



# **Lost in Transit**

**Insufficient Protection for Unaccompanied Migrant Children  
at Roissy Charles de Gaulle Airport**

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## I. Summary and Key Recommendations

*The [airport] transit zone is an improvement for foreigners because they can exercise their rights before they even enter French territory.*

—Eric Besson, minister, Ministry of Immigration, Integration, National Identity, and Solidarity Development, May 11, 2009.

*I said I didn't want to return. The [police] woman told me 'we will handcuff you...put you in the plane, and send you back to your country.'*

—Ousmane R. who arrived alone at Roissy Charles de Gaulle airport at the age of 16 in June 2007.

From January 2008 to July 2009 around 1,500 migrant children arrived without a care-giver or parent at Roissy Charles de Gaulle airport in Paris and were denied entry. Physically present within France's geographical borders, but yet not "in" France according to French law, these children were detained by police in the so-called airport transit zone.

Some of these children were trafficked, some were fleeing persecution in their home countries, and some were arriving to join family members. But instead of receiving protection, they faced degrading treatment by police, detention with adults, little protection from traffickers, barriers to filing asylum, and a rapid screening system procedurally stacked against children being able to properly make a claim to stay in France. Around 30 percent were subsequently deported to their country of origin or to a country through which they had transited on their journey to France, regardless of whether they had family or any ties there, or continued their journey to an onward destination. The others were granted access to France.

The treatment of unaccompanied child migrants at Roissy Charles de Gaulle has significance beyond France. As France's principal and Europe's second largest airport, it serves 60 million passengers yearly, making it a main entry point into Europe's borderless zone, the Schengen area. It counts more than half a million aircraft movements per year, connecting 470 destinations in 110 countries. The airport is also a major stopover point for long-haul flights crossing through Europe.

France, like any sovereign state, has a legitimate interest in controlling its borders and in screening persons who seek entry. However, these interests do not permit it to place

children at risk of harm. France's treatment of unaccompanied migrant children in airport transit zones violates its obligations under international law and should be immediately reformed.

Contrary to binding rulings by the European Court of Human Rights, and to opinions of United Nations bodies, the French government holds on to a legal fiction that the airport transit zone implies some kind of extra-territorial status. As a consequence, unaccompanied children held at the airport and denied entry to France are subject to a different legal regime than children "on French territory." In practice, this means children in transit zones have far fewer rights because their status as migrants trumps their rights as children.

Children may face intimidating or even abusive behavior from some police officers when they arrive. Human Rights Watch documented cases in which police coerced children as young as six into signing papers they did not understand. Police routinely use handcuffs and strip-searches on children. Some children interviewed by Human Rights Watch had been kept for an entire day locked up at airport terminals, during which time the police restricted their access to the toilet.

At a time when children feel insecure and in need of trustworthy information and assistance, Human Rights Watch found that police would also routinely threaten children with deportation. In cases documented by Human Rights Watch, police deliberately refused some children their entitlement to the 24 hour protection from deportation provision and decided on children's behalf that they wanted to depart "as soon as possible." Police requested intrusive age exams for children who were self evidently under eighteen.

Transit zones remain the only place in France where children are detained jointly with adult strangers, and where men and women are held in one single facility. The airport detention center is poorly supervised and children have been sexually harassed by fellow detainees, have seriously harmed themselves, and suffered from anxiety and sleep disorders.

The system provides for ad hoc administrators to be assigned as guardians to assist and represent children in the transit zone. To date not all unaccompanied children are assigned an ad hoc administrator, although the government has pledged this will happen. But even this would not fill protection gaps as children may be deported without ever meeting their assigned ad hoc administrator. Enjoying minimal powers, ad hoc administrators can endure a cat and mouse game in which border police deport unaccompanied children swiftly before the guardians arrive at the airport, or withhold information that makes it impossible to assist the child.

Children not represented by an ad hoc administrator or those who never meet their guardian cannot challenge the lawfulness of their detention because by law they are considered to lack the legal capacity to file such a claim. This puts children in an impossible and totally unfair situation.

Moreover, ad hoc administrators are inadequately trained and poorly paid for a task that is complex, stressful, and involves enormous responsibility. This creates significant risk that intervention by an ad hoc administrator will not always lead to the protection of a child's interests and rights.

Child asylum seekers may also be prevented by border police from filing asylum claims. Those who successfully file a claim undergo interviews almost immediately after arrival and while in detention. At that point they may lack the required confidence, preparation, legal aid, and reflection time to know how to respond, or to understand what is going on and the implications that interviews have. Furthermore, children may still be subject to the influence of traffickers and smugglers. The environment of the interview blurs the boundary between the French Office for Refugees and border police—the children's jailers—and further undermines children's confidence and trust.

Children who apply for but are denied asylum may face obstacles to appealing if their ad hoc administrator is absent or fails to inform them about the right and deadline for an appeal. Human Rights Watch documented cases where the ad hoc administrator refused to approve appeals on the grounds that an appeal is not justified—something quite beyond an ad hoc administrator's capacity or responsibility to assess.

Protection officers working for the French Office for Refugees are not specifically trained in adjudicating children's claims, and criteria for whether a claim is granted are the same for children as for adults. Fast track asylum procedures are particularly inappropriate for children, who have lower thresholds for handling trauma and stress than adults. Children might be traumatized by the reasons for their flight in the first place—but then in addition they find themselves being confronted by intimidating police behavior, detention and insufficient information and legal support in a situation where quick decisions are being made about their status. All of these factors combine to mean that children may not be able to convincingly or coherently articulate their claim, explain the reason for their flight or even understand what is happening to them, increasing the likelihood that legitimate claims may be denied. Human Rights Watch found two cases where negative decisions made under such circumstances were later overturned.

Trafficking victims are among those at risk of being held in airport transit zones and possibly deported. The French government argues that the transit zone offers protection for unaccompanied children and obstructs trafficking networks from operating on French soil. However, Human Rights Watch found the opposite to be true. Border police lack screening procedures to identify trafficking victims and have a track record of attempting to immediately deport them, with the risk of sending them back into the hands of criminal networks. Traffickers have even been able to visit and influence children in the airport detention center.

Other children may be harmed because by law and in practice they may be deported to a transit country where none of their family members are present or they may be returned to their home country without any guarantee for family reunification or safe care. Incredibly, police have attempted to do this with at least one unaccompanied child as young as five.

Children who resist deportation risk facing criminal charges and further detention. Children have been punished with solitary confinement at the airport detention center and reports indicate that border police have threatened children, and in isolated instances resorted to physical violence, to ensure removal from France.

Action by the authorities at the airport transit zone takes place within a very short timeframe. A child might be subject to an entry refusal and removal within the course of only a few hours, while never leaving airport terminals. Such speedy procedures thwart meaningful assessment of the child's situation and undermine any targeted intervention to protect them. The expediency of the procedures makes it less likely that a child will be able to challenge entry refusal and in practice seek protection from danger. It increases the risk that children are being returned to unsafe situations.

French and international human rights bodies, including the Children's Ombudsman, the UN Committee on the Rights of the Child, and several French non-governmental organizations have long criticized the government's treatment of unaccompanied migrant children at the airport, and called for an overhaul of the system. Some, such as the National Consultative Commission on Human Rights, have demanded that all unaccompanied migrant children be admitted to French territory where their right to stay in the country can be adequately assessed.

In early 2009, Immigration minister Eric Besson appointed a working group to analyze the situation of unaccompanied migrant children, including those held in airport transit zones. While a welcome step, the working group's conclusions had not been released at the time of



writing. In May 2009 the minister gave mixed signals about his intentions, stating that it was “out of the question to query the existence of the airport transit zone” since that would encourage trafficking networks and facilitate children’s exploitation.

Human Rights Watch takes a different view. As long as the authorities only consider cosmetic changes and do not address the legal fiction of the transit zone, which lies at the core of current shortcomings, human rights violations by France are likely to persist.

## **Key Recommendations to the French Government**

- Abolish the arbitrary legal status of the airport transit zone for unaccompanied migrant children and admit all unaccompanied children arriving at the border to French territory where their protection needs, vulnerabilities, views, and best interests can be properly assessed and inform any decision-making about their future.
- In the interim, immediately suspend the deportation of unaccompanied migrant children to transit countries, and adopt formal procedures that ensure their safety upon return to their country of origin or when reunited with their care-giver in a third country. Prior to any return decision, assess whether return is in the child’s best interests, taking into account the risk of abuse or harm they may face after arrival.
- Immediately issue clear guidelines to border police that deportation cannot take place until the child has seen his or her ad hoc administrator and had an opportunity to consult with a lawyer.
- Immediately refrain from detaining unaccompanied children with adults and girls with boys. As a general rule, unaccompanied migrant children should be placed in appropriate local authority care and not be detained. If children are to be exceptionally detained, they should be assisted by a lawyer and an ad hoc administrator in order to be able to challenge their detention.

## **Methodology and Scope**

This report examines French authorities’ treatment of migrant children who arrive without parents or care givers at Roissy Charles de Gaulle airport near Paris. Specifically, it focuses on children refused entry to France from the time they are held in the airport transit zone (zone d’attente) until they are granted access to enter France or are removed. This report does not discuss children’s treatment after they are granted permission to enter France or after their removal to their home country or to a third country.

Between April and July 2009, we interviewed a total of 19 unaccompanied migrant children, including six girls, who were held in an airport transit zone. One child was held at the transit zone of Paris Orly airport; the rest were held at Roissy Charles de Gaulle airport. Most children we spoke to were held in the transit zone between April 2008 and June 2009. Two children interviewed were held there in 2007 and one was held in 2006. Unaccompanied migrant children we interviewed were nationals of the following countries: Democratic Republic of Congo, Congo-Brazzaville, Eritrea, Sri Lanka, Nepal, China, Lebanon, Brazil, Ivory Coast, Albania, Guinea-Conakry, Nigeria, and Comoros Islands.

Two interviews were conducted over the phone, all others in person in private and confidential settings. Border police permitted us to speak to children held at the airport detention center in special rooms for visitors. Where necessary, interviews were conducted with the assistance of an interpreter. For five interviews, children's ad hoc administrator or parents were present. We also monitored 55 court hearings of unaccompanied migrant children before the judge who reviews detention of children held at the airport transit zone. All names of children have been replaced by pseudonyms to protect their identity.

We interviewed 10 ad hoc administrators who represent children held at the airport transit zone. We assured them anonymity for any information provided for this report and therefore withhold their names. We met with government officials from the Ministry of Immigration, Integration, National Identity and Solidarity Development (hereafter Ministry of Immigration), Ministry of Justice, Office for the Protection of Refugees and Stateless Persons, local Child Protection Services, and with airport border police at Roissy Charles de Gaulle. We also spoke with representatives of the judiciary, including a liberty and detention judge, the public prosecutor, and a children's judge.

Human Rights Watch did not aim to determine how children we interviewed arrived in France because some were likely still under the influence of smugglers. We also did not seek to assess their motives to migrate or whether they had a claim for asylum. Instead, we assessed to what extent French authorities' treatment of unaccompanied migrant children after their arrival was in conformity with its human rights obligations. That assessment included whether children were granted their right to seek asylum and have their claim examined in a fair and efficient manner.

In line with international instruments and French law, in this report the term “child” refers to a person under the age of 18.<sup>1</sup> For the purpose of this report, we use the term “unaccompanied child” to describe both unaccompanied and separated children as defined by the Committee on the Rights of the Child:

“Unaccompanied children” are children, as defined in article 1 of the Convention, 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. “Separated children” are children, as defined in article 1 of the Convention, who have been separated from both parents, or from their previous legal or customary primary caregiver, but not necessarily from other relatives. These may, therefore, include children accompanied by other adult family members.<sup>2</sup>

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<sup>1</sup> Convention on the Rights of the Child (CRC), adopted November 20, 1989, G.A. Res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, UN Doc. A/44/49 (1989), entered into force September 2, 1990, ratified by France on August 7, 1990, art. 1. Civil Code (Code Civil), <http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006070721&dateTexte=20091011> (accessed October 11, 2009), art. 388.

<sup>2</sup> UN Committee on the Rights of the Child, “Treatment of Unaccompanied and Separated Children Outside their Country of Origin,” General Comment No. 6, UN Doc. CRC/GC/2005/6 (2005), paras. 7-8.

## II. Context

### Transit Zones: A Legal Fiction

A transit zone (*zone d'attente*) is a legal fiction that allows France to treat a person physically in the country as if he or she is still on the outside. Although transit zones are located at border points or airports where a person would first enter the country, the concept has been broadly defined to allow a person held in the transit zone to go to places such as hotels and hospitals without ever legally entering the country, similar to a floating bubble.<sup>3</sup> In the case of Roissy Charles de Gaulle airport, for example, the transit zone includes hospitals around Paris, as well as a courtroom located more than 20 kilometers away from the airport.<sup>4</sup>

The transit zone is a migration control tool that provides a place to assess whether a person detained there fulfills the conditions to enter France and, in case that person fails to do so, to facilitate speedy removal.<sup>5</sup> Foreigners who are not permitted to enter France are detained in a transit zone until their removal, they obtain permission to enter the territory, or for the duration of the examination of their asylum claim. The maximum time of detention may not surpass 20 days.<sup>6</sup>

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<sup>3</sup> Code on the Entry and Stay of Foreigners and the Right to Asylum (Code de l'Entrée et du Séjour des Étrangers et du Droit d'Asile, CESEDA), <http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006070158&dateTexte=20090805> (accessed August 5, 2009), art. L221-1. Roissy Charles de Gaulle airport is commonly referred to as Roissy airport in France.

<sup>4</sup> CESEDA, art. L221-2. Law no. 2003-1119 of November 26, 2003, on Migration Control, the Residence of Foreigners in France, and Nationality (Loi no. 2003-1119 du 26 novembre 2003 relative à la maîtrise de l'immigration, au séjour des étrangers en France et à la nationalité), *Official Journal of the French Republic (Journal officiel de la République française)*, no. 274, <http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000795635&fastPos=1&fastReqId=1793093296&categorieLien=id&oldAction=rechTexte> (accessed August 5, 2009), art. 50. Law no. 92-625 of July 6 1992 on Transit Zones in Ports and Airports and Modifying Order no. 45-2658 of November 2, 1945 concerning the Entry and Stay of Foreigners in France (Loi no. 92-625 du 6 juillet 1992 sur la zone d'attente des ports et des aéroports et portant modification de l'ordonnance no 45-2658 du 2 novembre 1945 relative aux conditions d'entrée et de séjour des étrangers en France), *Official Journal of the French Republic (Journal officiel de la République française)*, no. 158, <http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000175480&fastPos=1&fastReqId=1979423956&categorieLien=id&oldAction=rechTexte> (accessed August 5, 2009), art. 1. Law no. 2003-1119 of November 26, 2003 on Migration Control, the Residence of Foreigners in France, and Nationality (Loi no. 2003-1119 du 26 novembre 2003 relative à la maîtrise de l'immigration, au séjour des étrangers en France et à la nationalité), *Official Journal of the French Republic (Journal officiel de la République française)*, no. 274, art. 50.

<sup>5</sup> Legal requirements for entry include valid identification and visa, proof of accommodation, additional documents attesting purpose of trip, sufficient financial support, medical insurance, and guarantee of return. CESEDA, arts. L211-1 - L211-10. Olivier Clochard, Antoine Decourcelle, Chloé Intrand, "Transit Zones and Asylum Requests at the Border: the Reinforcement of Migration Control?" (Zones d'attente et demande d'asile à la frontière : le renforcement des contrôles migratoires ?), *European Review of International Migration (Revue Européenne des Migrations Internationales)*, vol. 19 (2003), <http://remi.revues.org/index2948.html> (accessed August 5, 2009).

<sup>6</sup> The French Office for the Protection of Refugees and Stateless Persons (Office française de protection des réfugiés et apatrides, OFPRA, hereafter "Office for Refugees") determines only whether an asylum claim made at the border is "manifestly unfounded." If a claim is accepted, the asylum seeker has the right to remain on French territory for eight days in order to file an asylum claim under the regular procedure. If the request at the border is deemed "manifestly unfounded," the applicant is

The French government has repeatedly argued that persons held in the transit zone are subject to different laws because they have not entered France. In reality and especially in the case of unaccompanied children, this means they have fewer rights. Laws around transit zones make almost no distinction between an adult and an unaccompanied migrant child. Transit zones are a legal black hole for unaccompanied migrant children where their status as migrants prevails over their protection entitlements as children without caregivers.<sup>7</sup>

Transit zones are the only place in France where unaccompanied children are detained jointly with adults. They are the only place from where children can be forcibly removed to any country they transited or where they can lawfully enter. French national law forbids the deportation of unaccompanied migrant children “on French territory,” but children held in the transit zone are exempt from this protection as they are not entitled to the same set of rights as those “who have entered.”<sup>8</sup> Unaccompanied migrant children held in the airport transit zone may be deported to countries where none of their family members are present.<sup>9</sup> Also, a person who seeks asylum in a transit zone, in contrast to a person “on French territory,” is subject to a fast-track assessment.<sup>10</sup>

In contrast to the government’s reasoning, numerous courts, including the European Court of Human Rights, have held that “despite its name, the international zone does not have extraterritorial status” and that “holding [persons] in the international zone of Paris Orly Airport made them subject to French law.”<sup>11</sup> The French court of cassation stated in a recent decision that “a child held at the Roissy Charles de Gaulle airport transit zone is de facto on French territory,” and gave the children’s judge the powers to order the child’s entry into

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refused entry to France and may be removed. See chapter V for a full discussion of the asylum procedure at the border. CESEDA, arts. L213-9, L221-1.

