



# Convention on the Rights of the Child

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## Committee on the Rights of the Child

### Report on the inquiry concerning France conducted under article 13 of the Optional Protocol to the Convention on the Rights of the Child on a communications procedure\*\* \*\*

#### I. Introduction

1. Under article 13 of the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, if the Committee on the Rights of the Child receives reliable information indicating grave or systematic violations by a State Party of rights set forth in the Convention or in the Optional Protocol, it will invite the State Party to cooperate in the examination of the information and, to this end, submit observations without delay with regard to the information concerned. Taking into account any observations that may have been submitted by the State Party concerned, as well as any other reliable information available to it, the Committee may designate one or more of its members to conduct an inquiry and to report urgently to the Committee. Where warranted and with the consent of the State Party, the inquiry may include a visit to its territory.

2. France ratified the Convention on the Rights of the Child on 7 August 1990 and the Optional Protocol on a communications procedure on 7 January 2016. The procedure provided for in article 13 of the Optional Protocol has therefore been applicable since 7 April 2016.

3. On 4 November 2020, the Committee received a request to open an inquiry into violations of the rights of unaccompanied migrant children from Conseil français des associations pour les droits de l'enfant (French Council of Associations for the Rights of the Child) and Kids Empowerment, represented by counsel, namely, Camille Oberkampf and Delphine Mahé. Additional information was received on 27 August 2021 and 5 December 2022.

#### II. Information provided by the sources

4. The sources allege grave and systematic violations of the rights of unaccompanied migrant children in France under articles 2–4, 6, 8 (2), 12, 16, 19, 20, 24, 26–28, 34–37 and 39 of the Convention. They claim that children's rights are violated during age assessment procedures, with the result that they are denied access to the child protection system, including access to housing, healthcare, education and legal representation, and are deprived of their right to privacy. The sources also claim that some unaccompanied migrant children are deprived of their liberty. Those accepted into the child protection system are allegedly treated differently, with fewer resources set aside for their care than for the care of other children. There is no oversight of the care provided to unaccompanied migrant children.

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\* Adopted by the Committee at its ninety-eighth session (13–31 January 2025).

\*\* The present report was made public in accordance with rule 42 of the Committee's rules of procedure under the Optional Protocol on a communications procedure.



National and local standards directly or indirectly affecting unaccompanied migrant children are adopted without prior assessment of their impact on the best interests of the child.

5. The sources claim that these violations are grave within the meaning of article 13 of the Optional Protocol. They concern a large number of victims and are on a considerable scale, both in terms of their duration, since they have persisted for over 10 years, and in terms of their extent, since they concern the entire territory of the State Party. These violations cause serious harm to the victims, affecting all areas of their lives.

6. The sources claim that the violations are systematic insofar as they are systemic, widespread and rooted in a legal framework that derogates from ordinary child protection law and in which the fight against irregular immigration and financial considerations take precedence over the interests of unaccompanied migrant children.

### **III. Procedural background**

7. On 5 March 2021, having found that the information received from the sources was reliable and indicative of grave or systematic violations of the rights set forth in the Convention, the Committee decided to invite the State Party to submit its observations by 5 May 2021. France submitted its observations on 29 September 2021.

8. At its eighty-ninth session, held from 31 January to 11 February 2022, the Committee appointed two of its members, Sophie Kiladze and Benoit Van Keirsbilck, to conduct the inquiry and, in accordance with article 13 (2) of the Optional Protocol and rules 37 and 38 of its rules of procedure under the Optional Protocol, invited the Government of France to cooperate with the Committee in the inquiry. The Committee also asked the Government to agree to visits to its territory by the appointed members.

9. On 30 August 2023, France agreed to a visit by the two appointed members. Accompanied by an official of the Office of the United Nations High Commissioner for Human Rights, the members conducted their visit from 16 to 20 October 2023 and met with the State Secretary for Children of the Office of the Prime Minister and representatives of the Ministry of the Interior and Overseas Territories, the Ministry for Europe and Foreign Affairs, the Ministry of Justice, the Office of the State Secretary for Children, France terre d'asile, Apprentis d'Auteuil, the Office of the Children's Ombudsman, Bobigny Court (the presidency, prosecutor's office and juvenile court), Paris Court of Appeal (the juvenile division) and the French Office for the Protection of Refugees and Stateless Persons. They visited the waiting area at Paris-Charles de Gaulle Airport and met with representatives of the National Directorate of the Border Police, the Pas-de-Calais Departmental Council and the Unaccompanied Minors Unit of the Directorate for the Protection of Young People in the Judicial System, as well as the sources, a number of unaccompanied migrant children and representatives of several organizations and private stakeholders working in the field.

10. The Committee welcomes the cooperation of all the government institutions with which it requested to meet.

### **IV. Scope of the inquiry**

11. The Committee notes that the rights of different categories of unaccompanied migrant children are alleged to have been violated in different ways and on different scales – these categories are: (a) those who have not been recognized as minors and have no access to the child protection system; (b) those who have been recognized as minors and accepted into the child protection system; (c) those transiting French territory on their way to third countries; and (d) those who have been refused access to French territory at the border.

## V. Legal framework relating to unaccompanied migrant children

12. The Committee notes and welcomes the development by the State Party of numerous regulations, some of which were adopted and entered into force recently, and other measures to uphold the rights of unaccompanied migrant children. In accordance with article L611-3 of the Code on the Entry and Stay of Aliens and the Right of Asylum, all children under 18 years of age have the right to reside in France and may apply for a residence permit up to six months before reaching the age of 18.

