

Submission by Human Rights Watch to the Committee on Economic, Social and Cultural Rights on France

66th pre-sessional, 2020

This submission is to inform the Committee on Economic, Social and Cultural Rights' review of France under the International Covenant on Economic, Social and Cultural Rights. It focuses on France's treatment of unaccompanied migrant children and its protection of students, teachers, and schools during armed conflict.¹

Migrant Children (articles 11 and 13)

French law provides that unaccompanied migrant children should receive protection and care from the child protection system, the Aide sociale à l'enfance (ASE),² and should be allowed to enroll in local schools.³ In practice, unaccompanied migrant children across France face significant obstacles in accessing this protection, primarily due to poor practices related to age identification. This has immediate negative consequences for their enjoyment of their rights to housing, more generally to an adequate standard of living, and to education, and adversely affects their enjoyment of other human rights.

As a threshold issue, French authorities require most, if not all, unaccompanied migrant children to undergo age assessments before they are afforded the protections they require as children. The routine use of age assessments, not least because of their unreliability, does not comply with international standards, which call for their use only as a matter of last resort, used only where there are serious doubts about an individual's declared age and where other

¹ In line with international standards, this submission uses the term "child" to refer to a person under the age of 18. United Nations Convention on the Rights of the Child, art. 1, November 20, 1989, 1577 U.N.T.S. 3 (entered into force September 2, 1990). It uses the term the term "unaccompanied children" to refer to children "who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so." UN Committee on the Rights of the Child, General Comment No. 6: Treatment of Unaccompanied and Separated Children Outside Their Country of Origin, U.N. Doc. CRC/GC/2005/6 (September 1, 2005), para. 7.

² Arrêté [Order] of November 17, 2016, Implementing Decree No. 2016-840 of June 24, 2016, art. 9.

³ Code de l'éducation, art. L.111-1 ("The right to education is guaranteed to everyone in order to enable them to develop their personality, raise their level of initial and ongoing training, to integrate themselves into social and professional life, and to exercise their citizenship."); Circulaire No. 2012-141 of October 2, 2012, Organisation de la scolarité des élèves allophones nouvellement arrivés, art. 1.2 ("School is a right for all children residing on the national territory, whatever their nationality, migration status, or previous journey"), http://www.education.gouv.fr/pid25535/bulletin_officiel.html?cid_bo=61536 (accessed January 17, 2020).

approaches, including efforts to gather documentary evidence, have failed to establish an individual's age.⁴ Moreover, the manner of conducting age assessments in Paris and the Hautes-Alpes is often arbitrary.

In Paris, Human Rights Watch found that many youths who request protection from the child welfare system were turned away summarily and inaccurately, based on appearance alone; others were rejected without written decisions after interviews lasting as little as five minutes, contrary to French regulations.⁵

In the Hautes-Alpes as well as in Paris, children who received more extensive evaluations sometimes described questioning by examiners they said were indifferent or hostile. Children did not always understand the interpreters assigned to them, and some said that their interpreters criticized their responses. Many children felt they had not been heard during their interviews, a conclusion reinforced when they saw the reports prepared by the examiner.⁶

In cases reviewed by Human Rights Watch, children received negative age assessments because, in the judgement of the examiner, they failed to provide clear accounts of their journeys—in reality, meaning that they made minor mistakes with dates, confused the names of places they travelled through, or did not want to discuss particularly difficult experiences with an adult they had just met. Alternatively, examiners deemed very precise accounts indicators of maturity.⁷

Lack of identity documents was a basis for denial of formal recognition even though French regulations and international standards reflect the reality that children may lose documents in transit or may never have had identity document. If, on the other hand, children do present birth certificates or other documents to establish their age and other aspects of their identity, authorities questioned the validity of their documents.⁸

Examiners also cited the child's decision to travel unaccompanied as a sign of adulthood, even though many thousands of children travel on their own each year to France and other countries. Similarly, work in home countries or while in transit to Europe may be taken as an indication that the child is older than claimed, even though many children work at very young

⁴ For instance, the UN High Commissioner for Refugees notes that “[a]ge assessments are never to be used as a matter of routine.” UNHCR, Guidelines on International Protection: Child Asylum Claims, para. 75. See also UNHCR, Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum, February 1997, para. 5.11; Committee on the Rights of the Child, General Comment No. 6, para. 31(i).

