

**CONTRIBUTION OF LA CIMADE TO THE CONSIDERATION OF THE SIXTH PERIODIC REPORT OF FRANCE  
BY THE UNITED NATIONS COMMITTEE ON THE RIGHTS OF THE CHILD**

[La Cimade](#) is a French NGO founded at the beginning of the World War II. La Cimade provides legal aid to 100 000 migrants, refugees and asylum seekers per year, assisting them in accessing their rights. La Cimade leads advocacy actions towards decision makers; it informs and raises awareness on migration among the public.

Within the context of our legal support services, our staff are increasingly dealing with unaccompanied migrant children throughout French territory, including overseas departments. La Cimade wishes to contribute to the examination of France by the United Nations Committee on the Rights of the Child, via this report, on the situation of these children. Their situation is too often considered at the crossroads between immigration policies and child protection policy, with hardly reconcilable objectives.

La Cimade has consciously chosen to address the situation of unaccompanied migrant children under common law and not exclusively under special protections.

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## A. GENERAL MEASURES OF IMPLEMENTATION

Since the Committee's most recent recommendations on the occasion of the periodic review of France, numerous reforms have strengthened the legislative corpus relating to the rights of the child. A State Secretariat in charge of Social Protection has been established in January 2019 at the Health Ministry. This creation was introduced following the concerning situation of the Child protection system in France.

A national strategy of prevention and protection of the Child 2020-2022 was delivered and aimed at strengthening the rights of children: rights to health, education, safety and emotional security, self-sustaining after 18. Despite this progress, situation of unaccompanied migrant children receives little attention in the action plan. Furthermore, these texts are poorly applied, if at all with very insufficient resources.

- **How do the French authorities envisage to organise in a uniform way the national legislative corpus to all children throughout French territory, including overseas departments?**
- **Has the State considered increasing resources and sums allocated to child welfare? If so, by when, by what process and under which budget lines?**
- **Is the State intending ensuring the enforcement of the principle of equality among all children. If so, how does it plan to do so considering Departments<sup>1</sup>, courts and prefectures have piecemeal policies and even contradictory?**

## B. GENERAL PRINCIPLES

### NON-DISCRIMINATION

In France, the overall policy of child protection <sup>2</sup> considers and understands children on the grounds of their age and vulnerabilities. The constitutional rule of equality before the law prohibits any discrimination based on nationality or immigration status.

Despite relevant legislation, unaccompanied migrant children are subjected to a specific procedure prior to any common law, conditioning their access to rights.

Their protection falls under the prerogative of the departments (*« departments are administrative districts with devolved jurisdiction in social affairs<sup>3</sup>*). Nevertheless, the egalitarian feature of child protection has been constantly cracking in years<sup>4</sup>. Since migration policies are under State jurisdiction, departments regularly question their role in protecting children they see first as migrants.

- ***Which measures do the French authorities plan to take so as to prevent children from being protected under two-speed whether they are French nationals or not?***

La Cimade notes a heterogeneous protection from one department to the next: In some situations unaccompanied migrant children have socio-educational support, housing perfectly fitted to children, a support to autonomy (assistance for young adult, request for asylum or resident permit, etc.). Nevertheless, in many departments, such support is almost non-existent (trusted third party acting on behalf of the department, no support to education, learning or apprenticeship contract, no information on the right of residence or to request asylum, etc.). And some of them are left on their own and do nothing all day long.

La Cimade has reports that in some cities, children over 16 years of age sleep in hotels, without any educational follow-up. Sometimes they only have to eat once a day. La Cimade also observes a difference in

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<sup>1</sup> In France child protection is a decentralised competency which falls within the remit of the *departments*.

<sup>2</sup> At the international level (article 20 CRC), at European level (article 24.1 EU Charter of Fundamental Rights) and in France (articles 375 Civil Code and L112-3 social work and families Code)

<sup>3</sup> Since law on decentralisation, January, the 6<sup>th</sup> 1986

<sup>4</sup> The government has entrusted several general inspectorates in 2017 with the task of identifying operational solutions to improve the efficiency, coherence and budgetary sustainability of the evaluation and sheltering phase of the public policy implemented for the benefit of unaccompanied children (See the [rapport de la mission bipartite](#), February 2018)

treatment between the youngest (under 16) and the oldest. And those who are taken care of by the authorities after a judicial review (the children's judge) do not benefit from the same care than those granted child protection in the first instance, without the department questioning their age. La Cimade is also concerned about the increasing recourse to voluntary third party families and trustworthy third parties instead of professional social services.