13. On 7 February 2022, the State Party adopted a law containing numerous provisions on unaccompanied migrant children and providing a legal basis for services and policies designed to identify, welcome and protect such children.<sup>1</sup> However, this law has not yet been fully implemented.<sup>2</sup>

14. Act No. 2022-140 of 7 February 2022 provides, *inter alia*, for:

(a) Establishment of temporary emergency shelter for persons claiming to be children and temporarily or permanently deprived of family protection;<sup>3</sup>

(b) Prohibition of the placement in hotels of children and young adults (aged 16 to 21) in the care of the child welfare system<sup>4</sup> – in emergencies or where accommodation is required, they are entitled to be housed for up to two months in other types of accommodation;<sup>5</sup>

(c) Procedures for assessing children's age and unaccompanied status;

(d) Requirement to uphold the presumption of minority until an initial decision has been made declaring that the person is not a child;

(e) Prohibition of the revision by departmental councils of assessments of the age and unaccompanied status of children already in the care of child welfare services;

(f) Enlargement of the powers of juvenile judges in relation to the delegation of parental authority;

(g) Payment of a fixed contribution by the State to cover expenses, including the cost of housing during age assessments, incurred by departmental authorities;

(h) Access to healthcare services for those in need.

15. The Act also introduced an automated processing system for personal data collected during age assessment procedures (the "Minority Assessment Support" system) to facilitate coordination among services and the distribution of children throughout the country according to an allocation formula between departments.

<sup>1</sup> Act No. 2022-140 of 7 February 2022 on child protection.

<sup>2</sup> See Decree No. 2024-117 of 16 February 2024 on the developmental mentoring of children in the care of child welfare services, Decree No. 2024-118 of 16 February 2024 on the community-based mentoring of children in the care of the child welfare services and Decree No. 2024-119 of 16 February 2024 on the exceptional accommodation of minors and young adults in the care of the child welfare services in facilities classified as "youth and sport" or subject to a declaration regime.

<sup>3</sup> See Decree No. 2023-1240 of 22 December 2023 amending the arrangements for the shelter and assessment of persons declaring themselves minors and deprived of family protection and the procedures for the payment of the fixed contribution of the State to the expenses incurred by departments during age assessments, which implements article 40 of Act No. 2022-140.

<sup>4</sup> Since February 2024.

<sup>5</sup> Social Welfare and Family Code, arts. L227-4 and L321-1, as amended by Decree No. 2024-119 of 16 February 2024.

## VI. Findings of fact<sup>6</sup>

### A. Identification, age assessment and presumption of minority of unaccompanied migrant children

16. The Committee recognizes that France, like many other European countries, is facing a large influx of people entering its territory, many of whom claim to be unaccompanied migrant children, although not all may be under 18 or separated from their parents. Major cities and towns close to borders, as well as Paris, are particularly hard hit by this situation.

17. In France, persons recognized as unaccompanied minors are legally considered first and foremost as children in need of care and protection and must be taken into the care of the child protection or social welfare system, which is laudable.

18. The departmental authorities are responsible for the identification and assessment of persons claiming to be unaccompanied migrant children. Each department has its own identification and age assessment procedures. These vary from one department to another, as do the rates of recognition of minority status. In some departments, age assessment is delegated to non-governmental organizations (NGOs). The final decision to grant or refuse recognition as an unaccompanied migrant child is confirmed by the president of each departmental council. In 2019, the Directorate General for Social Cohesion of the Ministry of Solidarity and Health published a guide to best practice in assessing the minority and unaccompanied status of persons claiming to be minors and temporarily or permanently deprived of family protection.

19. Under national law, prior to assessment, departmental authorities are required to arrange emergency temporary accommodation for the person concerned for a period of five days, which may be extended twice for the same duration, including immediate accommodation and a “respite period”, according to the terms of Act No. 2022-140 of 7 February 2022.

20. However, the Defender of Rights has received several reports of an initial selection being carried out among children, distinguishing between those who will be provided with immediate shelter before their age is assessed and those who are required to remain on the street or are placed in hotels without appropriate supervision while awaiting an interview, without benefiting from prior emergency shelter. This selection is based solely on a subjective on-site assessment of age. In this context, children may be exposed to violence, trafficking in persons and other violations of their rights.

21. The assessment takes the form of an interview covering the person’s civil status, family, living conditions in the country of origin, reasons for leaving the country of origin, migration route prior to arrival in France, living conditions since arrival and plans for the future.

22. The Committee was informed that, in view of the high number of persons to be assessed, in the majority of cases the assessment procedure is based on a single interview, very often conducted by a single interviewer, lasting one hour on average. The person claiming to be a child is often interviewed alone, without the assistance of a trusted adult, legal guardian or lawyer. The physical appearance of the person is frequently a determining factor in the assessment, despite being highly subjective.

23. Civil society organizations appointed by departments to conduct age assessments often operate without due supervision or oversight. In Paris, for example, identification of unaccompanied migrant children has been entrusted to the association France terre d’asile, which receives public funds to that end.

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<sup>6</sup> This chapter is based on exchanges that the appointed members of the Committee had with the Secretary of State and other officials of ministries and public services during the country visit and on several reports compiled by non-governmental organizations, national human rights institutions and other entities.

24. If the person presents a civil status or identity document that appears fraudulent, the departmental council requests the competent authorities to assess its authenticity; these authorities may in turn consult with the consular authorities of the country of origin. The burden of proof generally lies with the child, not with the Government. The Committee took note of the Government's explanation concerning the high number of falsified documents and the lack of cooperation of certain States of origin. However, some departments tend to give no merit to identity documents provided.

25. If doubt persists as to the age of the person concerned, the departmental council may refer the matter to the public prosecutor so that a medical examination, consisting of an X-ray, may be carried out. Such examinations should be carried out only if the person's alleged age is implausible and only by decision of a judicial authority, with the consent of the person concerned. The findings of this examination must be presented with a margin of error and the person concerned must enjoy the benefit of the doubt. However, in practice, doubt about the age of the person concerned is expressed in a considerable number of cases and X-ray tests are used even in situations where conclusive identity documents have been produced.

