canada, “Mali: Requirements and

issued to a 16-year-old Malian boy based a negative age assessment in part on the ground that “[t]he birth certificate you present cannot be directly linked to you,”¹¹³ a statement that could be made of most birth certificates. The denial letter did not clarify whether the examiner attempted to compare the boy’s answers with the document he offered.

Officials often exclude replacement or delayed birth documents from consideration even though they have been issued by the order of a judge in the country of origin, a procedure known as a *jugement supplétif*, or “supplementary judgement,” which typically requires the production of witnesses in court who can attest to a child’s birth and parentage.¹¹⁴ For instance, the child welfare agency reached a negative age assessment in the case of a Guinean boy, stating:

You produced an excerpt of the civil status registry dated [withheld], as well as an additional civil judgement issued on [date withheld]. In view of their non-secured nature and the inability to associate the documents with the applicant, these two documents cannot contribute to the cluster of evaluation indices.¹¹⁵

Other denial letters reviewed by Human Rights Watch took the same approach to judicially authenticated birth records.¹¹⁶

Procedures to Obtain a National Identity Card, a Birth Certificate and a Certificate of Nationality; Characteristics of Each of These Identity Documents, Including Physical Features (2012-February 2015),” March 3, 2015, section 1.1, <http://www.refworld.org/docid/550c37d04.html> (accessed April 6, 2018). In the Republic of Guinea, national identity cards are technically required for everybody age 15 and over, but only 20 percent of Guinean citizens who required a national identity card had one in 2013, according to an estimate by the company that makes the cards. See Information and Refugee Board of Canada, “Guinea: National Identity Card, Including the Requirements and Procedures to Obtain the Card, Time Frames for Issuing the Card, Characteristics of the Card and Its Lamination Process (2011-2014),” November 25, 2014, section 1, <http://www.refworld.org/docid/563c5d054.html> (accessed April 6, 2018).

¹¹³ DASES Denial Letter, December 1, 2017 (on file with Human Rights Watch).

¹¹⁴ See, for example, Immigration and Refugee Board of Canada, “Mali: Requirements and Procedures to Obtain a National Identity Card, a Birth Certificate and a Certificate of Nationality,” section 2.2; Immigration and Refugee Board of Canada, “Guinea: Requirements and Procedure to Obtain a Birth Certificate Extract, Including from Abroad; Information Indicated on the Document; Incorrect or Fraudulent Birth Certificate Extracts (2009-September 2016), section 3.1, <http://www.refworld.org/cgi-bin/texis/vtx/rwmain?docid=5821dfba4> (accessed April 6, 2018); Mirna Adjami, *Statelessness and Nationality in Côte d’Ivoire: A Study for UNHCR* (Geneva: UNHCR, December 2016), p. 35.

¹¹⁵ DASES Denial Letter, October 30, 2017 (on file with Human Rights Watch).

¹¹⁶ See DASES Denial Letter, September 26, 2017 (on file with Human Rights Watch) (excluding a 17-year-old Guinean boy’s birth record extract and judicial authentication from consideration).

The Defender of Rights has cautioned that the absence of a photo on birth registration or similar documents should not be taken as a basis to exclude the document from consideration.¹¹⁷

Children who go before judges have had similar experiences. For example, Souleymane G., a 16-year-old Guinean boy, told us he saw the judge in early January and showed his birth certificate. “I spoke with my mother, and she was able to send my birth certificate. She also went to the court in Guinea to get additional proof of my age,” he said, showing us documents from a tribunal in Guinea that validated his birth certificate based on the testimony of two witnesses. Even with these documents, the judge directed him to undergo a bone test.¹¹⁸

In another case, Abdoulaye D., a 17-year-old Guinean boy, sought review by the court in Évry, about 45 km south of Paris, in October 2017. After waiting for two months, he went to the court to ask when his case would be heard, and the court officials told him that his file had been lost, meaning that he would have to request review again. With the help of his lawyers, he secured a court date in early March 2018. At his hearing, he showed the judge a certified consular document, which we also saw. The judge told him the document was not an official identity document. “It’s unreal. It’s not clear. They don’t tell you what’s happening. And then it’s like they’re trying purposely to string me out until I turn 18,” he said. At the time of our interview, he was waiting to hear the outcome of his hearing.¹¹⁹

Initial evaluators and judicial authorities also sometimes question passports, which do contain biometric identifiers. For instance, the denial letter issued to a 15-year-old boy from Côte d’Ivoire excluded his passport from consideration on the ground that it had no entry or exit stamps or visas,¹²⁰ even though most unaccompanied children who arrive in France from West Africa do not cross borders at official crossing points. The French Defender of Rights has documented similar cases.¹²¹

¹¹⁷ See Décision du Défenseur des droits n° MDE-2014-127, p. 7.

¹¹⁸ Human Rights Watch interview with Souleymane G., Paris, March 6, 2018.

¹¹⁹ Human Rights Watch interview with Abdoulaye D., Paris, March 13, 2018.

¹²⁰ See DASES Denial Letter, October 19, 2017 (on file with Human Rights Watch) (“The passport is empty of any stamp and shows no visas.”)

¹²¹ See Décision du Défenseur des droits n° MDE 2016-183, p. 10.

Possession of documents may also be insufficient to prevent DEMIE staff from summarily turning individuals away without conducting an age assessment. For example, a boy from Côte d'Ivoire, Mahamadou Z., also 16, told us that he had had his birth certificate authenticated by the embassy before going to the DEMIE. When he showed DEMIE staff his birth certificate, they told him to see the judge, without conducting an age assessment interview and without giving him a refusal letter.¹²²

Discredited Bone Examinations

Some judges rely on bone examinations as a means of determining age, even though French medical bodies have consistently criticised such tests as unreliable and called for an end to their use. Lawyers and nongovernmental organizations working with unaccompanied children said that the use of bone tests by judges varied, with some judges ordering these tests routinely.¹²³ Human Rights Watch was not able to obtain data for the total number of bone examinations ordered by judges in Paris.

Souleymane G., the 16-year-old boy from Guinea who was ordered by a judge to have a bone test even though he provided his birth certificate and a judicial authentication of that document, described his examination. “I put my hand like this on a scanner,” he said, spreading his fingers out. “They counted my teeth. They measured my head. The results haven’t come yet.”¹²⁴

A boy interviewed by Public Radio International for *The World* said that he arrived in France at age 16. After child welfare authorities refused to recognize him as a child, he had his identity documents authenticated by the Cameroonian embassy before he went to the court. Nevertheless, the judge ordered verification of his documents and, four months later, a bone examination. The results of the examination were not ready until a week before his eighteenth birthday—a lengthy delay that is consistent with other cases reported to Human Rights Watch. “[The test showed that I was between 17 and 18 years old. . . . So the judge says, ‘You’re almost 18. You’re not a minor.’ I said, ‘Why did you take

¹²² Human Rights Watch interview with Mahamadou Z., Paris, February 15, 2018.

¹²³ Human Rights Watch telephone interview with Catherine Delanoë-Daoud, May 18, 2018; Human Rights Watch interview with Corinne Torre, May 25, 2018; Human Rights Watch interview with Association Timmy, May 29, 2018. The French Defender of Rights has observed similar variation across France. See *Avis du Défenseur des droits* n° 17-03, p. 13.