⁵ Human Rights Watch, *“Like a Lottery”: Arbitrary Treatment of Unaccompanied Migrant Children in Paris*, (New York: Human Rights Watch, July 2018), pp. 17-23, <https://www.hrw.org/report/2018/07/04/lottery/arbitrary-treatment-unaccompanied-migrant-children-paris>; Human Rights Watch, “Paris: Dire Situation for Migrant Adolescents Arriving Alone,” October 5, 2018, <https://www.hrw.org/news/2018/10/05/paris-dire-situation-migrant-adolescents-arriving-alone>.

⁶ Human Rights Watch, *“Like a Lottery,”* pp. 23-24; Human Rights Watch, *Subject to Whim: The Treatment of Unaccompanied Migrant Children in the French Hautes-Alpes* (New York: Human Rights Watch, September 2019), pp. 42-50, <https://www.hrw.org/report/2019/09/05/subject-whim/treatment-unaccompanied-migrant-children-french-hautes-alpes>.

⁷ Human Rights Watch, *“Like a Lottery,”* pp. 24-31; Human Rights Watch, *Subject to Whim*, pp. 50-57.

⁸ Human Rights Watch, *“Like a Lottery,”* pp. 31-34.

ages around the world. Life goals that examiners deem unrealistic, such as overly optimistic assessments of career prospects, were also factors in negative age assessments.⁹

In particularly egregious cases, some judges in Paris who review age assessments order bone tests and other medical examinations to establish age,¹⁰ even though such tests have been criticised as unreliable by medical bodies in France and elsewhere.¹¹

Even when unaccompanied children have been formally recognized after an age assessment, they do not always receive the care and protection to which they are entitled. An unaccompanied child who is placed in care will not necessarily stay in the department where he or she sought recognition as a minor; unaccompanied children recognized in Paris, for example, are often sent elsewhere in France once they are placed in the care of the child welfare system, a procedure known as “national allocation” (*répartition nationale*).¹² Perhaps because each department is responsible for most of the cost of caring for unaccompanied children, some departments seek re-evaluation of age for some unaccompanied children sent to their care. As a result, children who are formally recognized by child protection authorities in one department may be denied recognition in another department.

In some cases, unaccompanied children whose ages are not in dispute do not receive the protection and care they need and are entitled to. In Marseille, for instance, 36 unaccompanied children were living in a squat in October 2019 because the local child protection authorities did not place them in appropriate accommodation, the Collectif 59 St-Just and Réseau Éducation Sans Frontières told Human Rights Watch.¹³

In addition to the information Human Rights Watch collected through in-depth investigations of the treatment of unaccompanied migrant children arriving in Paris and in the Hautes-Alpes,

⁹ Human Rights Watch, “*Like a Lottery*,” pp. 24-31; Human Rights Watch, *Subject to Whim*, pp. 50-57.

¹⁰ See Human Rights Watch, “*Like a Lottery*,” pp. 34-36.

¹¹ Défenseur des Droits, Avis du Défenseur des droits n° 17-03, p. 12; Défenseur des Droits, Rapport du Défenseur des Droits au Comité des Droits de l’Enfant des Nations Unies, February 27, 2015, para. 138, https://juridique.defenseurdesdroits.fr/doc_num.php?explnum_id=16563 (accessed January 17, 2020); Médecins du Monde, *Parcours d’un mineur non accompagné à MDM* (Paris: Médecins du Monde, 2018), p. 45; Commission Nationale Consultative des Droits de l’Homme, “Avis sur la situation des mineurs isolés étrangers présents sur le territoire nationale,” June 26, 2014, paras. 11-12; Commissioner for Human Rights, Council of Europe, “Methods for Assessing the Age of Migrant Children Must Be Improved,” August 9, 2011, <https://www.coe.int/en/web/commissioner/-/methods-for-assessing-the-age-ofmigrant-children-must-be-improv-1> (accessed January 17, 2020); Committee on the Rights of the Child, Concluding Observations: France, U.N. Doc. CRC/C/FRA/CO/4 (June 22, 2009), paras. 87-88.

¹² See Arrêté du 28 juin 2016 pris en application du décret n° 2016-840 du 24 juin 2016 relatif aux modalités de calcul de la clé de répartition des orientations des mineurs privés temporairement ou définitivement de la protection de leur famille, J.O. No. 0151 (June 30, 2016); Décision du 11 avril 2017 fixant pour l’année 2017 les objectifs de répartition proportionnée des accueils des mineurs privés temporairement ou définitivement de la protection de leur famille, J.O., Texte 39 (April 14, 2017).

¹³ See Camille Marquis (Human Rights Watch), “Unaccompanied Children Unfairly on Trial in France: Children Sought Shelter in a Squat When No Shelter Was Provided to Them,” October 18, 2019, <https://www.hrw.org/news/2019/10/18/unaccompanied-migrant-children-unfairly-trial-france>.