- ***What guarantees do the French authorities undertake to ensure that the departments provide comprehensive care adapted to the needs of each child, without distinction?***
- ***Is the State in a position to provide statistics on the number of non-nationals and French children under custody of voluntary and trustworthy third parties?***

As an illustration, in 2019 in 'Indre et Loire', the daily price is 250 euros per day for assessment during the statutory period of sheltering (temporary emergency shelter) and a maximum of 67 euros per day for accommodation and socio-educational support for unaccompanied migrant children under protection. For comparison, again in the same department, the daily price is 170 euros per day for "other minors aged 0 to 18" and per minor placed in care institutions<sup>5</sup>.

- ***How does the State plan to enforce this principle of non-discrimination? What measures does it plan to put in place to ensure adequate and non-discriminatory protection for each child on the basis of age, date of children protection order or nationality?***

#### **BEST INTERESTS OF THE CHILD**

In 2019<sup>6</sup>, the Constitutional Council recognized the best interest of the child<sup>7</sup> as a constitutional requirement. A few months later, the [Constitutional Council](#) endorsed the creation of a biometric file, a system that gives priority to border control and "illegal" immigration prevention over child protection... Despite the criticisms of the Human Rights Defender<sup>8</sup> and associations.

It is difficult to understand where respect for the child's best interest lies in the creation of such a register exclusively for non-nationals children seeking protection as unaccompanied minors:

- Young people seeking protection now have to go to the police station or the prefecture, and not to the child protection services. Since the deployment of this system, La Cimade has noted a significant drop in the arrival of unaccompanied children<sup>9</sup> - meaning more children are too afraid to go to the police and choose to stay in the streets instead or in other dangerous situations.

- The decree of 30 January 2019 makes it possible to deport a child as soon as the department considers that he or she is over 18 years of age, without waiting for judicial review. However, many children are wrongly considered to be adults by the departmental services: a [report by the General Inspectorate of Social Affairs](#) dated 15 February 2018 indicated that in Paris in 2017, judicial review overturned half of age assessments made by the department and granted child protection status.

- ***How does the State intend to proceed so that the concept of the best interest of the child is fully integrated into French law and consistently applied throughout the territory and in all procedures?***
- ***What guarantees will the State put in place to ensure that this file does not provide an opportunity to deport a certain number of unaccompanied children awaiting an appeal before the juvenile judge court?***

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<sup>5</sup> Maisons d'Enfants à Caractère Social (MECS)

<sup>6</sup> Constitutional council, 21 march 2019, n° 2018-765

<sup>7</sup> Such use shall be in the best interests of the child only on condition that:

-These provisions provide only for the taking of fingerprints and photographs.

-These provisions do not alter the rules relating to the determination of an individual's age and the protections attached to the status of a minor, including the prohibition on removal and the challenging of the assessment before a judge.

-The coming of age of an individual is not inferred from his or her refusal to submit to fingerprinting or from the fact that he or she is registered in AEM, AGDREF or VISABIO.

<sup>8</sup> Avis n° 17-10, 11 October. 2017

<sup>9</sup> This decrease can be explained by the fear that their fingerprints will be misinterpreted (children sometimes travel with borrowed passports, false identities and ages) and by the fear of children, sometimes victims of police violence in their migratory journeys, of pushing the door of the prefecture or police station.

In addition, the decree of 24 June 2016 provides a legal framework for the distribution and care of foreign children. A [decree](#) and then a [ministerial ruling](#) dated 19 December 2019 modified this distribution key between departments. The referral of a migrant child should not be automatic and should be based on the child's best interests. This is the meaning of the decision of the Council of State of 14 June 2017<sup>10</sup>.

However, it must be noted that reception departments are proposed without considering the best interests of the child, and in particular without any consideration of the child's ties of attachment, a living area or schooling in the first department. Children are referred to territories saturated by the reception of new arrivals or those with a particular context (such as border areas) or to territories systematically condemned for failure to non-enforcement of judicial decisions.

- ***What guarantees does the State have to ensure that the distribution is in the interests of children?***
- ***Is the State in a position to provide statistics on the number of reassessments made by departments following the distribution key?***

### **RESPECT FOR THE VIEWS OF THE CHILD**

La Cimade notes with concern that unaccompanied migrant children are generally not consulted.

