



# Fact Finding Report

## *Breakdown: the dismantling of the Calais “Jungle” and of the promises to its unaccompanied children*

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# Bar Human Rights Committee

The Bar Human Rights Committee (“BHRC”) is the international human rights arm of the Bar of England and Wales. It is an independent body, distinct from the Bar Council of England and Wales, dedicated to promoting principles of justice and respect for fundamental human rights through the rule of law. Its membership comprises barristers practising at the Bar of England and Wales, legal academics and law students. The BHRC’s fifteen Executive Committee members and general members offer their services *pro bono*, alongside their independent legal practices, teaching commitments and/or legal studies. BHRC employs one full-time executive officer.

The BHRC aims:

- to uphold the rule of law and internationally recognised human rights norms and standards;
- to support and protect practising lawyers, judges and human rights defenders who are threatened or oppressed in their work;
- to further interest in and knowledge of human rights and the laws relating to human rights, both within and outside the legal profession;
- to advise, support and co-operate with other organisations and individuals working for the promotion and protection of human rights; and
- to advise the Bar Council of England and Wales in connection with international human rights issues.

As part of its mandate, BHRC undertakes fact finding missions in order to ascertain the relevant facts relating to human rights concerns, whether allegedly committed by State or non-State actors. The remit of BHRC extends to all countries of the world, apart from its own jurisdiction of England and Wales. This reflects BHRC’s need to maintain its role as an independent but legally qualified observer, critic and advisor.

# Executive Summary

Between 24th and 28th October 2016, the Calais refugee camp, known colloquially as ‘theJungle,’ was dismantled and evacuated by French and British authorities. BHRC sent two legal observers, Kirsty Brimelow QC and Jelja Sane, on the 26th and 27th October to observe the processing of the camp’s estimated 1900 unaccompanied minors.

BHRC met with representatives of Médecins Sans Frontières France (‘MSF’), Avocats Sans Frontières, the United Nations High Commission for Refugees (‘UNHCR’), media representatives, the Refugee Youth Service, Save the Children, all local French lawyers seeking access to the Jungle, and two France Terre d’Asile (‘FTDA’) officials who became “whistleblowers” and requested anonymity.

Whilst BHRC was denied access to the Jungle by police on 26<sup>th</sup> October, the delegation gained access to the campsite on 27<sup>th</sup> October and spoke with many residents, including unaccompanied minors from Sudan and Eritrea. The delegation comprised the only barristers in the Jungle during this time, with local French lawyers and others remaining excluded.

Of note is that MSF, UNHCR and two FTDA officials pulled out of the processing of minors and other vulnerable people in the camp in protest of the arbitrariness, inhumane treatment and chaos.

The evidence collected by BHRC suggests that in the rush to demolish the camp, the French and British authorities failed to take effective steps to safeguard the welfare and safety of unaccompanied children, leaving many at risk. The authorities failed to ensure that children had access to safe accommodation before the demolition began and to provide both them and the organisations on the ground with clear and reliable information about the clearance operation.

The delegation witnessed first hand the terrible conditions that prevailed during the dismantling of the Jungle and gathered information as the camp periodically exploded in flames and then sank back in black smoke.

Children were subjected to a chaotic and unlawful age verification and registration process, based in many cases on physical appearance alone. The methods employed by officials were arbitrary and discriminatory. The delegation heard reports that the authorities did not provide any proper information to children about the age assessment process and that the guidelines that should have been followed were severely curtailed or ignored altogether.

The little information that was provided by the authorities was confused and constantly changing, adding another layer of distress and mistrust to an already vulnerable and traumatised population. BHRC saw and spoke with many unaccompanied minors who had no clear idea of what would happen next. Age disputed children were not given written reasons for decisions or an opportunity to challenge negative age assessments, failings which were compounded by the restrictions placed by the Préfecture on lawyers’ ability to access the campsite and provide

legal advice and support. As a result, many children have ended up in adult reception centres, giving rise to obvious safeguarding concerns, while others refused to engage with the authorities and have since gone missing.

British authorities had announced that they would handle family reunification claims under the Dublin III Regulation as well as claims for admission to the UK under the Dubs scheme on-site, under a so-called ‘expedited’ process. Home Office staff were deployed to the Jungle to conduct interviews, raising expectations amongst many children that they would be able to travel to the UK. However this policy was quickly abandoned and children were instead told that they would be relocated to specialist reception centres across France from where their applications would be examined. Approximately 1,000 children were thus bussed out of the Calais camp and dispersed during the demolition and in November and December 2016 Home Office officials travelled to these centres to conduct interviews.

BHRC has learned that family reunion cases under Dublin III were poorly handled such that an estimated 400 unaccompanied minors claiming to have relatives in the UK are now stranded in France having had no proper decisions on their cases. Moreover, BHRC is troubled by the decision of the UK government to cap the number of unaccompanied minors to be resettled from all of Europe at 280 and considers that the sudden cessation of the scheme is contrary to the spirit of the Dubs amendment.

BHRC condemns the failure of the French and British governments to adequately protect the rights of unaccompanied minors prior to the demolition of the Jungle. BHRC further condemns the implementation by the Home Office of the ‘expedited’ process to bring children into the UK, which was rigged with procedural irregularities and manifestly unjust.

The dismantling of the Jungle camp provided a unique opportunity for the French and UK authorities to design and implement suitable procedures to identify and safeguard the welfare and best interests of the unaccompanied children living there in accordance with their obligations under international and domestic law. Given the comparatively small number of children in the camp, the considerable resources of the French state and of the UK, and the repeated warnings by local actors and international human rights bodies of the dangers of dismantling the camp without a clear plan in place for the children, more could and should have been done.

Based on its observations, BHRC makes the following recommendations:

- I. Prioritise and provide resources, financial and practical, for locating children who fled Calais or where displaced from “The Jungle.” Vulnerability to trafficking is a pressing concern;
- II. Provide support for the children relocated from Calais – including providing access to legal advice in order to challenge rejected Dublin III and Dubs claims.
- III. Implement basic safeguarding processes. This is essential in order to protect children from trafficking;
- IV. Fill the protection gap which has resulted in children living rough;

- V. The national and international legal principle that the best interests of the child should be a primary consideration must be properly implemented by the British and French authorities in all actions concerning unaccompanied asylum-seeking children dispersed from Calais.
- VI. Remove the arbitrary cut-off date for applications into the UK from children pursuant to the Dubs amendment;
- VII. Re-consult upon the Dubs amendment with a view to increasing the number of children eligible under the scheme.
- VIII. The British and French authorities must cooperate to implement an effective Dublin III system which is not dependent on private actors, including identifying children with family members in the UK, investigating family links, supporting children in their applications and ensuring that 'take charge' requests are promptly dealt with.

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## Introduction

1. This report documents the findings of a two-day legal observation mission undertaken in the Calais refugee camp, known colloquially as ‘the Jungle’, between 26<sup>th</sup> and 27<sup>th</sup> October 2016 (‘the mission’). The legal observers were Kirsty Brimelow QC and Jelia Sane and the mission was undertaken on behalf of the Bar Human Rights Committee (‘BHRC’).
2. The purpose of the mission was to observe the dismantlement and evacuation of the Jungle by the French and British authorities between the 24<sup>th</sup> October and 28<sup>th</sup> October 2016, with a focus on the processing of the estimated 1, 900<sup>1</sup> unaccompanied minors living in the camp.
3. The report draws on the mission’s own observations, evidence it received from camp residents and from non-governmental, government and inter<sup>n</sup>ational organisations on the ground, and on information publicly available in reports, statements and news articles. The report was authored by Kirsty Brimelow QC and Jelia Sane and its conclusions approved by the BHRC Executive Committee.

## Research Conducted

4. BHRC met with representatives of Médecins Sans Frontières France, Avocats Sans Frontières, the United Nations High Commission for Refugees (‘UNHCR’), the Refugee Youth Service, Save the Children, local French lawyers as well as two France Terre d’Asile (‘FTDA’) “whistleblower” officials who requested anonymity. On 27<sup>th</sup> October 2016, BHRC gained access to the campsite and spoke with a number of residents, including unaccompanied minors from Sudan and Eritrea.
5. The delegation was unable to meet with representatives of the Préfecture, French police, or the Home Office. The Préfecture did not reply to attempts to contact until 29<sup>th</sup> December 2016 and access to the camp was barred on 26<sup>th</sup> October (in general, lawyers were not allowed entry<sup>2</sup>). BHRC continues to welcome comments from the French and British

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<sup>1</sup> According to French government figures, a total of 1,952 minors were evacuated out of Calais and dispersed to specialist child reception centres. *See* ‘Debate: Reception of Calais Refugees,’ FRENCH NATIONAL ASSEMBLY (7 Feb 2017) available at: <http://www.assemblee-nationale.fr/14/cr/2016-2017/20170112.asp#P970281>

<sup>2</sup> Human Rights Watch spent the previous week demanding a meeting in Paris in order to challenge the local refusal to enter.

authorities on the content and conclusions of this report, and will review its findings in light of any comments received.

## **Acknowledgements**

6. BHRC thanks Lord Jack McConnell for his assistance in attempting to facilitate the entry of Kirsty Brimelow QC and Jelia Sane into the camp through writing a letter to the Préfecture. BHRC thanks Lord Dubs, Vanessa Redgrave and Carlo Nero for their support of BHRC in this work and thanks Pippa Woodrow, barrister at Doughty Street Chambers for her contribution to legal framework and wider contextual sections of this report.

## **Funding**

7. The Mission was funded from BHRC central funds.

## Overview

8. The treatment and conditions faced by the Jungle's unaccompanied minors is in many ways symptomatic of the EU-wide failure to protect lone child refugees. This report is intended to initiate and contribute to further discussion regarding what action can be taken to address the crisis facing unaccompanied children in Europe, by examining the circumstances in which the Jungle was dismantled and considering ongoing lessons to be learnt.
9. BHRC does not take issue with the decision of the French government to relocate the camp's estimated 7,000 residents<sup>3</sup> to reception centres across France. The Jungle was no place for any human being, let alone for people whose lives had been devastated by conflict and/or persecution and who had undertaken perilous journeys across Europe in desperate search for safety. During the course of its mission, BHRC learned that the processing and transfer of the adults and families living in the camp in general had gone relatively smoothly.
10. It is deeply regrettable however, that the same cannot be said for the unaccompanied children, the camp's most vulnerable population. As is documented in this report, the evidence collected by BHRC suggests that in the rush to demolish the camp, the French and British authorities failed to take effective steps to safeguard the welfare and safety of these already traumatised children, leaving many at risk.
11. The authorities failed to ensure that children had access to safe accommodation before the demolition began and to provide both them and the organisations supporting them with clear and reliable information about the clearance operation.
12. Children were subjected to a chaotic and unlawful age verification and registration process, based in some cases on physical appearance alone. Such was the chaos that the important non-governmental actor Médecins Sans Frontières took the decision that it had to withdraw from the process in protest.