¹²⁴ Human Rights Watch interview with Souleymane G., Paris, March 6, 2018.

all that time to tell me that? Of course it says that I am almost 18, my birthday is next week.’ And she said, ‘So there’s nothing else we can do for you. You’re going to have to manage by yourself.’”¹²⁵

Appeals of such rulings are possible but time-consuming, and children who seek to appeal to higher courts face the prospect of protracted periods of uncertainty. If they turn 18 in the meantime, they are ineligible for any of the services they would have received as children.

Evaluating the medical tests used in France to determine age, the National Consultative Committee on Ethics for Health and Life Sciences (Comité consultatif national d’éthique pour les sciences de la vie et de la santé) noted that these examinations are based on studies undertaken between 1930 and the mid-1950s among heterogeneous, middle class American and British populations. Even in those populations, nutritional changes and other factors have altered signs of bone maturation in significant ways, the committee noted.¹²⁶ It concluded, “The age of a teenager can never be reduced to an image, a measurement, or a demonstration of pubertal development.”¹²⁷

The National Academy of Medicine has observed that the method of bone tests uniformly used in France “does not permit a clear distinction in the range between 16 and 18 years of age.”¹²⁸

¹²⁵ Adeline Sire, “Unaccompanied Minors in Paris Face X-Ray Tests and Other Kafkaesque Hurdles to Proving Their Age,” *The World*, PRI, February 22, 2018, <https://www.pri.org/stories/2018-02-22/unaccompanied-minors-paris-face-x-ray-tests-and-other-kafkaesque-hurdles-proving> (accessed March 5, 2018).

¹²⁶ Comité consultatif national d’éthique pour les sciences de la vie et de la santé, Avis No. 88: Sur les méthodes de détermination de l’âge à des fins juridiques, June 23, 2005, p. 5, <http://www.ccne-ethique.fr/sites/default/files/publications/avis088.pdf> (accessed April 8, 2018). Similarly, Belgium’s Conseil National de l’Ordre des médecins observed in 2010, “Different factors (ethnic, genetic, endocrine, socio-economic, nutritional, medical ...) can influence the growth of an individual.” Conseil National de l’Ordre des médecins, Séance du 20 février 2010, <https://www.ordomedic.be/fr/avis/conseil/tests-de-determination-d-age-des-mineurs-etrangers-non-accompagnes> (accessed April 8, 2018), avis maintenu par le Conseil le 14 octobre 2017, <https://www.ordomedic.be/fr/avis/conseil/tests-osseux-de-determination-d-age-des-mineurs-etrangers-non-accompagnes-mena> (accessed April 8, 2018).

¹²⁷ Comité consultatif national d’éthique pour les sciences de la vie et de la santé, Avis No. 88, p. 5.

¹²⁸ Académie Nationale de Médecine, “La fiabilité des examens médicaux visant à déterminer l’âge à des fins judiciaires et la possibilité d’amélioration en la matière pour les mineurs étrangers isolés,” January 16, 2007, http://www.infomie.net/IMG/pdf/Rapport_adopte_le_16_janvier_2007.pdf (accessed April 8, 2018). See also Jean-Louis Chaussain, “Académie Nationale de Médecine : rapport au nom d’un groupe de travail émanant de la Commission IX sur la fiabilité des examens médicaux visant à déterminer l’âge à des fins judiciaires et la possibilité d’amélioration en la matière pour les mineurs étrangers isolés,” *Journal du Droits des Jeunes : Revue d’Action Juridique et Sociale*, September 2008, http://www.infomie.net/IMG/pdf/Jean-Louis_Chaussain_JDJ_no_277.pdf (accessed April 8, 2018).

For these reasons, the High Council of Public Health (Haut Conseil de la Santé Publique) concluded in 2014:

The estimation of bone age (the method most often used) does not make it possible to determine the exact age of a youth when he is close to the legal age of majority. The determination of a physiological age on the basis of a radiograph alone is to be prohibited.¹²⁹

The French Defender of Rights, Médecins du Monde, the Commission Nationale Consultative des Droits de l'Homme, the Human Rights Commissioner of the Council of Europe, and the UN Committee on the Rights of the Child, among others, have called on French authorities to abandon their use of bone examinations to determine age.¹³⁰

In June 2018, the European Committee of Social Rights concluded that “the use of bone testing to determine the age of unaccompanied foreign minors is inappropriate and unreliable,” finding that France’s use of such tests violates the European Social Charter.¹³¹

¹²⁹ Haut Conseil de la Santé Publique, “Avis relatif à l'évaluation de la minorité d'un jeune étranger isolé,” January 23, 2014, para. 7.

¹³⁰ Défenseur des Droits, Avis du Défenseur des droits n^o 17-03, p. 12; Défenseur des Droits, *Rapport du Défenseur des Droits au Comité des Droits de l'Enfant des Nations Unies*, February 27, 2015, para. 138, https://juridique.defenseurdesdroits.fr/doc_num.php?explnum_id=16563 (accessed April 8, 2018); Médecins du Monde, *Parcours d'un mineur non accompagné à MDM* (Paris: Médecins du Monde, 2018), p. 45; Commission Nationale Consultative des Droits de l'Homme, “Avis sur la situation des mineurs isolés étrangers présents sur le territoire nationale,” June 26, 2014, paras. 11-12; Commissioner for Human Rights, Council of Europe, “Methods for Assessing the Age of Migrant Children Must Be Improved,” August 9, 2011, <https://www.coe.int/en/web/commissioner/-/methods-for-assessing-the-age-of-migrant-children-must-be-improv-1> (accessed April 8, 2018); Committee on the Rights of the Child, Concluding Observations: France, U.N. Doc. CRC/C/FRA/CO/4 (June 22, 2009), paras. 87-88. For a review of European policy and guidance from professional bodies, see Vivien Feltz, *Age Assessment for Unaccompanied Minors* (Paris: August 2015), <https://mdmeuroblog.files.wordpress.com/2014/01/age-determination-def.pdf> (accessed April 10, 2018).

¹³¹ *European Committee for Home-Based Priority Action for the Child and the Family (EUROCEF) v. France*, Decision on Merits, Complaint No. 114/2015 (European Committee of Social Rights January 24, 2018), para. 113.

The Consequences of Incorrect Age Assessment

When the Red Cross told me I was refused, I said to myself, “What am I going to do now?” The staff at the DEMIE refused to give me a metro ticket. They said to me, “When you are refused here, you are no longer entitled to anything.” I spent the day thinking, “What am I going to do?” It was cold outside. It was really hard.

— Ramatoulaye S., age 17, from Côte d’Ivoire

It all seems impossible sometimes, with no place to stay, going back and forth. How can you live? It’s exhausting. It makes my head tired from all the stress, having to look every day for a place to wash, get some water to drink, eat, sleep.

—15-year-old Moussa H., from Côte d’Ivoire

Unaccompanied migrant children in France who are incorrectly deemed to be adults find themselves distinctly disadvantaged—unable to access either the protections afforded to children or, while they are seeking review before a judge, the services available to adults.¹³² Migrant children wrongly identified as adults may also face the stress and danger of being homeless as a child.

Refusal of or delays in recognition as children may also mean loss of legal status upon adulthood because the fact and timing of being taken into care by the child welfare system affect eligibility for residence permits and French nationality. In practice, negative age assessments also impede access to asylum because children who are not in the child protection system must seek appointment of a legal representative (*administrateur ad hoc*) from the public prosecutor (*procureur*),¹³³ a protracted process.

Although all children in France are by law afforded the right to education regardless of their migration status, they may experience difficulties registering at school while they are

¹³² See Avis du Défenseur des droits n° 17-03, p. 5.