<sup>7</sup> CESEDA, arts. L213-1 - L224-4.

<sup>8</sup> CESEDA, arts. L511-4, L521-4.

<sup>9</sup> CESEDA, arts. L213-1 - L213-9.

<sup>10</sup> France has twice resisted legal reform providing safeguards for foreigners held at the airport transit zones until the European Court of Human Rights’ intervention. In *Gebremedhin v. France*, the court ruled that asylum seekers did not have the right to an effective remedy because their appeal against a negative asylum decision did not suspend their possible deportation. France amended its legislation following the ruling providing for an appeals procedure that suspended a person’s removal. Similarly, in *Amuur v. France*, contrary to the government’s reasoning, the court decided in 1996 that a person held at the airport transit zone is subject to a deprivation of liberty and therefore must benefit from the legal safeguards that come with his or her detention. European Court of Human Rights, *Amuur v. France*, Judgment of June 25, 1996, 17/1995/523/609, available at [www.echr.coe.int](http://www.echr.coe.int). European Court of Human Rights, *Gebremedhin v. France*, (Application no. 25389/05), April 26, 2007, available at [www.echr.coe.int](http://www.echr.coe.int)

<sup>11</sup> *Amuur v. France*, para. 52.

France if the child is in danger (see chapter IV for a discussion of the children’s judge’s mandate).<sup>12</sup>

The government has also claimed that persons held in the transit zone are not deprived of their liberty because they are not on French territory or because they can leave anytime by agreeing to their removal or onward journey.<sup>13</sup> French immigration ministry and border police officials further maintained in a meeting with Human Rights Watch that persons held in the transit zone were not “detained” but only “held” and that they had the choice of leaving at any time for a country where they would be admitted.<sup>14</sup>

The European Court of Human Rights has countered the government’s claim that persons held there were not detained, stating that “holding the applicants in the transit zone of Paris Orly Airport was equivalent in practice, in view of the restrictions suffered, to a deprivation of liberty” in the sense of article 5(1) of the European Convention on Human Rights.<sup>15</sup>

The arbitrariness of the transit zone’s legal status becomes further apparent in the testimonies of two unaccompanied children who told us they were placed in the Roissy airport transit zone after they entered French territory, a scenario not provided for by law.

I wanted to fly to the UK.... I got through all the passport checks but when I wanted to board the plane I got caught before boarding. They took me to the police.... They asked me how long I had stayed in France, I said two weeks.... I signed the papers. The interpreter said these were papers to sign so that I could sleep in the hotel. I didn’t read what I signed and I didn’t understand.<sup>16</sup>

Another boy who was 17 at the time of his arrival told us he slipped past the passport checks, which meant he was technically on French territory. Nevertheless, he was subsequently placed in the transit zone:

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<sup>12</sup> Cassation Court (Cour de Cassation), Civil Chamber 1 (Chambre Civile 1), Decision 08-14.125, March 25, 2009, <http://www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechJuriJudi&idTexte=JURITEXT000020453300&fastReqId=247656239&fastPos=21> (accessed August 5, 2009).

<sup>13</sup> *Amuur v. France*, para. 20. CESEDA, art. L221-4.

<sup>14</sup> Human Rights Watch interview with Francis Etienne, director of immigration, Eric Darras, sub-director for controls and removals and the fight against fraud, and Philippe Garabiol, deputy to the sub-director on residency and work, Ministry of Immigration, Paris, June 30, 2009, and with Nadine Joly, director, and Lydie Aragnouet-Brugnano, police chief, border police for Roissy Charles de Gaulle and Le Bourget airports, Paris, August 13, 2009.

<sup>15</sup> *Amuur v. France*, paras. 39, 49.

<sup>16</sup> Human Rights Watch interview with Azem C., May 2009.

I went to the general passport control and I slipped past like that... Then I went to police [in the arrivals hall] and presented myself.... I had to sign papers but I didn't have time to read them. That moment I was scared and didn't want to return. I signed because they wanted me to sign.<sup>17</sup>

The United Nations Convention on the Rights of the Child obliges the French authorities to always act in the child's best interests and to afford special assistance and protection to children without family, as well as to those who seek asylum.<sup>18</sup>

The UN Committee on the Rights of the Child, the body that oversees the Convention's implementation, made it clear that these obligations apply wherever a state exercises jurisdiction, which includes an airport transit zone:

State obligations under the Convention apply to each child within the State's territory and to all children subject to its jurisdiction. These state obligations cannot be arbitrarily and unilaterally curtailed either by excluding zones or areas from a State's territory or by defining particular zones or areas as not, or only partly, under the jurisdiction of the State. Moreover, State obligations under the Convention apply within the borders of a State, including with respect to those children who come under the State's jurisdiction while attempting to enter the country's territory.<sup>19</sup>

Acknowledging a state's interests in controlling its borders, the Committee has nonetheless held that "non-rights-based arguments such as those relating to general migration control, cannot override best interests considerations."<sup>20</sup>

## **The Importance of Roissy Charles de Gaulle Airport**

France's principal and Europe's second largest airport, Roissy Charles de Gaulle airport serves 60 million passengers yearly, making it a main entry point into Europe's borderless zone, the Schengen area. It counts more than half a million aircraft movements per year,

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<sup>17</sup> Human Rights Watch interview with Thomas N., May, 2009.

<sup>18</sup> CRC, arts. 3, 20, and 21.

<sup>19</sup> UN Committee on the Rights of the Child, General Comment No. 6, para. 12.

<sup>20</sup> *Ibid.*, para. 86.

connecting 470 destinations in 110 countries. The airport is also a major stop-over point for long-haul flights crossing through Europe.<sup>21</sup>

There are more than 70 transit zones in France and its overseas territories. Roissy airport is the most important transit zone: around 90 percent of all foreigners in transit zones are kept in Roissy airport, the equivalent of more than 14,000 persons per year.<sup>22</sup>

Roissy airport transit zone includes a detention center for 164 persons, known as Transit Zone for Persons with a Pending Procedure no. 3 (Zone d'Attente pour Personne en Instance n°3, ZAPI 3), located on the outskirts of the airport zone in front of a runway. Prior to being detained in that detention center, non-EU nationals may also be kept in police lock-ups within airport terminals. Unaccompanied children below age 13 may also be detained in hotels near the airport. In early 2008, because the number of detainees exceeded capacity, authorities detained migrants in large airport hangars.<sup>23</sup>

## Procedures for Unaccompanied Migrant Children at the Roissy Transit Zone

The following chart is a simplified overview of the official system for dealing with unaccompanied migrant children who are not permitted to enter France, and describes the mandate of institutions that intervene on their behalf. A child refused entry is detained in the transit zone. While held there, the child is, in theory, represented by a guardian, may file an asylum claim, is brought before a judge who reviews the detention after four days, may be released and permitted to enter France, or may be deported to the country of origin or last country of transit.

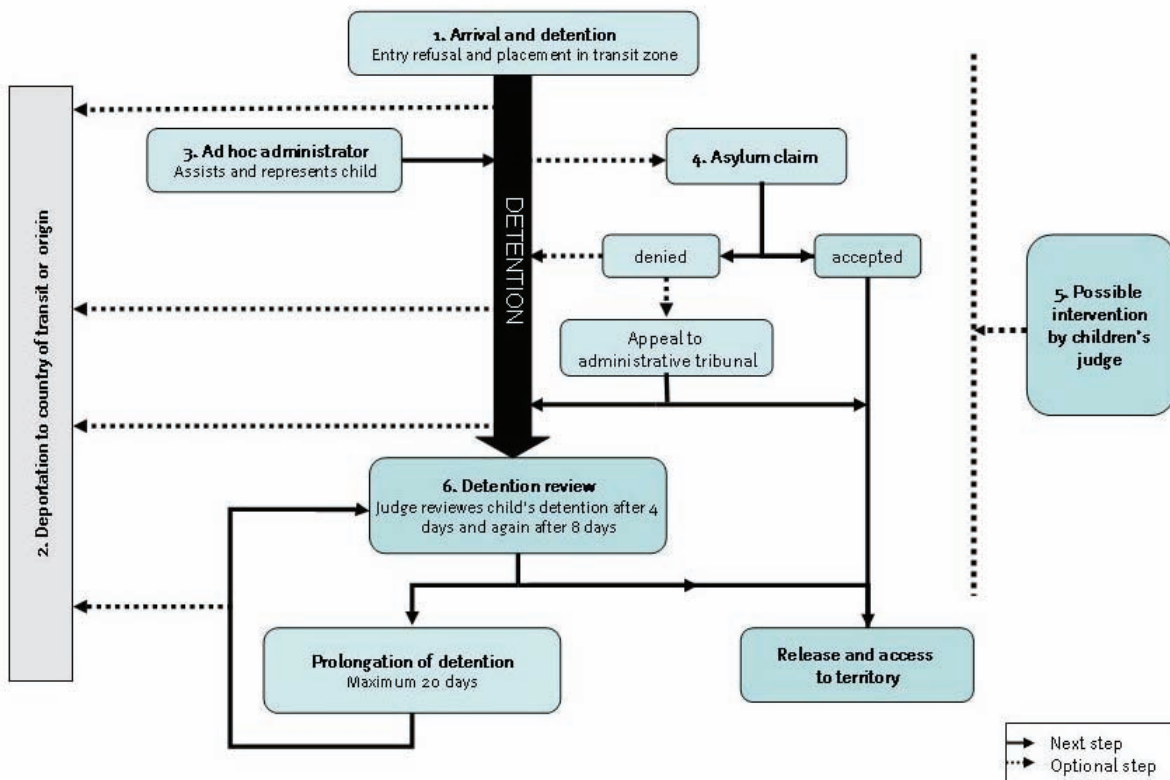
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<sup>21</sup> Paris airports (aéroports de Paris), "Reference Document 2008," (Document de Référence 2008), <http://www.aeroportsdeparis.fr/ADP/Resources/34af5885-311b-47fb-9866-c6a941c67b3d-DocRef2008.pdf> (accessed August 5, 2009), p. 33; Airports Council International, "Statistics: World Airport Traffic," July 2008, [http://www.aci.aero/aci/aci/file/Press%20Releases/2008/Interesting%20Stats\\_2007.pdf](http://www.aci.aero/aci/aci/file/Press%20Releases/2008/Interesting%20Stats_2007.pdf) (accessed August 5, 2009); Airports Council International, "Statistics: Top 30 World Airports by Passengers," July 2008, [http://www.aci.aero/aci/aci/file/Press%20Releases/2008/TOP30\\_Passengers\\_2007.pdf](http://www.aci.aero/aci/aci/file/Press%20Releases/2008/TOP30_Passengers_2007.pdf) (accessed August 5, 2009); Airports Council International, "Statistics: Top 30 World Airports by Aircraft Movements," July 2008, [http://www.aci.aero/aci/aci/file/Press%20Releases/2008/TOP30\\_Aircraft%20Movements\\_2007.pdf](http://www.aci.aero/aci/aci/file/Press%20Releases/2008/TOP30_Aircraft%20Movements_2007.pdf) (accessed August 5, 2009).

<sup>22</sup> National Association for the Assistance of Foreigners at the Border, Anafé (Association Nationale d'Assistance aux Frontières pour les Étrangers, Anafé), "Inhuman Treatment in the Transit Zone," (Inhumanité en Zone d'Attente), May 2009, <http://www.anafe.org/download/rapports/BilanANAFE-roissy-inhumanite-2008.pdf> (accessed August 5, 2009), p. 5. For an overview of transit zones in France and its overseas territories, see Anafé, "List of Transit Zones," (Liste des Zones d'Attentes), <http://www.anafe.org/download/rapports/liste-za-juillet2009.pdf> (accessed July 30, 2009). Anafé, "Statistics of Foreigners at the Border," (Statistiques relatives aux étrangers à la frontière), November 2008, <http://www.anafe.org/download/generalites/stats-za-nov2008.pdf> (accessed July 30, 2009), p. 9.

<sup>23</sup> Council of State (Conseil d'Etat), litigation section (section du contentieux), urgent suspension request (requête en référé-suspension), [http://www.gisti.org/IMG/pdf/recours\\_20080226\\_rs-vta-1fev.pdf](http://www.gisti.org/IMG/pdf/recours_20080226_rs-vta-1fev.pdf) (accessed July 30, 2009), p. 2.





1. Unaccompanied migrant children who do not fulfill conditions to enter France are denied entry and detained in the airport transit zone.

2. While detained in the airport transit zone, the child may be deported any time to the last country of transit, or his or her country of origin.<sup>24</sup>

3. Airport border police are required to inform the public prosecutor immediately about the presence of an unaccompanied migrant child. The latter then appoints a guardian for the child, an ad hoc administrator, who assists and represents the child during all administrative and judicial procedures. In practice, children may be deported before their ad hoc administrator arrives at the airport. The ad hoc administrator also represents the child during his or her detention review and the asylum interview.<sup>25</sup>

4. An unaccompanied child may request to enter France on the grounds of asylum. The French Office for the Protection of Refugees and Stateless Persons's (Office Français de Protection des Réfugiés et Apatrides, hereafter "Office for Refugees") assessment of the

<sup>24</sup> CESEDA, arts. L213-1 - L213-9, and L221-1.

<sup>25</sup> CESEDA, art. L221-5.

claim is limited to determining whether or not it is “manifestly unfounded.” The office issues an opinion to the Ministry of Immigration, the decision-making body.<sup>26</sup> While the child’s request is being examined, he or she may not be deported. If the request is granted, the child receives permission to enter France and submit a regular asylum claim.<sup>27</sup> If rejected, the child may appeal to the administrative tribunal (tribunal administrative) within 48 hours. The child is protected from deportation during the appeals review. If the child does not appeal a negative decision or if the appeal is denied, the child continues to be held in detention and may be deported at any point in time.<sup>28</sup>

5. The children’s judge (juge des enfants), a specialized judiciary for children in criminal and civil proceedings, may intervene any time if a child in the airport transit zone is considered to be in danger. The judge can request protection measures, which would lead to the child’s access to French territory for family reunification or placement in care. The child can request the judge’s intervention or the judge can exceptionally intervene on his or her own initiative, upon alert by any other person.<sup>29</sup>

6. The liberty and detention judge (juge des libertés et de la détention) reviews the legality of the child’s detention in the airport transit zone for a first time after four days, and if detention is extended and the child has not been deported, again after a maximum of eight days.<sup>30</sup> The child is present at the court hearing, represented by his or her ad hoc administrator and a lawyer (in most cases court-appointed), and if needed, assisted by an interpreter.<sup>31</sup> The public prosecutor may appeal the judge’s decision to free the child and request the child’s continued detention. The child’s ad hoc administrator may also challenge the judge’s decision to extend detention and the appeals court (cour d’appel) rules on these appeals.<sup>32</sup> The total length of detention in the transit zone may not surpass 20 days, at which point persons must be released and granted access to French territory.<sup>33</sup>

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<sup>26</sup> See chapter V for a discussion of the asylum procedure and the criteria to determine whether a claim is “manifestly unfounded.”

<sup>27</sup> CESEDA, arts. L213-9 and L221-1.

<sup>28</sup> CESEDA, art. L213-9.

<sup>29</sup> Civil Code (Code Civil), art. 375. Cassation Court (Cour de Cassation), Civil Chamber 1 (Chambre Civile 1), Decision 08-14.125, March 25, 2009.

<sup>30</sup> CESEDA, arts. L221-1 - L222-6.

<sup>31</sup> CESEDA, art. L222-3.

<sup>32</sup> CESEDA, arts. L222-5 and L222-6.

<sup>33</sup> CESEDA, arts. L222-1 and L222-2.

### III. Abuses by Border Police

The first contact between an unaccompanied migrant child and a government official is a decisive moment that sets the tone for the relationship between the child and authorities. An initial encounter that reassures the child and enhances the child's trust in authorities positively contributes to children's stability and ability to assert their rights. It also enables authorities to better assess and understand the child's situation including the possible risks children may face.

The first encounter between children and authorities at Roissy airport, however, falls far short of creating a positive environment. Almost all children interviewed by Human Rights Watch said that initial contacts with French authorities have been marked by threats, humiliations, and coercion which destabilize and frighten children and are possibly designed to induce children to renounce their entitlements and agree to voluntary deportation.