The Constitutional Council<sup>11</sup>, in validating the use of bone tests, lays down details aimed at guaranteeing the consent of the person<sup>12</sup>. Article 388 paragraph 3 of the Civil Code requires the child agreement before carrying out the examination. The Public Health Code<sup>13</sup> recalls that the consent of the minor must be systematically sought and that he or she has the right to participate in decision-making concerning him or her. In practice, respect for the child's opinion is hardly pursued: if the child decides not to take the bone test, there is a strong presumption of majority.

Adolescents who are taken into care by child welfare after the age of 16 are very largely oriented towards vocational courses in order to be able to obtain a residence permit when they reach the age of majority, even though they could remain in the generalist stream. On one hand, this is a failure to take account of the child's opinion and on the other, a discriminatory practice which deprives these children of the possibility of entering universities solely on the basis of their nationality.

- ***How will the State ensure that children's views and consents are informed and respected?***
- ***Does the State plan to amend Article L313-15 CESEDA<sup>14</sup>, which makes the issue of a residence permit conditional on a qualifying training course, even though children would be able to continue a general education course?***

### **LACK OF STABLE REFERENTS**

In France, unaccompanied migrant children are subject to child protection and representation mechanisms defined by common law. When no family member is in France, guardianship is referred to the children protection system. The existing legal framework also provides for the appointment of an ad hoc administrator.

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<sup>10</sup> This decision recalls that articles 375-5 of the Civil Code and L. 221-2-2 and R. 221-13 of the Code of Social Action and Families "do not set any criteria other than that of the interests of the child, but facilitate, in that interest, his or her orientation towards a reception department able to take care of him or her under satisfactory conditions, and do not disregard the stipulations of the Convention on the Rights of the Child".

<sup>11</sup> See [March 21, 2019 n° 2018-765](#)

<sup>12</sup> Consent must be "informed" and given in a language that he or she understands, which requires the assistance of an interpreter.

<sup>13</sup> Articles L 1111-2 et L1111-4 public health code

<sup>14</sup> Code de l'entrée et du séjour et du droit d'asile, Code of Entry and Residence of migrants and the Right to Asylum (CESEDA)

Apart from the procedures relating to entry on the territory and asylum claims, the current legal framework does not allow a legal representative to be appointed provisionally for a person already in France who claims to be unaccompanied and underage at the stage of his identification by the department and, in case of a refusal, during judicial review. This is likely to affect the ability of children to fully exercise their rights.

- ***What measures are planned in order to provide the justice system with sufficient means to meet the challenges of protecting children at risk, to provide for the appointment of an ad hoc administrator or even a guardian at all stages and in all circumstances?***

## **C. CIVIL RIGHTS AND FREEDOMS**

### **BIRTH REGISTRATION/NATIONALITY**

#### ***Nationality in Mayotte and overriding right***

A child born in France to foreign parents may claim French nationality by declaration from the age of 13, subject to conditions of residence, except in Mayotte where the parent must prove that he or she has resided in this territory regularly and continuously for at least 3 months on the day of the child's birth. It is only under these conditions that the child may be granted French nationality as an adolescent. This is a discrimination on the basis of nationality, Mayotte being home to a large Comorian community that French authorities seek to exclude from immigration and nationality benefits.,

- ***Will the State put an end to discriminatory legal requirements in place in Mayotte regarding access to nationality for children born on the territory?***

#### ***Civil state***

Any individual present on French territory, and more specifically children, must be able to hold civil status documents. Establishing the identity of the unaccompanied migrant children without civil status documents is fundamental. Child welfare must help children under their custody to reconstitute their documents. In practice, these steps are very rarely carried out, which will also raise concerns about access to rights and the issue of a residence permit when they reach the age of majority.

And when children have documents, given the imprecise nature of the assessment methods, it remains difficult to take into account civil status documents. Even if there is a presumption of authenticity of foreign civil status documents (Article 47 Civil Code), these documents are too often not taken into account or simply dismissed by the authorities. And even when the authenticity of the record is not contested, it is the holder of the record who is called into question, especially when this document does not bear a photograph.