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<sup>3</sup> Nordstrom, Louise "France reports 53% rise in population at Calais 'Jungle' migrant camp" FRANCE 24 (20 Aug 2016) available at <http://www.france24.com/en/20160819-france-calais-spectacular-increase-migrants-refugees-jungle-camp>.

13. At no stage were residents given an opportunity to challenge negative age assessments, a failure which was compounded by the restrictions placed by the Préfecture on lawyers' ability to access the campsite and provide legal advice and support. As a result, many children ended up in adult reception centres, giving rise to obvious safeguarding concerns, while others refused to engage with the authorities and have since gone missing.
14. In the weeks leading up to the start of the clearance operation, which formally began on 24 October 2016, the British government operated an "expedited" process in Calais under which unaccompanied minors eligible for transfer to the UK under the family reunification provisions of the Dublin III Regulation ('Dublin III') were directly interviewed by Home Office staff deployed on site. Under this process, the formal requirements laid out in Dublin III of first claiming asylum in the host country and that country then making a 'take charge' request<sup>4</sup> were dispensed with. In addition, children were assessed under the terms of section 67(1) of the Immigration Act ("the Dubs Amendment")- which requires the Secretary of State to admit a specified number of unaccompanied asylum-seeking children from Europe into the UK. By 24 October 2016, the Government announced that 200 'Dubs' children had been transferred to the UK<sup>5</sup>.
15. Between 24<sup>th</sup>-28<sup>th</sup> October 2016, an estimated 5,466 adults and families were registered by French and British officials and dispersed to reception centres scattered across France<sup>6</sup>. Unaccompanied children, whose minority had been accepted by the authorities, were originally told that they would remain on site during the clearance operations, in a secure area of the camp, where the Home Office would interview them. It was subsequently decided that they too would be transferred out of the Jungle and taken to specialist reception centres (*Centres d'Accueil et d'Orientation pour Mineurs Isolés* or 'CAOMIEs').
16. According to official figures, by 2<sup>nd</sup> November approximately 1850 lone children had been dispersed to CAOMIEs. Home Office staff conducted interviews in these CAOMIEs during

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<sup>4</sup> Articles 20 and 21 Dublin III Regulation

<sup>5</sup> "Home Secretary's statement on the transfer of unaccompanied minors from Calais camp," ORAL STATEMENT TO PARLIAMENT (24 Oct 2016) <https://www.gov.uk/government/speeches/statement-on-calais>; "France/UK: Lone Children From Calais Left in Limbo," Human Rights Watch (21 Dec 2016) available at <https://www.hrw.org/print/298031>.

<sup>6</sup> 'Debate: Reception of Calais Refugees,' FRENCH NATIONAL ASSEMBLY, *supra* note 1.

the course of November and December 2016, leading to the transfer of approximately 550 children to the UK under the Dublin III Regulation. The total number of children admitted in the context of the camp clearance is estimated at 750, which includes the 200 under the Dubs scheme referred to above<sup>7</sup>.

17. On 8<sup>th</sup> February 2017, the British government announced its decision to cap the number of children to be resettled to the UK from Europe to 350<sup>8</sup>. Although this figure was subsequently extended to 480 in April 2017,<sup>9</sup> it includes the 200 children already transferred from Calais before the eviction, meaning that the final number is 180 resettled children in total from *all* of Europe. The Home Secretary has justified the cessation of the Dubs scheme on the basis that it ‘*had become a magnet for people traffickers*’ and served to ‘*incentivise*’ irregular migration.<sup>10</sup> The Government has also claimed to be responding to limited capacity voiced by local authorities. This has been widely disputed, with a number of local authorities suggesting that they have surplus capacity and have not been asked to take any children<sup>11</sup>. The true position has yet to be determined at the time of writing this report.

18. BHRC considers that the dismantling of the Jungle camp provided a unique opportunity for the French and UK authorities to design and implement suitable procedures to identify and safeguard the welfare and best interests of the unaccompanied children living there in accordance with their obligations under international and domestic law. Given the comparatively small number of children in the camp, the considerable resources of the French state and of the UK, and the repeated warnings by local actors and international

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<sup>7</sup> R (AM) vs Secretary of State for the Home Department [2017] UKUT 262

<sup>8</sup> Goodwill, Robert “Immigration: Written Statement – HCWS467” (8 Feb 2017), *available at*: <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2017-02-08/HCWS467>

<sup>9</sup> Goodwill, Robert “Immigration: Written Statement-HCWS619 (26 April 2017) *available at*: <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2017-04-26/HCWS619/>

<sup>10</sup> See “Unaccompanied Child Refugees-in the House of Commons at 10:37 am on 9<sup>th</sup> February 2017,” THEYWORKFORYOU (last viewed 11 Aug 2017) <https://www.theyworkforyou.com/debates/?id=2017-02-09a.636.3>

<sup>11</sup> See Bulman, May “Refugee campaigners launch legal challenge over Home Office ‘failure’ to implement Dubs scheme,” INDEPENDENT (20 June 2017) <http://www.independent.co.uk/news/uk/home-news/child-refugees-dubs-amendment-immigration-act-home-office-legal-challenge-campaigners-a7798776.html>; *see also* Travis, Alan “UK has not taken in any child refugees under Dubs scheme this year,” THE GUARDIAN (19 July 2017) *available at* <https://www.theguardian.com/uk-news/2017/jul/19/uk-not-taken-any-child-refugees-dubs-scheme-this-year>

human rights bodies of the dangers of dismantling the camp without a clear plan in place for the children, more could and should have been done.

## Setting the Scene: Child Refugees in the EU

19. Since 2014, the number of refugees and migrants arriving in Europe, fleeing poverty, violence and persecution, has reached record levels not seen since the Second World War. According to the UNHCR, over 65 million people were forcibly displaced from their homes by conflict and persecution by the end of 2015, including 21 million refugees outside their countries of origin<sup>12</sup>. The number of first time applicants for asylum in EU member states in 2015 more than doubled from 563 thousand in 2014 to almost 1.26 million in 2015.<sup>13</sup> Having failed to anticipate the scale of migrant flows following the Syrian war and instability in North Africa, the EU and its member states did not have the structures in place to cope. The scale of the resulting crisis has been described as “*the greatest humanitarian challenge to have faced the European Union since it’s foundation*”.<sup>14</sup>
20. Children, many of them unaccompanied, are at the very forefront of this crisis. 29% of those making first-time asylum applications in EU member states in 2015 were minors. 88,245 of those applications were from unaccompanied children, including 3,045 in the UK. In May 2016 alone, 3,133 unaccompanied migrant children arrived in Italy. Many children do not even reach the EU’s shores: at least 137 migrant children drowned making the perilous journey across the eastern Mediterranean during the first half of 2016.<sup>15</sup>

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<sup>12</sup> “With 1 human in every 113 affected, forced displacement hits record high,” UNHCR (20 June 2016) available at <http://www.unhcr.org/afr/news/press/2016/6/5763ace54/1-human-113-affected-forced-displacement-hits-record-high.html>.

<sup>13</sup> “Asylum in EU Member States: Record number of over 1.2 million first time asylum seekers registered in 2015,” EUROSTAT (4 March 2016) <http://ec.europa.eu/eurostat/documents/2995521/7203832/3-04032016-AP-EN.pdf>

<sup>14</sup> “Children in crisis: unaccompanied migrant children in the EU,” HOUSE OF LORDS, EUROPEAN UNION COMMITTEE, 2<sup>nd</sup> Report of Session 2016-17 (26 July 2016) available at <https://publications.parliament.uk/pa/ld201617/ldselect/ldecom/34/34.pdf>.

<sup>15</sup> *Id.*

21. The legal framework governing the treatment of unaccompanied children when they reach the EU is underpinned by the principle, embodied in both international<sup>16</sup> and domestic law,<sup>17</sup> that the child's best interests must be taken into account as a primary consideration in any decision that concerns them.
22. The United Nations Convention on the Rights of the Child of 20 November 1989 (UNCRC), ratified by all EU member states, further sets out universal civil, political, economic, social and cultural rights which must be made available to all children, including asylum seeking, refugee and migrant children. Governments are obliged to take measures to guarantee the exercise of these rights without discrimination.<sup>18</sup>
23. Within the context of EU law and policy, the principle of the best interests of children is intended to underpin all EU activity<sup>19</sup>. A range of legislative and policy instruments have been adopted that seek to harmonise standards and procedures across the EU in relation to the reception, identification and treatment of refugees<sup>20</sup>. All of these instruments contain

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<sup>16</sup> The Convention on the Rights of the Child of 20 November 1989 provides that in all actions concerning children (whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies) "*the best interests of the child shall be a primary consideration*," Article 3(1).

General Comment No. 14 (2013) by the Committee on the Rights of the Child, provides a framework for assessing and determining the child's best interests. Best interests' considerations should underpin all actions and decisions relating to the child and should be adapted to the individual circumstances and characteristics of the child.

UNHCR guidance further states that any decisions relating to return, resettlement or local integration must be informed by a best interests determination to ascertain (i) the most appropriate durable solution; and (ii) the right time for it to be implemented: "*If it is not possible to determine which durable solution is in the best interests of the child, and the child has been integrated into his or her community, the temporary care arrangements should be maintained and the case reviewed as soon as possible, and within one year at the latest.*"

<sup>17</sup> In the UK, the Immigration Act 2009 imposes a statutory duty on the Secretary of State, and those acting on his or her behalf, to ensure that all decisions relating to the "immigration, asylum or nationality" of children are discharged having regard to their welfare.

<sup>18</sup> In this context, the UN Committee on the Rights of the Child drew attention to the imperative need to protect children living in inappropriate conditions in Calais in its final comments addressed to France on 23 February 2016. "Concluding observations on the fifth periodic report of France," Committee on the Rights of the Child, CRC/C/FRA/CO/5 (23 Feb 2016) available at

[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC/C/FRA/CO/5&Lang=En](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC/C/FRA/CO/5&Lang=En)

<sup>19</sup> Article 24 of the Charter of Fundamental Rights of the European Union.

<sup>20</sup> See for example: Council Directive 2003/9/EC of 27 January 2003, laying down minimum standards for the reception of asylum seekers (OJ L031, 6 February 2003, pp 18–25). The UK has not opted into the revised (recast) version of this instrument, Directive 2013/33.

Regulation (EU) No 604/2013 (commonly referred to as the Dublin III Regulation, recast) of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an

specific provisions on unaccompanied children consistent with international human rights standards, particularly in respect of their rights to appropriate legal advice and representation, protection, medical attention, education, accommodation and family reunification.