¹³³ See Circulaire N° CIV/01/05 prise en application du décret n° 2003-841 du 2 septembre 2003 relatif aux modalités de designation et d’indemnisation des administrateurs ad hoc institués par l’article 17 de la loi n° 2002-305 du 4 mars 2002 relative à l’autorité parentale, *Bulletin Officiel du Ministère de la Justice*, N° 98 (April 14, 2005), section 2.2.

seeking review of negative age assessments and, in some cases, even if they have been formally recognized as children.

In addition, our research found that negative age assessments have adverse consequences for mental health, including depression, self-harm, and thoughts of suicide.

More generally, many children expressed disillusionment in the fact of the treatment they received at the DEMIE and the consequences of negative age assessments for their sense of safety, security, and self. In a typical account, Idrissou M., a 16-year-old Guinean boy, told us:

Before I came to France, I would never have expected to go through this. The whole time I was in Italy, I didn't understand the language. I said to myself, 'I have to go to France. Once I get to France, I will feel at home.' My country was a French colony. I thought I would understand the language and the way of life once I reached France. I thought if I came to France, I would get help.¹³⁴

Homelessness

The most immediate consequence of a negative age assessment is homelessness. In principle, France has an obligation to ensure the basic needs of all persons in its territory, regardless of immigration status. In practice, children who are refused at the DEMIE are not referred to the limited systems in place for adults, meaning that they spend one or more nights on the streets until they find assistance through aid groups.

Idrissou M., the 16-year-old boy from Guinea, told Human Rights Watch that he had to leave the temporary accommodation he had been given at a hotel when he received a negative age evaluation. "I asked them, 'Where can I go? I don't have anybody.' They just said, 'No, we can't take you in anymore.'"¹³⁵

¹³⁴ Human Rights Watch interview with Idrissou M., Paris, February 15, 2018.

¹³⁵ Ibid.

Many of the other unaccompanied children we interviewed told us they lived on the streets after receiving negative age assessments. For instance, Mahamadou Z., a 16-year-old boy from Côte d'Ivoire, told Human Rights Watch that after he was turned away at the DEMIE and while he was waiting for a decision from the judge, he usually slept in the Couronnes Garden (Jardin des Couronnes), a park in Belleville, in the 20th Arrondissement of Paris. He also spent nights in the metro, and on cold nights he went to Porte de la Chapelle to sleep in a tent with some other migrants he knows.¹³⁶

Many of these children told us they felt unsafe sleeping on the streets. Moussa H., a 15-year-old from Côte d'Ivoire, said:

I have slept on the street a lot of times, near Porte de la Chapelle. There's a place with a bridge, and we spend the night underneath it. We heard that we have to be careful, because sometimes people get robbed. It's tiring. It's not right. It's really exhausting. Some people turn to alcohol to deal with things. Others use drugs. It's really shocking, what we have to deal with.¹³⁷

"When I spend the night outdoors, I'm scared, anyone could come up and hurt me. You don't know who is who," Mahamadou Z., 16, told us.¹³⁸

"Once when I was on the street, while I was sleeping somebody stole my backpack with all my clothes. I was too cold when I was sleeping. I had no blanket or tent," said Ramatoulaye S., a 17-year-old boy from Côte d'Ivoire.¹³⁹

When Refugee Rights Europe conducted a survey of 238 migrants living on the streets in Paris in late January 2018, 42 percent of respondents reported feeling unsafe. Three-quarters of those who said they felt unsafe reported verbal abuse by French citizens, often in the form of racial abuse, and one in five said they had been subjected to physical violence by French citizens.¹⁴⁰

¹³⁶ Human Rights Watch interview with Mahamadou Z., Paris, February 15, 2018.

¹³⁷ Human Rights Watch interview with Moussa H., Paris, February 15, 2018.

¹³⁸ Human Rights Watch interview with Mahamadou Z., Paris, February 15, 2018.

¹³⁹ Human Rights Watch interview with Ramatoulaye S., Paris, February 16, 2018.

¹⁴⁰ Alice Lucas and Marta Welander, *Still on the Streets: Documenting the Situation for Refugees and Displaced People in Paris, France* (London: Refugee Rights Europe, 2018), pp. 9-10.

More generally, children described the uncertainty of having to look for accommodation repeatedly. “Every night I sleep somewhere else. This is very difficult. There are some days I sleep with a family. On other days a whole group of us sleeps in a truck. It’s very difficult, very cold. It’s not very comfortable. We are all hungry, but we have to take what we can get,” Azad R., a 16-year-old Afghan boy, told Human Rights Watch in February.¹⁴¹

“I don’t have a single place that I stay. The groups help me find a place to stay, or MSF helps me. Sometimes I stay with French families that offer a bed for a night,” 16-year-old Nawid S., from Afghanistan, told Human Rights Watch in February 2018. When we spoke to him again in March, he had been fortunate enough to be able to stay with a family for several weeks.¹⁴²

“It’s exhausting changing the place you stay all the time, not having a fixed address,” 17-year-old Ramatoulaye S. told us.¹⁴³

Loss of Status

Lack of recognition as a child has significant consequences for an individual’s legal status. Children are not required to obtain a visa or residence permit (*titre de séjour*), regardless of their manner of entry to or length of stay in France.¹⁴⁴ Adults, in contrast, may be detained and deported if they cannot produce evidence of lawful presence.

Lack of or delays in recognition also have important implications for long-term status, even for individuals who are ultimately found to be children. Children who are taken into the care of the child welfare system before the age of 16 are eligible, once they reach age 18, for residence permits that allow them to continue their studies or to work.¹⁴⁵ If they are taken into care before the age of 15, they can request French nationality at age 18.¹⁴⁶ Those

¹⁴¹ Human Rights Watch interview with Azad R., Paris, February 20, 2018.

¹⁴² Human Rights Watch interviews with Nawid S., Paris, February 15, 2018; March 6, 2018.

¹⁴³ Human Rights Watch interview with Ramatoulaye S., Paris, February 16, 2018.

¹⁴⁴ Code de l’entrée et du séjour des étrangers et du droit d’asile, art. L.311-1.

¹⁴⁵ Ibid., art. L.313-11(2bis).

¹⁴⁶ Code civil, art. 21-12.

who are taken into care after the age of 16 may be able to obtain student or work permits at the age of 18.¹⁴⁷ Those who “age out” during the process are ineligible for these permits.

In principle, an adverse age assessment for entry into the child welfare system should not affect an individual’s ability to seek asylum. In practice, however, a child who goes to the reception hub for asylum seekers (the first stage in submitting an asylum application), is generally told to go to the DEMIE to seek protection from the child welfare system.

“These are totally different procedures, and the grounds for entry into the child protection system are different from those for asylum. We were told that the actual reason for this practice is that the reception hub’s computer system cannot accept an age less than 18. As a consequence, some youths have been induced to give a false age to get an appointment with the prefecture to begin their asylum application,” Catherine Delanoë-Daoud, one of the heads of the Paris Bar’s initiative to provide legal support for unaccompanied children, told Human Rights Watch. She and other lawyers have been able to get the reception hub to list unaccompanied children’s declared age, but only when they have gone to the reception hub with the child, she said. Authorities should accept applications from unaccompanied children and then immediately seek the appointment of a legal representative (*administrateur ad hoc*) to assist the child with the asylum process, she told us.¹⁴⁸

Some children told us they planned to seek asylum, but only after their age assessment process was completed. “It was complicated until they accepted me,” Faraz S., a 16-year-old from Afghanistan who told us the child welfare agency had formally recognized him as a child the previous week. In addition to not understanding the process for applying, he told us that he had not been able to think about making an asylum claim while his status as a child and access to housing remained uncertain. “All I was able to think about was what would happen to me and where I would sleep,” he said.¹⁴⁹

¹⁴⁷ Code de l’entrée et du séjour des étrangers et du droit d’asile, art. L.313-15.