26. Presumption of minority is applied only until an initial age assessment decision has been made, after which no such presumption is afforded for the rest of the procedure. This means that a person who claims to be a child but has been deemed to be an adult after initial assessment will be treated as such throughout the procedure, which can take up to eight months or even longer, depending on where he or she lives. In the meantime, adult care and support services generally refuse to provide such persons with protection, as they consider them to be children who should not be placed in an adult environment. The legal status of such persons is highly ambiguous, as they are both children and migrants and are therefore caught between the legislation protecting children and that aimed at combating irregular immigration. They remain unprotected, in limbo, until a definitive decision is taken, despite the fact that, in some departments and jurisdictions, the proportion of persons ruled to be minors after the reassessment of their age is very high, ranging from 50 to 80 per cent. The application of the presumption of minority throughout all reassessment procedures is therefore of the utmost importance. Only minors may benefit from child protection, while persons deemed to be adults are subject to migration policy. Being of the "right" age is thus a question of survival.<sup>7</sup>

27. The services responsible for age assessment are also responsible for providing information to the persons concerned, including regarding their right to contest age assessment decisions. However, most of the time, notification of decisions is given orally and does not appear to be provided in a child-friendly manner, and many of the persons concerned seem to be unaware of their right to challenge such decisions. Persons deemed to be adults after assessment may appeal directly to a juvenile judge, on the ground of the protection of an "endangered child", to contest the departmental council's decision – a procedure commonly referred to as "appealing the decision". This procedure is not suspensive, does not entitle the person to accommodation and is not subject to a time limit, leaving the young persons concerned to fend for themselves for several months, most often on the streets without any official support.

28. There are very few official figures on unaccompanied migrant children in State care, and particularly few on the procedure for the recognition of minority status. Bobigny Juvenile Court acknowledged that it had to manually count case files in order to estimate their number and that figures may vary significantly from one court to another. The departmental authorities provide no information on the recognition rate following their assessments. The

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<sup>7</sup> Data provided by the Unaccompanied Minors Unit: In August 2023, a survey was carried out in 8 appeal courts and with 15 juvenile court judges. Processing times and procedures vary. The proportion of appeals resulting in recognition as an unaccompanied minor was 82 per cent in Lyon, 59 per cent in Créteil, 60 per cent in Marseille and 57 per cent in Versailles. The number of appeals also varies. In Lyon, 285 people appealed to a judge, in Marseille, 339, and in Versailles, only 7. The aforementioned percentages must therefore be interpreted in the light of these figures. Bobigny Court of Appeal handled 1,293 cases, Paris Court of Appeal handled 1,060 and Créteil Court of Appeal handled 563. Processing times vary from 45 days in some courts to 9 months in others, depending on the number of cases.

Ministry of Justice publishes annual statistics on unaccompanied children with a permanent place in the child protection and social welfare system but does not indicate the number of people who have initiated a minority recognition procedure or for whom the procedure has been unsuccessful.

29. In some departments, NGOs organize outreach walks to orient unaccompanied children, including those attempting to cross the English Channel, towards emergency shelter, but these initiatives are insufficient.

## **B. Care and accommodation**

30. Under the State Party's legislation, protection must be provided to every child at risk on its territory, irrespective of his or her personal status and situation with regard to the rules governing entry to and residence in French territory.<sup>8</sup> Persons identified as unaccompanied migrant children are transferred by the National Referral Support Unit to a particular department on the basis of an allocation system. The child is then referred to the public prosecutor, who issues a provisional placement order and refers the case to the juvenile judge, who arranges for the child to receive legal protection, including accommodation, healthcare, education and other rights, until the age of 18. In some departments, protection may be extended until the person reaches the age of 21 under a "young adult contract". This upper age limit is set to become the rule in all departments for all young persons without family support or financial resources.

31. Recently, however, some departments have taken to refusing to receive unaccompanied migrant children, sometimes going so far as to adopt official positions to this effect. This was the position taken, for example, by the department of Ain on 29 November 2023 – a decision overturned by Lyon Administrative Court on 20 December 2023. The department of Saône-et-Loire closed its emergency accommodation centre for unaccompanied migrant children in April 2023, and in September 2023, the department of Territoire de Belfort imposed restrictions on the accommodation of unaccompanied migrant children.

32. Recognized unaccompanied migrant children are housed in specialized accommodation facilities. There, they receive social and psychological support, may attend school and have access to all other basic services. However, the number of such facilities remains insufficient. This has led to the use of other forms of accommodation, such as hotels, where children live without proper supervision or care. This practice has officially been prohibited since February 2024. However, the departmental authorities have expressed that they view the prohibition as unenforceable.

33. Persons claiming to be children but deemed adults upon initial assessment cannot be accommodated in children's shelters. The cases of persons refused admission to the child welfare system may be referred to the juvenile court, but no accommodation is provided during this procedure. This referral (and, where applicable, subsequent referral to the court of appeal and even the Court of Cassation) does not suspend the decision to refuse admission to the child welfare system and the juvenile courts are not bound by any time limit for examining the application submitted. Very often, adult shelters refuse such persons, since they continue to claim to be children, leaving them in an uncertain situation. The Committee learned that during this procedure, which can last up to eight months, the persons concerned receive no assistance from the State and live outdoors – in parks, makeshift camps and other temporary living sites – depending on the support of private individuals and NGOs for food and their basic needs.

34. The Committee observed that, in late October 2023, the authorities decided to dismantle a camp in Rue Pali-Kao Garden in Belleville Park, Paris, where hundreds of young boys had been staying for months. Shelter was organized for 430 young people, who were transported by bus to six reception and assessment centres, which provide accommodation for asylum-seekers, in the Île-de-France Region. That evening, around a hundred unsheltered young people who had not been accommodated spent the night under a bridge in the

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<sup>8</sup> Civil Code, art. 375.

nineteenth arrondissement. Once sheltered in the reception centres, the 430 young people, who had lodged appeals on grounds of minority, received police summonses to apply for asylum or a residence permit – procedures reserved for adults – even though they had already initiated the minority recognition procedure. Fearing that they would be mixed in with adults, several dozen young people failed to show up for their appointments and were subsequently served with notices of eviction from their reception centre by the French Office for Immigration and Integration and put out on the street. The Committee observed that at least 350 people claiming to be children but deemed to be adults following assessment and awaiting appeal decisions were living in Belleville Park in extremely precarious conditions, sheltered by tents or simple plastic sheets and dependent on private charity for survival. These people often face police evacuation operations to dismantle makeshift camps. Such operations tend to take place in the very early morning, when the occupants are still asleep, and are characterized by violence and confiscation of property (such as tents). During these evacuations, some young people are referred to accommodation that is not adapted to their needs and offers only a short-term solution.