24. However, despite the clear and binding legal principles, the responsibility of states to identify and prioritise the best interests of children within their jurisdiction has been “*largely ignored in practice*”<sup>21</sup>. Across the EU unaccompanied migrant children are living in overcrowded and squalid conditions as member states struggle to deal with the complex problems posed by their increasing numbers. Children are often found in emergency accommodation such as hotels or schools with no reliable access to food, water, sanitation, official information or any form of legal advice. Others sleep in car parks, train stations, hospital waiting rooms or on the streets. At borders, in “hotspots” and in camps, children regularly witness violence or are subjected to violence themselves. An increase in numbers has meant that any child-specific facilities that do exist now are over-stretched.

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application for international protection lodged in one of the Member States by a third- country national or a stateless person (recast) (OJ L180/13, 29 June 2013)

Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (OJ L326/13, 13 December 2005). The UK has not opted into the revised (recast) version of this instrument, Directive 2013/32.

Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (OJ L251, 3 October 2003, pp 12–18). The UK has not opted into this Directive.

Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (OJ L304/12, 30 September 2004). The UK has not opted into the revised (recast) version of this instrument, Directive 2011/95.

Council Directive 2008/115/EC of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ L348/98, 24 December 2008)

Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof (OJ L212 7 August 2001 pp 12–23). The UK has not opted into this Directive.

Council Directive 2011/36/EU of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA (OJ L101/1, 15 April 2011). The Commission has recently published Report from the Commission to the European Parliament and The Council on the progress made in the fight against trafficking in human beings (2016) as required under Article 20 of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, COM (2016) 267 final, on the implementation of this Directive.

<sup>21</sup> “Children in crisis: unaccompanied migrant children in the EU,” House of Lords, *supra* note 14.

25. The opinion of the European Council on Refugees and Exiles is that:

*“The legal obligations relating to the treatment of unaccompanied children under EU and international law have clearly not been met by several Member States to the point that children regularly figure at the epicentre of ever-increasing sites of squalor, destitution and detention.”*<sup>22</sup>

26. Despite this appalling picture, there has been a persistent reluctance across member states to accept responsibility for unaccompanied child refugees. This abdication of responsibility manifests itself in numerous ways, whether by passively waiving children through to another state territory without support or protection, refusing entry altogether or by failing to identify and respond to the needs of the children in their jurisdiction.

27. Among the key concerns expressed by witnesses to the House of Lords European Union Committee in their 2016 report on unaccompanied migrant children in the EU<sup>23</sup> was the lack of any systematic, prompt and child-appropriate mechanisms for the identification and registration of unaccompanied migrant children. The Committee noted that

*“the lack of adequate identification and registration is a direct reflection of the reluctance of national authorities to take responsibility for unaccompanied migrant children. It has far-reaching consequences, including an inability to initiate promptly child protection procedures, a lack of data and the inability to trace missing children.”*<sup>24</sup>

28. Without reliable sources of information or legal assistance, children are left to navigate, alone, a series of complex and protracted legal processes. Their perception that legal mechanisms are not working effectively, justified distrust of state authorities as a result of their traumatic experiences, and the receipt of misinformation provided by traffickers and smugglers, leads to a refusal by many children to access the legal mechanisms designed to protect them and facilitate reunion with their family members. This in turn renders them particularly vulnerable to exploitation and abuse.

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<sup>22</sup> Written Evidence (UME0040) to the House of Lords EU Committee (3 May 2016) available at <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/eu-home-affairs-subcommittee/unaccompanied-minors-in-the-eu/written/33618.html>.

<sup>23</sup> “Children in crisis: unaccompanied migrant children in the EU,” House of Lords, *supra* note 14.

<sup>24</sup> *Ibid.*

29. Children who do engage with the authorities are often treated with suspicion and hostility. This ‘culture of disbelief’ extends to presumptive doubts about their age and motives for coming to the EU. Flawed age assessments frequently lead to the placement of minors in unsuitable conditions where they are vulnerable to abuse and exploitation from adults, and denial of access to the legal protections to which they are entitled as children.
30. Against this backdrop, it is not surprising that it is conservatively estimated that at least 10,000 migrant children have gone missing in the EU.<sup>25</sup> As early as 2013, Missing Children Europe reported that 50% of unaccompanied children went missing within 48 hours of being placed in certain reception centres after their arrival in the EU.<sup>26</sup> Alarmingly, that number continues to grow.
31. BHRC was able to observe many of these systemic EU-wide problems reflected in the treatment of unaccompanied minors in the Jungle camp, which has been noted as a “*particularly stark*” example of the inadequate living conditions and treatment faced by unaccompanied minors in Europe<sup>27</sup>.

## The Calais ‘Jungle’ Camp: Context

32. The ‘Jungle’ consists of some 18 hectares of uneven and sandy heathland on a former landfill site located some 6 kilometres to the east of Calais and less than two hours by train from London Saint Pancras. It is thought that the nickname ‘Jungle’ derives from the Pashto word *dzhangal*, which means forest and is how many camp residents referred to the site<sup>28</sup>.

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<sup>25</sup> Townsend, Mark “10,000 refugee children are missing, says Europol,” the Guardian (30 Jan 2016) available at <https://www.theguardian.com/world/2016/jan/30/fears-for-missing-child-refugees>.

<sup>26</sup> Missing Children Europe, ‘Up to 50% of unaccompanied migrant children go missing within 48 hours of being placed in certain reception centres in Europe’ (2016)

<sup>27</sup> “Children in crisis: unaccompanied migrant children in the EU”, House of Lords, *supra* note 14.

<sup>28</sup> *Exiles and Fundamental Rights: the situation on the territory of Calais*, FRENCH DEFENDER OF RIGHTS (October 2015) pp 9-11 available at [https://www.defenseurdesdroits.fr/sites/default/files/atoms/files/20151006-rapport\\_calais\\_en.pdf](https://www.defenseurdesdroits.fr/sites/default/files/atoms/files/20151006-rapport_calais_en.pdf).

33. According to French government figures, around 6,900 people were living in the Jungle at the start of August 2016.<sup>29</sup> A census conducted by the UK charity Help Refugees in September 2016 put the number at 10,800, out of which over one thousand were unaccompanied children. The Help Refugees census found that Afghans, Sudanese, Eritrean and Ethiopian nationals made up 90% of the camp's population.<sup>30</sup>

## History and Evolution

34. The existence of formal and informal settlements in and around the port city of Calais is not a new phenomenon. Over the last two decades, this corner of northern France has seen tens of thousands of migrants endure squalid conditions in the hope of making it to the UK in passing lorries.

35. In September 1999, the French government opened a temporary reception facility (the *Centre d'hébergement et d'accueil d'urgence humanitaire* or Emergency Humanitarian Accommodation and Reception Centre) in a warehouse in the town of Sangatte, just under a mile from the entrance to the Eurotunnel. This was in response to the growing number of individuals arriving in Calais from the Balkans. The facility was managed by the French Red Cross and designed to accommodate up to 800 individuals. It rapidly became overcrowded and by 2002 its population had grown to over 2000. As a result, in December 2002, French authorities decided to close the centre citing fears that it was becoming a 'pull factor' for undocumented migrants seeking to enter the UK.<sup>31</sup>

36. The closure of Sangatte did not have the desired effect of ending the influx of migrants in northern France. Instead, it led to the creation of a number of makeshift settlements or 'jungles' in the local area, as hundreds camped on unoccupied land in the outskirts of Calais and squatted abandoned buildings inside the city. While the terrible living conditions in these new 'jungles' were well-documented,<sup>32</sup> for many years the French authorities

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<sup>29</sup> Nordstrom, Louise "France reports 53% rise in population at Calais 'Jungle' migrant camp," *supra* note 3.

<sup>30</sup> "New Calais Census Released- 700 children in Calais, 78% on their own," HELP REFUGEES (20 June 2016) available at <http://www.helprefugees.org.uk/2016/06/20/new-calais-census-released-700-children-in-calais-78-on-their-own/>.

<sup>31</sup> "Sangatta refugee camp," THE GUARDIAN (23 May 2002) available at <https://www.theguardian.com/uk/2002/may/23/immigration.immigrationandpublicservices1>.

<sup>32</sup> See Topping, Alexandra "Calais refugee camp conditions diabolical, says report," THE GUARDIAN (2 Oct 2015) available at <https://www.theguardian.com/world/2015/oct/02/calais-refugee-camp-conditions-diabolical-report-jungle-bacteria-hygiene>; see also "Migrant crisis: Conditions worsen in Calais 'Jungle,'" BBC NEWS (8

rejected the idea of creating new accommodation centres. In the words of the then French Minister of the Interior, ‘*I do not want to create a reception centre which would be a new gathering point for migrants*’.<sup>33</sup> In what became a game of cat and mouse, French police regularly raided these living areas and expelled residents without any alternative accommodation being provided, leading migrants to move to new locations and create new ‘jungles’.<sup>34</sup>

## The apparition of the ‘Jungle’

37. This state of affairs changed radically in 2014, a year which saw the number of migrants in the region rise from approximately 400 to 1500, following increased violence and instability in the Middle East and Africa<sup>35</sup>.

38. In August 2014, faced with a growing migrant population, French authorities finally agreed to create a daytime reception facility approximately three miles outside of the city and in January 2015, the *Jules Ferry* centre opened its doors. Managed by a local association, *La Vie Active*, the centre provided up to 2,500 meals a day to camp residents, as well as access to 60 showers, 30 toilets, and facilities for laundry and mobile telephone recharge. In addition, the centre could accommodate up to 400 women and children, however unaccompanied minors were not permitted to stay there<sup>36</sup>.

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Sept 2016) available at <http://www.bbc.co.uk/news/av/world-europe-37304532/migrant-crisis-conditions-worsen-in-calais-jungle>; King, Harriet, “Refugee Crisis: Investigating the Brutal Conditions of the Calais Jungle Camp, IPF (10 June 2016) <http://the-ipf.com/2016/06/10/refugee-crisis-calais-jungle-camp/>; Stephen Cragg QC & Grainne Mellon, “Report: Camps at Calais and Grande-Synthe (France): Policing and Access to Justice,” BAR HUMAN RIGHTS COMMITTEE OF ENGLAND AND WALES (July 2016) available at <http://www.barhumanrights.org.uk/bhrc-publishes-report-on-police-violence-and-access-to-justice-in-calais-migrant-camps/>.

<sup>33</sup> Afflux de migrants à Calais : Cazeneuve opposé à l'ouverture d'un centre [“Flood of Migrants in Calais: Cazeneuve Opposed to the Opening of a Centre”], *Le Monde* (28 Aug 2014) available at [http://www.lemonde.fr/societe/article/2014/08/28/cazeneuve-oppose-a-l-ouverture-d-un-centre-pour-migrants-a-calais\\_4478674\\_3224.html](http://www.lemonde.fr/societe/article/2014/08/28/cazeneuve-oppose-a-l-ouverture-d-un-centre-pour-migrants-a-calais_4478674_3224.html).