¹⁴⁸ Human Rights Watch interview with Catherine Delanoë-Daoud and Isabelle Roth, February 14, 2018.

¹⁴⁹ Human Rights Watch interview with Faraz S., Paris, May 24, 2018.

Adverse Effect on Mental Health

Time on the street and uncertainty about what the future will bring take their toll on children. As Mélanie Kerloc'h, an MSF psychologist, told Human Rights Watch, "Few have been homeless in their country. They are exposed physically; they have no physical respite. Their psyche is always on alert, in survival mode . . . This experience has emotional and behavioural impacts, the consequence of fatigue, of sleep deprivation."¹⁵⁰

"It makes me very stressed. I keep thinking, when will I go to the judge? How will the judge respond? I keep thinking of all of this. Maybe I'll have to leave France," said 16-year-old Issouf Y., from Côte d'Ivoire.¹⁵¹

Adama B., from Guinea, told us, "I keep thinking of everything. What will happen if nobody helps me? Where will I sleep? I think about that all the time. These thoughts keep me awake at night."¹⁵²

Negative age assessments also have an adverse impact on mental health, Mélanie Kerloc'h, the MSF psychologist, told us. "They associate the denial of recognition of their age with what they said [about their lives], as if what they told the official about their experiences was false. It's seen as a denigration or as an erasure," she said.¹⁵³

Some children described acts of self-harm. "I was thinking about my situation and feeling very bad. One day I was smoking a cigarette when I was having these thoughts, so I took it and burned myself," Nawid S., a 16-year-old Afghan boy, told Human Rights Watch, showing a raised welt on his wrist.¹⁵⁴

¹⁵⁰ Human Rights Watch interview with Mélanie Kerloc'h, psychologist, Médecins sans Frontières, Pantin, February 16, 2018. See also Maryline Baumard, "Au centre pour mineurs de Pantin, 'on n'imaginait pas l'urgence du suivi psychologique.'" *Le Monde*, March 8, 2018, www.lemonde.fr/societe/article/2018/03/08/au-centre-pour-mineurs-de-pantin-on-n-imaginait-pas-l-urgence-du-suivi-psychologique_5267580_3224.html (accessed April 5, 2018).

¹⁵¹ Human Rights Watch interview with Issouf Y., Paris, February 17, 2018.

¹⁵² Human Rights Watch interview with Adama B., Paris, February 18, 2018.

¹⁵³ Human Rights Watch interview with Mélanie Kerloc'h, February 16, 2018.

¹⁵⁴ Human Rights Watch interview with Nawid S., Paris, February 15, 2018.

In addition, some children who are seen at the MSF center describe strong suicide ideation, Mélanie Kerloc'h, the MSF psychologist, told us.¹⁵⁵

Denial of Education

Nearly all of the children interviewed by Human Rights Watch spoke of their strong desire to continue their education as a means of fulfilling their potential, living up to their families' hopes and expectations, and contributing to society.

In principle, all children in France have the right to education, regardless of their migration status. In practice, however, aid workers and children themselves report that it is often difficult to register at a school.

Unaccompanied children who are awaiting the outcome of judicial hearings to review negative age determinations consistently report difficulties with school enrollment, regardless of the length of time their case was under review. In fact, none of the children we interviewed who were seeking review of an adverse age assessment had been able to enroll in school. "Now that I'm recognized, I can go," 16-year-old Faraz S., from Afghanistan, told us, saying that he had been formally recognized as a child the previous week. "Up to now I haven't been able to attend school," he said.¹⁵⁶

We also heard of cases in which children faced difficulties with school enrollment even after they were formally recognized as under the age of 18. In one such case, Oumar W., a 17-year-old from Mali who had received a verbal negative age assessment after a 30-minute interview at the DEMIE and was then recognized as a child by the juvenile judge, had been waiting for five months to enroll in school when we interviewed him in March 2018.¹⁵⁷

¹⁵⁵ Human Rights Watch interview with Mélanie Kerloc'h, February 16, 2018. See also Julia Dumont, "Paris: des associations dénoncent la négligence de l'ASE après le suicide d'un mineur isolé," *InfoMigrants*, March 13, 2018, <http://www.infomigrants.net/fr/post/8137/paris-des-associations-denoncent-la-negligen-ge-de-l-ase-apres-le-suicide-d-un-mineur-isole> (accessed April 18, 2018); Philippe Gangebet, "L'Etoile de Tunis, squat précaire pour les mineurs isolés étrangers à Toulouse," *Le Monde*, November 30, 2017 (noting two suicide attempts in November 2017 among unaccompanied children identified by a humanitarian organization in Toulouse, in the south of France), http://www.lemonde.fr/societe/article/2017/11/30/l-etoile-de-tunis-squat-precaire-pour-les-mineurs-isoles-etrangers-a-toulouse_5222619_3224.html (accessed April 5, 2018).

¹⁵⁶ Human Rights Watch interview with Faraz S., Paris, May 23, 2018.

¹⁵⁷ Human Rights Watch interview with Oumar W., Paris, March 12, 2018.

Legal Standards

The practices identified in this report violate unaccompanied children’s human rights. Instead of the full and proper procedure to which they are entitled under the law, unaccompanied children have been subject to arbitrary age assessments, including being turned away on the basis of appearance alone; summary interviews after which they have not received written decisions, without which they cannot seek review by a judge; adverse inferences drawn from their accounts in an arbitrary manner; and the use of discredited bone tests. This treatment violates the human rights standards applicable to unaccompanied migrant children. In addition, because formal recognition as a child is an essential first step to enter the child protection system and receive other rights and services, including access to housing, health, and education and regularization of legal status at majority, the age assessment procedures employed in Paris lead to denial of children’s right to protection and assistance.

Applicable EU Law Governing Treatment of Unaccompanied Children

Central to the current EU legal framework governing treatment of unaccompanied children are article 25 of Directive 2013/32/EU (Asylum Procedures Directive) and article 24 of Directive 2013/33/EU (Reception Conditions Directive), which address the rights of unaccompanied children and their procedural protections.¹⁵⁸ The directives require governments to appoint a representative for an unaccompanied child, with the necessary expertise and qualifications to perform the role, as soon as possible. Both directives explicitly require the representative to fulfil their functions “in accordance with the principle of the best interests of the child.”¹⁵⁹

¹⁵⁸ See Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on granting and withdrawing refugee status [Asylum Procedures Directive (Recast)], OJ 2013 L 180/60 (June 29, 2013), superseding Council Directive 2005/85/EC of 1 December 2005, OJ 2005 L 329/11 (December 24, 2005); Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 on reception conditions for asylum seekers [Reception Conditions Directive], OJ 2013 L180/96 (June 29, 2013), repealing Council Directive 2003/9/EC of 27 January 2003, OJ 2003 L 031 (February 6, 2003).

¹⁵⁹ Asylum Procedures Directive (Recast), art. 25(1)(a); Reception Conditions Directive, art. 24(1).

Implementation of the directives also has to conform with fundamental rights norms laid down in other sources of EU law, including the EU Charter of Fundamental Rights,¹⁶⁰ and with human rights instruments including but not limited to the 1951 Convention relating to the Status of Refugees,¹⁶¹ the European Convention on Human Rights,¹⁶² the European Social Charter,¹⁶³ the UN Convention on the Rights of the Child,¹⁶⁴ the International Covenant on Civil and Political Rights (ICCPR),¹⁶⁵ the International Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW),¹⁶⁶ and the UN Convention on the Rights of Persons with Disabilities.¹⁶⁷ These norms may require governments to go beyond the level of guarantees laid down in the directives.