35. The Committee also notes that budgets set aside for the care of unaccompanied migrant children have increased in recent years and that such children represent one fifth of children benefiting from child protection services. However, the Defender of Rights has noted with concern that many new long-term care facilities for unaccompanied migrant children have been constructed at low cost, with daily allowances that do not allow for the same quality of educational support as that available to other young people in care – sometimes less than €50 per day. Owing to a lack of funding and social workers, the latter have a huge workload, which can reach as high as 100 to 150 children under their responsibility, preventing them from providing quality individual support.

36. The Committee was informed that a number of unaccompanied migrant children had been subjected to trafficking, exploitation and violence, including sexual abuse, in their country of origin, during their journeys – as is the case, for example, of many of those who crossed through Libya, notably girls – or during their stay in France, and had trauma from their experiences. Children living on the streets or in squats are particularly vulnerable to various forms of abuse and exploitation by adults, acting alone or as part of criminal networks. Owing to the lack of proper supervision and care for these children, their cases are either not reported or, if they are, are not properly handled by the State. Moreover, there are not enough shelters for victims of trafficking, with only six in the whole country.

37. With regard to children transiting through France on their way to the United Kingdom, the Committee observed informal camps in Calais and Grande-Synthe where smugglers sell passage to the United Kingdom for around €2,000 to €3,000 and children live in unsanitary conditions, often being used as smugglers themselves. To prevent the development of a new “jungle”, which sometimes accommodate up to 10,000 people, including some 1,000 children, the police regularly dismantle the camps and confiscate all the migrants’ belongings, including their identity documents. The authorities claim that they try to identify any children living in these informal camps in order to provide them with shelter. However, several NGOs dispute this, indicating that many unaccompanied migrant children are not provided with shelter and that specialized accommodation facilities are largely underfunded. Many unaccompanied migrant children are concentrated near the coast, waiting for the right moment to leave France on boats. They live in tents, with limited access to food, water and sanitary facilities, which are provided by the Red Cross and other NGOs. These children are at high risk of trafficking, abuse, maltreatment and police violence. In 2021, Human Rights Observers recorded over 1,226 evictions from informal living sites in Calais.<sup>9</sup>

### C. Access to healthcare and education

38. Negative age assessments and prolonged periods in legal limbo take a heavy toll on children’s physical and mental health. After long and dangerous journeys, the overwhelming majority of migrant children arriving in France experience symptoms of post-traumatic stress

<sup>9</sup> See Human Rights Observers, “Observations of Evictions of Informal Living Sites: Calais and Grande-Synthe”, Annual Report 2021.

and deteriorating mental health but have no access to psychological support before being taken into care by child welfare services. Because they are not eligible for the French universal healthcare system without formal recognition as a child, their health needs are not always identified and met, and medical treatment, including for dental problems, and psychological support can be delayed. The Committee was informed that, in some cases, young girls had reported to professionals working with them that they had been subjected to sexual violence or had risked being trapped in situations of sexual exploitation but did not receive physical or psychological assistance.

39. The absence of legal representatives for persons appealing age assessments decisions is another obstacle, since the consent of a legal representative must be obtained before healthcare may be provided to a child. State medical aid, intended for foreign nationals in an irregular administrative situation who have been residing in the country for more than three months, is not easily accessible to unaccompanied migrant children, despite an interministerial circular<sup>10</sup> recommending that they benefit from such aid even if they do not fulfil the minimum residence duration or proof-of-resources criteria. Since persons appealing age assessment decisions cannot be considered to be in an irregular situation and, as minors, they do not fall under the residence permit system, State medical aid is difficult to apply in their case.

40. Access to schooling for unaccompanied migrant children is hampered by administrative, legal and budgetary obstacles. For those who have been refused access to the child protection system and are awaiting a judge's decision, the situation is even more critical, as most educational authorities refuse to assess their academic level, which is a prerequisite for their placement in a school.

#### **D. Application for asylum**

41. Only a small proportion of unaccompanied migrant children arriving in France apply for asylum (1,003 out of the 14,782 in the child welfare system),<sup>11</sup> despite the fact that it offers long-term benefits, including the right to remain and the possibility of family reunification. The main reasons are lack of knowledge about asylum procedures, lack of legal support to guide young people through the process and a lack of mental health services, which is also an obstacle to the asylum process itself, because the process may trigger trauma. Moreover, unaccompanied migrant children must have a legal representative to lodge a claim, but ad hoc administrators are often not present or are appointed late. Young people sometimes prefer simpler forms of regularization to facilitate their plans for vocational training or to attempt to reach the United Kingdom from France. The Committee noted that the French Office for the Protection of Refugees and Stateless Persons, which is responsible for the initial assessment of asylum applications, has introduced a specific policy for processing asylum applications submitted by unaccompanied migrant children. Under this policy, children are represented by an ad hoc administrator and interviewed by qualified staff. The interview rooms and procedures are child-friendly and information sheets are provided in several languages. In 2022, 82 per cent of asylum-seekers were granted refugee status (or 95 per cent, if the decisions of the National Court of Asylum are included).<sup>12</sup>

#### **E. Access to the territory of the State Party and detention at the border**

42. The Committee also visited the waiting area at Paris-Charles de Gaulle Airport, where six beds have been set aside for unaccompanied migrant children in a separate part of the building and Red Cross representatives are available. The facilities have been designed with children in mind. The limit on the duration of detention in this area is four days, renewable twice for eight days. According to border police statistics, 309 minors, including

<sup>10</sup> Circular No. DSS/2A/2011/351 of 8 September 2011 on specific points in the regulations governing State medical aid, in particular family situation and household composition (status of minors).