<sup>34</sup> *Exiles and Fundamental Rights: the situation on the territory of Calais*, FRENCH DEFENDER OF RIGHTS, SUPRA note 28.

<sup>35</sup> Opinion on the situation of migrants in Calais and in the Pale of Calais, COMMISSION NATIONALE CONSULTATIVE DES DROITS DE L’HOMME (2 July 2015) paragraph 4, available at [http://www.cncdh.fr/sites/default/files/15.07.02\\_avis\\_migrants\\_calais\\_en\\_0.pdf](http://www.cncdh.fr/sites/default/files/15.07.02_avis_migrants_calais_en_0.pdf).

<sup>36</sup> Ambassador Tomáš Boček, “Report of the fact-finding mission on the situation of migrants and refugees in Calais and Grande-Synthe, France by Ambassador Tomas Bocek, Special Representative of the Secretary General on migration and refugees 12-13 and 21-23 September 2016” (Hereinafter “Special Rep on Migration and Refugees fact finding report”) SPECIAL REPRESENTATIVE OF THE SECRETARY GENERAL ON MIGRATION AND REFUGEES (12 Oct 2016) (12-13 and 21-23 September 2016) available at [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=09000016806ae620](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016806ae620).

39. Migrants were encouraged by local officials to leave the ‘jungles’ and squats in and around Calais and to settle on the former landfill site adjacent to the *Jules Ferry* centre<sup>37</sup>, which became the modern-day Jungle. Despite the involvement of local actors in its creation, the Jungle remained an unofficial and illegal, migrant camp whose existence was tolerated by the French state.

40. Reports abound of the desperate living conditions in the Jungle. Hard as it may be to imagine, within and on the borders of two of the planet’s wealthiest industrialised countries, lay a place of untold suffering and misery where thousands fleeing conflict and persecution were largely abandoned to their fate. In July 2015, the French National Consultative Commission on Human Rights reported that up to 3,000 people were living in this wasteland, in tarpaulins and precarious shacks, without electricity, lighting, sanitary facilities or drinking water. The Commission went on to state that:

*‘[It] was extremely shocked to note, during its visit to the site, that the terrain did not include any installation allowing a dignified life [...] The extremely precarious living conditions and the concentration of nearly 3,000 people on an undeveloped site- 8 communities each with their own history live on the heathland – are a factor of dehumanisation and liable to engender an explosive situation, as shown by the regular occurrence of violence between individuals and communities. The CNCDH expresses its deep concern regarding what could be likened to a shanty town, since no dignified shelter has been constructed to this day by the public authorities.’*<sup>38</sup>

41. In the absence of any intervention from the French state, volunteers and civil society were left to fill in the gap. In October 2015, Jungle residents and NGOs, including *Secours Catholique* and *Medecins du Monde*, brought a legal challenge before the Lille Administrative Tribunal regarding the material conditions in the camp. The Tribunal upheld their complaint, finding that:

*“..... As a result of manifestly inadequate access to water and toilets and the lack of refuse collection operations, the population at the camp are living in conditions which do not meet their basic needs in terms of hygiene and access to drinking water and which expose them to health risks; As a result, there is a serious and manifestly*

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<sup>37</sup> *Exiles and Fundamental Rights: the situation on the territory of Calais*, FRENCH DEFENDER OF RIGHTS, *supra* note 28, pg. 11.

<sup>38</sup> “Opinion on the situation of migrants in Calais and in the Pale of Calais,” COMMISSION NATIONALE CONSULTATIVE DES DROITS DE L’HOMME, *supra* note 35, para 7.

*unlawful breach of their right not to be subjected to inhuman and degrading treatment.*  
.....<sup>39</sup>

42. The court ordered the French authorities to take a number of remedial measures, including providing water access points and refuse collection, taking steps to clean the site, installing toilets, and, crucially, identifying and protecting the unaccompanied minors living in the camp.

43. Whilst this did lead to some improvements on the ground, the conditions remained far from satisfactory. In early January 2016 Keir Starmer MP, wrote:

*“I have just returned from the camps in Calais and Dunkirk where thousands of migrants have temporary homes. The conditions are so bad that describing them .... cannot capture the squalor. You have to smell conditions like these and feel the squelch of mud mixed with urine and much else through your boots to appreciate the horror.”*  
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44. Further, residents, including unaccompanied children, were exposed to other dangers in the camp including human trafficking, violence, including from the police, and sexual exploitation and abuse. Other dangers to human health were found to include toxic white asbestos giving rise a risk of carcinogenic disease.<sup>41</sup>

45. In October 2015, the French authorities opened ‘accommodation and orientation centres,’ far from Calais, in other parts of France (*Centres d’Accueil et d’Orientation* or CAOs) as a temporary measure to accommodate those adults and families who agreed to give up on their plans to migrate to the UK. According to official figures, an estimated 6,000 people were transferred to these centres between October 2015 and October 2016<sup>42</sup>. Migrants had the option of staying in these centres for up to one month<sup>43</sup> whilst they considered whether they wished to claim asylum in France. Those who subsequently made an asylum claim were eligible to be accommodated in designated reception for asylum seekers centres

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<sup>39</sup> Order No. 1508747, TRIBUNAL ADMINISTRATIF DE LILLE (2 Nov 2015) available at <http://www.asylumlawdatabase.eu/sites/www.asylumlawdatabase.eu/files/aldfiles/TA Lille 2 novembre 2015 no.1508747.pdf>

<sup>40</sup> Kier Starmer, “Personal reflections on the refugee camps at Calais and Dunkirk” (14 Jan 2016) available at [http://www.keirstarmer.com/personal\\_reflections\\_on\\_the\\_refugee\\_camps\\_at\\_calais\\_and\\_dunkirk](http://www.keirstarmer.com/personal_reflections_on_the_refugee_camps_at_calais_and_dunkirk)

<sup>41</sup> R (ZAT & Others) v Secretary of State for the Home Department [2016] UKUT 61 (UAC) 22 January 2016, [para 16].

<sup>42</sup> L’ÉTAT S’ENGAGE (“The State”), Ministère de Calais, <https://etat-a-calais.fr/le-ministre-de-linterieur-explique/> (last visited 9 Aug 2017).

<sup>43</sup> Prestianni, Sara, “What will remain of the Calais ‘Jungle,’” Open Migration (31 Oct 2016) available at <http://openmigration.org/en/analyses/what-will-remain-of-calais/>.

(Centre d'Accueil de Demandeurs d'Asile or CADA), consistent with France's obligations under the Reception Conditions Directive.<sup>44</sup>

46. In mid-January 2016, the French authorities finally agreed to provide basic accommodation *on site* and opened the *Centre d'Accueil Provisoire* (Temporary Reception Centre or 'CAP') in the northern section of the camp. However, this facility, which consisted of heated converted shipping containers, could only accommodate up to 1500 individuals with priority given to vulnerable groups<sup>45</sup>, although there were no specific conditions appropriate for children.
47. Although the CAP was not designed for or intended to house unaccompanied minors, an estimated 200 were placed there between May and October 2016<sup>46</sup>. A further 50 unaccompanied girls were accommodated in the *Jules Ferry* centre during this period<sup>47</sup>. Thousands of other migrants, including women and children, continued to live in abysmal conditions in the wasteland surrounding the CAP either in tents or precarious shacks erected by residents and volunteers.
48. In March 2016, the southern part of the camp was demolished by the authorities, causing an estimated 3500 individuals to relocate to the northern zones. This coincided with a rapid increase in the number of camp residents, from an estimated 3000 in April 2016 to 7000 in June and July<sup>48</sup>.

## The role of the UK

49. It is clear that it is the French state that is primarily responsible for the fate of migrants living on its soil. Nonetheless, BHRC notes that the British authorities have long played a

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<sup>44</sup> Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection. Access to the CADA is contingent upon the making of an asylum claim.

<sup>45</sup> Special Rep on Migration and Refugees fact finding report, *supra* note 36.

<sup>46</sup> *Id.*

<sup>47</sup> See *Report of the fact-finding mission on the dismantlement of the camps at Calais and Stalingrad (Paris) and care of migrants*, DEFENDER OF RIGHTS (Dec 2016) available at

<https://www.defenseurdesdroits.fr/sites/default/files/atoms/files/rapp-demantelement-v6.pdf> (in French), p.9.

<sup>48</sup> Special Rep on Migration and Refugees fact finding report, *supra* note 36.

special role in Calais, ever since Margaret Thatcher and Francois Mitterand signed the Treaty for the Channel Tunnel in 1986.<sup>49</sup> Indeed, British immigration officials exercise a number of powers under the Immigration Act 1971 in a ‘juxtaposed control zone’ at the port of Calais and at the Channel Tunnel. These include powers of arrest and detention.<sup>50</sup>

50. More recently, in August 2015, the French and British governments adopted a joint declaration (‘Managing migratory flows in Calais: joint ministerial declaration on UK/French cooperation’) which acknowledges *‘the special circumstances of Calais as closest port to the United Kingdom’*<sup>51</sup> and whose stated aim is to *‘secure continuing efficient and effective cooperation for both states’* in relation *‘both to security and humanitarian provision’* in Calais and *‘achieve long-term, sustainable solutions’* to the problem of irregular migration.<sup>52</sup>

51. The declaration provides for enhanced collaboration between French and UK law enforcement agencies as well as *‘strong, visible and effective security’* at the Channel Tunnel and Port of Calais.<sup>53</sup> With regards to the humanitarian situation, it is said that both governments *‘share concerns’* about the *‘difficult’* living conditions in the Jungle, which present *‘health and sanitation challenges’* as well as trafficking risks.<sup>54</sup> In response, it is said that the UK will continue to provide would-be migrants *‘with a more dissuasive and realistic sense of life for illegal migrants in the United Kingdom’*,<sup>55</sup> and that both governments will (amongst others) implement programmes to identify and provide adequate information and *‘protected accommodation’* to potential victims of trafficking and *‘especially’* vulnerable migrants, as well as support them in making an asylum claim in France.<sup>56</sup>

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<sup>49</sup> Treaty between the United Kingdom of Great Britain and Northern Ireland and the French Republic, Concerning the Construction and Operation by Private Concessionaires of a Channel Fixed Link with Exchanges of Notes, Canterbury, 12 February 1986 France No. 1 (1986)

<sup>50</sup> Channel Tunnel (International Arrangements) Order 1993 and the Nationality, Immigration and Asylum Act 2002 (Juxtaposed Controls) Order 2003).

<sup>51</sup> Para 17

<sup>52</sup> *Id* at Paras 6, 7 Joint Declaration

<sup>53</sup> *Id* at Paras 10- 16.