- ***How does the State plan to work more closely with the embassies and consulates of the countries of origin in order to give these children access to civil status documents and to recognise documents drawn up in the forms customary in the country in question?***
- ***Does the State plan to develop human and financial resources to enable the fraud departments but also judges to be able to seek out the provisions of the law of the countries of origin regulating the regularity of birth certificates?***

### **RIGHT TO PRIVACY**

There is still a concern about the personal data of some unaccompanied migrant children which can now be collected in an automated national file with the aim of better ensuring age assessment<sup>15</sup>. The decree of 30 January 2019 defines the type of data that may be collected and the persons who may have access to it or be recipients of it. Concerns remain since such a file undermines respect for privacy and the right to equality and serves not to assess minorities but to counter “illegal” immigration.

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<sup>15</sup> File created by Decree No. 2019-57 of January 30, 2019 relating to the procedures for assessing persons declaring themselves to be minors and temporarily or permanently deprived of the protection of their family and authorizing the creation of personal data processing relating to these persons, art. 2.

- ***What guarantees can the State give to ensure that children are duly informed of their right to object to the record-keeping of personal data as well as access, correction or suppression such data?***

## **D. VIOLENCE AGAINST CHILDREN**

### **TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT**

A new plan for 2020-2022 follows on from the plan to mobilize and combat violence against children from 2017 to 2019. There is no mention of child trafficking and little mention of migrant children. Moreover, although the Civil Code had been amended to prohibit physical and psychological violence through parental authority, the practices persisted.

For example, in Mayotte, there is little financial/material/human aid for families and only very few children can benefit from care. Between 500 and 600 families are supported. In 2018, 1700 reports of concern were received, only 800 were processed. Due to the lack of infrastructure, the different actors prioritise the situations. *Harmful cultural practices may be tolerated by authorities, leading to children not being protected.*

- ***What are the concrete tools for combating violence against children, particularly in the French Overseas Territories?***

## **E. FAMILY ENVIRONMENT AND ALTERNATIVE CARE**

### **CHILDREN DEPRIVED OF A FAMILY ENVIRONMENT**

Since 2018, La Cimade has noted the development of a new practice: When arresting migrant parents, the police press the mother and/or father to entrust their child to a third party: children entrusted in an emergency and without any verification of the conditions: neighbours, civil society activists, family members, acquaintances. La Cimade has also observed the placement of children first at the child system protection and then in foster families during their parents' detention and after deportation. This practice, particularly in the administrative detention centre in French Guyana, has continued to increase. La Cimade now provides weekly support to parents abroad who indicate that their child is still in France, at home alone or in the care of a third party. Since 2018, La Cimade in French Guyana has identified at least 68 parents who have indicated that they have a child in their care alone. 7 out of 68 have been deported.

The placement of these children in the child protection system is totally unsuitable. The parents who are locked up are not failing their children's upbringing, the security filters usually put in place by the protection services between parents and foster families are meaningless and increase the isolation of these children who are suddenly torn apart from their family solely because of their parent's migratory status and nationality, in the absence of any harm or neglect. No French national can be separated from a child without legal basis and sufficient cause.

- **Does the State plan to end such practices separating migrant children from their parents?**

In Mayotte, the notion of "unaccompanied/isolated" is not interpreted in the same way: the many unaccompanied minors living without a legal representative but with neighbours, an uncle or a teacher are not covered by children protection services because they are deemed not really "isolated" children. However, this lack of care has important consequences in terms of protection, access to education, training, access to residence or nationality, etc.

- **Does the State plan to ensure that the law applicable to child protection is also effective in overseas France, particularly in Mayotte? Is the State considering developing measures and resources to do so?**

## Young adults

Young adults leaving the children protection system, who are required to be self-sufficient at a very early age, are not sufficiently prepared for leaving the scheme: their situation worsens with a break in access to health (end of healthcare), education and vocational training, accommodation, etc., and they are often left with no access to health care, education and vocational training. Insufficient preparation for the transition to majority precipitates young adults into precarious situations. Contracts for young adults are left to the discretion of the department and in practice many departments have decided to stop providing such assistance to young adults previously under their custody.

- **What legislative changes are planned to ensure that young people who have reached the age of majority can leave the child protection system safely?**
- **Does the State plan to allocate additional resources to support them when they reach majority?**

## F. DISABILITY, BASIC HEALTH AND WELFARE

### STANDARD OF LIVING

The realities vary greatly, but La Cimade accompanies a certain number of children who sleep on the street or are housed in unsatisfactory conditions: in squats, shantytowns, hotel rooms, camps or in the homes of third parties who are not always well-intentioned. Sometimes there is a distinction in the type of accommodation according to the age of the young person (the youngest in children's hospices and the oldest in a hotel). Some types of accommodation are unsuitable for children.