<sup>11</sup> See French Office for the Protection of Refugees and Stateless Persons, *Rapport d'activité 2022: à l'écoute du monde*.

<sup>12</sup> Ibid.



104 unaccompanied migrant children, were held in the waiting area in 2021; 321 children, including 82 unaccompanied migrant children, in 2022; and 288 children, including 62 unaccompanied migrant children, in 2023. French law provides that unaccompanied migrant children may be kept in the waiting area only in exceptional circumstances, but the Defender of Rights claims that the opposite is true in practice.<sup>13</sup>

43. The Committee was informed that unaccompanied minors intercepted at the Italian border had been sent back to Italy, as confirmed by several administrative court rulings, including a ruling of Nice Administrative Court.

## **F. Equal treatment**

44. The Committee notes that responsibility for the identification and protection of unaccompanied migrant children is largely decentralized, while justice, health and education remain national responsibilities. French legislation aims to distribute unaccompanied migrant children equitably between departments on the basis of precise criteria, while striving to harmonize the care provided across all departments, ensure equal treatment and avoid repeated relocations, through the publication of guides and the organization of non-mandatory training for the competent authorities. In addition, the Constitutional Council has established a common framework for age assessment, including psychosocial assessment, review of official identity documents and, as a last resort, a medical examination including an X-ray bone test.

45. However, the Committee has observed differences in the treatment of unaccompanied migrant children and French children in the child protection system. This is particularly true of financial support, which is lower for unaccompanied migrant children, including for their accommodation, activities and food, as well as the remuneration of the professionals who look after such children. The treatment of unaccompanied migrant children also varies from one department to another.

## **G. Legal representation and assistance, and access to justice**

46. The child welfare service entrusted with the care of an unaccompanied migrant child is required to request the public prosecutor to refer the child's case to the family court judge responsible for the guardianship of minors, for the purposes of the transfer of his or her guardianship to that service.<sup>14</sup> This may be necessary, for example, in order for the child to be able to open a bank account and for a number of other legal formalities, such as applying for a passport or residence permit.

47. Act No. 2002-305 of 4 March 2002 on parental authority provides for an ad hoc administrator to be appointed by the principal public prosecutor to represent unaccompanied migrant children in two situations: when they are placed in a waiting area or when they apply for asylum. However, under the current system, an unaccompanied migrant child may also be placed under so-called "social" guardianship. In such cases, the guardianship judge appoints a guardian whose role is to ensure the child's well-being and manage his or her property for the duration of the protective measure.

48. Too few ad hoc administrators are appointed. The majority are volunteers chosen from a list drawn up by the court of appeal. For example, there are only two ad hoc administrators in Créteil and only four in Loire-Atlantique. Not all of them are specialized in working with unaccompanied migrant children, while each is responsible for around 150 children.

49. A lawyer or legal representative is not systematically appointed to every unaccompanied migrant child, even though they all need legal support. The legal assistance arranged for them by the French Office for the Protection of Refugees and Stateless Persons is not paid and few lawyers are willing to provide pro bono services. The quality of legal aid

<sup>13</sup> Defender of Rights, *Les mineurs non accompagnés au regard du droit*, 2022, p. 14.

<sup>14</sup> Civil Code, art. 411.

is another area of concern. On the whole, legal representation is inadequate; only around 30 per cent of unaccompanied migrant children seeking asylum receive it.

## **VII. Legal findings**

### **A. Violation of Convention rights**

#### **1. Best interests of the child**

50. Under article 3 (1) of the Convention, the best interests of the child must be a primary consideration in all actions concerning children.

51. States Parties must ensure that the best interests of the child are taken fully into consideration in immigration law, in the planning, implementation and assessment of migration policies and in decision-making on individual cases, including in granting or refusing entry or residence, decisions regarding the enforcement of immigration law and restrictions on access to social rights for children and/or their parents or legal guardians and decisions regarding family unity and child custody, where the best interests of the child must be a primary consideration and thus have high priority.

52. Assessment interviews must be conducted by a multidisciplinary team.

53. The appointment of a competent guardian as soon as possible is an essential procedural guarantee to ensure that the best interests of an unaccompanied or separated child are respected. In cases where separated or unaccompanied children are referred to asylum procedures or other administrative or judicial proceedings, they should also be provided with a legal representative in addition to a guardian.

54. The Committee also emphasizes that unaccompanied migrant children should be provided with all relevant information, inter alia, on their rights, the services available, means of communication, complaints mechanisms, immigration and asylum processes and their outcomes. Information should be provided in the child's own language in a timely, child-sensitive and age-appropriate manner, in order to ensure that the child's voice is heard and is given due weight in the proceedings. Failure to do so amounts to a violation of articles 3 and 12 of the Convention, as the age determination process is the starting point for the application of the Convention. Regarding the significant relationship between the right to be heard and the best interests of the child, the Committee has made clear that there can be no correct application of article 3 if the components of article 12 are not respected.

55. The Committee refers to its findings in paragraphs 22 and 25 above concerning the lack of a multidisciplinary approach and the use of X-ray bone examinations and to paragraphs 46–49 concerning the limited number of ad hoc administrators appointed to protect children's interests, their poor working conditions and the inadequacy of legal assistance.

56. The Committee notes that the State Party is not in compliance with its obligations under article 3 read in conjunction with article 12 of the Convention, in particular for the following reasons:

- (a) Failure to prioritize the best interests of the child in laws and policies;
- (b) Lack of a multidisciplinary approach;
- (c) Use of X-ray bone examinations as the preferred method of assessment;
- (d) Insufficient funding for services, which affects the number and quality of guardians representing the interests of unaccompanied migrant children;
- (e) Children's limited access to legal aid and their lack of access to information about their rights;
- (f) Absence of training in assessing children's best interests for professionals.