<sup>54</sup> *Id* at Para 17.

<sup>55</sup> *Id* at Para 20.

<sup>56</sup> *Id* at Para 21.

52. The UK has opted out of the EU Family Reunification Directive<sup>57</sup> and of intra-EU relocation schemes<sup>58</sup>. Nonetheless it has a duty to admit unaccompanied minors onto its territory for the purposes of family reunification under the Dublin III Regulation<sup>59</sup> and Article 8 European Convention on Human Rights<sup>60</sup>. This includes children in Calais. Moreover, pursuant to section 67(1) Immigration Act 2016 (familiar as the ‘Dubs amendment’) the Home Secretary is required to ‘*make arrangements to relocate to the United Kingdom and support a specified number of unaccompanied children from other countries in Europe*’<sup>61</sup> On 14<sup>th</sup> November 2016<sup>62</sup> the Home Office published guidelines introducing eligibility criteria for refugee children from Calais applying for relocation under the Dubs amendment. In order to be eligible, children must have been present in the Jungle on or before 24<sup>th</sup> October 2016 (i.e. the start date of the demolition); must have arrived in Europe before 20<sup>th</sup> March 2016<sup>63</sup>; and it must be in their ‘best interests’ for them to be transferred to the UK. The child must also meet *one* of the following criteria: be 12 years old or under; have been referred by the French authorities (or an organisation working on their behalf) as being at high risk of sexual exploitation; be 15 years or under and of Sudanese or Syrian nationality; or be under 18 and the accompanying sibling of a child meeting one of the above criteria.

## The lead up to the October 2016 evacuation

53. In early September 2016, Bernard Cazeneuve, the then Minister of the Interior and current Prime Minister of France, announced that the remaining part of the Jungle would be entirely

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<sup>57</sup> Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification.

<sup>58</sup> Travis, Alan “David Cameron’s limp action on refugees puts Britain outside the EU,” THE GUARDIAN (7 Sept 2015) available at <https://www.theguardian.com/world/2015/sep/07/david-camerons-limited-promise-refugees-britains-impotence-outside-eu>.

<sup>59</sup> Article 8 Dublin III Regulation.

<sup>60</sup> See for example *Tuquabo – Tekle v The Netherlands* [Application No 60665/00], *Mayeka and Mitunga v Belgium* [2008] 46 EHRR 23.

<sup>61</sup> Available at <http://www.legislation.gov.uk/ukpga/2016/19/section/67/enacted>. The section is named after Alfred Dubs, the Labour member of the House of Lords who proposed the amendment to the Immigration Act 2016 establishing the ‘Dubs scheme’ under which the UK would guarantee safe passage and support to unaccompanied children in Europe who may otherwise have no legal route into the country. The scheme was established during a brief surge in political and public concern over the fate of child refugees in Europe. Initially the number proposed was 3,000 children, although the final legislation did not mention a specific figure. Lord Dubs was himself a child refugee and one of 669 Czech children who fled the Nazis and came to the UK on the Kindertransporten.

<sup>62</sup> The guidance was published internally for Home Office staff on 8<sup>th</sup> November 2016

<sup>63</sup> 20<sup>th</sup> March 2016 is the date of entry into force of the EU-Turkey Statement [found here: <http://www.consilium.europa.eu/en/press/press-releases/2016/03/18-eu-turkey-statement/>].

cleared by the end of that year and that residents would be dispersed to CAOs across the country<sup>64</sup>.

54. As noted above, the decision to provide adequate reception arrangements for the thousands of migrants who were enduring abysmal conditions in the Jungle was plainly welcome. In the words of Human Rights Watch, this camp *‘had become a symbol of Europe’s shame, a visible reminder of the European Union’s failure to find a humane, fair and coordinated approach to migration’*<sup>65</sup>.

55. Actors on the ground told BHRC that in relation to adults and families, the clearance operation was peaceful and relatively successful. BHRC observed repeated gatherings of armed police but saw no violence towards camp residents. However, it is BHRC’s view that both the lead up to, and the conduct of, the operation as regards unaccompanied children was plagued by a number of significant failings, which left scores at risk.

56. BHRC’s observance of this clearing was often through thick, choking black smoke as sections of the camp were set alight by unknown people. Some within the camp reported that these fires were deliberately set alight by French authorities. However, there was no substantiation of these allegations other than the facts relayed that people knew and recognised each other in the camp and that the fire setters were from the outside, acting with sophistication. Whoever or whatever the source, the effect upon the meagre living conditions in the camp was devastating.

## **Failure to safeguard children’s welfare ahead of the dismantlement operation**

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<sup>64</sup>“Bernard Cazeneuve annonce la poursuite du démantèlement de la Jungle de Calais” (Bernard Cazeneuve announces the continuation of the dismantling of the Calais Jungle”) FRANCEINFO (02 Sept 2016) available at <http://france3-regions.francetvinfo.fr/hauts-de-france/bernard-cazeneuve-annonce-poursuite-du-demantelement-jungle-calais-1076465.html>.

<sup>65</sup>Bochenek, Michael Garcia “Looking ahead from Calais” HUMAN RIGHTS WATCH (22 Nov 2016) available at <https://www.hrw.org/news/2016/11/22/looking-ahead-calais>.

57. BHRC considers that French authorities failed to take sufficient measures to ensure the welfare and safety of the unaccompanied minors living in the camp before the start of dismantlement operation.
58. This failure is all the more striking in light of the fact that (1) approximately 100 lone children had gone missing during the demolition of the southern zone of the camp in March 2016<sup>66</sup> and further (2) there was a subsequent recommendation by the Defender of Rights to the French government that adequate arrangements to accommodate and protect unaccompanied minors be put in place *ahead* of any future operations<sup>67</sup>.
59. These concerns were echoed by several organisations in late October 2016, including the International Rescue Committee, Save the Children, Citizens UK and British lawmakers<sup>68</sup> who stated that they had ‘*very serious worries concerning the security and well-being of unaccompanied minors and vulnerable adults*’ and feared that ‘*the resources currently being deployed and the proposed responses [were] insufficient to ensure the effective protection of the most vulnerable, notably unaccompanied children*’.<sup>69</sup> They urged the authorities, ahead of the demolition, to identify all children eligible to come to the UK and find accommodation for all unaccompanied minors in the camp.
60. These warnings were again echoed in a report from the Council of Europe’s Commissioner for Human Rights published on 14 October 2016 expressing concern at the lack of any detailed plan for the accommodation and care of the unaccompanied minors in Calais. The report called on the Council of Europe to seek assurances from both the UK and French authorities that all pending dossiers for Dublin III or Dubs amendment transfers of unaccompanied minors would be processed before the camp’s evacuation.<sup>70</sup> BHRC considers it deeply regrettable that these warnings were not heeded.

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<sup>66</sup> Special Rep on Migration and Refugees fact finding report, *supra* note 36.

<sup>67</sup> See *Report of the fact-finding mission on the dismantlement of the camps at Calais and Stalingrad (Paris) and care of migrants*, DEFENDER OF RIGHTS, *supra* note 47; see also *Décision du Défenseur des droits MDE-2016-113* (“Decision of the Defender of Rights MDE 2016-113”), DEFENDER OF RIGHTS (20 April 2016) available at [https://juridique.defenseurdesdroits.fr/files/DDD/DEC/DDD\\_DEC\\_20160420\\_MDE-2016-113.pdf](https://juridique.defenseurdesdroits.fr/files/DDD/DEC/DDD_DEC_20160420_MDE-2016-113.pdf) pp.10-12 (in French).

<sup>68</sup> Including Tim Farron MP, Caroline Lucas MP and Nick Clegg MP.

<sup>69</sup> “UK charities flag child safety fears ahead of Calais ‘Jungle’ closure,” FRANCE24 (23 Oct 2016) available at <http://www.france24.com/en/20161023-british-charities-press-france-ahead-calais-jungle-camp-closure>.

<sup>70</sup> Special Rep on Migration and Refugees fact finding report, *supra* note 36.

61. BHRC learned that FTDA conducted a further census between 7<sup>th</sup> and 9<sup>th</sup> October 2016, through which it was able to compile a list of unaccompanied minors present in the camp and identify those who either had family in the UK or wished to settle there. Yet it seems that those children were subsequently left to fend for themselves in the wholly unsuitable conditions of the Jungle and that no action was taken by the French state to provide them with safe accommodation ahead of the demolition.
62. BHRC notes that since 2012<sup>71</sup> there has existed a dedicated system for the protection and care of unaccompanied minors in the Pas-de-Calais department. There are four emergency accommodation places available for up to five days for children under the age of 15 in the *George Brassens* reception centre and 30 for those aged 15 and over in the FTDA run *Maison du Jeune Refuge* in Saint Omer, some 30 miles away from Calais<sup>72</sup>. Children are able to stay for longer than five days if they agree to be taken into care, and for those who do decide to remain in France, 38 permanent places are available in the *Maison du Jeune Refuge*.<sup>73</sup> As has been noted elsewhere, this was a stark choice for many children in the camp who had relatives in the UK with whom they wished to be reunited and, rightly,<sup>74</sup> feared getting lost in the French care system. As a result, for a long time many children accessed these facilities for five days, before running away and returning to the Jungle and continuing dangerous attempts to enter the UK irregularly<sup>75</sup>.
63. However, it seems that the situation changed in August and September 2016 as children increasingly abandoned their plans to travel to the UK in favour of settling in France. BHRC learned from MSF that around 88 unaccompanied minors stated that they wished to access the care system, however 65 were turned away because of a lack of capacity.

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<sup>71</sup> *Exiles and Fundamental Rights: the situation on the territory of Calais*, FRENCH DEFENDER OF RIGHTS, SUPRA note 28, p. 53; see also Decision of the Defender of Rights MDE 2016-113, DEFENDER OF RIGHTS, *supra* note 67.

<sup>72</sup> “Opinion on the situation of migrants in Calais and in the Pale of Calais,” FRENCH NATIONAL CONSULTATIVE HUMAN RIGHTS COMMISSION, (2 July 2015) para 24.

<sup>73</sup> ‘*Maison du jeune refuge a Saint-Omer : pour mettre a l’abri, aider a rester*’, LA VOIX DU NORD, (31 Dec 2014) available at <http://www.lavoixdunord.fr/archive/recup%3A%252Fregion%252Fmaison-du-jeune-refugie-a-saint-omer-pour-mettre-a-ia37b0n2573588> (in French).

<sup>74</sup> In *R (ZAT & Others)*, *supra* note 41, the UK Upper Tribunal (IAC) observed that the operation of the care system in France and the administrative difficulties in making an asylum claim, a precondition for a ‘take charge’ request to be made under Dublin III, could serve to distance children from the possibility of family reunion in the UK [para 24]

<sup>75</sup> *Exiles and Fundamental Rights: the situation on the territory of Calais*, FRENCH DEFENDER OF RIGHTS, SUPRA note 28, p.54.