#### Humiliating and Degrading Treatment

Airport border police have subjected children to humiliating and degrading treatment. Many children said they had to strip naked during the police search, which they felt was humiliating. Police officers of the same sex generally carried out the search with the exception of one boy, age 17, who said that two female officers were in the same room when he was searched:

One group [of officers] came to search me.... There were four police officers, one searched me—I had to take off all my clothes, and one searched my suitcase. One woman and another officer were there just to watch. It was very humiliating to be naked before the woman. Their manner of searching me was humiliating. The black police officer made fun of me. I felt like I was treated like an idiot and I felt intimidated.<sup>34</sup>

Several children told us that border police at the airport terminals kept them locked in a room shared with adults for an entire day before taking them to the detention center. In

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<sup>34</sup> Human Rights Watch interview with Daniel S., April 2009. The practice of routinely strip searching children appears disproportionate and has recently been criticized by an oversight commission. National Commission on Professional Conduct and Security (Commission Nationale de Déontologie de la Sécurité), "2008 Report" ("Rapport 2008"), [http://www.cnds.fr/rapports/ra\\_pdf/Rapport\\_CNDS\\_2008.pdf](http://www.cnds.fr/rapports/ra_pdf/Rapport_CNDS_2008.pdf) (accessed August 5, 2009), p. 16.

some cases, authorities restricted their access to the toilet: “I waited all afternoon in a place. I was taken to a place that was like a prison with the door locked; persons inside wanted to go to the toilet [but couldn’t] so they urinated on the floor,” a 17-year-old boy told us.<sup>35</sup> A 16-year-old girl similarly said:

They first locked me inside a room. I was with several other people in one room, including men; maybe eight or ten in total. I tried to call the police to go to the toilet but nobody was there.... I could not go to the toilet.<sup>36</sup>

Although such acts may not be intimidating for adults, children are generally less able to withstand intimidation and pressure, especially in an environment that is new and confusing for them and where they are left in uncertainty about what will happen next. Authorities therefore should consider the impact of applying standard procedures to unaccompanied children and refrain from action that potentially destabilizes children.

Although not typical, two boys told us that even though they approached the police several times they were told to wait for two days inside the airport terminal before police agreed to process their cases. Although children are entitled to representation by an ad hoc administrator immediately after their first contact with police, the experience of these two boys highlights that such representation may not be granted when there is insufficient supervision of police action.<sup>37</sup>

The smuggler told us to wait when we arrived to Roissy airport. We didn’t understand that we were in France. The smuggler left us there, he never came back. We waited until four in the morning then we went to the police. The police told us to sit on chairs and to wait. The police didn’t really understand English. We went to the police around 4 a.m. They told us to sit down and wait. We waited for two days.

We didn’t understand whether it was morning or night when we waited for the police. Each time the police came out of the office we went up to them and asked but each time we were told to sit and wait again. Once an officer

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<sup>35</sup> Human Rights Watch interview with Paco M., June 2009.

<sup>36</sup> Human Rights Watch interviews with Lilian A., April and May 2009.

<sup>37</sup> The French Red Cross informed Human Rights Watch that it regularly raises concerns about allegations of inhuman treatment, denied access to telephones, or prolonged detention in airport terminals with airport border police. Letter from Didier Piard, director of social action department, French Red Cross, to Human Rights Watch, September 14, 2009.

came and asked for our names and nationality but then told us to wait again. After two days we asked for something to eat. One police officer got us some fries.<sup>38</sup>

## Unwarranted Pressure Placed on Children

The vast majority of children told us that border police heavily pressured or misled them into signing documents without explaining what they were signing, effectively taking advantage of children being intimidated and not knowing their rights.<sup>39</sup> In at least three instances of which Human Rights Watch is aware, authorities did not provide children with an interpreter, as required by law.<sup>40</sup>

Unaccompanied migrant children refused entry into France are by law entitled to a 24-hour protection from deportation, the so-called *jour franc*.<sup>41</sup> The child's wish (or refusal) to benefit from the *jour franc* is marked on the entry refusal paper that children have to sign. Human Rights Watch found that in at least three instances, authorities did not grant children their right to a *jour franc*, marked on the entry refusal paper that the child wished to depart "as soon as possible," and immediately tried to deport the child against the child's wishes.<sup>42</sup> In late 2008, police marked on behalf of a 5-year-old unaccompanied boy that he wanted to "depart as soon as possible."<sup>43</sup>

In addition to the three cases we documented in March and May 2009, the real figure of children not granted their *jour franc* is likely to be much higher. According to police records, between January and May 2009, out of 265 unaccompanied children who were refused entry, 24 were removed before the expiration of a *jour franc*.<sup>44</sup> Airport border police told Human

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<sup>38</sup> Human Rights Watch interview with Najib B. and Mohamed A., April 2009.

<sup>39</sup> Human Rights Watch interviews with Daniel S., April 2009, with Najib B. and Mohamed A., April 2009, with Juliette H., May 2009, with Helene S., May 2009, with Irene M., May 2009, with Catherine S., May 2009, with Juliette H., May 2009, with Thomas N., May 2009, with Ousmane R., May 2009, with Azem C., May 2009, with Jean P., May 2009, with Paco M., June 2009, with Shing S., July 2009, and with Omar F., July 2009.

<sup>40</sup> Human Rights Watch observations during children's hearings before the liberty and detention judge, May 13, 2009, and June 9, 2009. Human Rights Watch interview with Najib B. and Mohamed A., April 2009.

<sup>41</sup> CESEDA, art. L213-2.

<sup>42</sup> Human Rights Watch observations during children's hearings before the liberty and detention judge, March 20, 2009, May 14, 2009, and May 29, 2009. The French Red Cross informed Human Rights Watch that it has demanded airport police systematically grant children their right to the *jour franc*. Letter from Didier Piard, French Red Cross, September 14, 2009.

<sup>43</sup> A copy of the boy's entry refusal order is on file with Human Rights Watch. He was not deported and the liberty and detention judge ordered his release after four days. His case is further discussed in the chapter VI.

<sup>44</sup> These figures were provided by Anafé and are based on data gathered by the police.

Rights Watch that when the *jour franc* is not granted it is because children want to depart.<sup>45</sup> In light of confirmed cases that children who did not want to depart in fact had “depart as soon as possible” marked on the entry refusal paper, there must be serious doubt if all or any of the 24 children removed before the expiration of a *jour franc* actually did want to depart.

The police officer simply asked us to sign here, here, and here. And we just did. We were scared and just signed. The police didn’t explain anything to us.... We hardly looked at what we signed.... [Three days later] we signed something-else. It was two papers. We were a bit scared that they would deport us. They police told us ‘no problem—just sign’. There was no interpreter, not even by phone.”<sup>46</sup>

A 12-year-old girl told us how police pressured her and a 6-year-old girl to sign the entry refusal papers.

They asked me to sign papers. I said I won’t sign and then [the other girl] also refused to sign. They insisted once more and said ‘sign.’ I said I won’t sign. Then they gave up. They asked us to sign at the bottom without explaining.<sup>47</sup>

A 17-year-old boy told us that he did not know what he had signed: “I was scared to be sent back. Because one of my family members came to France and had been sent back. I was scared that maybe I signed a paper that allowed my deportation.”<sup>48</sup>

## Threats to Deport Children

Unaccompanied children may also be subject to threats of deportation by border police. The majority of children Human Rights Watch spoke to said that border police had threatened them with deportation. The 12-year-old girl mentioned above told us how police threatened her and a six-year-old girl who was with her.

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<sup>45</sup> Human Rights Watch interview with Nadine Joly and Lydie Aragnouet-Brugnano, border police for Roissy Charles de Gaulle and Le Bourget airports, Paris, August 13, 2009.

<sup>46</sup> Human Rights Watch interview with Najib B. and Mohamed A., April 2009.

<sup>47</sup> Human Rights Watch interview with Juliette H., May 2009.

<sup>48</sup> Human Rights Watch interview with Vikram A., July 2009.

They said, ‘we don’t know whether you will see your parents again.’ I started to cry and so did [name withheld]. Then I told [name withheld] that they were lying so she calmed down. The police said they will punish my parents so that this won’t happen again.... Where we were playing [during the day] one police officer told us, ‘You will depart again.’ I didn’t cry but my heart ached.<sup>49</sup>

A 12-year-old boy from the Ivory Coast was threatened with deportation after he refused to sign papers he did not understand. It is possible that these threats were made to coerce the boy into signing his refusal to the *jour franc*.

They told me to sign papers. I did not sign. Then the police officer said she will show it to her boss. They said my passport was fake and that they will send me back to Ivory Coast. ‘We will send you back to Ivory Coast,’ and ‘you will leave again,’ they said.<sup>50</sup>

These threats are likely to be especially effective as they take place at a moment when children are confused, exhausted, and most in need of assistance and trustworthy information from authorities. The UN Committee on the Rights of the Child urges authorities to determine a child’s protection needs following a first contact, and to carry out such an assessment in a fair and child-sensitive manner, giving due respect to the child’s human dignity.<sup>51</sup>

## Unnecessary and Flawed Medical Examinations to Determine Age

In 2008, approximately 90 out of 1,092 migrants who said they were underage were declared adults following a medical examination. From January to May 2009, this was the case for 9 out of 265 persons. These examinations, which consist of physical assessments only, are fairly imprecise, with margins of error of up to five years.<sup>52</sup> In addition, they appear to be used excessively and in overly restrictive conditions that do little to screen out adults but are nevertheless intimidating.

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<sup>49</sup> Human Rights Watch interview with Juliette H., May 2009.

<sup>50</sup> Human Rights Watch interview with Jean P., May 2009. Daniel S., Helene S., Azem C., and Ousmane R., also reported police threats to deport them. Human Rights Watch interviews with Daniel S., April 2009, with Helene S., May 2009, with Azem C., May, 2009, and with Ousmane R., May 2009.

<sup>51</sup> UN Committee on the Rights of the Child, General Comment No.6, para. 31.

<sup>52</sup> “Age determination is an inexact science and the margin of error can sometimes be as much as 5 years either side.” Royal College of Paediatrics and Child Health, *The Health of Refugee Children: Guidelines for Practitioners* (London: 1999), p. 13.

Medical examinations to determine age are based solely on a physical assessment that includes an x-ray scan of the wrist-bone, the counting of teeth, and a measuring of a child's height and weight.<sup>53</sup> With very few exceptions, children told us they received no information about the purpose of the medical examination and had not been asked for consent, despite this being legally required under French and European Union legislation.<sup>54</sup> Two children told Human Rights Watch:

The next day we went to the hospital. There was no interpreter at the hospital. Four or five police officers took us there. We were handcuffed when we were taken to the hospital, but not anymore on the way back. We didn't know where we were going. At the hospital we didn't receive any explanations. They made an x-ray, checked our teeth, size, and weight. The doctor afterwards showed us his thumb up. We understood that this sign means something positive but we didn't know what it was about.<sup>55</sup>

In addition to their imprecision, pediatricians have further criticized the fact that some exams expose children to X-ray for non-medical purposes.<sup>56</sup> Legal avenues to immediately challenge an erroneous age assessment on behalf of a child do not exist.<sup>57</sup>

According to the UN Committee on the Rights of the Child, children should be informed about the purpose and the implications of an age assessment and be given effective representation by a guardian and lawyer. Such exams should not rely exclusively on physical appearances but should take into account a child's psychological maturity, demeanor, ability to interact with adults, social and educational history, and life experiences.<sup>58</sup> It should also be possible to legally challenge the result of an erroneous assessment.

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<sup>53</sup> Human Rights Watch interview with Patrick Chariot, head of medico-legal unit, Jean Verdier hospital, Bondy, May 11, 2009.

<sup>54</sup> Public Health Code (Code de la Santé Publique), arts. L1111-2, L1111-4; Council Directive 2005/85/EC of December 1, 2005, on minimum standards on procedures in Member States for granting and withdrawing refugee status, *Official Journal of the European Union*, art. 17.5.

<sup>55</sup> Human Rights Watch interview with Najib B. and Mohamed A., April 2009.

<sup>56</sup> Royal College of Paediatrics and Child Health, *The Health of Refugee Children: Guidelines for Practitioners*, pp. 13-14.

<sup>57</sup> Human Rights Watch telephone interview with Patrick Poirret, prosecutor, Bobigny Court, August 18, 2009.

<sup>58</sup> UN Committee on the Rights of the Child, General Comment No. 6, para. 31(i). Jacqueline Bhabha and Nadine Finch, "Seeking Asylum Alone: United Kingdom," <http://www.ilpa.org.uk/seeking%20asylum%20alone.pdf> (accessed July 8, 2009), p. 61.



Police routinely request medical age examinations even when there is no doubt that a child is underage.<sup>59</sup> According to one ad hoc administrator, police even ordered an age exam for a six-year-old girl in early 2009 but were stopped after he intervened.<sup>60</sup> Age exams should only be conducted in case of doubt about a person's age.

Furthermore, children as young as 12 told us that they were taken to and from the hospital in handcuffs or strapped to the car seat, and squeezed in-between police officers. "They took me in handcuffs to the hospital. We were two boys and five police officers. They took the handcuffs off before we arrived to the hospital. On the way back they handcuffed me again," a 12-year old boy told us.

## Abuses and Risks in Detention

French law permits unaccompanied migrant children to be detained for a maximum of 20 days at the airport transit zone. Police order the first four days of detention through an administrative decision but a judge must validate any extension.<sup>61</sup> In practice, only a small minority of children are detained for 20 days. The majority leave the airport transit zone either within the first four days because they are deported or at four days when a judge reviews their detention and orders their release.

Within the course of three weeks in April and May 2009, Human Rights Watch documented five incidents in which children faced harm in detention.<sup>62</sup> In two instances children experienced mental health problems, suggesting that they needed specialized services and attention unavailable in detention: one child attempted to commit suicide and another child had a psychological breakdown. In a third incident, a boy told us that an adult inmate with whom he was detained sexually harassed him: "I was scared because there was one guy who was interested in me. He told me to follow him. I said 'no.' I stayed inside the room all day. I was scared and stayed inside the room. I could not talk to anybody."<sup>63</sup>

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<sup>59</sup> Human Rights Watch interviews with Juliette H., May 2009, and with Jean P., May 2009. Both children were 12 years old when they arrived to Roissy airport and looked underage.

<sup>60</sup> Human Rights Watch interview with ad hoc administrator, May 2009. Human Rights Watch does not know why the police request age exams in such obvious cases, and Ministry of Immigration officials said there was no point of carrying out exams in such cases. The girl's ad hoc administrator was of the view that police wanted to check whether the age exam might classify her as 13 so that they could detain her jointly with adults.

<sup>61</sup> CESEDA, art. L221-3.

<sup>62</sup> The period concerned is April 30 to May 21, 2009.

<sup>63</sup> Human Rights Watch telephone interview with Paco M., June 2009. Paco M. was on vacation visiting relatives in another EU country and told us he was not granted permission to enter France solely because he did not have his return ticket on him.

In a fourth incident, border police permitted a trafficker to visit a girl in detention. When that girl's detention was reviewed before the liberty and detention judge, the government lawyer acknowledged she was a trafficking victim and argued for her continued detention because she would abscond if released. The judge extended her detention.<sup>64</sup> Despite this awareness on the government's side, insufficient safeguards were in place to stop her trafficker from visiting her in detention shortly afterwards (her case is further discussed in Chapter V). According to her ad hoc administrator, she was so distressed after 12 days in detention that she could not stop trembling.<sup>65</sup> A fifth child, a girl, suffered from anxieties and sleeping disorders after 12 days in detention, and her ad hoc administrator was going to alert the children's judge had she not been released by the liberty and detention judge.<sup>66</sup>

Children are also subject to solitary confinement in the airport transit zone. Anafé, an organization that provides legal aid at the airport detention center, documented in 2007 the placement of a 16-year-old girl in an isolation cell after she attempted to commit suicide.<sup>67</sup> While the segregation of a suicidal person can be justified for safety reasons, in this case the authorities should have considered that her continued detention at the airport, in particular in solitary confinement, might have caused additional harm and did not provide her with the specialized services she required.

As these examples illustrate, detention can put children at increased risk of self-harm, mental distress, and abuse from fellow inmates or outsiders. Joint detention of children and adults for any lengths of time is prohibited under the UN Convention on the Rights of the Child (CRC) and the international Covenant on Civil and Political Rights, and the detention of children generally should be a measure of last resort.<sup>68</sup>

At Roissy, women, men, girls and boys are held in one single facility and are not physically separated from one another. Children, age 13 and older are detained with adults in the airport detention center; younger children are generally held in hotels near the airport,

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<sup>64</sup> Human Rights Watch observations during children's hearings before the liberty and detention judge, April 29, 2009.

<sup>65</sup> Human Rights Watch observations during children's hearings before the liberty and detention judge, May 7, 2009.

<sup>66</sup> Human Rights Watch observations during children's hearings before the liberty and detention judge, May 21, 2009. Human Rights Watch interview with ad hoc administrator, May 2009.

<sup>67</sup> Anafé, "Annual Report 2007" ("Bilan 2007"), September 2008, <http://www.anafe.org/download/rapports/anafe-bilan-2007-sept2008.pdf> (accessed August 4, 2009), p. 20.