## 2. Inhuman and degrading treatment

57. Article 37 (a) of the Convention states that no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. The Committee notes that States Parties are obliged to ensure the protection of all migrant children deprived of their family environment. The Committee refers to its findings in paragraphs 33–37 above, according to which minors whose minority has not been recognized and who are awaiting a decision on appeal, as well as those transiting through French territory to attempt to reach the United Kingdom, are living in camps or on the streets in conditions totally unsuited to their situation as children, whether in terms of safety, housing, hygiene or access to food and care, and in a precarious situation that is unacceptable given their young age. In the camps and on the streets, these children are exposed to the risks of trafficking, violence, including sexual violence, drug addiction and involvement in criminal activities. The Committee refers to the judgment of the European Court of Human Rights in the case of *Khan v. France*, according to which the consideration given to these conditions was “manifestly inadequate” and revealed “a deficiency of such a nature as to expose them, to a severe degree, to inhuman or degrading treatment, thus causing a serious and manifestly unlawful breach of a fundamental freedom”.<sup>15</sup>

58. The Committee endorses the position of the European Court of Human Rights that ill-treatment must reach a minimum level of severity to qualify as inhuman or degrading treatment. The assessment of that severity is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim. Treatment is deemed to be “degrading” when it is such as to arouse in the victims feelings of fear, anguish and inferiority capable of humiliating and debasing them. The situation in the present case can be deemed as reaching the severity threshold within the meaning of article 37 (a) of the Convention and can therefore be considered as degrading treatment.

59. The Committee is therefore of the opinion that the State Party has failed to comply with its obligations under article 37 (a) of the Convention, in particular with regard to unaccompanied migrant children living in camps and on the streets, for the following reasons:

(a) The extremely precarious conditions, contrary to human dignity, in which the children live, with limited access to food, drinking water and sanitary facilities;

(b) The exposure of these children to violence, including sexual abuse, trafficking in persons, drugs and criminal activity.

## 3. Deprivation of liberty

60. Under article 37 (b) of the Convention, the State Party must ensure that no child is deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child must be in conformity with the law and must be used only as a measure of last resort and for the shortest appropriate period of time. The Committee recalls its general comment No. 23 (2017), issued jointly with general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, according to which minor offences concerning irregular entry or stay cannot under any circumstances have consequences similar to those derived from the commission of a serious offence. Therefore, the possibility of detaining children as a measure of last resort, which may apply in other contexts such as juvenile criminal justice, is not applicable in immigration proceedings as it would conflict with the principle of the best interests of the child and the right to development.

61. The Committee notes that the conditions in airport waiting areas, where children are confined to a specific area, are similar to those in a closed detention centre and is of the view that the deprivation of liberty of children for reasons related to migration status, regardless of the duration of such detention, is generally disproportionate and therefore arbitrary within the meaning of article 37 (b) of the Convention.

<sup>15</sup> European Court of Human Rights, *Khan v. France*, application No. 12267/16, judgment, 28 February 2019, para. 81 (citing a decision of the urgent applications judge of the Council of State).

62. The Committee recalls its position in the case of *A.M.K. and S.K. v. Belgium*, in which it found that, by failing to consider possible alternatives to the detention of the children concerned, the State Party did not give due regard, as a primary consideration, to their best interests, either at the time of their detention or when their detention was extended.<sup>16</sup>

63. In the light of the foregoing, the Committee concludes that the State Party is in violation of article 37 (b) of the Convention read alone and in conjunction with article 3 by detaining unaccompanied migrant children in the waiting area of Paris-Charles de Gaulle Airport without giving consideration to non-custodial measures.

#### 4. Child protection

64. The Committee notes that article 6 (2) of the Convention defines States Parties' obligation to ensure to the maximum extent possible the survival and development of the child. This right should be guaranteed to unaccompanied migrant children in accordance with article 20 (1) and (2), under which special protection and assistance and alternative care must be provided for children deprived of their family environment. At the same time, the obstacles children may face in accessing education, adequate housing, sufficient food and water or health services can have a negative impact on the physical, mental, spiritual, moral and social development of unaccompanied migrant children. The Committee recalls that States should pay particular attention to the protection of undocumented children. States should also consider the specific vulnerable circumstances that migrant children could face on the basis of their gender and other factors, such as poverty, ethnicity, disability, religion, sexual orientation, gender identity or others, which may aggravate the child's vulnerability to sexual abuse, exploitation and other forms of violence, among other human rights abuses, throughout the entire migratory process.

65. The Committee refers to its findings of fact in paragraphs 34–37 above concerning the precarious living conditions of unaccompanied migrant children who have been denied minority status, those who sometimes wait several months to reach the United Kingdom on boats and those who are taken into State care and placed in hotels, with no supervision by the protection system, representing a significant risk to their well-being.

66. In addition, the Committee refers to paragraphs 36–38 above concerning the risks of violence, sexual abuse and trafficking in persons to which unaccompanied migrant children are exposed and the lack of appropriate training for professionals working with and for unaccompanied migrant children.

67. The Committee is of the view that the State Party has failed to comply with its obligations under articles 3, 6, 19, 20, 22, 27 and 34 of the Convention for the following reasons:

- (a) Denial of access to child protection services pending a court decision on appeal, which leaves children on the streets, without shelter and basic sanitary facilities;
- (b) Lack of protection services for children trying to reach the United Kingdom on boats and living in tents in precarious conditions;
- (c) Exposure of children, including those living on the streets and in tents, and also those living without proper supervision in hotels, to violence, abuse and trafficking;
- (d) Failure to address cases of violence against children, including sexual abuse and trafficking in persons.

#### 5. Right to identity

68. Article 8 of the Convention obliges States Parties to respect the right of the child to preserve his or her identity.