- *What alternatives better suited to the reception and needs of children can be put in place?*
- *Does the State envisage putting in place measures to ensure that departments provide shelter for unaccompanied migrant children while awaiting their assessment and in appropriate conditions?*

In France, young people recognised as adults by the departments, even though they are appealing to the juvenile court judge, are not under protection. This undermines the dignity of the person and the right not to be subjected to inhuman and degrading treatment and places people in an environment totally unsuited to the condition of a child and in an unacceptable precariousness. No care or accommodation is provided for them during the time it takes for them to appeal. The departmental council refuses, considering them to be adults, and the State shelter system (the so called 115) refuses to take them in because it considers them to be minors<sup>16</sup>. The ECHR's decisions on provisional measures are also along these lines<sup>17</sup>.

- **The Covid-19 crisis highlighted the great vulnerability of unaccompanied migrant children, and the numerous litigations during the health crisis led judges to demand that departments provide accommodation in a structure adapted to their alleged age, prevent the risks of spreading covid-19 and take care of their food, health and medical needs until the judge has given a final ruling on their minority. Given that more than half of the time the judge considers the child to be a minor, does the State envisage finally guaranteeing that the child will be sheltered until a decision by the judge overturns or confirms the child's minority?**

### HEALTH

The Committee had recommended that France review the conditions governing hospitalization and, in particular, allow parents to accompany and care for their children when they are hospitalized. La Cimade remained concerned that children who are said to have been medically evacuated from Mayotte for

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16 Thus, in a [report](#) of July 4, 2018, the NGO Human Rights Watch revealed "that due to arbitrary practices, unaccompanied children may be wrongly considered as adults, making them ineligible for emergency shelter and other forms of protection reserved for minors. (...) Hundreds of these young migrants thus find themselves homeless, often condemned to sleep in the streets of Paris". This worrying situation is far from being confined to the Paris region.

17 CEDH, 31 march 2020 n° 15457/20; SMK against France N° 14356/19, 29 march 2019

treatment in La Réunion are automatically separated from their parents who are not authorized to accompany them. This concerns infants as well as children aged 10 years. Doctors insist on the presence of the parents, which is essential for the improvement of their child's health.

- **Does the State envisage setting up medical evacuations that would systematically allow parents to accompany their sick child, regardless of their resources or administrative situation? Santé**

Moreover, although a health check-up was provided for in the November 2019 decree, in practice it is rarely carried out. Foreign children still do not have automatic access to universal health coverage. The lack of care for psycho-trauma and the difficulties in accessing general and specific care remain very problematic for migrant children.

- *Does the State envisage putting in place guarantees to ensure that the health check-up is effective?*
- *Would the State be able to guarantee the resources needed for a genuine public health policy and thus enable every child to have access to basic health services?*
- *Does the State plan to develop means to ensure the mental health care of foreign minors?*

## **G. EDUCATION, LEISURE AND CULTURAL ACTIVITIES**

Although the State must guarantee access to school for all, without discrimination, it is estimated today that thousands of children do not attend school in Guyana and Mayotte. 80% of children living in shantytowns or squats do not attend school and unaccompanied minors are not spared. Many people have been denied access to schooling following the refusal to send them to school, especially those whose minority is contested by the departments or who are over 16 years old.

For instance, the Paris Administrative Court, in a judgement of 30 January 2018, annulled the implicit refusal to assign an unaccompanied minor, considering that this refusal was contrary to the right to education. The Minister of National Education appealed, arguing that he did not impose any obligation on the administration to educate a minor over the age of 16. On 14 May 2019, the Paris Administrative Court of Appeal dismissed the Ministry's appeal and affirmed the right to schooling after the age of 16, even for unaccompanied foreign minors who had been refused care by Child Welfare. Determined to do everything possible to prevent children from attending school, the Ministry decided to appeal in cassation to the Council of State.

- **Does the State envisage maintaining this appeal in cassation even though the courts have reaffirmed this right to schooling?**
- **Is it possible to provide an accurate official estimate of the number of out-of-school children in all French municipalities, including those in overseas France?**
- **What are the measures envisaged by the State to enable every child to enjoy the right to education without discrimination?**

## **H. SPECIAL PROTECTION MEASURES**

### **ASYLUM-SEEKING, UNACCOMPANIED MIGRANT CHILDREN AND REFUGEE CHILDREN**

Since the last 5<sup>th</sup> report of France, the number of unaccompanied minors present on French territory has increased, but the number of protected children in 2019 (16,760) is lower than in 2018 (1,702). Access to the rights these children should enjoy is not always guaranteed. Entry into the child protection system is always complicated, some departments refuse to take care of them, the first period of sheltering is rarely respected, and when they are protected, their accompaniment may be defective.