Children’s Right to Fair and Non-Arbitrary Proceedings

Identification of children as under age 18 is a prerequisite for them to access the special protection and assistance to which they are entitled and so determination of the threshold question of whether an individual is a child is a critical process.¹⁶⁸ Not least because of the far-reaching consequences on the rights of the child of the outcome of this process, it cannot be arbitrary and should comply with the principle of fairness.¹⁶⁹

¹⁶⁰ Charter of Fundamental Rights of the European Union, October 26, 2012, OJ C 326/391.

¹⁶¹ Convention relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 137 (entered into force April 22, 1954).

¹⁶² Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), November 4, 1950, ETS No. 005 (entered into force September 3, 1953).

¹⁶³ European Social Charter (Revised), May 3, 1996, ETS No. 163 (entered into force July 1, 1999).

¹⁶⁴ Convention on the Rights of the Child, November 20, 1989, 1577 U.N.T.S. 3 (entered into force September 2, 1990).

¹⁶⁵ International Covenant on Civil and Political Rights (ICCPR), December 19, 1966, 999 U.N.T.S. 171 (entered into force March 23, 1976).

¹⁶⁶ Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), December 18, 1979, 1249 U.N.T.S. 13 (entered into force September 3, 1981).

¹⁶⁷ Convention on the Rights of Persons with Disabilities, December 13, 2006, 2515 U.N.T.S. 3 (entered into force May 3, 2008).

¹⁶⁸ Children who are temporarily or permanently deprived of their family environment have the right to special protection and assistance, as provided by article 20(1) of the Convention on the Rights of the Child and article 17 (1)(c) of the European Social Charter. More generally, children have the right to “such measures of protection as are required by [their] status.” ICCPR, art. 24(1).

¹⁶⁹ See, for example, Committee on the Rights of the Child, General Comment No. 6: Treatment of Unaccompanied and Separated Children Outside Their Country of Origin, U.N. Doc. CRC/GC/2005/6 (September 1, 2005), para. 31 (assessments to identify children as unaccompanied or separated children “must be conducted in a scientific . . . and fair manner,” among other procedural guarantees); Committee on the Rights of the Child, General Comment No. 14 on the Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration, U.N. Doc. CRC/C/GC/14 (May 29, 2013), para. 87 (need for “transparent and objective processes for all decisions made by . . . judges or administrative authorities . . . in areas which directly affect the child”); Committee on the Rights of the Child, General Comment No. 13: The Right of the Child to Freedom from All Forms of Violence, U.N. Doc. CRC/C/GC/13 (April 18, 2011), para. 54 (requirement of respect for due process “[a]ll

The Committee on the Rights of the Child has identified several specific procedural guarantees that states should afford to unaccompanied and separated children. The child's best interests should be "a guiding principle for determining the priority of protection needs and the chronology of measures to be applied in respect of unaccompanied and separated children."¹⁷⁰ Children should receive appropriate assistance, including the appointment of guardians before the commencement of age assessment procedures and the assistance of interpreters throughout the procedure. Interviews should be tailored to the needs of children and should be conducted by examiners with the necessary training and skills. Any age assessment procedures used should be multidisciplinary and should afford the benefit of the doubt "such that if there is a possibility that the individual is a child, s/he should be treated as such."¹⁷¹

Children also have the right to have access to asylum procedures regardless of their age and regardless of whether they are unaccompanied or with other family members.¹⁷² Realization of this right requires that children be referred to asylum procedures when evidence or the totality of circumstances indicates reasonable grounds for concern that a child may be in need of international protection, even if the child is unable to explicitly articulate a concrete fear.¹⁷³

The age assessment and asylum procedures used in Paris as documented in this report do not protect children's best interests, do not afford them legal and other appropriate assistance as a matter of routine, and therefore do not meet international standards.

times and in all cases" of judicial involvement to protect children from violence). Similarly, the UN Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) call on states to extend the principles in the rules, including the principle of a fair hearing conducted "in an atmosphere of understanding," to juvenile welfare and care proceedings. See Beijing Rules, rules 3.2, 14.1, 14.2, adopted by G.A. Res. 40/33 (November 29, 1985).

¹⁷⁰ Committee on the Rights of the Child, General Comment No. 6, para. 31. See generally Committee on the Rights of the Child, General Comment No. 14, paras. 6(c), 14(a) (best interests evaluation as a rule of procedure).

¹⁷¹ Committee on the Rights of the Child, General Comment No. 6, para. 31(i). See also Committee on the Rights of the Child, General Comment No. 14, paras. 92-98.

¹⁷² Committee on the Rights of the Child, General Comment No. 6, paras. 66, 64.

¹⁷³ *Ibid.*, para. 66.

The Requirement to Protect Children’s Best Interests

The EU directives explicitly stipulate that “[t]he best interests of the child shall be a primary consideration for Member States when implementing this Directive.”¹⁷⁴ The Committee on the Rights of the Child calls for the principle of best interests to be “respected during all stages of the displacement cycle. At any of these stages, a best interest determination must be documented in preparation of any decision fundamentally impacting on the unaccompanied or separated child’s life,”¹⁷⁵ including “any administrative or judicial decision concerning the . . . placement or care of a child.”¹⁷⁶ All best interest determinations should be “carried out in a friendly and safe atmosphere by qualified professionals who are trained in age and gender-sensitive interviewing techniques.”¹⁷⁷

Practices such as turning children away at the door, conducting summary interviews without written decisions, regularly excluding documentary evidence of age from consideration, and basing age assessments in part on work during the journey to France, fluency in French, minor inconsistencies in dates, and similar grounds do not protect children’s best interests.

The Right to Legal and Other Assistance

Both directives require governments to appoint a representative to represent and assist the child as soon as possible.¹⁷⁸ According to the Committee on the Rights of the Child, unaccompanied and separated children should have guardians appointed “as expeditiously as possible,” before the commencement of any age assessment procedures or other processes.¹⁷⁹

¹⁷⁴ Asylum Procedures Directive (Recast), art. 25(6); Reception Conditions Directive, art. 23(1).

¹⁷⁵ Committee on the Rights of the Child, General Comment No. 6, para. 19. See also Committee on the Rights of the Child, General Comment No. 14.

¹⁷⁶ Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and Committee on the Rights of the Child, Joint General Comment No. 3 (Committee on the Rights of Migrant Workers) and No. 22 (Committee on the Rights of the Child) on the General Principles Regarding the Human Rights of Children in the Context of International Migration, U.N. Doc. CMW/C/GC/3-CRC/C/GC/22 (November 16, 2017), para. 30.

¹⁷⁷ Committee on the Rights of the Child, General Comment No. 6, para. 20. See also Committee on the Rights of the Child, General Comment No. 14, paras. 94-95.

¹⁷⁸ See Asylum Procedures Directive (Recast), art. 25(1)(a); Reception Conditions Directive, art. 24(1).

¹⁷⁹ Committee on the Rights of the Child, General Comment No. 6, para. 21. See also Joint General Comment No. 3 (Committee on the Rights of Migrant Workers) and No. 22 (Committee on the Rights of the Child, paras. 32(h), 36.