<sup>68</sup> CRC, art. 37(b) and (c). International Covenant on Civil and Political Rights, (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6313 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, ratified by France on February 4, 1981, art. 10.2(b).

although in some instances children younger than 13 are also detained jointly with adults.<sup>69</sup> A 12-year-old boy with a fake passport attesting his age was 17 was held for four days jointly with adults.<sup>70</sup>

Beginning in spring 2010, airport border police plan to hold children under age 13 inside the airport detention center in separate quarters. The space is to have six beds and be under constant supervision by French Red Cross employees. However, teenagers may still be held with adults if space is insufficient or if there are very young children who should be separated from older children.<sup>71</sup>

Joint detention of children with unrelated adults puts them at risk of abuse, including sexual violence, particularly in settings with insufficient supervision.<sup>72</sup> While airport border police run the detention facility, children told us that police almost never come to the first floor of the airport detention center where detainees' rooms are located and supervision appears to be exercised primarily through camera monitoring and through small teams of French Red Cross employees who provide humanitarian assistance in the facility.<sup>73</sup>

The transit zones are the only places under French law where the detention of children with adults is allowed. It is difficult to understand why France recognizes the requirement to implement the basic child protection measure of separating detained children from adults in all circumstances but this one. The Paris appeals court held that the detention of unaccompanied migrant children in an airport transit zone does not violate France's obligations under the Convention on the Rights of the Child. The court argues that unaccompanied children's detention is permissible because it is limited in time, because the UN Committee on the Rights of the Child had never objected to French law permitting children's detention, and because the child "has not yet entered French territory."<sup>74</sup>

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<sup>69</sup> This practice is not required by law but based on a police decision. Human Rights Watch interview with Nadine Joly and Lydie Aragnouet-Brugnano, Paris, August 13, 2009.

<sup>70</sup> Human Rights Watch interviews with Jean P., May 2009 and with his ad hoc administrator, May, 2009.

<sup>71</sup> Human Rights Watch interview with Nadine Joly and Lydie Aragnouet-Brugnano, Paris, August 13, 2009.

<sup>72</sup> Paulo Sérgio Pinheiro, *World Report on Violence against Children*, (Geneva: United Nations Secretary-General's Study on Violence against Children, October 2006), [www.violencestudy.org/a553](http://www.violencestudy.org/a553) (accessed August 30, 2008) p. 199.

<sup>73</sup> Human Rights Watch interviews with Paco M., June, 2009, with Shing S., July 2009, and with Wen C., July, 2009.

<sup>74</sup> Paris Appeals Court (Cour d'Appel de Paris), decision of October 27, 2008 (ordonnance du 27 octobre 2008), no. Q 08/00989.

This ruling contravenes basic international standards, including in the Convention on the Rights of the Child, which prohibit the detention of children with adults for any length of time.<sup>75</sup> The fact that the Committee on the Rights of the Child has not specifically criticized a provision in French law does not signify a tacit endorsement. In terms of practical harm, the example of Paco M., who was detained for one day and night only, illustrates how an adult inmate can immediately place a child at serious risk. The European Court held in *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, with particular reference to unaccompanied children, that the detention of an unaccompanied child jointly with adults may amount to inhuman and degrading treatment.<sup>76</sup>

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<sup>75</sup> CRC, art. 37(b) and (c).

<sup>76</sup> *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, (Application no. 13178/03), October 12, 2006, available at [www.echr.coe.int](http://www.echr.coe.int), paras. 50-59.

## IV. Lack of Legal Representation for Unaccompanied Migrant Children

In airport transit zones, unaccompanied migrant children are treated exactly the same as adults with one exception—children are, in theory, appointed a legal guardian, a so-called ad hoc administrator (administrateur ad hoc).<sup>77</sup> Human Rights Watch recognizes the commitment and good intentions of the majority of individual ad hoc administrators and the part they play in helping protect children. Without them the system would be even worse than it is. Nevertheless, we have concerns about the limitations of their role and the capacity of ad hoc administrators to always discharge it in the best interests of the child.

Ad hoc administrators are not supposed to provide legal aid for children nor to co-decide on police decisions, including whether a child is deported. Although they are to “assist” children detained in the transit zone, their primary task is to make up for the child’s legal lack of capacity and to “assure representation” of the child so that authorities’ actions become valid.<sup>78</sup>

Yet, even these requirements are disposable. Although some ad hoc administrators manage to play a protective function for the child, other guardians may perform a purely nominal function without ever meeting the child they represent, and their absence does not block police from detaining or deporting a child.<sup>79</sup>

Two organizations, the French Red Cross and Famille Assistance provide ad hoc administrators for unaccompanied children at Roissy airport. French Red Cross ad hoc administrators are unpaid volunteers, while those who work for the organization “Famille Assistance” receive the minimal remuneration provided for by law.

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<sup>77</sup> CESEDA art. L221-5, Law no. 2002-305 on Parental Authority (Loi no. 2002-305 relative à l’Autorité Parentale), *Official Journal of the French Republic (Journal Officiel de la République Française)*, <http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000776352&fastPos=1&fastReqId=1711435895&categorieLien=id&oldAction=rechTexte> (accessed August 5, 2009).

<sup>78</sup> Civil Code, arts. 388-2 and 389-3. Law no. 2002-305, art. 17. The French civil code, which refers to ad hoc administrators in other settings than the transit zone, only implicitly mentions that they are to act in the child’s interests. None of the legal texts that specifically regulate ad hoc administrators’ mandate with regard to children in the transit zone, however, refer to the obligation to act in the child’s best interest. Circular no. CIV/01/05 in Application of Decree no. 2003-841 of September 2, 2003, Relating to the Designation and Remuneration Modalities of Ad hoc Administrators Established by Article 17 of Law no. 2002-305 of March 4, 2002, concerning Parental Authority (Circular no. CIV/01/05 prise en application du décret no. 2003-841 du 2 septembre 2003 relatif aux modalités de désignation et d’indemnisation des administrateurs ad hoc institués par l’article 17 de la loi no. 2002-305 du 4 mars 2002 relative à l’autorité parentale), *Official Bulletin of the Ministry of Justice (Bulletin officiel du Ministère de la Justice)*, no. 98, 2005, para. 3.2.

<sup>79</sup> See the Paris appeal court decision arguing that the government’s request to the French Red Cross for an ad hoc administrator was sufficient for the child’s detention (and deportation) to be lawful despite the fact that the French Red Cross declined the request due to lack of personnel. Paris Appeal Court (Cour d’Appel de Paris) Decision (Ordonnance), July 24, 2008.

The requirements to be met for an individual to be appointed an ad hoc administrator are low and remuneration is very small, fixed at 150 Euro per child represented.<sup>80</sup> There is no reimbursement for transport, communication, or interpretation expenses, or for additional workload due to appeals and representation during court hearings. Given these limitations ad hoc administrators are confronted with, the risk is that for all their good intentions some may in practice do little more than rubber stamp the administrative and judicial procedures to which the child is subjected.<sup>81</sup>

Despite the requirement that all unaccompanied children be appointed an ad hoc administrator, in practice, around 30 percent of all children who entered in 2008 were unrepresented and had no guardian assigned. An additional 20 percent never met with their guardian because they were deported or continued their journey before they met their representative.<sup>82</sup> The overall percentage of children represented has improved significantly since February 2009 with the creation of a new organization, Famille Assistance, but as many as 13 percent of unaccompanied children remained without a guardian as of May 2009.<sup>83</sup>

## The Limits on the Role of Ad Hoc Administrators

French authorities are obliged under international law to give primary consideration to the child's best interest in any decision they make.<sup>84</sup> This includes whether a child should be

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<sup>80</sup> Ad hoc administrators are required to possess demonstrated interest and competence in childhood issues, be between the ages of 30 and 70, and have no record of criminal offenses or disciplinary proceedings. Decree no. 2003-841 of September 2, 2003 Relating to the Designation and Remuneration Modalities of Ad hoc Administrators as Established by Article 17 of Law no. 2002-305 of March 4, 2002 (Décret no. 2003-841, du 2 septembre 2003 relatif aux modalités de désignation et d'indemnisation des administrateurs ad hoc institués par l'article 17 de la loi no. 2002-305 du 4 mars 2002), art. 2.

<sup>81</sup> Ad hoc administrators were only introduced by law after judges repeatedly ruled that subjecting children to administrative and judicial procedures in the transit zone without an adult representative was an irregular practice and systematically released children from detention. These administrative and judicial procedures include refusing entry, placement in the transit zone, lodging an asylum claim, the asylum interview, police interviews, and the review of detention by the competent judge. Ad hoc administrators have been repeatedly criticized for validating government action at the expense of protecting children. See Nadia Allouche, "Did the Ad hoc Administrator forget to Defend the Interests of the Child?" ("L'Administrateur ad hoc Aurait-il Oublié qu'il a pour Mission de Défendre les Intérêts du Mineur qu'il Représente?"), *Journal on the Rights of Youth (Journal du Droit des Jeunes)*, no. 254, April 2006, pp. 23-25; and Anafé, "Unaccompanied Children in the Transit Zone: with or without Ad hoc Administrators, their Rights Are Constantly Violated" ("Mineurs Isolés en Zone d'Attente: avec ou sans Administrateur ad hoc, les Droits des Enfants Constamment Bafoués"), October 4, 2006, <http://www.anafe.org/download/mineurs/note-anafe-aah-04-10-06.pdf> (accessed August 5, 2009).

<sup>82</sup> Human Rights Watch interview with Nasrine Tamine and Claire Lainé, French Red Cross, Paris, September 17, 2009.

<sup>83</sup> "Short address by M. Eric Besson: Creation of the working group on unaccompanied migrant children" ("Allocution de M. Eric Besson : Installation du groupe de travail sur les mineurs isolés"), Ministry of Immigration, (Ministère de l'Immigration), May 11, 2009, <http://www.immigration.gouv.fr/IMG/pdf/DiscoursGROUPEMEI110509.pdf> (accessed August 11, 2009). The public prosecutor of Bobigny court told us that representation has since improved further. Human Rights Watch telephone interview with Patrick Poirret, August 18, 2009.

<sup>84</sup> CRC, art. 3.

detained, deported, or undergo an age exam. Under French law the child's ad hoc administrator is mandated to safeguard the child's best interests.

Yet, despite the legal mandate, ad hoc administrators are not given the required powers to do so effectively. Airport border police underlined in a meeting with Human Rights Watch that ad hoc administrators did not and should not participate in police decisions regarding the child's detention, deportation, or decision to carry out an age exam.<sup>85</sup> In practice, these decisions are not subject to a best interest assessment and remain exclusive police decisions in which ad hoc administrators have no say.<sup>86</sup>

Ad hoc administrators act under severe time pressure and have enormous responsibilities. They often represent several children at the same time, in exceptional cases even up to 10, which raises questions about their capacity to build a relationship of trust with the child and assess his or her situation within a very short period involving limited encounters. One child described us the encounter with his ad hoc administrator as follows: "that man gave me a paper with his phone number the day before the [asylum] interview. He explained to me but it was difficult to understand who he was."<sup>87</sup> Their work becomes even more difficult when representing children who are traumatized, who have complex migration histories, who are trafficked, or children who do not trust their ad hoc administrators and reveal little about the reasons why they came to France. One ad hoc administrator described the daily difficulties she faces as follows:

Sometimes [we] are overburdened and we have complicated cases. It's horrible to have cases full of misery and psychologically it is sometimes very difficult.... the transit zone is a race against time. You lose time because the child is under shock, jetlagged, tired, confused, passing the age exam, or busy because of the meal hours. You lose a lot of time like this in the beginning until you can finally start figuring out what's happening. It is also physically tough, because you have to run around a lot.<sup>88</sup>

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<sup>85</sup> Human Rights Watch interview with Nadine Joly and Lydie Aragnouet-Brugnano, Paris, August 13, 2009.

<sup>86</sup> The French Red Cross informed Human Rights Watch that it acknowledges and regrets legal gaps and incoherencies governing ad hoc administrators' mandates but strives to make the most of that mandate to serve the child's interest. The French Red Cross for example litigated a case before the court of cassation that resulted in an unambiguous mandate for the children's judge to intervene in the airport transit zone. It also regrets border police's lack of information sharing with ad hoc administrators. Letter from Didier Piard, French Red Cross, September 14, 2009.

<sup>87</sup> Human Rights Watch interview with Omar F., July 2009.

<sup>88</sup> Human Rights Watch interview with ad hoc administrator, March, 2009.

Ad hoc administrators interviewed by Human Rights Watch were very committed and generally well-qualified to morally support and reassure children, although several lacked a broad knowledge about the rights of migrants and asylum seekers. Human Rights Watch has concerns that training was often limited, which contributed to these low knowledge levels of children's and migrants rights.<sup>89</sup>

Human Rights Watch witnessed administrators seeking courses of action which belied a lack of understanding of the process. For example, two ad hoc administrators we saw in court hearings demanded that the liberty and detention judge order the police to return the child to the country of origin and not the transit country. While the judge reviews the legality of the child's detention it does not have the power to give such orders to the police.<sup>90</sup> Human Rights Watch also observed one ad hoc administrator intervening against the interest of the child by declaring before the liberty and detention judge that the boy was lying about his nationality and had given a different version during the police interview.<sup>91</sup> Another ad hoc administrator was unsure about the children's judge's power to intervene and was unable to reach her organization to discuss the right course of action.<sup>92</sup> Several ad hoc administrators said they had never heard of subsidiary protection entitlements for asylum seekers that forbid return to inhuman or degrading treatment or to grave threat against one's life or person, and even an experienced ad hoc administrator did not know how to challenge an administrative detention order.<sup>93</sup>

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<sup>89</sup> Training for French Red Cross ad hoc administrators consists of three days of theoretical training followed by joint missions with more experienced colleagues for several weeks or months. The French Red Cross recently decided to extend the initial training to five days. Human Rights Watch telephone interview with Claire Lainé, French Red Cross, June 30, 2009.

<sup>90</sup> Human Rights Watch interview with Stéphanie Kretowicz, vice-president, Bobigny Court, May 14, 2009. Human Rights Watch observations during children's hearings before the liberty and detention judge, Bobigny, March 20, May 17, and May 25, 2009.

<sup>91</sup> Human Rights Watch observations during child's hearing before the liberty and detention judge, Bobigny, March 20, 2009. The boy's lawyer, in response to the ad hoc administrator's intervention, pointed out that the boy was of Palestinian nationality but living in Egypt, which could explain the apparent contradiction.

<sup>92</sup> Human Rights Watch observations during child's hearing before the liberty and detention judge, Bobigny, May 27, 2009.

<sup>93</sup> Human Rights Watch interviews with ad hoc administrators, March, May and July, 2009. Three French Red Cross ad hoc administrators, two of them who had just finished their legal training with the French Red Cross, told us they had never heard of subsidiary protection and were unaware that trafficking victims are entitled to international protection. They said they thought that filing an asylum claim for a trafficking victim would be a deliberate attempt to delay procedures in order to foil deportation. When we asked the French Red Cross why several of its ad hoc administrators were unaware of subsidiary protection, we were initially told that ad hoc administrators were not specifically trained but that lawyers guiding them in their decision-making would apply these protection criteria. Later, French Red Cross representatives told us that its ad hoc administrators were trained about subsidiary protection but that the term 'subsidiary protection' was not used in the training, which explains why they never heard of it. Human Rights Watch found French Red Cross ad hoc administrators were not only unfamiliar with the term but also its content. Human Rights Watch telephone interview with Claire Lainé, French Red Cross, June 30, 2009. Human Rights Watch interview with Claire Lainé, Nasrine Tamine, Emmanuelle Soublin, co-director, Didier Piard, director, social action department, French Red Cross, Paris, September 17, 2009.



Additionally, several ad hoc administrators expressed reluctance to consistently challenge government decisions by appealing detention orders or requesting interventions before the children's judge. They said they feared this would tarnish their credibility or complicate their relationship with these institutions.<sup>94</sup>

Ad hoc administrators for the airport transit zone are not subject to any external supervision or monitoring and their actions are not reviewed by any independent mechanism. Although they regularly submit reports to the prosecutor, the latter is not mandated to assess the exercise of their function.<sup>95</sup> The UN Committee on the Rights of the Child calls on states to introduce review mechanisms to monitor the quality of the exercise of guardianship so that the best interests of the child are respected.<sup>96</sup>

### **Absence of Ad Hoc Administrators**

The law does not require the immediate presence of an ad hoc administrator when a child arrives at the airport and begins their interaction with the authorities. As ad hoc administrators do not have a permanent presence at the airport—a consequence of their low remuneration—they meet children only after some delay, often the day after the child's arrival. Therefore the system does not ensure the presence of an ad hoc administrator at a time when the child is subject to some of the most important procedures in the transit zone—including access to the asylum procedure, and the 24 hour protection from deportation—and they are then unable to verify that children's rights are respected during this time.<sup>97</sup> As described previously, Human Rights Watch found numerous rights violations during this initial period.

Some children are even deported before their ad hoc administrator arrives at the airport. The French Red Cross said that in 2008 around 30 percent of children they represented never met with their ad hoc administrator, in most cases because they were deported or continued their journey before their ad hoc administrator arrived.<sup>98</sup> While shockingly high, this figure represents an improvement to 2007, when 52 percent of all children represented by the

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<sup>94</sup> Human Rights Watch interviews with ad hoc administrators, Paris, March, May, and July 2009.

<sup>95</sup> Human Rights Watch telephone interview with Patrick Poirret, August 18, 2009.