Similarly, according to an FTDA census, 95% of the young people accommodated in Saint Omer wished to stay in France compared to 15% in 2015.<sup>76</sup> In September 2016, the director of the centre at Saint Omer told the *Guardian* that the French state had failed to promptly and adequately react to the unfolding accommodation crisis:

*‘Since 2014 the numbers are just going up and up. The 45 spaces we have here no longer corresponds to the reality of the situation in Calais. This system was created in 2009 when there were only 1,500 people in the camp, and perhaps around 100 children,’ he said. ‘We have never had an ambitious, long-term plan. It is frustrating.’<sup>77</sup>*

64. BHRC recalls that it is the responsibility of the French state to protect and care for unaccompanied minors ‘at risk’ on its territory, regardless of their immigration status. Once such children are identified, they must be accommodated and safeguarded by child protection services, as a matter of French domestic law<sup>78</sup>.
65. Moreover, France is bound by Article 3(2) of the UNCRC to ensure such protection and care are in place as is necessary for the wellbeing of the child, taking account of the rights and duties of his or her parents, legal guardians or other individuals legally responsible for him or her. The government is required to take all appropriate legislative and administrative measures to that end. Those obligations are owed equally to asylum-seeking, refugee and migrant children irrespective of their nationality, immigration status or statelessness, in accordance with Article 2 of the UNCRC which prevents discrimination in implementation and exercise of convention rights and the General Comment no.6 of the Committee for the Rights of the Child, Treatment of Unaccompanied and Separated Children Outside their Country of Origin (1 September 2005).

### **The fast-tracking of Dublin III and Dubs Amendment claims**

66. The practical barriers to the effective application of the Dublin III Regulation to unaccompanied children in Calais with relatives in the UK have been the subject of

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<sup>76</sup> Gentleman, Amelia, “Calais refugee children abandoning plans to reach UK, THE GUARDIAN (22 Sept 2016) available at <https://www.theguardian.com/world/2016/sep/22/calais-refugee-children-abandoning-plans-to-reach-uk>.

<sup>77</sup> *Id.*

<sup>78</sup> Article 375 Civil Code.

litigation<sup>79</sup> and are not repeated here. It is enough for the purposes of the present report to note that the main obstacles in relation to children in Calais were considered to be *inter alia* the lack of access to accurate information about their legal rights to family reunification, a justified lack of trust that the system would work for them, the fact that children first had to be processed within the child protection system before being able to make an asylum claim and apply for family reunification under the Dublin III Regulation, and lengthy delays once they accessed the Dublin process.<sup>80</sup> Consequently, there were no ‘take charge’ requests made by France to the UK in respect of unaccompanied children between 2010 and 2015.

67. This state of affairs changed following the judgment of the Upper Tribunal in the case of *ZAT v SSHD* in January 2016 and between April and October 2016, 83 unaccompanied children were transferred to the UK pursuant to the Dublin III Regulation out of a potential 178 identified by Safe Passage UK<sup>81</sup>.

68. In September 2016, Home Office personnel travelled to the Jungle and began conducting interviews *in situ* with the stated aim of facilitating and expediting the process in relation to both Dublin and Dubs children, as explained above.

69. It was reported to BHRC that the fast-tracking process took place in a ‘chaotic’ manner. It seems that children were initially told to present themselves at the CAP with ‘tickets’ which had been distributed by FTDA. This system soon became impractical, with growing numbers of children gathered outside the CAP whilst they waited to be interviewed by the Home Office. As a result, FTDA changed the registration system, deciding to accept only referrals of minors who presented themselves with an NGO. This sudden change in procedure caused a lot of confusion amongst the children who, according to MSF, ‘were treated like ping pong balls, it was really appalling’. It also ran the risk of depriving those minors who had not engaged with any of the local NGOs of the possibility of accessing the fast-track system. However, it seems that the biggest issue was the tension and mistrust it created in the children; many of whom have been found to be suffering from serious mental

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<sup>79</sup> See *R (ZAT & Others)*, *supra* note 41; *Home Secretary v R (ZAT & Others)* [2016] EWCA Civ 810.

<sup>80</sup> *Id.*

<sup>81</sup> *Exiles and Fundamental Rights: the situation on the territory of Calais*, FRENCH DEFENDER OF RIGHTS, SUPRA note 28, p. 11.

health conditions following their stay in the camp and the delays in their transfer.<sup>82</sup> For those children who had been waiting for several months to be transferred to the UK, it was difficult to see other children be processed in a matter of days under the fast-track. As MSF explained ‘*we had kids coming up to us and saying ‘this is unfair’. We could feel that the minors were very, very tense*’.

## Access to information

70. One of the chief complaints the delegation received was the authorities’ failure to provide clear, accurate and timely information to camp residents and local actors on the conduct of the dismantlement operation, in particular in relation to unaccompanied minors. In the words of UNHCR, ‘*information provision here is a weak point*’.
71. It was not until Thursday 20<sup>th</sup> October that the authorities announced, during a meeting with local actors at the *sous-prefecture*, that the dismantlement operation would begin on the 24<sup>th</sup> October, i.e. the following Monday. The authorities explained that camp residents would have to present themselves at a warehouse near the camp where they would be screened and registered as follows: i) lone adult male or ii) family/vulnerable person or iii) unaccompanied minor. The first two categories would then be dispersed to CAOs across France. Unaccompanied minors who wished to travel to the UK would be accommodated on site, in the CAP, while their claims were examined by British officials. Children who wanted to remain in France would be relocated to dedicated child reception centres to be processed.
72. On Sunday 23<sup>rd</sup> October, the day before the operation was scheduled to begin, representatives from the *prefecture* and the OFII carried out an outreach mission in the camp. Leaflets in 9 languages, which contained information on the registration and

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<sup>82</sup> Evidence compiled by a psychiatrist for Citizens UK has suggested that the mental health of nearly all the children who have stayed in the camp has deteriorated amid continuing delays over their transfer. Dr Susannah Fairweather, a psychiatrist who led a team assessing the children, said there had been a “*significant deterioration in the children’s mental health, including a risk of suicide [...] Of the children who underwent psychiatric assessment, all of them presented with psychiatric symptoms, with approximately 90% meeting the criteria for a recognised psychiatric disorder, such as PTSD and depression.*” See Doward, James “Most Calais camp child refugees ‘traumatised and depressed,’ the Guardian (5 Nov 2016) available at <https://www.theguardian.com/world/2016/nov/05/child-refugees-calais-traumatised-and-depressed>.

dispersal process, were handed out. Residents were informed that buses would be laid on from Monday 24<sup>th</sup> October to take those who registered to CAOs across the country.

73. The Mission learned that critically, no social workers or educators trained in working with children took part in this outreach session, nor was any specific information provided by the authorities in relation to the arrangements in place for unaccompanied minors.

## **Registration and Evacuation: 24th-27th October**

74. The dismantlement and evacuation operation began in the early hours of Monday 24<sup>th</sup> October. Camp residents were told to queue up outside a warehouse situated near the camp to be screened and registered by French and British officials. The authorities followed a triage system as advertised, registering people either as lone adult males; family and/or vulnerable group; or unaccompanied minors. NGOs were informed that, after registration, adults and families would be transported by bus to reception centres across the country, and that unaccompanied minors would remain on site in the CAP while they waited to be interviewed by the Home Office. The purpose of these interviews was to determine whether they satisfied the Dublin III or Dubs criteria and were thus eligible to be resettled in the UK. Outside of the warehouse, French authorities initiated the process of physically demolishing the camp.
75. BHRC has a number of concerns about the manner in which the operation was conducted including the lack of access to lawyers or legal support, wholly improper and inadequate age assessment procedures, failure to provide consistent and reliable information, premature termination of registration processes and lack of safe accommodation for children during the dismantlement of the camp, and the failure to plan for the arrival of additional children seeking to access legal pathways to the UK,

### **Access to lawyers**

76. On 23<sup>rd</sup> October 2016, the *préfecture* of the Pas de Calais issued a decree (*arrêté préfectoral*) establishing, for the very first time, a ‘protection zone’ around the Jungle from 24<sup>th</sup> October to 6<sup>th</sup> November 2016. The effect of this decree, which was adopted under France’s state of emergency laws,<sup>83</sup> was to restrict access to the Jungle to those who held a valid permit, a move which was justified by the Prefecture on public order grounds. Under the terms of the *arrêté*, permits were available *inter alia* to public officials, volunteers, NGO workers, and journalists.
77. BHRC spoke to a number of French human rights lawyers, including Francois Cantier, the President of *Avocats Sans Frontières*, who complained that no permits were made available to lawyers and legal observers. They reported making numerous written requests to the Préfecture for authorisation to access the Jungle in order to observe the dismantlement operations. The requests were all rejected by the authorities, with no reasons being given. As a result, no lawyers were able to enter the camp during the course of the operation, all but preventing residents from obtaining accurate and impartial legal advice and support.
78. The delegation itself made numerous written requests to the Préfecture ahead of the operation for permission to access the camp, which went unanswered. A cursory letter – attempting to reassure that all had gone well in the demolition– was received on 19<sup>th</sup> December 2016. Meanwhile, BHRC was denied access to the site by the police on 26<sup>th</sup> October. However, the burning of the Jungle was observed as the black smoke billowed into the sky.
79. On 26<sup>th</sup> October 2016, a number of French NGOs, including the GISTI (Groupe d’Information et de Soutien des Immigrés or Migrant Information and Support Group), ADDE (Association pour la Défense des Droits des Etrangers or Association for the Defence of the Rights of Aliens) and SAF (Syndicat des Avocats de France or Union of French Lawyers) lodged an emergency application before the Lille Administrative Tribunal challenging the decision to restrict lawyers’ access to the Jungle on the grounds that it constituted an unjustified and disproportionate violation of the right to legal assistance. On 27<sup>th</sup> October 2016, the Préfecture issued a further decree cancelling the 23<sup>rd</sup> October decree, having taken the view that the clearance operation was finished. The

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<sup>83</sup> Article 5(2) Law 55-385 3 April 1955.

Administrative Tribunal, in a hearing held on 28<sup>th</sup> October 2016, found that the matter was now moot and declined to rule on the merits.