The Committee on the Rights of the Child regards the appointment of a guardian as “a key procedural safeguard to ensure respect for the best interests of an unaccompanied or separated child.”¹⁸⁰ When a separated or unaccompanied child is placed in asylum proceedings or any other administrative or judicial proceedings, or whenever a child is the principal applicant in an asylum procedure, the child should also have a legal representative appointed.¹⁸¹ The guardian should be “an adult who is familiar with the child’s background and who is competent and able to represent his or her best interests.”¹⁸² In cases where a legal representative is also required, the legal representative should be provided free of charge.¹⁸³

The Committee on the Rights of the Child and UNHCR also call for children to receive legal representation throughout the process.¹⁸⁴ Similarly, the Inter-Agency Guiding Principles on Unaccompanied and Separated Children call for “the appointment of a legal representative as well as a guardian to promote a decision that will be in the child’s best interests.”¹⁸⁵

Children should have the assistance of interpreters during interviews, including in any age assessment procedures.¹⁸⁶

Unaccompanied children in France do not receive legal or other assistance from the start of the age assessment process, inconsistent with these standards.

¹⁸⁰ Committee on the Rights of the Child, General Comment No. 6, para. 21.

¹⁸¹ *Ibid.*, paras. 21, 33-34, 36; Committee on the Rights of the Child, General Comment No. 14, para. 96; Joint General Comment No. 3 (Committee on the Rights of Migrant Workers) and No. 22 (Committee on the Rights of the Child), para. 36; UNHCR, Guidelines on International Protection: Child Asylum Claims, U.N. Doc. HCR/GIP/09/08 (December 22, 2009), para. 69.

¹⁸² Committee on the Rights of the Child, General Comment No. 6, para. 69.

¹⁸³ *Ibid.*

¹⁸⁴ Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and Committee on the Rights of the Child, Joint General Comment No. 4 (Committee on the Rights of Migrant Workers) and No. 23 (Committee on the Rights of the Child) on State Obligations Regarding the Human Rights of Children in the Context of International Migration in Countries of Origin, Transit, Destination and Return, U.N. Doc. CMW/C/GC/4-CRC/C/GC/23 (November 16, 2017), para. 17(f); UNHCR, Guidelines on International Protection: Child Asylum Claims, para. 69.

¹⁸⁵ International Committee of the Red Cross, Inter-Agency Guiding Principles on Separated and Unaccompanied Children, January 2004, p. 61. See also Joint General Comment No. 4 (Committee on the Rights of Migrant Workers) and No. 23 (Committee on the Rights of the Child), para. 17(i).

¹⁸⁶ See Committee on the Rights of the Child, General Comment No. 6, para. 25; Joint General Comment No. 3 (Committee on the Rights of Migrant Workers) and No. 22 (Committee on the Rights of the Child), para. 36; Joint General Comment No. 4 (Committee on the Rights of Migrant Workers) and No. 23 (Committee on the Rights of the Child), para. 17(d).

Age Assessment Procedures

Article 25 (5) of the Asylum Procedures Directive explicitly addresses age assessments and establishes that they are only appropriate if there are doubts about the individual's age and any continuing doubt about age, is to be resolved in the individual's favor so they are treated as a child.¹⁸⁷ Therefore, under EU law, age assessments should only be used if there are grounds for serious doubt about an individual's age, and never as a routine practice.¹⁸⁸ This is consistent with recommendations from other bodies such as the Committee on the Rights of the Child and UNHCR.

These authorities have made clear that age assessment should be as a matter of last resort, used only where there are serious doubts about an individual's declared age and where other approaches, including efforts to gather documentary evidence, have failed to establish an individual's age.¹⁸⁹ UNHCR notes that "[a]ge assessments are never to be used as a matter of routine."¹⁹⁰ Similarly, the Statement of Good Practice of the Separated Children in Europe Programme recommends that "[a]ge assessment procedures should only be undertaken as a measure of last resort, not as standard or routine practice, where there are grounds for serious doubt and where other approaches, such as interviews and attempts to gather documentary evidence, have failed to establish the individual's age."¹⁹¹

As a preliminary matter, authorities should clearly and formally offer reasons why an individual's age is doubted before commencing age assessment procedures. With respect to documents, the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (Committee on the Rights of Migrant Workers) and the

¹⁸⁷ Asylum Procedures Directive (Recast), art. 25(5).

¹⁸⁸ See European Council on Refugees and Exiles (ECRE), Information Note on Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), December 2014, p.32, https://www.ecre.org/wp-content/uploads/2016/07/ECRE-Information-Note-on-the-Asylum-Procedures-Directive-recast_December-2014.pdf (accessed June 4, 2018).

¹⁸⁹ See Committee on the Rights of the Child, General Comment No. 6, para. 31(i); UNHCR, Guidelines on International Protection: Child Asylum Claims, para. 75; UNHCR, Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum, February 1997, para. 5.11.

¹⁹⁰ UNHCR, Observations on the Use of Age Assessments in the Identification of Separated or Unaccompanied Children Seeking Asylum, Case No. CIK-1938/2014 (Lithuanian Supreme Court), June 1, 2015, para. 9(ix).

¹⁹¹ Separated Children in Europe Programme, *Statement of Good Practice* (Copenhagen: Save the Children, UNHCR, and UNICEF, 4th rev. ed. 2009), section D.5.1.

Committee on the Rights of the Child state, “Documents that are available should be considered genuine unless there is proof to the contrary”¹⁹²

When age assessment procedures are used, they should be multidisciplinary in nature. Age assessments “should not only take into account the physical appearance of the individual, but also his or her psychological maturity.”¹⁹³ UNHCR notes that “the guiding principle is whether an individual demonstrates an ‘immaturity’ and vulnerability that may require more sensitive treatment.”¹⁹⁴

Interviews with children, whether as part of an age assessment process or for other purposes, require particular expertise and care. UNHCR cautions that “[c]hildren cannot be expected to provide adult-like accounts of their experiences”¹⁹⁵ and observes that “time is crucial in building trust and allows for proper recollection and sharing of information about the child’s own story which is useful in establishing his or her age.”¹⁹⁶

UNHCR advises:

It is, therefore, essential that examiners have the necessary training and skills to be able to evaluate accurately the reliability and significance of the child’s account. This may require involving experts in interviewing children outside a formal setting or observing children and communicating with them in an environment where they feel safe, for example, in a reception centre.¹⁹⁷

¹⁹² Joint General Comment No. 4 (Committee on the Rights of Migrant Workers) and No. 23 (Committee on the Rights of the Child), para. 4.

¹⁹³ Committee on the Rights of the Child, General Comment No. 6, para. 31(i). See also Joint General Comment No. 4 (Committee on the Rights of Migrant Workers) and No. 23 (Committee on the Rights of the Child), para. 4.

¹⁹⁴ UNHCR, Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum, para. 5.11(c).

¹⁹⁵ UNHCR, Guidelines on International Protection: Child Asylum Claims, para. 72.

¹⁹⁶ UNHCR, Observations on the Use of Age Assessments in the Identification of Separated or Unaccompanied Children Seeking Asylum, para. 9(xi). See also Separated Children in Europe Programme, Position Paper on Age Assessment in the Context of Separated Children in Europe, 2012, p. 15, <http://www.refworld.org/docid/4ff535f52.html> (accessed May 1, 2018).

¹⁹⁷ UNHCR, Guidelines on International Protection: Child Asylum Claims, para. 72.