<sup>96</sup> UN Committee on the Rights of the Child, General Comment No.6, para. 35.

<sup>97</sup> The French Red Cross informed us that it regularly points out legal inconsistencies that do not require the ad hoc administrators' immediate presence after the child's arrival. It would welcome a permanent presence of ad hoc administrators right but stresses that this is not realistic with the current remuneration scheme. Letter from Didier Piard, French Red Cross, September 14, 2009.

<sup>98</sup> Human Rights Watch email correspondence from Nasrine Tamine, French Red Cross, September 21, 2009.

French Red Cross did not meet with their ad hoc administrator, in a majority of cases because they were deported or continued their journey within less than 24 hours.<sup>99</sup> A child's deportation is valid even when the child has never met his or her guardian as long as authorities have requested the appointment of an ad hoc administrator from the French Red Cross or Famille Assistance.<sup>100</sup>

Furthermore, some children are never appointed an ad hoc administrator because the French Red Cross faces repeated shortages of volunteers. In 2007 for example, 133 unaccompanied migrant children (around 16.7 percent of all unaccompanied children for whom the police requested an ad hoc administrator) did not get any representation at all. In 2008 the situation deteriorated, when the equivalent figures were 300 children (or around 30 percent of all unaccompanied children for whom police requested a guardian).<sup>101</sup> The representation of children through ad hoc administrators has improved since early 2009, when a new non-governmental organization (Famille Assistance) was established to supply ad hoc administrators in addition to the French Red Cross. But around 13 percent of all children remained without legal representation as of May 2009.<sup>102</sup>

The system is positively Kafkaesque because children who are not represented by an ad hoc administrator or who never meet their representative are prevented from challenging the lawfulness of their detention. Under French law they are considered to lack the capacity to file such a claim by themselves.<sup>103</sup>

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<sup>99</sup> French Red Cross (Croix-Rouge Française), "Statistical Report about Ad hoc Administrators' Missions" ("Rapport statistique de la mission administrateur ad hoc en 2007"), August 2008, p. 7. Children's Ombudsman (Défenseure des Enfants), "Symposium: Unaccompanied Migrant Children—Towards a Harmonization of Practices in the Child's Best Interests" ("Colloque : Mineurs étrangers isolés—vers une harmonisation des pratiques dans l'intérêt supérieur de l'enfant"), [http://www.defenseurdesenfants.com/pdf/Actes\\_MEI.pdf](http://www.defenseurdesenfants.com/pdf/Actes_MEI.pdf) (accessed July 7, 2009), p. 19;

<sup>100</sup> Circular no. CIV/01/05, para. 3.2. Although law 2002-305 specifies that an ad hoc administrator needs to go to the waiting zone, this inter-ministerial circular states that the ad hoc administrator's absence is not in itself a reason for an administrative procedure to be nullified. See also the Paris appeal court decision arguing that the government's request to the French Red Cross for an ad hoc administrator was sufficient for the child's detention (and deportation) to be lawful despite the fact that the French Red Cross declined the request due to lack of personnel. Paris Appeal Court (Cour d'Appel de Paris) Decision (Ordonnance), July 24, 2008.

<sup>101</sup> French Red Cross (Croix-Rouge Française), "Statistical Report about Ad hoc Administrators' Missions," (Rapport Statistique de la Mission Administrateur Ad hoc en 2007), August 2008, p. 7. Human Rights Watch interview with Nasrine Tamine and Claire Lainé, social action department, French Red Cross, Paris, September 17, 2009.

<sup>102</sup> "Short address by M. Eric Besson: Creation of the working group on unaccompanied migrant children" ("Allocution de M. Eric Besson : Installation du groupe de travail sur les mineurs isolés"), Ministry of Immigration, (Ministère de l'Immigration), May 11, 2009.

<sup>103</sup> CESEDA, art. L221-5. See examples of children who were unable to challenge their detention due to the absence or opposition by their ad hoc administrator and an excerpt of an appeals court decision ruling that the appeal from an unaccompanied child's lawyer was invalid because the child's ad hoc administrator did not sign on to the appeal. Anafé, "The Zone of Lost Children" (La Zone des enfants perdus), November 2004, [http://www.coe.int/t/dg3/migration/Source/MalagaRegConf/Anaf\\_Rapport\\_mineurs\\_nov\\_04\\_fr.pdf](http://www.coe.int/t/dg3/migration/Source/MalagaRegConf/Anaf_Rapport_mineurs_nov_04_fr.pdf) (accessed August 3, 2009), p. 24.

Under the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) as well as the UN Convention on the Rights of the Child, the detention of a person must come with the right to challenge its lawfulness.<sup>104</sup> If children are detained but barred from challenging their detention because their ad hoc administrator is absent or not appointed and they lack the capacity or ability to challenge the lawfulness of detention on their own account, then the right to challenge one's detention is being violated.

The UN Committee on the Rights of the Child calls on states to appoint a guardian or advisor as soon as an unaccompanied child is identified. The guardian should be consulted and informed about all actions taken with regard to the child.<sup>105</sup> This requirement derives from the binding obligation that a child's best interests are a primary consideration in all actions affecting the child.<sup>106</sup> That French law permits the child's detention and removal from France even when the child remains unrepresented by either a guardian or a lawyer is not in line with these obligations.

According to the Committee on the Rights of the Child, guardians (in this case ad hoc administrators) who represent children should be familiar with the child's background and ensure that the child's legal needs are appropriately covered. Guardians should also have the authority to be and actually be present in all decision-making in relation to the child. Children in a judicial or administrative proceeding should be represented by a lawyer, in addition to the guardian.<sup>107</sup>

## Obstruction by Border Police

We found instances in which border police deliberately withheld important information from ad hoc administrators and obstructed them from carrying out their mandate. For example, on May 10, 2009, police transferred a 17-year-old Somali boy to the psychiatric emergency ward of a nearby hospital after the boy apparently suffered a breakdown at the airport detention center.<sup>108</sup> Even though doctors attested that his mental state did not permit a deportation, he

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<sup>104</sup> European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), 213 U.N.T.S. 222, entered into force September 3, 1953, as amended by Protocols Nos. 3, 5, 8, and 11 which entered into force on September 21, 1970, December 20, 1971, January 1, 1990, and November 1, 1998, respectively, ratified by France on May 3, 1974, art. 5.4. CRC, art. 37(d).

<sup>105</sup> UN Committee on the Rights of the Child, General Comment No. 6, para. 33.

<sup>106</sup> CRC, art. 3.

<sup>107</sup> CRC, art. 3. UN Committee on the Rights of the Child, General Comment No.6, paras. 21 and 33.

<sup>108</sup> After arriving at the detention center, the boy lay on the floor and took off his clothes. Human Rights Watch observations during child's hearing before the liberty and detention judge, Bobigny, May 13, 2009.

was sent back to the airport detention center. When the boy's ad hoc administrator tried to meet with him, police told her he was at the hospital for an age exam. Unaware of this serious incident and the boy's mental health, the ad hoc administrator did not challenge the boy's detention. She found out about the incident four days later, when the liberty and detention judge examined the boy's files. The judge released the child.<sup>109</sup>

Several ad hoc administrators told Human Rights Watch that police routinely deny them access to children's files. Exceptions were made in a few instances when ad hoc administrators were permitted to quickly view files. Such exceptions, we were told, depended on the willingness of border police officers on duty.<sup>110</sup>

French legislation does not specifically require police to share files with children's ad hoc administrators that contain police interview transcripts, results of age exams, investigations about the child's travel route, or medical records. Nevertheless, state officials are obliged under international law to act in children's best interests and to provide children assistance, and guardians should be consulted and informed regarding all actions taken in relation to the child.<sup>111</sup> By withholding information that is crucial for ad hoc administrators to carry out their function, it is hard to see how these obligations can be met.

Police have also failed to inform ad hoc administrators when a child has been accompanied by an adult who could not prove the parental relationship. One ad hoc administrator told us that in one case the police placed the adult in custody elsewhere and held the child as an unaccompanied migrant in the transit zone but did not inform the ad hoc administrator that the child had been traveling with an adult.<sup>112</sup> Not knowing about such existing relationships prevents ad hoc administrators from accurately understanding a child's situation, including the impact that separation from a parent can have on a child's mental health. Furthermore, police neither communicate the result of age assessments to ad hoc administrators, nor do they immediately communicate ad hoc administrators about the justification for a child's negative asylum decision.<sup>113</sup>

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<sup>109</sup> Human Rights Watch observation during children's hearing before the liberty and detention judge, Bobigny, May 13, 2009.

<sup>110</sup> Human Rights Watch interviews with ad hoc administrator, May and July 2009.

<sup>111</sup> CRC, arts. 3, 20. UN Committee on the Rights of the Child, General Comment No.6, para. 33.

<sup>112</sup> Human Rights Watch interview with ad hoc administrator, July 2009.

<sup>113</sup> The Office for Refugees conducts interviews with asylum seekers in transit zones and then issues an opinion to the Ministry of Immigration who makes the decision at first instance. Police officials communicate the outcome of the asylum application to persons detained in transit zones. We were told that the Ministry of Immigration always follows the Office for Refugees' opinions. Human Rights Watch interview with Daniel Le Madec, head of border asylum procedure, Office for Refugees, Ministry of Immigration, May 15, 2009.

The French Red Cross told us that police do not always grant ad hoc administrators access to airport terminals to meet children held there.<sup>114</sup> Border police also do not inform ad hoc administrators before they deport children. For example, one ad hoc administrator said she left the rooms where children are detained for another part of the detention center. Upon returning, she discovered that border police had taken the boy she represented away for deportation. He refused to board the plane.<sup>115</sup> Another ad hoc administrator described to us how she witnessed two children she represented arriving at the detention center with their suitcases. Only afterwards did she find out that police tried to deport them and that the children had refused.<sup>116</sup>

Because ad hoc administrators are only sporadically present at the airport, they are dependent on border police to provide them with the information about children that is essential for the exercise of their mandate. Ad hoc administrators, however, lack the powers to demand that border police provide such information. One ad hoc administrator told us that the most difficult part of her job was to access information and that the border police's withholding of information often puts an additional and unnecessary burden on her work.<sup>117</sup>

Some ad hoc administrators also expressed to Human Rights Watch a reluctance to challenge police decisions. Some feared that doing so could be perceived as adversarial and possibly complicate their relationship with the police: “if they choose to make your life hard, they manage,” said one ad hoc administrator of their relationship with the airport border police.<sup>118</sup>

## Insufficient Access to Legal Assistance

Unaccompanied migrant children have very limited access to independent legal counsel at Roissy airport. Under French law, unaccompanied migrant children are entitled to legal aid free of charge.<sup>119</sup> In practice, however, there is no state-sponsored scheme to provide this to unaccompanied children immediately after their arrival. Court-appointed lawyers are only assigned to represent children when the liberty and detention judge reviews children's

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<sup>114</sup> Human Rights Watch interview with Claire Lainé and Nasrine Tamine, French Red Cross, September 17, 2009.

<sup>115</sup> Human Rights Watch interview with ad hoc administrator, March 2009.

<sup>116</sup> Human Rights Watch interview with ad hoc administrator, July 2009.

<sup>117</sup> Human Rights Watch interview with ad hoc administrator, July 2009.

<sup>118</sup> Human Rights Watch interview with ad hoc administrators, May 2009.

<sup>119</sup> Law no. 91-647 of July 10, 1991 on Legal Aid (Loi no. 91-647 du 10 juillet 1991 relative à l'aide juridique), *Official Journal of the French Republic (Journal officiel de la République française)*, <http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000537611&fastPos=1&fastReqId=1172082595&categorieLien=id&oldAction=rechTexte> (accessed August 5, 2009).

detention after four days (see below). The organization Anafé operates a legal aid phone line and maintains a sporadic presence at the detention center where it provides legal aid free of charge. It is, however, not in a position to represent the more than 14,000 persons detained there per year, of which around 1,000 are unaccompanied children.

### *Lack of Competent Legal Aid during Children's Detention Review*

The liberty and detention judge (juge des libertés et de la détention) reviews children's detention after four days and can grant the child access to France by releasing him or her from detention. The judge may also prolong the child's detention and in these cases reviews the child's detention a second time after a maximum of eight days. The maximum time in detention is limited to 20 days. During the review, in addition to their ad hoc administrator, children are typically represented by a court-appointed lawyer from the bar. The judge reviews whether regulations were respected and can order the child's release if they were not. The judge can also consider whether the child is in a situation of danger and needs protection, including because of a return to a transit country, but is not mandated to examine whether the child merits refugee protection, which is assessed in a separate procedure (see below). The judge can consider French and international law in their decision-making if the child's lawyer raises it. If the child's lawyer does not raise the child's best interest, or other protection entitlements under the UN Convention on the Rights of the Child and other treaties, the judge may take these into account of their own motion but does not have an obligation to do so.<sup>120</sup>

Human Rights Watch monitored a total of 45 detention review hearings in court where children were represented by a court-appointed lawyer. No lawyer argued in any of the 45 hearings that children's detention in the transit zone was not in their best interests, nor did they refer to other entitlements under the UN Convention on the Right of the Child (CRC). Neither did lawyers raise the risks for children if returned to a country they merely transited, which could give rise to entitlements under the European Convention on Human Rights and CRC that forbid return to inhuman and degrading treatment.<sup>121</sup> In most hearings, lawyers invoked only procedural grounds to justify the child's release, including delays in the appointment of ad hoc administrators or the lack of interpreters. In 13 out of these 45

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<sup>120</sup> Human Rights Watch interview with Stéphanie Kretowicz, Bobigny, May 14, 2009.

<sup>121</sup> Human Rights Watch observations during children's hearings before the liberty and detention judge, Bobigny, March 19 – August 11, 2009. One court-appointed lawyer intended to mention the child's best interest entitlements under the CRC because the child whose detention was reviewed had family in France. However, instead of referring to the CRC, she referred to article 3 of the European Convention on Human Rights. Human Rights Watch observations during children's hearings before the liberty and detention judge, Bobigny, August 7, 2009 and Human Rights Watch telephone interview with ad hoc administrator, August 12, 2009.

hearings, court-appointed lawyers did not raise a single reason to argue for the child's release.

Court-appointed lawyers often have more than one dozen persons to represent before the liberty and custody judge, and are paid a lump sum of 600 Euro irrespective of their workload. A lawyer from the bar told Human Rights Watch that lawyers representing children in the transit zone were well trained on immigration legislation but not necessarily on children's rights, an area where she saw room for improvement.<sup>122</sup> One court-appointed lawyer explained to us after the hearing that she had access to files of detainees only one hour before the hearing starts, which meant she was largely unprepared for the hearing and unable to meet with their clients. She described the situation as "emergency justice." In some cases, the lawyer told us, Anafé sends them additional information about a child by fax and the organization Famille Assistance also told us they try to assist lawyers in their task by briefing them before the hearing.<sup>123</sup>

In contrast, lawyers for the government invoked several times the Convention on the Rights of the Child to demand the child remain in detention including by saying it was in their best interest. We also witnessed government lawyers call unaccompanied children in the courtroom "liars" or "deceivers," because they had traveled with fake documents or given false identities.<sup>124</sup> In these cases the children's lawyers did not respond, such as by pointing out why migrants can not necessarily get valid travel documents.

While the government lawyer's job is to question a person's credibility in such hearings, Human Rights Watch witnessed at least one instance in which the basis of such an attack was false. The lawyer asked a 16-year-old boy what currency was being used in Palestinian camps in the south of Lebanon, from where the child claimed to originate. When the child answered the Lebanese pound, the government lawyer falsely declared that "everybody knows the Israeli shekel is being used." Neither the judge nor the lawyer contested this attack on the child's credibility on false grounds and the judge extended the boy's detention

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<sup>122</sup> Human Rights Watch interview with Dominique Attias, Paris Bar, and several lawyers from Paris and Seine-Saint-Denis Bar, Paris, May 6, 2009.

<sup>123</sup> Human Rights Watch interview with court-appointed lawyer, Bobigny, May 19, 2009. Human Rights Watch interview with Freddy Mahon, Famille Assistance, June 27, 2009.

<sup>124</sup> Human Rights Watch observations during children's hearings before the liberty and detention judge, Bobigny, May 17, 2009.

for eight days.<sup>125</sup> Human Rights Watch staff in Lebanon confirm that the Lebanese pound was and is in use.

### **The Children’s Judge and Children’s Ombudsperson: Limited Powers to Intervene**

The children’s judge (*juge des enfants*) and the children’s ombudsman (*défenseure des enfants*) are two institutions that may both intervene on behalf of unaccompanied children held in the airport transit zone. Where the child is believed to be in danger, the children judge’s intervention would lead to the child’s admission to French territory and placement in state care. The same powers are also granted to the prosecutor. The children’s ombudsman in contrast may issue recommendations to authorities but does not have the power to mandate government officials to release a child.<sup>126</sup>

Guidelines on what may constitute a dangerous situation for the child are not provided for in law, and the children’s judge’s decision to intervene is subject to his or her assessment of each case. One judge explained to us that there was a reluctance on part of the institution to systematically order children’s access to the territory and said that the institution was acting in a politically difficult environment.<sup>127</sup> A prosecutor, equipped with the same powers as the children’s judge, explained to us further that he intervenes in case children have health problems or suffer from psychological stress in the transit zone. He made it clear that his interventions were limited to cases that would not undermine applicable immigration legislation.<sup>128</sup> The organization Anafé confirmed that it regularly alerts the children’s judge including because the deportation of a child may place him or her in danger, but that the body’s interventions are very rare. Furthermore, alerts to either the children’s judge or the children’s ombudsperson do not have suspensive effect on a child’s deportation. Accordingly, police may still deport a child while the children’s judge or ombudsman are assessing a case before deciding to intervene.