Human Rights Watch has also heard accounts of arbitrary decision making by authorities elsewhere in France, suggesting that flawed procedures are a problem across France.¹⁴

Access to Housing and Other Social Services

The most immediate consequence of a negative age assessment is that children are left to fend for themselves. They are evicted from the temporary housing they receive while their age is being assessed, even if they seek review before a judge. Some find shelter with families who volunteer space in their homes. Others are housed in shelters for adults. Some stay on the streets.

For instance, Sébastien D., a 17-year old Cameroonian boy, told Human Rights Watch he had been sleeping in a park in Paris for 17 days after officials made a negative age assessment in August 2018. “To sleep, you look for a corner, you lay down a piece of cardboard. If you find an older gentleman, he might give you a blanket. Because at night it can be very cold,” he said.¹⁵

Mamadou, a 16-year-old Malian boy, told Human Rights Watch, “The [authorities] gave me a paper explaining how to call the 115 [the emergency number that adults in France can call to find temporary accommodation] to get a place to sleep. I called the 115, but they told me they couldn't take me because I was a minor. I'm not going to say I'm over 18 just so I don't sleep on the street!”¹⁶

In the Hautes-Alpes, a citizens' network has housed many unaccompanied migrant children while they seek review of negative age assessments.¹⁷ A similar initiative in Paris has placed many children in temporary accommodation, for periods ranging from a single night to several months.¹⁸ But these laudable efforts, along with services provided by nongovernmental groups, cannot meet the need and depend on voluntary action. In contrast, the French state has both the means and the obligation, under domestic law and its international commitments, to provide appropriate care and protection to all children within French territory, regardless of migration status.

Denial of Education

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

¹⁴ See, for example, Defender of Rights, *Childhood and Violence: The Part Played by Public Institutions* (Paris: Défenseur des droits, 2019), https://defenseurdesdroits.fr/sites/default/files/atoms/files/836190480_ddd_synthrapenf-2019_access_en.pdf (accessed January 17, 2020); Camille Marquis (Human Rights Watch), “France Slammed over Treatment of Migrant Children: The French Ombudsman Confirms Human Rights Watch’s Findings,” November 19, 2019, <https://www.hrw.org/news/2019/11/19/france-slammed-over-treatment-migrant-children>.

¹⁵ Human Rights Watch, “Paris: Dire Situation for Migrant Adolescents Arriving Alone.”

¹⁶ *Ibid.*

¹⁷ See Human Rights Watch, *Subject to Whim*, p. 63.

¹⁸ See Human Rights Watch, “*Like a Lottery*,” p. 3.

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

In particular, unaccompanied children who are awaiting the outcome of judicial hearings to review negative age determinations consistently report difficulties with school enrollment, regardless of the length of time their case was under review. In fact, none of the children interviewed by Human Rights Watch in Paris who were seeking review of an adverse age assessment had been able to enroll in school.

Human Rights Watch also heard of cases in which children faced difficulties with school enrollment even after they were formally recognized as under the age of 18. In one such case, Oumar W., a 17-year-old from Mali who had received a verbal negative age assessment after a 30-minute interview in Paris and was then recognized as a child by the juvenile judge, had been waiting for five months to enroll in school when Human Rights Watch interviewed him in March 2018.¹⁹

In the Hautes-Alpes, the citizen network Réseau Hospitalité has succeeded in persuading local schools to enroll many of the children they are taking care of. In the absence of this private initiative by a local association and volunteer lawyers, many of these children would likely not be attending school while they waited for the judge to rule on their cases.²⁰

The Committee on Economic, Social and Cultural Rights has “confirm[ed] that the principle of non-discrimination extends to all persons of school age residing in the territory of a State party, including non-nationals, and irrespective of their legal status.”²¹

The Implications for Other Rights

Negative age assessments can have an adverse impact on mental health, impairing children’s enjoyment of the highest attainable standard of health. Mélanie Kerloc’h, a psychologist working with Médecins Sans Frontières, explained that children “associate the denial of recognition of their age with what they said [about their lives], as if what they told the official about their experiences was false. It’s seen as a denigration or as an erasure.”²²

Children said they felt significant anxiety because of the length of the process of seeking review of negative age assessments and uncertainty about their futures. “It makes me very stressed. I keep thinking, when will I go to the judge? How will the judge respond? I keep thinking of all of this. Maybe I’ll have to leave France,” 16-year-old Issouf Y., from Côte d’Ivoire, told Human Rights Watch. Adama B., from Guinea, said, “I keep thinking of everything. What

¹⁹ Human Rights Watch, “*Like a Lottery*,” p. 43.