The Committee on the Rights of the Child similarly calls for adjudicators and examiners to receive appropriate training.¹⁹⁸ In particular, as the Separated Children in Europe Programme’s Statement of Good Practice recommends, “Immigration or border police staff and other relevant actors should receive training in conducting child-friendly interviews.”¹⁹⁹

Examiners should take particular care to avoid imposing their own culturally specific or other stereotyped notions of childhood in conducting age assessments. For example, working from young ages is uncommon in Europe but common in many parts of the world. Engaging in work, including very dangerous or difficult work or working for long hours, is not in itself an indicator of adulthood.

International standards, including, as noted above, the EU Asylum Procedures Directive,²⁰⁰ call on authorities to give individuals the benefit of the doubt in cases in which age is uncertain or disputed. The Committee on the Rights of the Child has concluded that age assessment procedures “should accord the individual the benefit of the doubt such that if there is a possibility that the individual is a child, she or he should be treated as such.”²⁰¹ In similar terms, UNHCR observes that “[t]he margin of appreciation inherent to all age assessment methods needs to be applied in such a manner that, in case of uncertainty, the individual will be considered a child.”²⁰²

Moreover, UNHCR cautions:

Where possible, the legal consequences or significance of the age criteria should be reduced or downplayed. It is not desirable that too many legal advantages and disadvantages are known to flow from the criteria because this may be an incentive for misrepresentation. The guiding principle is

¹⁹⁸ Committee on the Rights of the Child, General Comment No. 6, para. 75. See also *ibid.*, paras. 95-97; Joint General Comment No. 4 (Committee on the Rights of Migrant Workers) and No. 23 (Committee on the Rights of the Child), para. 4.

¹⁹⁹ Separated Children in Europe Programme, Statement of Good Practice, Part B10.

²⁰⁰ See Asylum Procedures Directive (Recast), art. 25(5).

²⁰¹ Committee on the Rights of the Child, General Comment No. 6, para. 31(i). See also Joint General Comment No. 4 (Committee on the Rights of Migrant Workers) and No. 23 (Committee on the Rights of the Child), para. 4.

²⁰² UNHCR, Guidelines on International Protection: Child Asylum Claims, para. 75. Accord UNHCR, Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum, para. 5.11; UNHCR, Observations on the Use of Age Assessment in the Identification of Separated or Unaccompanied Children Seeking Asylum, Case No. CIK-1938/2014, para. 9(ii).

whether an individual demonstrates an “immaturity” and vulnerability that may require more sensitive treatment.²⁰³

Age assessments should be timely. “Delays in or prolonged decision-making have particularly adverse effects on children as they evolve.”²⁰⁴

They should be provided in writing and should set forth the basis for any denial: “In order to demonstrate that the right of the child to have his or her best interests assessed and taken as a primary consideration has been respected, any decision concerning the child or children must be motivated, justified and explained.”²⁰⁵ Authorities should provide these decisions in a language and manner that the children involved understand.²⁰⁶

Medical Examinations

The Asylum Procedures Directive explicitly permits EU governments to order medical examinations if essential to try to determine the applicants age but stipulates they shall always be with the consent of the child and “the least invasive examination and shall be carried out by qualified medical professionals.”²⁰⁷ In June 2018, the European Committee of Social Rights concluded that “the use of bone testing to determine the age of unaccompanied foreign minors is inappropriate and unreliable” and found that that France’s use of such tests violates the European Social Charter.²⁰⁸ In line with the decision of the European Committee of Social Rights, Human Rights Watch calls on states not to rely on medical tests as a means of age determination, particularly given that experts repeatedly warn they are not a reliable way to correctly determine age.

UNHCR cautions that governments should bear in mind that medical examinations have a margin of error.²⁰⁹ The margin of error is particularly wide for examinations used on

²⁰³ UNHCR, Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum, para. 5.11(c).

²⁰⁴ Committee on the Rights of the Child, General Comment No. 14, para. 93.

²⁰⁵ *Ibid.*, para. 97.

²⁰⁶ See Separated Children in Europe Programme, Position Paper on Age Assessment in the Context of Separated Children in Europe, p. 13.

²⁰⁷ See Asylum Procedures Directive (Recast), arts. 25(5), 25(5)(b).

²⁰⁸ *European Committee for Home-Based Priority Action for the Child and the Family (EUROCEF) v. France*, Decision on Merits, Complaint No. 114/2015 (European Committee of Social Rights January 24, 2018), para. 113.

²⁰⁹ UNHCR, Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum, para. 5.11(b).

adolescents, meaning that their probative value is negligible in close cases.²¹⁰ For these reasons, the Committee on the Rights of Migrant Workers and the Committee on the Rights of the Child call on states to “refrain from using medical methods based on, inter alia, bone and dental exam analysis”²¹¹

The Separated Children in Europe Programme recommends that “if any documentary proof of age emerges at any point in time, this should override any previous result recorded on the basis of medical or other exams.”²¹²

The Obligation to Provide Unaccompanied Children with Care and Accommodation

Children who have been deprived of their family environment have the right to special protection and assistance provided by the state.²¹³ As with other children living on the street, “the State is the de facto caregiver and is obliged . . . to ensure alternative care to a child temporarily or permanently deprived of his or her family environment.”²¹⁴ The European Committee of Social Rights has ruled that unaccompanied children enjoy a right to shelter.²¹⁵ Likewise the European Court of Human Rights found that authorities have a responsibility to ensure unaccompanied minors have suitable accommodation and that failing to do so may amount to degrading treatment in violation of the ECHR.²¹⁶ Both Council of Europe bodies have highlighted that states must not use their immigration

²¹⁰ See, for example, Terry Smith and Laura Brownlees, “Age Assessment Practices: A Literature Review and Annotated Bibliography,” Discussion Paper (New York: UNICEF, 2011), https://www.unicef.org/protection/Age_Assessment_Practices_2010.pdf (accessed May 1, 2018).

²¹¹ Joint General Comment No. 4 (Committee on the Rights of Migrant Workers) and No. 23 (Committee on the Rights of the Child), para. 4.

²¹² Separated Children in Europe Programme, “Position Paper on Age Assessment in the Context of Separated Children in Europe,” May 2012, p. 11, <http://www.scepnetwork.org/images/16/163.pdf> (accessed April 10, 2018).

²¹³ Convention on the Rights of the Child, art. 20(1); European Social Charter, art. 17(1)(c). See also Joint General Comment No. 4 (Committee on the Rights of Migrant Workers) and No. 23 (Committee on the Rights of the Child), para. 11.

²¹⁴ Committee on the Rights of the Child, General Comment No. 21 on Children in Street Situations U.N. Doc. CRC/C/GC/21 (June 21, 2017), para. 44; see also Committee on the Rights of the Child, General Comment No. 13, paras. 33, 35.

²¹⁵ *Defence for Children International (DCI) v. the Netherlands*, Complaint No. 47/2008, Merits, (European Committee of Social Rights October 20, 2009).

²¹⁶ *Rahimi v. Greece*, App. No. 8687/08, Judgement of April 5, 2011 (European Court of Human Rights), para. 95.

policy to deprive foreign children, especially those who are unaccompanied, of the protection their status warrants.²¹⁷

Alternative care can take a combination of forms to meet the practical needs of unaccompanied children. The types of care may include, for example, outreach and support programs to identify and offer practical assistance (including food, clothing, and information) to unaccompanied children living on the streets, drop-in and community or social centers, night shelters, temporary residential care in group homes, foster care, and independent living or long-term care options.²¹⁸

The failure to provide alternative care and accommodation to unaccompanied children not only violates their right to the protection and care necessary for their well-being²¹⁹ but also contravenes their rights to enjoyment of a life with dignity,²²⁰ to protection from violence and exploitation,²²¹ and to minimum essential levels of economic, social and cultural rights.²²²

The Right to Education

All children have the right to education. As the Committee on Economic, Social and Cultural Rights has observed:

Education is both a right in itself and an indispensable means of realizing other human rights. As an empowerment right, education is the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities. . . . But the importance of education

²¹⁷ See *Defence for Children International v. the Netherlands*. See also European Union Agency for Fundamental Rights and Council of Europe, *Handbook on European Law Relating to Asylum, Borders and Immigration* (Luxembourg: Publications Office of the European Union, 2015).