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<sup>125</sup> Human Rights Watch observations during children’s hearings before the liberty and detention judge, Bobigny, May 17, 2009.

<sup>126</sup> Human Rights Watch interview with Hugues Feltesse, general delegate, Children’s Ombudsman, Paris, May 13, 2009. The ombudsman is in the process of assessing to what extent authorities follow the institution’s recommendations.

<sup>127</sup> Human Rights Watch interview with Jean-Pierre Rosenczveig, children’s judge, Bobigny, May 15, 2009. Human Rights Watch meeting with Anafé, Paris, May 4, 2009.

<sup>128</sup> Human Rights Watch telephone interview with Patrick Poirret, August 18, 2009.



## V. Failing to Protect the Most Vulnerable Children

Among the unaccompanied children detained at the airport transit zone are trafficked and asylum seeking children. Rather than screening for and protecting these children, French authorities treat them no differently than other irregular migrants. These children are thus at risk of being returned to their traffickers or to persecution in their home countries.

### The Failure to Protect Trafficking Victims

Trafficking is the recruitment and transport of a person for the purpose of exploitation, which include sexual or labor exploitation.<sup>129</sup> French border police do not have any procedures in place to identify trafficking victims, whether among unaccompanied children or otherwise, and have failed to identify and protect them in detention and from deportation back to their traffickers.<sup>130</sup>

For example, Human Rights Watch documented two instances in which police attempted to deport two suspected trafficking victims without assessing the circumstances of their arrival, which might have indicated that they were trafficked. In the first case in April 2009, border police attempted to deport a 16-year-old Nigerian girl two days after her arrival despite the fact that authorities had justified doubts about the stated purpose of her travel.<sup>131</sup> Her first ad hoc administrator failed to object; although she told us she believed the girl was a

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<sup>129</sup> a) "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

(c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in subparagraph (a) of this article;

(d) "Child" shall mean any person under eighteen years of age." Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Trafficking Protocol), adopted November 15, 2000, G.A. Res. 55/25, annex II, 55 U.N. GAOR Supp. (No. 49) at 60, U.N. Doc. A/45/49 (Vol.I) (2001), ratified by France on October 29, 2002, art. 3.

<sup>130</sup> Human Rights Watch interview with Eric Panloup, chief of squadron, Ministry of Interior, Paris, May 22, 2009. The Ministry leads a working group that, among other protection mechanisms, elaborates procedures to identify trafficking victims. The French Red Cross informed us it regularly alerts authorities about the need to better respond to children who appear to be trafficking victims, asks for the children's judge's intervention in these cases, and provides suspected victims written information where they can seek help. Letter from Didier Piard, French Red Cross, September 14, 2009.

<sup>131</sup> Border police suspected that the girl's stated aim of joining her parents in Budapest for vacation was dubious because a few days earlier half a dozen Nigerian women arrived who, like the girl, had an authentic Schengen visa issued by the same Hungarian Consulate in Nigeria. Statement by the government lawyer during the girl's hearing before the liberty and detention judge, Bobigny, April 29, 2009.

trafficking victim and she had not established any contact with the girl's parents, she said that she thought it was best for her to be sent back.<sup>132</sup>

The judge who reviewed the girl's detention after four days extended her detention by eight days after the government's lawyer argued it was in her best interest to be detained, since she would only abscond from care if released. The girl later told the ad hoc administrator that her trafficker visited her in detention and collected 1,000 euros from her. Police failed to inform the girl's ad hoc administrator, who had also changed in the meantime, about the visitor.<sup>133</sup> The judge who reviewed her detention a second time after 12 days released her and she was placed in state care. At that point, according to her second ad hoc administrator who had requested the children's judge to intervene and place her in state care, she was constantly trembling.<sup>134</sup>

In the second case, a 16-year-old Guinean girl traveled from Conakry to Dubai via Paris but was refused entry in Dubai and returned to Paris. French border police tried to immediately send her back to Conakry. They did not grant her the *jour franc* nor did they wait for her ad hoc administrator to arrive at the airport. The girl refused to board the plane. The girl traveled with an authentic diplomatic passport, which was not hers, and gave a range of contradictory statements before the judge about her parents' whereabouts, names, and the purpose of her travel to Dubai. The judge who reviewed her detention after four days released her and she was put into local authority care.<sup>135</sup>

Ministry of Immigration officials as well as airport border police told us they had cases in which authorities intercepted traffickers or decided not to remove child trafficking victims. The officials, however, could not tell us how many trafficking victims had been identified and

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<sup>132</sup> Human Rights Watch interviews with ad hoc administrator and with Lilian A., April 2009.

<sup>133</sup> The girl told her new ad hoc administrator that a fellow national, whom she initially presented as her cousin, visited her in detention and collected the 1,000 euros. That person was also present in the court room during the girl's detention review. The girl admitted to the ad hoc administrator later that she in fact did not know the man. Statements made by the ad hoc administrator during the girl's hearing before the liberty and detention judge, May 7, 2009. Human Rights Watch observations during children's hearings before the liberty and detention judge, Bobigny, April 29, 2009, and May 7, 2009.

<sup>134</sup> Human Rights Watch observations during children's hearing before the liberty and detention judge, Bobigny, May 7, 2009.

<sup>135</sup> The girl refused to board the plane. For both girls, private immigration lawyers appeared in court the day of their hearing. In both cases, due to the dubious circumstances of the girls' arrivals and the unknown source of money for the lawyers' fees (which, according to ad hoc administrators and a judge, range from 1,500 to 3,000 euros), ad hoc administrators rejected these lawyers and demanded that the girls be represented by court-appointed lawyers. Human Rights Watch observations during children's hearings before the liberty and detention judge, Bobigny, April 29, 2009, May 7, 2009, and May 14, 2009.

referred to protection in the past year. They were also unable to explain to us how they would protect victims from removal and admitted that victims might face deportation.<sup>136</sup>

Under French and international law, trafficking victims are entitled to protection that includes protection from deportation and temporary residence permits.<sup>137</sup> They may also be granted protection with temporary residence if they face inhuman and degrading treatment upon return.<sup>138</sup> However, victims are unable to access these entitlements if they fail to tell authorities that they are being trafficked and cooperate with asylum or law enforcement officials. The head of the border asylum procedure with the Office for Refugees told Human Rights Watch that trafficking victims almost never speak out and that its officers could do nothing in these cases even when they had strong suspicions.<sup>139</sup>

As will be discussed in the following sections, several factors make it unlikely that trafficking victims will be able to speak out and help law enforcement officials tackle criminal networks immediately after arriving in France: they are subjected to the stress of detention, trafficking victims may still be subject to influence or intimidation by traffickers; they may fear deportation; they are typically confused about the roles of the French Office for Refugees and the border police; and they are subject to a fast-track asylum assessment at the border (which are discussed below).

## Unaccompanied Children who Seek Asylum

Asylum-seeking children face barriers to filing and appealing asylum claims and seeking protection against return to persecution or inhuman and degrading treatment. Three children told us that police officers at the airport terminal either refused or were reluctant to register

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<sup>136</sup> Human Rights Watch interviews with Francis Etienne, Eric Darras, and Philippe Garabiol, Ministry of Immigration, Paris, June 30, 2009, and with Nadine Joly and Lydie Aagnouet-Brugnano, border police for Roissy Charles de Gaulle and Le Bourget airports, Paris, August 13, 2009.

<sup>137</sup> Trafficking Protocol, arts. 1-8. The UN Committee on the Rights of the Child considers that the trafficking of children for the purpose of sexual exploitation victims may constitute a child-specific form of persecution and give rise to protection entitlements under the under the Refugee Convention. UN Committee on the Rights of the Child, General Comment No. 6, para. 74. Penal Code, arts. 225-4-1 and 225-4-2. CESEDA, art. L316-1. Decree no. 2007-1352 of September 13, 2007 relating to the Right to Residency, Protection, Reception, and Accommodation of Victims of Trafficking and Modifying the Code on the Entry and Stay of Foreigners and the Right to Asylum (Regulations) (Décret no. 2007-1352 du 13 septembre 2007 relatif à l'admission au séjour, à la protection, à l'accueil et à l'hébergement des étrangers victimes de la Traite des êtres humains et du proxénétisme et modifiant le code de l'entrée et du séjour des étrangers et du droit d'asile (dispositions réglementaires)), *Official Journal of the French Republic (Journal officiel de la République française)*, no. 214.

<sup>138</sup> Law no. 2003-1176 of December 10, 2003 Modifying Law no. 52-893 of July 25, 1952 Concerning the Right to Asylum (Loi no. 2003-1176 du 10 décembre 2003 modifiant la loi no. 52-893 du 25 juillet 1952 relative au droit d'asile), *Official Journal of the French Republic (Journal officiel de la République française)*, no. 286, art. 1. Human Rights Watch interview with Daniel Le Madec, head of border asylum procedure, Office for Refugees, Ministry of Immigration, May 15, 2009.

<sup>139</sup> Human Rights Watch interview with Daniel Le Madec, Office for Refugees, Paris, May 15, 2009.

their claim.<sup>140</sup> For example, a 17-year-old boy told us that in early 2008 police threatened him with deportation after he asked to file an asylum claim:

[The police] called me to a desk. They took a picture of me and gave me a paper to sign. I said I would not sign. The police officer then said to me that I would be deported anyway no matter whether I signed. I said again I wanted to seek asylum but the police laughed at me and said ‘there’s no point doing that’ and that I would be deported anyway.

When he said that, that moment, I felt like killing myself. I had lived through so many things and always had the strength to overcome them and made all these efforts to save myself and had arrived where I believed to be finally safe. I felt like it all fell apart. I thought that if there is an opportunity to throw myself out of a window, I’ll do it.<sup>141</sup>

Two unaccompanied boys said border police failed to tell them about their right to seek asylum despite the boys telling police that they left their country because of political problems: “We said we wanted to stay in France—I didn’t know what asylum was.... We told the police that we had political problems.”<sup>142</sup> Two boys in contrast told us they had no problems filing a claim and said border police asked them whether they wanted to seek asylum.<sup>143</sup>

French Red Cross ad hoc administrators told us that they conduct their own preliminary screen and may decide not to file asylum claims on behalf of children. One ad hoc administrator, for example, told us that she was hesitant to file an asylum application on behalf of a child who did not fully understand its implications, while two other ad hoc administrators said they would suggest children to seek asylum if they had reasons for doing so.<sup>144</sup> While the UN Committee on the Rights of the Child recommends that children not be referred to the asylum procedure automatically and regardless of their circumstances,<sup>145</sup> Human Rights Watch is concerned that ad hoc administrators are not in a position to arrive at a meaningful evaluation of a child’s claim. French Red Cross ad hoc administrators

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<sup>140</sup> Human Rights Watch interviews with Daniel S., April 2009, and with Najib B. and Mohamed A., April 2009.

<sup>141</sup> Human Rights Watch interview with Daniel S., April 2009.

<sup>142</sup> Human Rights Watch interview with Najib B. and Mohamed A., April 2009.

<sup>143</sup> Human Rights Watch interviews with Omar F., and Vikram A., July 2009.

<sup>144</sup> Human Rights Watch interviews with ad hoc administrators, March 2009 and May 2009,

<sup>145</sup> UN Committee on the Rights of the Child, General Comment No. 6, para. 67.

displayed limited knowledge of asylum law. Their capacity is further hampered by the restricted interactions between an ad hoc administrator and the child in the transit zone, and the fact that their screenings are done almost immediately after the child's arrival and while he or she is detained. All of these factors make it in our view not possible for ad hoc administrators to ensure proper evaluation of a child's claim. Ad hoc administrators should as a standard practice facilitate the child's access to the asylum procedure, including when the child faces return to a transit country.<sup>146</sup>

### *Fast-Track Asylum Procedure at the Border*

Fast-track asylum procedures at the border are inappropriate for unaccompanied children because they are conducted immediately after children's arrival and fail to take into account special circumstances for asylum seeking children. Unaccompanied children might be traumatized due to the reason for their flight, they might be stressed and anxious because of an absence of information, intimidating police behavior, or because they are detained. Asylum seeking children lack trust, reflection time, legal aid, and the necessary preparation in such an environment. All of these factors, individually and even more so when in combination, mean that children may not be able to convincingly or coherently articulate their claim, explain the reason for their flight, or even understand the implications of an asylum interview, which may negatively impact or even be used against them in the asylum interview itself. Although adult asylum seekers may experience many of the same difficulties, children generally have lower thresholds for withstanding such traumas and stresses and less capacity to overcome them.

Unlike for persons who seek asylum "in France," the Office for Refugees does not make a final decision on whether a person who seeks asylum at the border is granted refugee status. Instead, it only checks whether or not a claim is "manifestly unfounded."<sup>147</sup> If a claim is considered to be "manifestly unfounded," the person remains detained and may be returned to a transit country or country of origin; if not so considered, the person is granted permission to enter France to deposit a claim under the regular asylum procedure.<sup>148</sup> The law thus requires only a preliminary evaluation of an asylum seeker's motives at the border, yet

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<sup>146</sup> The organization Famille Assistance does not attempt to verify whether a child has migration motives that would give rise to protection entitlements under the Refugee Convention. Instead, it always facilitates the child's access to the asylum procedure, including when the child faces return to a transit country.

<sup>147</sup> The criteria to define whether a claim is "manifestly unfounded" include: migration motives that do not fall within the asylum field; the deliberate misrepresentation of identity or false declarations; declarations void of substance; reference to a situation of general upheaval or insecurity but without personalized elements; declarations that are incoherent, implausible, or with major contradictions that render the story void of credibility. Human Rights Watch interview with Daniel Le Madec, Office for Refugees, Ministry of Immigration, Paris, May 15, 2009.

<sup>148</sup> Law no. 92-625 of July 6, 1992, art. 35(quarter).

it his hard to see how protection officers apply the criteria to determine whether a claim is “manifestly unfounded” without carrying out a full examination of a person’s case.<sup>149</sup>

Children told us they were confused about the difference between police and the Office for Refugees, that they were disoriented, had sleeping disorders, suffered from anxiety and were afraid of being deported, or that they were unaware of the implications of the interview.<sup>150</sup> A 17-year-old boy described how he felt before his asylum interview:

I went to bed. I got up at night and prayed. I was stressed. I was afraid they would call me to deport me. After I saw their attitude I lost all confidence in them. I didn’t sleep well.... I was alone in a room. It was an additional burden to be alone.... I never had the sensation before of being in a prison and I realized that then.<sup>151</sup>

A-16-year-old boy told us he had not even realized that he had gone through an asylum interview and described his fear of being deported as follows:

The [airport detention center] is very close to the airport so you are not okay until you are far from the airport. Whenever you see the planes you are thinking ‘it is my turn now.’ You see that they take other people for deportation. It is intimidating.<sup>152</sup>

The experience of two other boys who left their countries because of political problems but were not informed about their right to seek asylum illustrates how detention can impact a child’s capacity to present his or her case during an asylum interview:

We stayed in the same room. We were scared because we didn’t know what was happening.... We almost didn’t sleep in the transit zone. We didn’t sleep well.... I asked for a sleeping pill but they didn’t give me any. We were

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<sup>149</sup> Interviews at the border last on average about 45 minutes. Human Rights Watch interview with Daniel Le Madec, Office for Refugees, Paris, May 15, 2009.

<sup>150</sup> Human Rights Watch interviews with Daniel S., April 2009, with Najib B. and Mohamed A., April 2009, with Lilian A., April and May 2009, with Ousmane R., May 2009, and with Omar F., July 2009.

<sup>151</sup> Human Rights Watch interview Daniel S., April 2009.

<sup>152</sup> Human Rights Watch interview with Omar F., July 2009.

thinking all the time and talking. We were all the time thinking and had nobody-else to talk to.<sup>153</sup>

The French Office for Refugees has not conducted any special training for its police officers in adjudicating children's claims, and the criteria for whether a claim is "manifestly unfounded" are applied to children equally as to adults. Because of the procedure's expediency with protection officers making decisions usually shortly after the interview, there is an important risk of error.<sup>154</sup> The two following examples illustrate flaws in the fast track process.