## Age assessment and registration

80. BHRC is alarmed at the inadequacy of the age assessment and registration process employed during the evacuation for the reasons set out below.
81. **First**, the delegation heard troubling reports from multiple sources that FTDA teams and French police were conducting assessments based on physical appearance alone in the minors' queue outside of the warehouse.
82. Two FTDA officials resigned in protest, appalled at what they witnessed. They subsequently acted as "whistleblowers" and agreed to speak to BHRC on the condition of anonymity. This first-hand information was revealing. They reported that even children who had identity documents were being expelled from the queue if their appearance did not fit.<sup>84</sup>
83. They told the delegation that the options for children who were subjected to these 'assessments' were either to enter the adult queue where they would be registered and then taken to an adult reception centre, or to decline registration at all and return to the Jungle. Some Sudanese minors the delegation spoke to reported that they believed they were being discriminated against by the authorities as they were being disproportionately selected and expelled from the children's queue, in comparison to other groups such as Afghans. According to Save the Children, this included one 16-year-old Sudanese boy who had travelled from a reception centre for unaccompanied minors in the south of France to Calais that week in the hope of being admitted to the UK. Despite having documentation showing that he had been staying in that centre, and thus had already been age assessed as a child, he was taken out of the minors' queue. The delegation met the boy and obtained his account.
84. The delegation learned that once inside the warehouse, the process adopted was as follows. In the first instance, minors were 'aged assessed' based solely on their physical appearance by Home Office officials and representatives from the French Ministry of the Interior.

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<sup>84</sup> Article 47 French Civil Code.

Those whose minority was accepted were taken to one side where they waited to be transferred to the CAP.

85. If there was doubt as to the person's age, they would be interviewed, this time by the Home Office and FTDA. According to the UNHCR these interviews were often very brief. Because there weren't enough interpreters available, some UNHCR interpreters initially assisted with the interviews but later pulled out of the process because they felt that *'the questions were unethical'* and that officials *'were mocking the children'*. The Home Office had the final say on whether or not a person was a child (and thus accommodated in the CAP).
86. The delegation also learned from the Legal Shelter that some of the children registered between 24<sup>th</sup> and 26<sup>th</sup> October had in fact been previously referred to the Home Office by the French authorities for the purposes of family reunification under the Dublin III Regulation. No process was put in place to screen and identify those children and some have now been dispersed to reception centres across the country.
87. Plainly, those most at risk of being improperly aged assessed were teenagers given the obvious difficulties in distinguishing, based on physical appearance alone, between a 16/17-year-old and a 19/20-year-old.
88. It is deeply concerning that the methods employed by officials were arbitrary and discriminatory with no guidelines or proper processes being followed. The delegation heard reports that guidelines which should have been followed were severely curtailed or ignored due to lack of time. This resulted in adults being assessed as children and *vice versa*. Moreover, the authorities did not provide any information to children about the age assessment process, nor did they give written reasons for their decisions.
89. These fundamentally flawed and troubled practices were publicly condemned by the UNCHR and resulted in MSF removing their vital assistance from the camp in protest.
90. **Second**, the little information that was provided by the authorities was confused and constantly changing, adding another layer of distress and mistrust to an already vulnerable and traumatised population. BHRC saw and spoke with many unaccompanied minors who

had no clear idea of what would happen next. Although it had originally been announced that unaccompanied children would be interviewed by the Home Office in the CAP, this did not happen. On 2 November, the authorities announced instead that *all* unaccompanied children would be dispersed out of Calais and placed in reception centres (CAOMIEs) across France where Home Office officials would visit and conduct interviews there.

91. This failure to provide consistent information was of huge concern to many local actors on the ground. Virginia Howells, Save the Children's Emergencies Coordinator told us:

*"I have no confidence that there is actually a best interests' assessment happening at all, I have no confidence that there was ever a plan to do it properly because we haven't seen one. I have even less confidence now that they are being dispersed to different centres across France, including Dublin and Dubs children. Those children are going to lose faith in the system because no one is explaining it to them in sensible language. We can't explain it to them because we don't have the information, and the information we do have, we don't know if we can trust it.*

*Now that they are dispersing these children, I have no confidence that the Home Office will follow through in giving these children proper assessments. We've heard unofficially that it's just this week."*

92. **Third**, the BHRC considers that the decision of the authorities to terminate the registration process after only three days was extremely premature and left many at risk.

93. By midday on Wednesday 26 October, Fabienne Buccio the prefect of the Pas-de-Calais declared: *'The camp is completely empty. There are no more migrants in the camp. Our mission has been fulfilled'*<sup>85</sup>. Yet when the delegation gained access to the Jungle on 27<sup>th</sup> October, it was able to observe hundreds of unregistered people in the camp, included unaccompanied children, with nowhere to go. The delegation spent time speaking to the children. Their situation was distressing. According to Virginia Howells:

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*'What we are seeing are children who have travelled from all over France to Calais as this is seen as their 'ticket to the UK', which is why doing it in this mad rush, in*

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<sup>85</sup> Ganley, Elaine & Katz, Gregory «'Mission has been fulfilled': Authorities declare the Calais migrant camp empty, » CTV NEWS (26 Oct 2016) available at <http://www.ctvnews.ca/world/mission-has-been-fulfilled-authorities-declare-the-calais-migrant-camp-empty-1.3131777>.

*a week, was a terrible idea. We know that children have come from Paris and from other centres across France to Calais, which is in itself terribly dangerous'*

## The lack of safe accommodation for children

95. A further concern for BHRC is the failure by the French authorities to provide safe accommodation to the children in the camp ahead of and during the dismantlement operation.
96. As set out above, *registered* children were accommodated in the CAP, a fenced off area of the Jungle consisting of shipping containers, before eventually being dispersed to CAOMIEs on 2 November. BHRC learned from UNCHR that approximately 1500 minors were placed in the CAP. This number included children in relation to whom a Dublin ‘take charge request’ had *already* been made by the French authorities and who had been waiting, some for several months, to travel to the UK, as well as children identified during the dismantlement operation.
97. Many organisations, including Save the Children, criticised the CAP for being unsuited to children’s needs. BHRC learned that there was no food, shower facilities or safe play areas in the site. Instead, children had to walk to the Jules Ferry centre nearby in order to access those services. In addition, children had no access to legal or psychosocial support. Only 3 educators were assigned to look after approximately 1500 extremely vulnerable young people.
98. At least 100 children were turned away from registration on Wednesday 26<sup>th</sup> October with nowhere to go. The Refugee Youth Service attempted to get children into the CAP but were told by the authorities that the shelter was full. UNHCR and Save the Children managed to find beds for approximately 15 children in the warehouse where the registration had been taking place after negotiating with the Prefecture. Many others, including three young Eritrean boys aged 13 and 14 were turned away, and forced to sleep in a cold makeshift school in the Jungle or the sandy ridge outside the container centre whilst the camp burned around them.
99. On the morning of Thursday 27<sup>th</sup> October, the delegation encountered many of these children wandering the Jungle cold, hungry and in a state of panic and confusion. Organisations working on the ground were told that anyone remaining on site who was not registered would be arrested. During the course of the afternoon, BHRC observed a heavy

presence of French riot police. However, despite concerns and widespread fears in the camp that they would use tear gas, none was deployed. At one point, the delegation climbed on top of a sand dune to watch the police forming a barrier along the adjacent road. It was a show of force and caused fear. NGOs asked us to stay close to observe. We did so. However, the police eventually disbanded and drove away.

100. An estimated 113 unregistered children were forced to sleep rough for a second night, to the alarm and dismay of many NGOs and the UNHCR. British officials were reported to have put pressure on their French counterparts to urgently find safe accommodation for them. Finally, on the 28<sup>th</sup> October, buses were made available to take these children to reception centres.

101. The plan for how children were to be accommodated, supported and treated within a fair legal process appears to have been either non-existent or deeply flawed. The Home Office has been working closely alongside the France Terre d'Asile, a French organization mandated by the State to provide services to asylum seekers, and – the delegation was told – taking the lead in much of the flawed processing.

## Broken Promises

102. As highlighted above, Home Office officials had been expected to process all Dublin III and Dubs cases on-site in Calais. However, at the very last minute, this policy was abandoned. Instead, children were told that they would be temporarily relocated to reception centres across France, from where their claims would be examined by British authorities. According to a directive issued by the French Ministry of Justice on 1 November 2016,<sup>86</sup> those who had no possibility of entering the UK under either route, would be given an opportunity to make an asylum claim in France.

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<sup>86</sup> Nor: JUSD1631761C (“Circular of 1 November 2016 of the guardian of the seal, the minister of justice, related to the establishment of an exceptional national dispersal mechanism for unaccompanied minors in the context of the dismantlement of the ‘lande’ of Calais”) MINISTERE DE LA JUSTICE (30 Nov 2016) *available at* [http://www.textes.justice.gouv.fr/art\\_pix/JUSD1631761C.pdf](http://www.textes.justice.gouv.fr/art_pix/JUSD1631761C.pdf).

103. This sudden change in policy created even greater mistrust amongst the children with organisations warning that this risked many children disappearing. As Virginia Howells explained:

*“We want children to be going to child-appropriate accommodation but our huge concern is that these children will become a massive flight risk. In the last eviction in March we had 129 children go missing. We know that more children have already run away. We know that if you bus a child to somewhere else in France the risk is that they lose faith that they can get to the UK.”* She added: *“I’ve spoken to children who say: ‘I don’t trust this bus I don’t know where it’s going, I’m going to jump on the back of a lorry, I’m going to try the train tracks.*

104. On 2 November, the UN Committee on the Rights of the Child expressed immediate concern regarding the procedures adopted for children in Calais and called for the French and UK governments to urgently address the situation of children who had been forced to take shelter in disused shipping containers or sleep outside as the makeshift “Jungle” camp was demolished. The committee stated<sup>87</sup>:

*“The events of the past week have shown clearly that political and other considerations prevailed over the initial promises by both Governments that the situation of unaccompanied children would be their priority. The best interests of the child have been completely disregarded.*

[...]

*Disagreements between the French and UK Governments over who should take responsibility for the majority of these children have led to major violations of these children’s rights. Hundreds of children have been subjected to inhumane living conditions, left without adequate shelter, food, medical services and psychosocial support, and in some cases exposed to smugglers and traffickers.*

*We welcome the announcement by the French authorities that the children are being relocated to dedicated centres where the next steps concerning their future will be decided. We call for this to be done as quickly as possible and in a child-centred manner to avoid further and possibly irreparable harm to the children’s well-being.*

[...]

*It is essential that measures are taken to ensure that these children receive appropriate assistance to recover from what they have experienced. Responsibility for the violations*

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<sup>87</sup> “Calais camp: French and UK Governments fell well short of their child rights obligations-UN experts,” UNITED NATIONS HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER (2 Nov 2016) available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20815>.