²¹⁸ See Committee on the Rights of the Child, General Comment No. 21, para. 44.

²¹⁹ Convention on the Rights of the Child, arts. 3(2), 20(2).

²²⁰ See *Ibid.*, art. 6; Committee on the Rights of the Child, General Comment No. 21, para. 29 (citing Villagrán Morales et al v. Guatemala, Inter-American Court of Human Rights, November 19, 1999).

²²¹ Convention on the Rights of the Child, art. 19. See Committee on the Rights of the Child, General Comment No. 6, para. 23.

²²² Committee on the Rights of the Child, General Comment No. 21, para. 34; Committee on Economic, Social and Cultural Rights, General Comment No. 3: The Nature of States Parties' Obligations, U.N. Doc. E/1991/23 (December 14, 1990), para. 10.

is not just practical: a well-educated, enlightened and active mind, able to wander freely and widely, is one of the joys and rewards of human existence.²²³

At the primary level, education should be compulsory and available free to all. Secondary education and vocational training should be available and accessible to every child.²²⁴

The Committee on Economic, Social and Cultural Rights has “confirm[ed] that the principle of non-discrimination extends to all persons of school age residing in the territory of a State party, including non-nationals, and irrespective of their legal status.”²²⁵ Similarly, the Committee on the Elimination of Racial Discrimination recommends that states “[r]emove obstacles that prevent the enjoyment of economic, social and cultural rights by noncitizens, notably in the area of education” and “[e]nsure that public educational institutions are open to non-citizens and children of undocumented immigrants residing in the territory of a state party.”²²⁶

The Committee on the Rights of Migrant Workers and the Committee on the Rights of the Child call on states to ensure that “[a]ll children in the context of international migration, shall have full access to all levels and all aspects of education, including early childhood education and vocational training, on the basis of equality with nationals of the country where those children are living.”²²⁷

Separated and unaccompanied children should have access to education throughout the time they are outside of their countries of origin.²²⁸ To avoid disruption to education, authorities should avoid having children move during the school year and should support

²²³ Committee on Economic, Social and Cultural Rights, General Comment No. 13: The Right to Education, UN Doc. E/C.12/1999/10 (December 8, 1990), para. 1.

²²⁴ Convention on the Rights of the Child, arts. 28(1)(1)(a), (b), (d); International Covenant on Economic, Social and Cultural Rights, December 16, 1966, 993 U.N.T.S. 3, arts. 13(2)(a), (b).

²²⁵ Committee on Economic, Social and Cultural Rights, General Comment No. 13, para. 34.

²²⁶ Committee on the Elimination of Racial Discrimination, General Recommendation XXX: Discrimination against Non-Citizens, UN Doc. CERD/C/Misc.11/rev.3 (February 23-March 12, 2004), paras. 29-30. The Committee on the Elimination of Racial Discrimination issues authoritative guidance on the binding content of the obligations set forth in the International Convention on the Elimination of All Forms of Racial Discrimination, December 21, 1965, 660 U.N.T.S. 195 (entered into force January 4, 1969).

²²⁷ Joint General Comment No. 4 (Committee on the Rights of Migrant Workers) and No. 23 (Committee on the Rights of the Child), para. 59.

²²⁸ “Every unaccompanied and separated child, irrespective of status, shall have full access to education in the country that they have entered in line with articles 28, 29 (1) (c), 30 and 32 of the Convention and the general principles developed by the Committee.” Committee on the Rights of the Child, General Comment No. 6, para. 41.

them in the completion of compulsory and ongoing education courses after they reach the age of majority.²²⁹

²²⁹ Joint General Comment No. 4 (Committee on the Rights of Migrant Workers) and No. 23 (Committee on the Rights of the Child), para. 60.

Acknowledgments

This report was written by Michael Garcia Bochenek, senior counsel on children’s rights at Human Rights Watch, based on research he undertook from February to May 2018 with Helen Griffiths, children’s rights senior coordinator; Bénédicte Jeannerod, France director; Camille Marquis, senior advocacy associate; and Valérie Lombard, senior outreach director. Aisling Reidy, senior legal adviser, contributed to the section on legal standards. Sarah Thau, intern in the Paris office, provided research assistance, and Salomé Moatti, intern in the Paris office, took part in some interviews.

Zama Neff, executive director of the Children’s Rights Division; Judith Sunderland, associate Europe and Central Asia director; Aisling Reidy; and Tom Porteous, deputy program director, edited the report. Bénédicte Jeannerod and Anna Chaplin also reviewed the report. Alex Firth, associate in the Children’s Rights Division; Fitzroy Hepkins, administrative manager; and José Martínez, senior coordinator, produced the report. Damien Bonelli translated the report into French, and Camille Marquis reviewed the translation.

We appreciate the willingness of the children’s ombudsman (Défenseur des enfants) and her staff and officials with the French Office for the Protection of Refugees and Stateless Persons (Office français de protection des réfugiés et apatrides, OFPRA), the French Red Cross, and Paris City Hall to meet with us to discuss our findings.

Human Rights Watch is particularly grateful to the nongovernmental organizations and individuals who generously assisted us in the course of this research, including Agathe Nadimi and staff and volunteers with ADJIE, Association Timmy, Médecins sans Frontières, Paris d’Exils, Paris Refugee Ground Support, Solidarithé, and Utopia 56.

Finally, we would like to thank the children and young adults who were willing to share their experiences.

“Like a Lottery”

Arbitrary Treatment of Unaccompanied Migrant Children in Paris

Child protection authorities in Paris are arbitrarily refusing unaccompanied migrant youths status as minors and using flawed age assessment procedures with the result that many of these children are excluded from care they need and to which they are entitled. Arbitrary practices can lead to unaccompanied children being erroneously considered adults, leaving them ineligible for emergency shelter and other protection given to children. As a result, hundreds of unaccompanied children sleep on the streets of Paris each night, lawyers and nongovernmental organizations estimate.

Human Rights Watch found that many youths who requested protection from the child welfare system were turned away summarily and inaccurately, based on appearance alone. Others are rejected without written decisions after interviews lasting as little as five minutes, contrary to French regulations. Those who do receive full interviews may be denied recognition as children because of personal judgements made for invalid reasons, for example because they worked during their journey to Europe or travelled on their own—as do many children around the world.

When children seek review of adverse decisions, some judges regularly order bone tests to determine their age. Medical bodies in France and elsewhere have repeatedly found that bone and similar medical examinations are not a reliable means of determining age, particularly for older adolescents, and have called for an end to their use.

French national and departmental authorities should ensure that age assessments are used only when authorities have well-founded doubts about an individual’s claim to be under 18. In such cases, they should determine age through interviews by professionals with the expertise to work with children and should bear in mind that all age assessments will be estimates.

France should also end the use of bone tests and similar discredited medical examinations.



Daouda S., a 16-year-old unaccompanied boy from Guinea, has slept on the streets of Paris for weeks at a time while he waits for a judge to hear his case. Occasionally, he is able to stay with families for short stretches.

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