In early 2009, a 17-year-old girl who sought asylum at the border underwent medical exams that confirmed her allegations of sexual violence. Asylum officers for the French Office for Refugees interviewed her over the phone, initially with other detainees present. Her ad hoc administrator arrived after the start of interview, interrupted the interview, and demanded a confidential setting. He was also concerned that the circumstances of her arrival suggested she might be a trafficking victim.<sup>155</sup> According to her ad hoc administrator, the girl was unable to remember the names of some places in her region of origin and also could not correctly remember the chronology of certain events.<sup>156</sup> The French Office for Refugees recommended that her claim be rejected. The ad hoc administrator believed that the uncontested evidence of abuse had not been given adequate weight, nor had proper account been taken of the fact that inconsistencies or gaps in her story could easily be explained with her past trauma and the circumstances in which the interview was conducted.<sup>157</sup> After the initial negative decision, her ad hoc administrator appealed to the minister of immigration for permission for her to enter France on exceptional grounds, which was granted.<sup>158</sup>

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<sup>153</sup> Human Rights Watch interview with Najib B. and Mohamed A., April 2009.

<sup>154</sup> We asked the head of the border asylum procedure whether officers who conduct interviews with unaccompanied migrant children applied criteria to determine whether a claim is manifestly unfounded differently to unaccompanied children than to adults. We were told that officers have access to UNHCR guidelines on this matter and are asked to act with great sensitivity to claims by children and grant children the benefit of doubt. The Office for Refugees, however, has not issued its own instructions on how to incorporate these guidelines into its own criteria and procedures for assessing claims by unaccompanied migrant children. Human Rights Watch email correspondence from Daniel Le Madec, Office for Refugees, July 22, 2009.

<sup>155</sup> Human Rights Watch interview with ad hoc administrator, March, 2009. Despite assurances by the Office for Refugees that they would not interview unaccompanied migrant children over the phone, this girl was interviewed over the phone at Paris Orly airport, where the Office for Refugees does not have a permanent presence.

<sup>156</sup> Human Rights Watch interview with ad hoc administrator, March 2009.

<sup>157</sup> Ibid.

<sup>158</sup> Ibid.

Similarly, in early 2008, the French Office for Refugees based the rejection of Daniel S.'s asylum application at the border on inconsistencies in his story and the boy's lack of geographical knowledge.<sup>159</sup> The boy did not have an ad hoc administrator and thus received no preparation about what to expect and the importance of the interview. He told us that his anxiety in detention and the great pressure he felt before the interview, resulting in part from the police's threat to deport him and initial refusal to register his claim, affected his ability to communicate his story. His lawyer also told us he did not have the necessary confidence and trust to speak about the persecution he faced and was unable to communicate relevant information during his interview.<sup>160</sup> He described his reaction after the negative decision as follows:

The reason they gave [in the rejection] was that I had little knowledge of that region.... and that my claim was not really founded. I was furious and laughed at the same time when I saw that. With all the stress I was in during the interview I hardly understood what was happening. It made me laugh to be told I didn't know my region. Some of the questions [during the interview] I did not want to reply to. I did not realize the importance of these questions. Also.... I didn't realize that I had to speak about all these details. I did not talk about some things because I assumed the other person would understand nevertheless.<sup>161</sup>

His claim was rejected but he was released from airport detention by the liberty and detention judge. Once in France, he filed a regular asylum application, was prepared and assisted in the interview, and was granted refugee status after several months.

One additional factor that may negatively influence children's communication of their story is the fact that the distinction between the role of the French Office for Refugees and that of the border police is not always clear to children. The border police, who are viewed by children as their jailers, register an asylum application. Protection officers with the Office for Refugees conduct the asylum interview and assess children's claim. However, the room in which the interview takes place is guarded by police officers and the actual decision is communicated to the asylum seeker by the police. It is unsurprising that asylum seeking

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<sup>159</sup> Human Rights Watch interview with Daniel S., April 2009.

<sup>160</sup> Human Rights Watch email correspondence from Daniel S.'s lawyer, September 22, 2009 (name withheld).

<sup>161</sup> Human Rights Watch interview with Daniel S., April 2009.



children felt there was no difference between the two institutions. A boy who was 16 at the time he arrived told us he was convinced that the two bodies worked hand in hand.<sup>162</sup>

I had several interviews [with police and for the asylum claim]. They always asked the same ‘what my problems were’, and ‘where I came from.’ I am convinced they asked the same questions to verify whether I said the truth.... I’m sure this was the case.<sup>163</sup>

### *Obstacles to Filing an Appeal*

Children face numerous obstacles to appealing against a negative asylum decision. Ad hoc administrators are not present when police communicate a negative asylum decision and thus are unable to verify whether children are informed of their right to file an appeal.

Ibrahim F., a 16-year-old unaccompanied boy told us he tried in vain to appeal against a negative asylum decision: “I couldn’t make an appeal [to my negative asylum decision]. I received the decision two days ago. I went to office 38 but they told me they couldn’t make an appeal for me.”<sup>164</sup>

As noted previously, under French law children lack the legal capacity to file appeals or to appoint lawyers by themselves. Ad hoc administrators therefore must approve lawyers’ interventions on behalf of children they represent, including appeals against a rejected asylum decision.

French Red Cross representatives and ad hoc administrators told us they may not file appeals if they consider a child’s story not convincing, when the child’s profile does not meet protection criteria, or when it is not in the best interest of the child.<sup>165</sup> One ad hoc administrator for example told us when we asked whether an appeal was filed on behalf of an asylum seeking boy: “[the boy] had a very vague story, with nothing to justify an asylum

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<sup>162</sup> Human Rights Watch interview with Ousmane R., May 2009.

<sup>163</sup> Human Rights Watch interview with Ousmane R., May 2009.

<sup>164</sup> Human Rights Watch telephone interview with Ibrahim F., May 2009. Office 38 is the office of Anafé. Anafé staff said they did not remember the circumstances of this boy’s request. Human Rights Watch interview with Anafé staff, Paris, June 29, 2009.

<sup>165</sup> Human Rights Watch telephone interview with Claire Lainé, French Red Cross, June 30, 2009. Human Rights Watch interview with ad hoc administrators, March 2009. Human Rights Watch interview with Claire Lainé, Nasrine Tamine, Emmanuelle Soublin, co-director, Didier Piard, director, social action department, French Red Cross, Paris, September 17, 2009. Human Rights Watch presented its findings and criticism of French Red Cross practice with regards to asylum appeals in a letter to the organization dated August 27. The French Red Cross provided its response in writing on September 14 and during a meeting in Paris on September 17.

application. For an appeal it's necessary to have elements justifying the appeal."<sup>166</sup> It was rare, a French Red Cross representative told us, that its ad hoc administrators would not agree with the opinion of the French Office for Refugees, but that they would never automatically follow the government's views.<sup>167</sup>

While the French Red Cross has lodged some appeals against decisions refusing asylum to unaccompanied children, the number of appeals lodged are remarkably low. Since the law providing for a suspensive appeal for asylum seekers came into effect in November 2007, the Red Cross only lodged two appeals, in 2008, despite more than 180 negative asylum decisions that year. During the first nine months of 2009, no appeals have been lodged. None of these appeals was successful.<sup>168</sup>

In explaining the low level of appeals lodged, the French Red Cross explained to us that an appeal against a negative asylum decision was only one among other legal options, such as an alert to the children's judge or the children's prosecutor. For example, according to the French Red Cross, about 75% of all children are released from detention and permitted to enter France after the liberty and detention judge's review and that there often is sufficient time to wait for the outcome of that review before filing an appeal. Yet, Ibrahim F., the boy who in vain tried to file an asylum application and was at risk of being returned to Algeria, a country he transited on this way to France, was not assisted to file an appeal by his French Red Cross guardian even though the liberty and detention judge extended his detention.<sup>169</sup>

While the need to file an appeal is indeed redundant after the liberty and detention judge releases the child from airport detention and grants him or her access to France, a significant number of children, including those who seek asylum, are not released but sent back to the airport detention center after judicial review of their detention. In those cases, appealing a negative asylum application is the only remedy that blocks the child's forced return, as an alert to the children's judge does not suspend the child's deportation. The low number of

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<sup>166</sup> Human Rights Watch interview with ad hoc administrator, March 2009.

<sup>167</sup> Human Rights Watch interview with Claire Lainé, French Red Cross, Paris, March 12 and June 30, 2009. Letter from Didier Piard, French Red Cross, September 14, 2009.

<sup>168</sup> In 2008, 222 unaccompanied children represented by French Red Cross ad hoc administrators filed an asylum claim. Out of these, 48 children, or roughly 22 percent, received a positive decision while 174 received a negative decision, of which two were appealed. Email communication from Nasrine Tamine, French Red Cross, to Human Rights Watch, September 21, 2009.

<sup>169</sup> Human Rights Watch observations during children's hearings before the liberty and detention judge, Bobigny, May 17 and May 25, 2009.

appeals filed altogether indicates that this legal remedy is used very restrictively by the French Red Cross and that their default position is not to appeal.<sup>170</sup>

Besides filing a very low number of appeals, in a few cases the French Red Cross has blocked lawyers working for Anafé from filing appeals on behalf of children. In the first half of 2009, according to Anafé, it blocked two such appeals.<sup>171</sup> Red Cross representatives told us that they blocked these appeals because they were not in the child's interest or not justified. They stressed that they did not have a policy against filing appeals but made these decisions within their mandate of representing the interests of a child who does not have the legal capacity to make such a decision or to appoint a lawyer. The French Red Cross appears to be alone in this practice: according to ad hoc administrators working for the non-governmental organization "Famille Assistance," they never block appeals of negative asylum decisions.<sup>172</sup>

Blocking an appeal of a negative asylum decision in our view represents a failure to carry out the ad hoc administrators' mandate and is a violation of a child's right to appeal. Although this appears to have been limited to a few cases only, by doing so ad hoc administrators have acted outside their authority as children's guardians and have assumed the role of judges. The right to challenge a negative asylum decision is a fundamental safeguard against protection from risk of ill-treatment, harm, danger, and inhuman or degrading treatment in case of return.

That a child's story is not convincing upon a first hearing may be due to numerous factors including trauma from past abuse, the stressful environment in the transit zone, influence by smugglers and traffickers, lack of confidence in authorities or ad hoc administrators, or simply a lack of preparation for the asylum interview. Given the limited training ad hoc administrators receive, the erroneous understanding of asylum they demonstrated in interviews with Human Rights Watch<sup>173</sup>, and the limited interaction with the child they are able to have, they are neither in a position to understand a child's reason for migration or to determine whether a return is indeed in the child's best interests. The UN Committee for the

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<sup>170</sup> French Red Cross Representatives told us they would make sure their chosen strategy does not put the child at risk of return and told us that 92 percent of all asylum seeking children had been admitted to France as a result of various interventions, including alerts to the children's judge, decisions to free the child by the liberty and detention judge, or decisions by the French Office for Refugees. Human Rights Watch interview with Claire Lainé, Nasrine Tamine, Emmanuelle Soublin, and Didier Piard, French Red Cross, Paris, September 17, 2009.

<sup>171</sup> Human Rights Watch interview with Anafé, Paris, June 29, 2009. Anafé could not tell us the exact number of detention or asylum appeals that were blocked by French Red Cross ad hoc administrators in 2008 but said they were less than five.

<sup>172</sup> Human Rights Watch interview with Freddy Mahon, Famille Assistance, March 16, 2009.

<sup>173</sup> See pp. 31-32.

Rights of the Child stresses that a determination of what is in a child's best interests requires a clear and comprehensive assessment and must be documented before making any decision that fundamentally impacts an unaccompanied child's life. The committee adds that allowing the child to access the territory is a prerequisite for such a determination.<sup>174</sup>

It should also be noted that the drafting of appeals is laborious, subject to tight deadlines, and an extra task added to an already intense workload for ad hoc administrators.<sup>175</sup> The fact that appeals may be dismissed on procedural grounds unless they are well-substantiated, and that ad hoc administrators are often over-burdened and may be under-qualified, and often are on assignments only for short periods, may also discourage them from filing appeals.

Under the UN Convention on the Rights of the Child, governments are bound to provide protection and humanitarian assistance to refugee children and those seeking asylum.<sup>176</sup> The United Nations High Commissioner for Refugees has called on governments to grant unaccompanied asylum seeking children access to their territory, to consider their claim under the regular refugee determination procedures, to provide them with a lawyer, and to refrain from detaining these children.<sup>177</sup> The UN Committee on the Rights of the Child has added that staff involved in status-determination procedures of children should receive relevant training and that "the child should be given the 'benefit of the doubt', should there be credibility concerns relating to his or her story as well as a possibility to appeal for a formal review of the decision." As a procedural safeguard, an asylum seeking child should be represented by an adult familiar with the child's background and competent to represent his or her best interests and the child should in all cases be given access to a qualified lawyer.<sup>178</sup>

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<sup>174</sup> UN Committee on the Rights of the Child, General Comment No.6, paras. 19-20.

<sup>175</sup> CESEDA, art. L213-9.

<sup>176</sup> CRC, art. 22.

<sup>177</sup> Office of the United Nations High Commissioner for Refugees, "Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum," February 1997, secs. 4, 7.

<sup>178</sup> UN Committee on the Rights of the Child, General Comment No. 6, paras. 68-77.

## VI. Deportations without Safeguards

In 2008, out of approximately 1,000 unaccompanied migrant children who arrived to Roissy Charles de Gaulle airport, 341 children were deported from France or continued their journey to an onward destination, all others were granted permission to enter France.<sup>179</sup> According to the French Red Cross, at least 25 to 30 children they represented were deported to countries they only transited, although the director of the airport border police assured us that this practice did not take place.<sup>180</sup> From January to May 2009, out of 265 unaccompanied children who were held in the transit zone, 51 children (19 percent) were deported, whereas 200 were granted permission to enter France.<sup>181</sup> The fate of 14 unaccompanied children remains unknown to us and we also do not know how many of these children were deported to countries they merely transited.

French law makes no distinction between adults and unaccompanied children when it comes to return: children like adults may be returned to countries they merely transited and with insufficient safeguards to protect them from harm.<sup>182</sup> Airport border police told us that even though the interest of the child is of concern to them they have used the strategy of sending children “to send a signal to smuggling networks,” and to “show a firm will against further arrivals.” They added that their migration control measures served not solely the interests of France but also those of the European Union.<sup>183</sup>

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<sup>179</sup>About one third of these 1,000 children remained without representation by a guardian, yet, not all children who were unrepresented were necessarily deported. The French Red Cross for example told us that 39 percent out of 607 children represented by their ad hoc administrators were deported or continued their journey, which is slightly higher than the overall percentage of children deported, which stands at around 34 percent. Human Rights Watch interview with Claire Lainé and Nasrine Tamine, French Red Cross, Paris, September 17, 2009 and email communication from Nasrine Tamine to Human Rights Watch, September 21, 2009. In 2007, out of 822 unaccompanied migrant children who were refused entry at Roissy Charles de Gaulle Airport, 680 were confirmed as children following an age assessment. Out of these, 38 percent, or 256 unaccompanied children, were deported. “Short address by M. Eric Besson: Creation of the working group on unaccompanied migrant children” (“Allocution de M. Eric Besson : Installation du groupe de travail sur les mineurs isolés”), Ministry of Immigration, (Ministère de l’Immigration), May 11, 2009. A minority of those not granted permission to enter France were on transit through Roissy Charles de Gaulle airport and had a ticket to an onward destination either inside or outside the European Union.

<sup>180</sup> Human Rights Watch interviews with Claire Lainé, French Red Cross, March 12, 2009, and with Nadine Joly and Lydie Aragnouet-Brugnano, border police for Roissy Charles de Gaulle and Le Bourget airports, Paris, August 13, 2009. See also Anafé, “Inhuman Treatment in the Transit Zone,” May 2009, pp. 44-45.

<sup>181</sup> These figures were provided by Anafé and are based on data gathered by the police.

<sup>182</sup> CESEDA, art. L221-1.

<sup>183</sup> Human Rights Watch interview with Nadine Joly and Lydie Aragnouet-Brugnano, border police for Roissy Charles de Gaulle and Le Bourget airports, Paris, August 13, 2009. Ad hoc administrators told us that airport border police systematically scheduled the child’s return to the country from where the last flight originated. When border police know on which flight an unaccompanied child arrived, they mark the scheduled return flight on the entry refusal paper that remains with the child. In those cases, ad hoc administrators are aware of destination and timelines for the child’s removal. Human Rights Watch interviews with ad hoc administrators, Paris, March, May and July 2009.

In a particularly egregious example, in November 2008, border police wanted to deport an unaccompanied five-year-old Comorian boy to Yemen, his last country of transit, and hand him over to local police. According to court documents, they had no agreement with Yemeni police to take care of him, nor was there any guarantee that the boy would be safe while in the custody of Yemeni officials, or that local officials would safely reunite him with his family, whose whereabouts remained unknown at that time. The liberty and detention judge released him following the police's explanation of how he would be returned, and he was referred to local authority care.<sup>184</sup>

In May 2009, border police made multiple attempts to deport a 16-year-old Chadian boy to Egypt, his last country of transit. They also attempted to deport a 17-year-old boy from Egypt on a plane to Antananarivo, Madagascar, which was again the boy's last country of transit. At that time, in mid-March 2009, Madagascar was at the edge of a civil war. The government also acknowledged during a court hearing in May 2009 that it intended to deport two Lebanese boys, ages 14 and 16, to Algeria, their last country of transit.<sup>185</sup>

Ministry of Immigration officials told us that French liaison officers (in charge of migration control or security) in various countries are contacted before a child is returned to meet the child upon arrival. They explained though, that these would then hand the child over to local security officials.<sup>186</sup> The transfer of an unaccompanied child to security personnel, in either the child's country of origin or a country the child merely transited, provides no guarantees for the child's safety. On the contrary, Human Rights Watch and other organizations have consistently documented, for example, how unaccompanied children returned to Morocco and handed over to security forces are routinely subject to abuse and detention.<sup>187</sup> Moreover, given that liaison officers are not present in all countries and that unaccompanied children may be returned within a few hours only after their arrival, it seems unlikely that returned children are met in all circumstances.