²⁰ See Human Rights Watch, *Subject to Whim*, p. 63.

²¹ Committee on Economic, Social and Cultural Rights, General Comment No. 13, para. 34.

²² Human Rights Watch, “*Like a Lottery*,” p. 42.

will happen if nobody helps me? Where will I sleep? I think about that all the time. These thoughts keep me awake at night.”

Some children said they cut themselves or engaged in other acts of self-harm in response to these anxieties. Human Rights Watch also heard accounts of children attempting or considering suicide.

Even if children are ultimately successful when their cases are reviewed by a juvenile court judge, delays in formal recognition have significant implications for legal status upon reaching majority age because the fact and timing of being taken into care by the child protection system affect eligibility for residence permits and French nationality. Children who are taken into care before the age of 16 are eligible at age 18 for residence permits, and those taken into care after age 16 may be able to obtain student or work permits when they turn 18. If they are taken into care before the age of 15, they can request French nationality at age 18.

As a result, children’s access to vocational training and higher education may be impaired. Those who are unable to obtain legal status solely as the result of delays in formal recognition may not be permitted to work or even to remain in France.

Human Rights Watch recommends that the Committee call upon the government to:

- Ensure that age assessments are used only when authorities have serious doubts about an individual’s claim to be under the age of 18. In such cases, they can take appropriate steps to determine age and establish eligibility for services, bearing in mind that all age assessments will be estimates. Age assessments should seek to establish approximate age through interviews and review of documents, as recommended by international standards. Assessments should be undertaken with sensitivity by trained examiners. These procedures should afford the benefit of the doubt so that if there is a possibility that an individual is a child, that individual is treated as a child.
- End the use of bone tests and similar medical examinations as means to determine age.
- Ensure that departments have sufficient resources to carry out their child protection functions.
- Ensure that all those who are awaiting an evaluation receive emergency shelter for the minimum period of five days or until the evaluation is completed, as required by article R.221-11 of the Code de l’action sociale et des familles. The period of emergency shelter should be extended to cover any period of appeal of an adverse age determination.
- Issue and implement clear guidance to examiners that age assessments should follow the November 17, 2016, order of the Ministry of Justice. In particular:

- Staff should not turn away individuals at the door on the basis of appearance alone.
- Summary or “flash” interviews are not permitted.
- All interviews should be conducted with particular expertise and care, in a manner “characterized by neutrality and compassion.”
- Birth certificates and other civil documents obtained abroad should be presumed valid in the absence of substantiated reason to believe they are not.
- The absence of a photo or other biometric identifiers on a birth certificate or other civil documents should not be a basis for excluding those documents from consideration.
- Every individual assessed and found to be an adult should receive a written decision explaining the reasons for the decision.
- Ensure that all unaccompanied migrant children in France have access to education, in line with French law and international standards.

Protection of Education During Armed Conflict (article 13)

The Safe Schools Declaration is an inter-governmental political commitment that provides countries the opportunity to express political support for the protection of students, teachers, and schools during times of armed conflict; the importance of the continuation of education during armed conflict; and the implementation of the *Guidelines for Protecting Schools and Universities from Military Use during Armed Conflict*.²³ France endorsed the Safe Schools Declaration in February 2017.

France is a permanent member of the United Nations Security Council and has voted for the two most recent Security Council resolutions that encourage member states to take concrete measures to deter the military use of schools in contravention of international law.²⁴

Human Rights Watch recommends that the Committee call upon the government to:

- Congratulate France for endorsing the Safe Schools Declaration.
- Encourage France to share their good practices with other countries, including any including any recipients of humanitarian aid, development assistance, or military training.

Human Rights Watch recommends that the Committee ask the government:

²³ Guidelines for Protecting Schools and Universities from Military Use during Armed Conflict, March 18, 2014, http://protectingeducation.org/sites/default/files/documents/guidelines_en.pdf (accessed November 6, 2018).

²⁴ United Nations Security Council, Resolution 2225 (2015), June 18, 2015, [https://undocs.org/S/RES/2225\(2015\)](https://undocs.org/S/RES/2225(2015)) United Nations Security Council, Resolution 2427 (2018), July 9, 2018, [https://undocs.org/S/RES/2427\(2018\)](https://undocs.org/S/RES/2427(2018)) (accessed January 15, 2020)

- What concrete measures have the French armed forces taken to deter the military use of schools in contravention of international law, including through its military manuals, policies, trainings, planning, and orders.