69. A child's date of birth is part of his or her identity. The determination of the age of a young person who claims to be a minor is of fundamental importance, as the outcome determines whether that person will be entitled to or excluded from protection by the State

<sup>16</sup> *A.M.K. and S.K. v. Belgium* (CRC/C/89/D/73/2019), para. 10.13.

as a child. Similarly, and this point is of vital importance to the Committee, the enjoyment of the rights set out in the Convention flows from this determination. It is therefore imperative that there be due process to determine a person's age, as well as the opportunity to challenge the outcome through an effective and rapid appeals process. While that process is under way, the person concerned should enjoy the benefit of the doubt and be treated as a child.

70. All documents that are available should be considered genuine unless there is proof to the contrary. The burden of proof does not lie solely with the person concerned, especially since this person and the State Party do not always have equal access to the evidence and, frequently, the State Party alone has access to the relevant information. The Committee recalls that States Parties may not act in a manner contrary to the facts established by an original and official identity document issued by a sovereign country unless they have formally challenged its validity.

71. In most cases, the authenticity of documents provided by persons claiming to be children is questioned and officials consider them a priori invalid, even when the child presents a consular card featuring a photograph. The burden of proof often lies with the child rather than with the Government. In many cases, when officials suspect that a document has been falsified, they make no effort to contact the consular authorities of the country of origin to verify its authenticity. The Committee notes the information provided by the State Party concerning the high rate of falsification and the lack of cooperation on the part of certain States.

72. The Committee is of the view that the State Party is not complying with its obligations under article 8 of the Convention when assessing age, because of its imposition of the burden of proof for identity and consular documents solely on the persons concerned and its inadequate efforts to verify the authenticity of such documents.

## **6. Right to health**

73. When implementing the right to enjoy the highest attainable standard of health and facilities for the treatment of illness and rehabilitation of health under article 24 of the Convention, States Parties are obligated to ensure that unaccompanied and separated children have the same access to healthcare as children who are nationals. In ensuring their access, States must assess and address the particular situation and vulnerabilities of such children. They must, in particular, take into account the fact that unaccompanied children have undergone separation from family members and have also, to varying degrees, experienced loss, trauma, disruption and violence. The profound trauma experienced by many affected children calls for special sensitivity and attention in their care and rehabilitation.

74. Article 39 of the Convention imposes an obligation on States Parties to provide rehabilitation services for children who have been victims of any form of abuse, neglect, exploitation, torture, cruel, inhuman or degrading treatment or armed conflict. To facilitate this rehabilitation and reintegration, culturally and gender-appropriate mental healthcare and qualified psychosocial counselling should be provided.

75. The Committee refers to its findings in paragraph 38 above concerning the lack of psychological services for unaccompanied migrant children. People living in camps and on the streets, who have been denied minority status and are in transit to the United Kingdom, have no access to the healthcare system, including rehabilitation and reintegration services, because they are not eligible for the State Party's universal healthcare system without formal recognition of their child status.

76. The Committee is of the opinion that the State Party has violated articles 24, 26 and 39 of the Convention, in particular for the following reasons:

- (a) Absence of a professional medical examination when assessing the person's age and unaccompanied status;
- (b) Lack of access to healthcare for unaccompanied migrant children living in camps and on the streets, including those who have been denied minor status and are awaiting a decision on appeal;

(c) Insufficient psychological and psychosocial counselling and other rehabilitation services for unaccompanied migrant children who have experienced trauma.

## **7. Right to education**

77. Article 28 of the Convention obliges States Parties to guarantee the right to education. The Committee recalls that States must ensure that access to education is maintained during all phases of migration. Every unaccompanied or separated child, irrespective of status, must have full access to education in the country that he or she has entered in line with articles 28, 29 (1) (c), 30 and 32 of the Convention and the general principles developed by the Committee. All adolescents should be allowed to enrol in vocational training or education, and early learning programmes should be offered to young children.

78. In France, access to schooling is not guaranteed for all unaccompanied migrant children. Young people living in camps or on the streets, who have been denied minority status and are awaiting a judge's decision, have no access to school or other educational facilities.

79. In this respect, the Committee considers that the State Party has violated article 28 of the Convention, owing to the lack of access to schooling for children living in camps or on the streets, outside the childcare system, including those awaiting an appeal decision on the assessment of their minority.

## **8. Non-discrimination**

80. Article 2 (1) of the Convention obliges States Parties to respect and guarantee the rights set forth in the Convention in respect of each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

81. The Committee notes that the principle of non-discrimination, in all its forms, applies to all relations with unaccompanied migrant children. In particular, it prohibits any discrimination based, among other things, on the status of an unaccompanied or separated child, or that of a refugee, asylum-seeker or migrant. Similarly, States Parties should ensure that migrant children are integrated into receiving societies through the effective realization of their human rights and access to services in an equal manner with nationals. The State Party should take the measures necessary to ensure in practice that all asylum-seekers and migrants have an equal right to a fully effective suspensive appeal, in particular by ensuring access to professional interpretation services and legal aid, including in administrative detention centres.

82. With regard to the treatment of unaccompanied migrant children in France, the Committee refers to paragraph 35 above concerning differences in the funding of accommodation and care for children admitted to the child welfare system.

83. The Committee is therefore of the view that the State Party has failed to meet its obligations under article 2 of the Convention, in particular by providing unaccompanied migrant children with lower standards of protection than those provided to children with French nationality or resident status, who are cared for by the State and have unrestricted access to all existing services.

## **B. Grave or systematic nature of the violations**

84. According to article 13 of the Optional Protocol, the Committee must assess whether the rights violations found are grave or systematic.

85. The Committee considers violations to be grave if they are likely to produce substantial harm to victims. The determination regarding the gravity of violations must take into account the scale, prevalence, nature and impact of the violations found.

86. The term "systematic" refers to the organized nature of the acts or omissions leading to violations and the improbability of their random occurrence.