#### **Unaccompanied migrant children and internal borders:**

France has re-established controls at its internal borders since 2015. In this context, internal borders have become the scene of human rights violations of unaccompanied migrant children.

The [note on the situation of migrants at the French-Italian border of 19 June 2018 of the National Consultative Commission on Human Rights \(CNCDH\)](#) provides a better understanding of what is happening on the French-Italian border in particular. The situation is such that on 5 February 2019, the [Nice Public Prosecutor opened an investigation against the border police](#) following the numerous reports made by the associations present on the spot.

At the border, the protection of unaccompanied children is reduced. The associations note backflows of minors, discriminatory controls, threatening and insulting remarks, obstacles to the registration of asylum applications, lack of interpreters, face checks and arbitrary detention in inhuman conditions...

- ***Could the State ensure that under-age children could indeed be assigned an ad hoc administrator at the border?***
- ***What measures do the French authorities envisage to ensure that "refoulements" of minors at the borders by French law enforcement agencies cease?***
- ***What measures do the French authorities plan to put in place to ensure effective protection of these children at the borders, in accordance with the law in force?***

The issue of locking children in waiting zones and effective access to their rights remains unresolved.

- ***Has the State planned a legislative reform to prohibit the confinement of migrant children in waiting zones?***

#### **Shelter: temporary reception of unaccompanied minors**

French law provides that the president of the departmental council sets up an emergency temporary reception centre, also known as "mise à abri"<sup>18</sup>. However, it is not uncommon for young people not to be placed in this shelter after reporting themselves.

- ***Could the State provide an overview of the functioning of the sheltering system as well as data on compliance with the 5-day emergency shelter while the authorities assess the child's situation?***
- ***Could it provide precise information on the accommodation offered to these young people during the sheltering period?***

#### **Evaluation**

France does not take sufficient account of the best interests of the child as a guiding principle in all assessment processes. A very large number of summary assessments have been noted, with outright refusals based on physical or behavioural criteria, or rapid interviews, sometimes with embarrassing or inappropriate questions. Evaluators are rarely trained and there is no multidisciplinary team. The young person's declaratory elements are not taken into account, their civil status documents are systematically questioned (even when the Border Police have not contested their authenticity), and these assessments are rarely carried out with benevolence, the assumption being that "they are lying".

- ***Does the State plan to make this assessment of minority and isolation in two stages, one pre-assessment for sheltering and another sometime afterwards?***
- ***To what extent could the French authorities undertake to train the assessors to ensure that these interviews are carried out by competent and trained persons, without the assessment being made at their own expense?***
- ***Could the State provide statistical data on the number of requests for protection by unaccompanied minors, the number of assessments carried out, the number of recognitions granted by the departments and the number of appeals to the children's judge?***

In a [decision of 21 March 2019, the Constitutional Council](#) considered that these "medical examinations" for the purpose of determining the age of a foreign child were in conformity with the French Constitution,

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<sup>18</sup> Article R.221-11 social action and families Code

subject to compliance with the guarantees that the legislature had established for their use. Nevertheless, these "medical examinations" have been criticized for several years for their lack of scientific reliability.

- ***Could the State provide precise information on the practice of bone testing, as well as figures on the number of bone tests carried out and on the results of legal proceedings to challenge decisions refusing to recognise the minority?***

### **Right of asylum**

Shortcomings in the reception of unaccompanied minors also have an impact on access to their procedural rights, in particular access to asylum applications, the number of which remains very low: in 2019, 755 unaccompanied minors applied for asylum, a much lower number than the number of unaccompanied minors placed under the protection of Child Welfare services.

The different actors are not always aware that it is possible for a child to apply for asylum. Furthermore, there is confusion between child welfare protection and asylum protection, even though the two procedures are clearly separate. The appointment of an ad hoc administrator is not always ensured, which has consequences for these asylum applications.

For example, the juvenile court of Boulogne sur Mer<sup>19</sup> points out that "*In the absence of legal representatives for the minor on the national territory, an ad hoc administrator should be appointed to initiate any procedure that is in the minor's interest*". In another decision<sup>20</sup>, the judge ordered the prefecture to register the asylum application and to refer the matter without delay to the public prosecutor for the appointment of an ad hoc administrator.