*of their rights should also be established with the aim of ensuring that other children do not have to suffer a similar fate.”*

105. In the week following the evacuation, buses started transporting the children who had remained in the CAP to CAOMIEs across France. Home Office officials were present on these buses, which played a key role in children placing their faith in this new system and agreeing to being dispersed out of Calais. They were reassured that their claims would be examined once they reached the CAOMIEs, which many children perceived as meaning they would eventually be admitted to the UK. Since that date, BHRC understands that only 550 children in CAOMIEs have been admitted to the UK under the Dublin III Regulation<sup>88</sup>.
106. BHRC has been unable to independently verify the conditions in the CAOMIEs. However, on 26 January 2017, the French National Consultative Human Rights Commission noted with concern that (a) there was a disparity in the levels of care and support available to the children, with some CAOMIEs not having any psychologists or interpreters available; (b) the lack of information for children about the process and the delays in examining their claims had led to ‘risk behaviours,’ including instances of attempted suicide, self-harm and hunger strikes and; (c) children did not have an opportunity of appealing Dublin III or Dubs refusals.
107. On 8<sup>th</sup> February 2017 UK Immigration Minister Robert Goodwill government issued a ministerial statement announcing that the Dubs scheme would be closing, having taken in only 350 children in total.<sup>89</sup> Of the approximately 1,000 children bussed to reception centres as the Jungle homes were destroyed, the government announcement meant that just 150 would be brought to the UK under the Dubs legislation.
108. During the course of judicial review proceedings brought by the charity *Help Refugees*<sup>90</sup> in relation to the Government’s approach to its duties under section 67 Immigration Act 2016 and in particular, to its consultation process aimed at assessing local

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<sup>88</sup> R (AM) v SSHD, *supra* note 7.

<sup>89</sup> Goodwill, Robert “Immigration: Written Statement-HCWS619 (26 April 2017) available at: <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2017-04-26/HCWS619/>

<sup>90</sup> *Help Refugees Limited v Secretary of State for the Home Department* (CO/5312/2016)

authority capacity, it was disclosed that the Home Office had erred in failing to take into account accommodation available in the west of the UK. The government announced that a further 130 children would be accommodated, bringing the total number of children who would be admitted under the Dubs Amendment to 480.<sup>91</sup> Whilst the announcement was welcomed it was also tempered with dismay at ongoing chaos in relation to fulfilling international law obligations to unaccompanied children<sup>92</sup>.

109. In addition, a small number of individual challenges have successfully been brought by children with family members in the UK who were dispersed to CAOMIEs post-demolition and subsequently denied admission under the expedited Dublin III process described above<sup>93</sup>. In the lead case of *AM*, the Upper Tribunal concluded that:

*“The expedited process in the group of five cases to which this challenge belongs was beset with procedural deficiencies and shortcomings and egregious unfairness. These contaminants are either not contested or incontestable. The conduct of the two interviews alone warrants a conclusion of procedural unfairness. The materiality of these procedural frailties is beyond plausible argument. The acid question is whether these procedural irregularities can be excused on the basis of the humanitarian challenge and the need for expedition. These are the two factors on which the Secretary of State relies. These must be recognised as important considerations and we readily acknowledge the major challenge the two Governments concerned faced. However, we consider that the exercise of balancing them with all the other factors summarised below results in a resounding negative answer to the question posed. Fundamentally, there was far too much at stake for these isolated and vulnerable children to warrant any other answer.”<sup>94</sup>*

110. Finally, BHRC is aware of another judicial review challenge, brought by Citizens UK, relating to the Government’s failure to take steps to protect the rights of unaccompanied minors prior to the demolition of the Jungle, and its ongoing failure to deliver and operate an effective system under the Dublin III Regulation to facilitate the transfer of lone child refugees<sup>95</sup>.

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<sup>91</sup> Goodwill, Robert “Immigration: Written Statement-HCWS619, *supra* note 9.

<sup>92</sup> Travis, Alan & Gentleman, Ameila “UK to take 130 more lone refugee children in Dubs scheme climbdown,” THE GUARDIAN (26 April 2017) available at <https://www.theguardian.com/world/2017/apr/26/britain-take-130-more-lone-refugee-children-dubs-scheme>.

<sup>93</sup> See *R (AM) v SSHD*, *supra* note 7;

<sup>94</sup> *R (AM) v SSHD*, *supra* note 7, para. 122

<sup>95</sup> “Citizens UK Granted Permission to Bring Legal Action Over Home Office’s Failure to Implement Family Reunification for Unaccompanied Refugee Children in Europe,” SAFE PASSAGE (28 Feb 2017) available at [http://safepassage.org.uk/press\\_posts/citizens-uk-granted-permission-to-bring-legal-action-over-home-offices-failure-to-implement-family-reunification-for-unaccompanied-refugee-children-in-europe/](http://safepassage.org.uk/press_posts/citizens-uk-granted-permission-to-bring-legal-action-over-home-offices-failure-to-implement-family-reunification-for-unaccompanied-refugee-children-in-europe/)

111. Whilst this litigation has yielded positive results, the fact remains that many children have lost hope of safe passage to the UK altogether and are returning to Calais to resume their life-threatening attempts to get to into the country irregularly.

112. If conditions in the Jungle were deeply inappropriate for children before, they are now far worse. They are sleeping in ditches and under bridges near to the Channel Tunnel, hiding from the authorities who have taken a hard line with any sign of new settlements such that children sleep without tents to avoid detection, burying food in the dirt so that they will know where to find it if they are chased away by police. One such 16-year old boy told the *Guardian*:

*“They made promises when the jungle was demolished, and now we are back in this horrible situation. We don’t want to be here,” a 16-year-old said. “We want to be getting an education.”*<sup>96</sup>

113. The most recent reports from the camp, including by the French Defender of Rights,<sup>97</sup> show that some of the children choosing to return to the site of the Jungle have been met with even worse treatment. More than 1,000 refugees have returned to Calais and Dunkirk, most of them teenagers. They now live without toilets, running water, showers or shelter. Regular raids by the police lead to their tents being shredded and their food, clothes and sleeping bags being confiscated. Hundreds of refugees are sleeping in the open on wasteland behind an industrial zone near the port. Although a French court recently ruled that the city government must provide showers and water supplies, the local administration has yet to do so and have not provided any details of how many will be installed or where.<sup>98</sup>

114. Since the demolition of the camp, staff from the charity Citizens UK have reported receiving suicidal text messages from former child residents. Of the 40 being cared for, Citizens UK reports that a third have expressed suicidal thoughts or a lack of care for their own life, 75% have showed an “alarming deterioration” in mental health and 90% have reported “increased anxiety”. Dr Susannah Fairweather, a psychiatrist who led a team

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<sup>96</sup> Gentleman, Amelia, “Sleeping in the undergrowth – the children still hoping to get to the UK,” THE GUARDIAN (10 Feb 2017) available at <https://www.theguardian.com/uk-news/2017/feb/10/sleeping-in-the-undergrowth-the-children-still-hoping-to-get-to-the-uk>

<sup>97</sup> Decision du Defendeur des Droits n2017-206, 21 June 2017, FRENCH DEFENDER OF RIGHTS, available at <https://www.defenseurdesdroits.fr/sites/default/files/atoms/files/decision.pdf> (in French)

<sup>98</sup> Gentleman, Amelia, “Teargas, cold, no toilets: plight of refugees in Calais revealed,” the Guardian (10 Aug 2017) available at [https://www.theguardian.com/uk-news/2017/aug/10/teargas-cold-no-toilets-plight-of-refugees-back-in-calairevealed?utm\\_source=esp&utm\\_medium=Email&utm\\_campaign=GU+Today+main+NEW+H+categories&utm\\_term=238860&subid=15698705&CMP=EMCNEWEML661912;](https://www.theguardian.com/uk-news/2017/aug/10/teargas-cold-no-toilets-plight-of-refugees-back-in-calairevealed?utm_source=esp&utm_medium=Email&utm_campaign=GU+Today+main+NEW+H+categories&utm_term=238860&subid=15698705&CMP=EMCNEWEML661912;)

assessing the children, said there had been a “*significant deterioration in the children’s mental health, including a risk of suicide. Of the children who underwent psychiatric assessment, all of them presented with psychiatric symptoms, with approximately 90% meeting the criteria for a recognized psychiatric disorder, such as PTSD and depression.*”

115. BHRC has condemned this sudden cessation of the scheme for unaccompanied children as a breach of the spirit of the Dubs legislation, which contained no cap on the number of minors or the time within which they would be accepted<sup>99</sup>. BHRC further condemns the failure of both the French and British governments to implement an effective Dublin III system which is not almost entirely dependent on the work of private actors.

116. BHRC considers it unacceptable that some two years after the refugee crisis began and in the face of consistent calls for a robust response from international experts, NGOs, courts and lawmakers, unaccompanied children are still being abandoned by governments who are not prepared to accept responsibility for them and comply with their international obligations. BHRC urges both the French and UK governments not to repeat the failings of 2016. The UK made promises to the vulnerable children of Calais. It vital those promises are now kept.

## Recommendations

117. BHRC makes the following recommendations:

- I. Prioritise and provide resources, financial and practical, for locating children who fled Calais or where displaced from “The Jungle.” Vulnerability to trafficking is a pressing concern;

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<sup>99</sup> See “BHRC witnesses child rights abuse during demolition of Calais refugee camp,” Bar Human Rights Committee of England and Wales (31 Oct 2016) *available at* <http://www.barhumanrights.org.uk/bhrc-witnesses-child-rights-abuses-during-demolition-of-calais-refugee-camps/>.

- II. Provide support for the children relocated from Calais – including providing access to legal advice in order to identify and transfer children eligible under Dublin 111 or review and reconsider rejected Dubs scheme cases.
- III. Implement basic safeguarding processes. This is essential in order to protect children from trafficking;
- IV. Fill the protection gap which has resulted in children living rough;
- V. Incorporate written reasons into refusals to transfer child applicants to the UK under the Dubs scheme;
- VI. Properly implement the review mechanism where children’s applications have been refused and allow those children access to lawyers to advise them;
- VII. The national and international legal principle that the best interests of the child should be a primary consideration must be properly implemented by the British and French authorities in all actions concerning unaccompanied asylum-seeking children.
- VIII. Remove the arbitrary cut –off date for applications into the UK from children pursuant to the Dubs amendment;
- IX. Re-consult upon the Dubs amendment and increase the number of children eligible under the scheme.

## **Conclusion**

118. Many children came to the camp, leaving accommodation elsewhere in France, and ended up in a worse situation. Others absconded from the camp and ended up sleeping rough in ditches and on the streets. Safeguarding systems and protection of children from traffickers were not in place. Procedures of processing children under the Dubs and Dublin schemes were opaque, with lack of written reasons and access to review. As a result, the granting of applications was arbitrary and gave the impression of being discriminatory – with certain nationalities being prioritised over others. Best interests of children were not paramount, with children being treated as migrants first and children last.

The closing of “the Jungle” stands as a failure of French/UK collaboration in fulfilment of their obligations towards unaccompanied children.