87. The Committee assesses the gravity of the violations committed in the State Party in the light of their scale and the substantial harm they have caused. In particular, it notes that a large number of unaccompanied migrant children have suffered serious harm and lasting effects on their physical and mental health and development as a result of these violations. Many unaccompanied migrant children living in camps or on the streets are subjected to precarious living conditions and are exposed to threats and violence, causing them to experience fear and anxiety.

88. The Committee is of the view that the rights violations by the State Party are of a systematic nature, owing to the State Party's repeated failure to implement legal, policy and other measures to protect unaccompanied migrant children living on the streets, in tents and in makeshift camps. The State Party has systematically refused to provide child protection services to these children, thus depriving them of access to an adequate standard of living and basic services. These violations have occurred repeatedly over long periods and are not isolated.

89. The Committee is of the view that, in the light of the documents at its disposal and the information obtained during the inquiry, the violations by the State Party of the obligations set forth in the Convention are grave and systematic, for the following reasons:

(a) Many young people claiming to be children but found to be adults upon assessment and treated as such throughout the procedure are systematically denied access to child protection services while awaiting court appeal decisions, leaving them in makeshift camps and on the streets without access to basic services necessary for survival, such as food, drinking water, housing and basic sanitation, and are denied access to healthcare and education;

(b) Unaccompanied migrant children living in camps, on the streets or in hotels without adequate supervision from the child protection system are exposed to violence, including sexual violence, trafficking in persons, drugs and criminal activity;

(c) Many unaccompanied migrant children trying to reach the United Kingdom on boats are not supported by the child protection system and live in extremely precarious conditions in camps, without access to basic services, healthcare or education;

(d) Unaccompanied migrant children who are denied entry into the child protection system have no access to professional mental health services, despite the significant trauma they may have suffered in their country of origin or during their journey to France;

(e) Unaccompanied migrant children are regularly deprived of their liberty in international airport waiting areas and border holding centres for reasons related to their migration status, which can have a lasting impact on their mental health and development;

(f) During age assessment procedures, the State Party has systematically failed to: (i) prioritize the best interests of the child in laws and policies; (ii) apply a multidisciplinary approach and adequately train professionals; (iii) provide specialized guardians for unaccompanied migrant children; and (iv) provide legal aid and information;

(g) The State Party regularly places the burden of proof for identity and consular documents solely on the person concerned and has used X-ray bone examinations as the preferred method of assessing minority despite the unreliability of this method and its wide margin of error.

90. The Committee notes that, although there is evidence of violations of article 2 of the Convention, it has not been able to conclude that these violations have reached the threshold of gravity or systematicity required under article 13 of the Optional Protocol.

### **C. Attribution of rights violations to the State**

91. The State is directly responsible for violations of children's rights enshrined in the Convention. The State's actions and inaction concerning unaccompanied migrant children are attributable to France, both in terms of central and local State agencies and in terms of

private entities exercising powers delegated by the State. The Committee notes that States Parties are not relieved of their obligations under the Convention and the optional protocols when their functions are delegated or outsourced to a private business or NGO.

## **VIII. Recommendations**

92. The Committee recommends that the State Party take measures to comply with its obligations regarding unaccompanied migrant children, in particular:

(a) Ensure that the rights of unaccompanied migrant children are respected throughout its territory, in particular by fully applying Act No. 2022-140 of 7 February 2022 on child protection;

(b) Give people the benefit of the doubt as to their age, in accordance with the principle of presumption of minority;

(c) Ensure that the documents presented by the person concerned are taken into consideration and, if they are issued or authenticated by the competent public authority or embassy, accept them as authentic;

(d) End the use of X-ray bone examinations as the sole method for determining children's age and apply multidisciplinary methods that have proven more appropriate;

(e) Systematically appoint a legal representative (guardian or ad hoc administrator) and a lawyer for the persons concerned to ensure that their rights are respected in all procedures, including the age determination procedure, from the outset;

(f) Offer, in cases where the age of the person is contested, an effective, accessible and rapid remedy leading to a decision within a short period of time, ensuring that the person concerned is fully informed of the existence of these remedies and the corresponding procedures;

(g) Provide interpretation in a language that the person concerned understands;

(h) Put an end to the detention of unaccompanied migrant children in airport waiting areas and holding centres and ensure that non-custodial measures are applied in accordance with the best interests of the child;

(i) Ensure the collection and publication of disaggregated data, respecting the privacy of unaccompanied migrant children;

(j) Allocate sufficient human, technical and financial resources throughout its territory and jurisdiction to guarantee equal treatment for all unaccompanied migrant children.

93. The Committee also recommends that the State Party:

(a) Ensure adequate housing, food and water for all unaccompanied migrant children, so that no child, including those who have been denied minority status and are awaiting a decision on appeal, has to live in an informal camp or on the streets;

(b) Increase outreach activities, in particular in the departments of Pas-de-Calais and Nord, to offer information and guidance to unaccompanied migrant children, provide them with shelter and adapt child welfare services to the specific needs of children in this region;

(c) Ensure equal access to education for all unaccompanied migrant children, including those who are challenging an age assessment decision;

(d) Ensure unhindered access to health services for all unaccompanied migrant children, regardless of their status;

(e) Provide unaccompanied migrant children with access to psychological and psychosocial counselling and other social reintegration services;



(f) Establish a system for preventing and responding to risks to which unaccompanied migrant children may be exposed, such as violence, sexual violence and trafficking in persons;

(g) Provide training to immigration agents, police officers, public prosecutors, judges and other relevant professionals on the rights of asylum-seeking and other migrant children and, in particular, on general comment No. 6 (2005), joint general comment No. 3 of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families/No. 22 of the Committee on the Rights of the Child (2017) and joint general comment No. 4/No. 23 (2017).

## **IX. Follow-up**

94. The Committee requests the State Party to inform it within six months of the measures it has taken and intends to take and recommends that it disseminate these conclusions and recommendations once they have been made public in accordance with rule 42 of its rules of procedure under the Optional Protocol.<sup>17</sup>

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<sup>17</sup> CRC/C/158/Rev.1.