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<sup>184</sup> Bobigny Court (Tribunal de Grande Instance de Bobigny), Decision on the Extension in the Transit Zone (Ordonnance sur le Maintien en Zone d'Attente), November 21, 2008. A copy of the decision is on file with Human Rights Watch.

<sup>185</sup> Human Rights Watch observations during children's hearings before the liberty and detention judge, Bobigny, March 20, May 17, and May 27, 2009.

<sup>186</sup> Human Rights Watch interview with Francis Etienne, Eric Darras, and Philippe Garabiol, Ministry of Immigration, Paris, June 30, 2009.

<sup>187</sup> Human Rights Watch, *Nowhere to Turn: State Abuses of Unaccompanied Migrant Children by Spain and Morocco*, vol. 14, no. 4(D), May 2002, [www.hrw.org/reports/2002/spain-morocco/](http://www.hrw.org/reports/2002/spain-morocco/); Human Rights Watch, *Returns at Any Cost: Spain's Push to Return Unaccompanied Migrant Children in the Absence of Safeguards*, October 2008, <http://www.hrw.org/en/node/75594/section/1>, footnote 5.

Both the French Red Cross and Anafé have raised concern over the treatment of unaccompanied migrant children who try to enter France while transiting through Charles de Gaulle with a ticket to an onward destination. Many of these children are of Chinese origin and possess tickets to Latin American countries, such as Mexico and Cuba. Airport border police told us that, even though they understood that the objective of some children in fact was to enter France while on transit, they would make sure these children reached their final destination and prevent them from remaining in France.<sup>188</sup> Such action, even though presented as assistance to children in transit, in reality may in most cases be nothing else than deportation to third countries with no prior securing of their care and protection. As ad hoc administrators cannot be present to represent children's interests in these situations, the children are left without safeguards and access to protection.

The law allows for criminal charges to be brought against migrants who refuse to be deported, including against unaccompanied migrant children.<sup>189</sup> In 2008, 11 unaccompanied children were placed in police custody for refusing to board the plane. A 16-year-old boy who repeatedly refused to board a plane was put into police custody in spring 2009. He later was released and put into state care.<sup>190</sup>

Children appear not to be spared from police violence during deportation attempts and there have been allegations that border police in isolated cases have used illegitimate force or intimidation to ensure children's deportations. Staff of Anafé informed us that a boy who was subject to six deportation attempts alleged that police became violent during the third attempt to return him and showed them wrist injuries from handcuffs.<sup>191</sup> One ad hoc administrator also told us that border police threatened a 14-year-old boy that they would cancel his mother's residence permit unless the boy agreed to his removal.<sup>192</sup> Such accounts in most cases would be unlikely to come to light because all contact is usually lost after a person's removal.

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<sup>188</sup> Human Rights Watch interview with Nadine Joly and Lydie Aragnouet-Brugnano, border police for Roissy Charles de Gaulle and Le Bourget airports, Paris, August 13, 2009.

<sup>189</sup> CESEDA, art. L624-1.

<sup>190</sup> Human Rights Watch interview with ad hoc administrator, May 2009.

<sup>191</sup> Human Rights Watch Email correspondence from Anafé, July 6, 2009. Anafé documented another case of police violence during a removal in 2008. Anafé, "Inhuman Treatment in the Transit Zone," May 2009, p. 20.

<sup>192</sup> Human Rights Watch interview with ad hoc administrator, March 2009.

## International Obligations when Returning Unaccompanied Migrant Children

When returning unaccompanied migrant children, France’s legal obligations under the UN Convention on the Rights of the Child, the European Convention on Human Rights, the Refugee Convention, and the UN Convention against Torture apply. These conventions apply wherever the state exercises jurisdiction, which includes the airport transit zone.

Under the Refugee Convention, France is bound by the principle of *non-refoulement*, which prohibits the return of person to a place where he or his or her life or freedom would be threatened on account of nationality, race, religion, political opinion, or membership of a particular social group.<sup>193</sup> The principle of *non-refoulement* is furthermore enshrined in the European Convention on Human Rights and the Convention against Torture. The latter treaty prohibits France from returning a person to a place where he or she faces torture; the former also prohibits the return to a place where the person faces a risk of inhuman or degrading treatment.<sup>194</sup>

Under the European Convention on Human Rights, the government not only has to refrain from sending children back to inhuman and degrading treatment, it must also take positive steps to foreclose the risk of such treatment before deciding to return an unaccompanied child. For example, the European Court of Human Rights (ECtHR) held that Belgium acted in violation of these obligations when it deported a five-year-old unaccompanied girl to Congo: “Belgian authorities did not seek to ensure that [the child] would be properly looked after or have regard to the real situation she was likely to encounter on her return to her country of origin.”<sup>195</sup>

The ECtHR obliges the government to take “requisite measures and precautions” against inhuman and degrading treatment when it returns an unaccompanied child.<sup>196</sup> The circumstances of what constitutes inhuman or degrading treatment for an unaccompanied child may differ significantly from that of adults. As shown in the case of the five-year-old Congolese girl, her deportation without any prior assurance of her care was considered to

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<sup>193</sup> Convention relating to the Status of Refugees, 189 U.N.T.S. 150, entered into force April 22, 1954, ratified by France on June 23, 1954, art. 1(2).

<sup>194</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted December 10, 1984, G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), entered into force June 26, 1987, ratified by France on June 26, 1987, art. 3. ECHR, art. 3.

<sup>195</sup> *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium* (Application no. 13178/03), October 12, 2006, available at [www.echr.coe.int](http://www.echr.coe.int), para. 68.

<sup>196</sup> *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, October 12, 2006, available at [www.echr.coe.int](http://www.echr.coe.int), para. 69.



amount to inhuman and degrading treatment.<sup>197</sup> Other situations that may rise to inhuman and degrading treatment and ought to be considered before returning a child include: the risks that trafficking victims will fall back into the hands of criminal networks, and the risks for children who fled their families due to domestic violence will be returned to an abusive situation.

In *Nsona v. The Netherlands*, which also involved the forced removal of an unaccompanied child, the ECtHR established states parties' responsibility under the European Convention on Human Rights prior to removing the child:

The responsibility under Article 3 in cases of this kind lies in the act of exposing an individual to the risk of ill-treatment, the existence of the risk must be assessed primarily with reference to those facts which were known or *ought to have been known* to the Contracting States at the time of the expulsion.<sup>198</sup>

The handing over of children to security forces in a third country or the child's country of origin with no guarantee that these children will be taken into care or safely reunited with their families may put the child in danger and at risk of inhuman and degrading treatment. Due to the speedy removal procedures at the airport and the difficulties to establish a relationship of trust with the child in a detention environment, conditions are not given for a risk assessment in case of return, and the child's safety upon return therefore cannot be guaranteed.

Under the UN Convention on the Rights of the Child, states are furthermore obliged to provide protection and care for unaccompanied children and to take into account a child's best interest in every action affecting the child.<sup>199</sup> Before returning an unaccompanied child to either a transit country or country of origin, authorities should seek information on whether the child faces abuse or the violation of fundamental rights and whether care arrangements exist for the child, and take that information into account for a comprehensive assessment of the child's best interest. The Committee on the Rights of the Child established a list of criteria that should guide authorities' assessment. These include

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<sup>197</sup> *Ibid.*, paras. 66-71.

<sup>198</sup> *Nsona v. The Netherlands*, (23366/94), Judgment of 26 June and 26 October 1996; 63/1995/569/655, available at [www.echr.coe.int](http://www.echr.coe.int), para. 92(c) (emphasis added).

<sup>199</sup> CRC, arts. 3 and 20.

considerations about the child's safety and security upon return, socio-economic conditions, as well as the views of the child.<sup>200</sup>

Children furthermore enjoy procedural guarantees when faced with a removal order. Under the European Convention on Human Rights they must have access to an effective remedy if deportation risks violating any of their rights under that convention.<sup>201</sup> Children who are without legal representation or those who are assigned an ad hoc administrator but deported before meeting their representative are by law or *de facto* deprived from accessing an effective remedy. Children who are arbitrarily prevented by their ad hoc administrators from filing an appeal against a negative asylum decision are equally left without access to an effective remedy.

Ultimately, authorities should identify a lasting solution for the child, heeding the child's best interests and taking into account his or her views. A durable solution may be achieved through family reunification in the country of origin or a third country. But when family reunification or return to the country of origin are not possible due to legal obstacles or because they are not in the child's best interests, states are to facilitate the child's integration into the host country through refugee status or other forms of protection.<sup>202</sup>

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<sup>200</sup> UN Committee on the Rights of the Child, General Comment No. 6, para. 84.

<sup>201</sup> ECHR, art. 13.

<sup>202</sup> UN Committee on the Rights of the Child, General Comment No. 6, para. 79.

## VII. Recommendations

### To the Ministry of Immigration, Integration, National Identity, and Solidarity Development

- Abolish the arbitrary legal status of the airport transit zone for unaccompanied migrant children and admit all unaccompanied children arriving at the border to French territory where their protection needs, vulnerabilities, views, and best interests can be properly assessed and inform any decision-making about their future.
- In the interim, immediately suspend the deportation of unaccompanied migrant children to transit countries and adopt formal procedures that ensure their safety upon return to their country of origin or when reunited with their care-giver in a third country. Prior to any return decision, assess whether return is in the child's best interests, taking into account the risk of abuse or harm they may face after arrival.
- Immediately issue clear guidelines to border police that deportation cannot take place until the child has seen his or her ad hoc administrator and had an opportunity to consult with a lawyer.
- Immediately refrain from detaining unaccompanied children with adults and girls with boys. As a general rule, unaccompanied migrant children should be placed in appropriate local authority care and not be detained. If children are to be exceptionally detained, they should be assisted by a lawyer and an ad hoc administrator in order to be able to challenge their detention.
- Adopt formal guidelines and screening to identify trafficking victims at the border and ensure victims' access to protection, including protection from removal. Train airport border police to apply these guidelines and provide assistance through specialized personnel present at the airport. Ensure that all ad hoc administrators are informed and provided contact details of any visitor meeting with a child detained at the airport. Unaccompanied migrant children identified as possible trafficking victims should be referred to specially designed and safe accommodation away from Paris.
- Provide all persons at the border with written and oral information about their rights, including their right to seek asylum, and in a language they understand.

- Support legislative change to abolish the fast track asylum procedures for unaccompanied children and to automatically grant all asylum-seeking children permission to enter France to file a claim under regular asylum procedures.
- Ensure prompt presence of ad hoc administrators at the airport to give effect to children's exercise of their rights immediately after identification. A demonstrable knowledge of the rights of migrant and asylum seeking children should be an essential criterion for their appointment. Support legislative change to professionalize ad hoc administrators' service and to strengthen their mandate to grant them access to all relevant information and the authority to safeguard the child's best interests and protection needs at all times, including in border police decisions.
- Assign each unaccompanied child an ad hoc administrator who can promptly be present at the airport immediately upon identifying the child and who represents the child throughout his or her detention in the transit zone. Refrain from questioning the child until the ad hoc administrator is present.
- Ensure ad hoc administrators are given unimpeded access to all police documents relevant for the exercise of their mandate and full access to children held in hotels, solitary confinement, police custody, and airport terminals.
- In addition to representation by ad hoc administrators, ensure the prompt presence of state-sponsored lawyers in the airport transit zone so that children can access their entitlement to legal assistance free of charge as soon as possible after their arrival and are able to challenge administrative and judicial decisions.
- Adopt age assessment procedures that do not exclusively rely on physical examinations but also take into account the child's maturity and life history, in line with recommendations by the UN Committee on the Rights of the Child. These procedures should provide for effective mechanisms to challenge flawed assessments and require prior information about and consent for the exam from the child and ad hoc administrator. Adopt guidelines to prevent age examinations from being performed in obviously unnecessary circumstances and to prevent their being conducted in a degrading manner.

## To the Roissy Charles de Gaulle Airport Border Police

- Refrain from deporting children before their ad hoc administrators arrive at the airport and grant them access to all children held at airport terminals, including those who are held while transiting through Roissy Charles de Gaulle airport. Refrain from screening, questioning, interviewing, and from requesting age exams for unaccompanied children without their ad hoc administrator present.
- Always grant all unaccompanied children their right to a *jour franc*, the 24-hour protection from removal.
- Immediately put an end to any attempts by officer to threaten children with deportation after their arrival and treat all children with dignity and in a way that is adapted to their age and maturity.
- Put an end to the practice of officers seeking to push children to sign documents they do not understand. Ensure children are fully aware of the implications of administrative decisions and that their ad hoc administrator is present when they are to sign documents.
- Put an end to the any officers intimidating unaccompanied children through restraint measures such as hand-cuffs or extensive strip-searches. Use such measures only in justified instances and in a proportionate manner.
- In cooperation with ad hoc administrators, provide written materials about trafficking and exploitation risks to all unaccompanied migrant children who arrive at the airport. Such information should include addresses, maps, and phone numbers of organizations and services where they may seek help.
- Provide ad hoc administrators access to all relevant information, and grant them unimpeded access to children they represent, no matter where they are held.
- Refrain from detaining children in solitary confinement and from initiating criminal charges against those who resist deportation.
- Refrain from demanding age assessments for children who are clearly underage. In cases of doubt and when there is a possibility that an individual is a child, he or she should be treated as such.

## **To the French Office for Refugees (OFPRA)**

- In cooperation with specialized organizations, train all protection officers on interviewing children, on adjudicating their claims, and on child-specific forms of persecution. Include specific training on the possible impact of trauma, abuse, stress, detention, and anxiety on children's stories.
- Support legislative changes to abolish the fast track procedure for unaccompanied migrant children at the border and to consider asylum claims by unaccompanied migrant children under the regular asylum procedure. Refrain from interviewing children by phone.

## **To the French Red Cross**

- Immediately stop any efforts to block lawyers from appealing detention or negative asylum decisions on behalf of children.
- In case of rejected asylum decisions, ensure that all asylum seeking children receive information about their right to file an appeal and facilitate their making an appeal if they wish to file one.
- Adopt clear procedures to ensure that ad hoc administrators understand their duty to ensure access to protection for migrant children whose interests they represent.
- Support ad hoc administrators in filing appeals on behalf of children, including by ensuring sufficient support and resources to take on additional tasks when faced with tight deadlines.
- Adopt standard procedures and provide clear guidance to all ad hoc administrators on how to proceed with child victims of trafficking.

## **To the French Red Cross and Famille Assistance**

- In cooperation with specialized organizations, train all ad hoc administrators about children's entitlements under the UN Convention on the Rights of the Child and other human rights instruments and instruct them to comply with these provisions in all their actions. Such training should include in-depth information about guidelines and binding standards governing the return of unaccompanied migrant children and on unaccompanied children's entitlements to special care and protection. In addition, provide clear guidelines to all ad hoc administrators on how to apply binding standards and good practice in their work as guardians for unaccompanied migrant children.

- Jointly with the UNHCR and other specialized organizations, provide further training for all ad hoc administrators on asylum and subsidiary protection rights.
- Systematically file requests for legal aid for all unaccompanied migrant children held at the airport transit zone. Coordinate with and assist lawyers in filing appeals on behalf of children.

### **To the Children’s Judge and the Public Prosecutor**

- Use your protection mandate in accordance with unaccompanied children’s entitlements under the UN Convention on the Rights of the Child and the European Convention on Human Rights. In particular, give due consideration to unaccompanied children’s right to special protection and assistance and to the risk they face in case of deportation.
- Periodically review ad hoc administrators’ exercise of their mandate. Scrutinize and question instances in which ad hoc administrators have rejected legal intervention on behalf of unaccompanied migrant children.

### **To the European Commission**

- Present concrete proposals for strengthening the protection of unaccompanied children in the upcoming revision of European Union asylum directives that guarantee appointed guardians the power to represent the child’s best interests and safeguard the child’s protection needs; that establish clear qualification criteria for guardians who represent unaccompanied children, which should include demonstrated expertise about the rights of children, migrants, and asylum seekers; and that, in addition to a guardian, include the appointment of a qualified lawyer free of charge for unaccompanied children subject to administrative or judicial procedures.

### **To the Council of the European Union**

- Strengthen the protection of unaccompanied children in the upcoming revision of asylum directives by ensuring that all provisions for unaccompanied children are in line with international human rights law applicable in EU member states.
- Pursue a rights based approach in all EU action to the situation of unaccompanied migrant children and ensure that these children are first and foremost treated as children with their rights and protection needs given priority in all migration policies.

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