- ***Could the state provide information on access to asylum applications by unaccompanied minors?***
- ***Could the state give details of the number of ad hoc administrators requested by minors to apply for asylum and the number of actual appointments?***
- ***Does the State envisage allocating new human, technical and financial resources in all territories for the representation of unaccompanied migrant children, for example by increasing the number of ad hoc administrators?***

### **Right of residence**

Access to a residence permit remains complicated for unaccompanied minors. While it is a permit granted automatically when children are taken into care by social assistance before the age of 16, in practice prefectures have a very strict interpretation of the criteria laid down in the Code of Entry and Residence. Titles for minors taken into care after the age of 16 are even more difficult to obtain: they are left to the prefect's discretion and preparation for leaving the child protection scheme is often non-existent.

- ***Could the State provide figures on the number of residence permits applied for by these minors?***
- ***Although the Ministry of the Interior publishes annual statistics on the number of residence permits issued, these permits (related to children under protection) do not stand out specifically. In cases where permits are issued on the grounds of an activity or private life, could the State specify the grounds on which permits are issued under articles L313-11-2 bis and L313-15 of the CESEDA?***

### **Children detention**

While unaccompanied minors cannot be the subject of a deportation or expulsion order in France, many children are still locked up in certain administrative detention centres and massively in Mayotte. Despite [multiple condemnations by the European Court of Human Rights](#), the French government refuses to repeal its legislation authorizing the detention of children accompanying their parents solely because of their

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<sup>19</sup> Juvenile Court (Tribunal pour enfants) Boulogne sur Mer, 18 February 2016, N°160032

<sup>20</sup> Administrative Court (Tribunal administratif) Montreuil, 23 October 2019, N° 1911554

migration status. In 2019, 304 accompanied children and 264 unaccompanied minors were locked up in administrative detention centres (in mainland France, French Guyana and Guadeloupe).

Sometimes children presenting themselves as unaccompanied migrant children but not recognized as such by the departments are placed in detention, even though an appeal to the juvenile judge has been lodged. The latest immigration laws of 2016 and 2018 have not put an end to the detention of children with their families. A bill aimed at strictly regulating the administrative detention of children with minors, tabled on 12 May 2020, is currently under debate, but it still does not aim to outright prohibit the detention of children.

- ***What measures and legislative reform does the State envisage to prohibit administrative detention for any child, whether accompanied or not?***
- ***Will specific guarantees be taken to remedy the situation in overseas France, particularly in Mayotte?***

#### **SALE, TRAFFICKING AND ABDUCTION**

In October 2019, the Government presented the [Second National Action Plan against Trafficking in Human Beings](#) (2019-2021). This long-awaited plan was presented almost three years after the first plan ended. It includes specific action for the protection of minors who are victims of trafficking. In France, this issue is still largely invisible. Some unaccompanied migrant children live in squats, shantytowns or on the streets, this situation makes them all the more vulnerable to this phenomenon.

- ***Following the presentation of the second plan, what means and resources are planned for the implementation of these measures to combat child trafficking and to better identify and protect children?***
- ***Can the State specify its timetable?***

La Cimade, which is present in penitentiary centres, has observed that children who are forced to commit delinquencies find themselves in preventive detention even though they are victims of trafficking. The principle of non-prosecution is difficult to apply: some prosecutors' offices refuse to acknowledge the influence of networks in juvenile delinquency. And if the public prosecutor's office tried to do so, it would still be necessary to characterize the offence and classify it as trafficking in human beings, which is still difficult.

- ***What measures are being taken to ensure that the principle of non-punishment of trafficked minors who are forced to commit offences is respected?***

When they arrive in France, some unaccompanied migrant children are absorbed by mafia networks or people who will exploit them. Some of them have already tested the use of narcotics, traumatised by the migration route, they are spotted and exploited. These children do not report themselves to child protection actors, do not seek help from associations and rarely ask for protection.

- ***What measures are the French authorities planning to take to alleviate the difficulties linked to the lack of adherence of these children to care, owing to the power they find themselves in?***

Cimade hopes that the Committee will have the opportunity to put these fundamental questions to the French authorities: the expected answers would make it possible to ensure effective protection of unaccompanied migrant children in accordance with the law in force.

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