



# In whose best interests?

*Exploring Unaccompanied Minors' Rights in the French context*

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## TABLE OF ACRONYMS AND ABBREVIATIONS

ADDAP 13	Departmental Association for the Development of Preventive Actions (Bouches du Rhône)	Association Départementale pour le Développement des Actions de Prévention des Bouches du Rhône
ADJIE	Association for the Defence of Unaccompanied Young People	Association de défense des jeunes isolés étrangers
ANAFE	National Association of Border Assistance to Foreigners	Association Nationale d'Assistance aux Frontières pour les Etrangers
ASE	Public Welfare Services for Children	Aide Sociale à l'Enfance
BIC	Best Interests of the Child	Intérêt supérieur de l'enfant
CASF	Social Work and Family Code	Code de l'action sociale et des familles
CASNAV	Academic Centre for the Education of newly settled children and children of travelling families.	Centre Académique pour la Scolarisation des enfants allophones Nouvellement Arrivés et des enfants issus de familles itinérantes et de Voyageurs
CESEDA	Code for the Entry and Residence of Foreigners and Asylum Seekers	Code de l'Entrée et du Séjour des Etrangers et Demandeurs d'Asile
CNCDH	National Consultative Commission on Human Rights	Commission Nationale Consultative des Droits de l'Homme
CCNE	French National Consultative Committee of Ethics	Comité Consultatif National d'Ethique
CRC	(UN) Convention on the Rights of the Child	Convention internationale relative aux Droits de l'Enfant
DDD	French Ombudsman	Défenseur des droits
DPJJ	Direction of Judicial Protection for Young People	Direction de la protection judiciaire de la Jeunesse
EASO	European Asylum Support Office	Bureau Européen d'appui en matière d'asile
FTDA	France Terre d'Asile	
GISTI	Groupe d'information et de soutien des immigrés	
HLR	Hors la rue	
INSEE	National Institute of Statistics and Economic Studies	Institut national de la statistique et des études économiques
ODAS	National Observatory of the Decentralized Social Action	Observatoire de l'Action Sociale Décentralisée

OFII	French Office for Immigration and Integration	Office Français de l'Immigration et de l'Intégration
OFPRA	French Office for the Protection of Refugees and Stateless Persons	Office Français pour la Protection des Réfugiés et Apatrides
PAOMIE	Office for the Reception and Orientation of Unaccompanied Minors	Permanence d'Accueil et d'Orientation des Mineurs Isolés Etrangers
RESF	Education without Borders network	Réseau Education Sans Frontières
SCEP	Separated Children in Europe Programme	Programme en faveur des enfants séparés en Europe
UAM	Unaccompanied minor	Mineur non accompagné



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# 1 Introduction

This document is part of the project “In Whose Best Interests? Exploring Unaccompanied Minors’ Rights through the lens of Migration and Asylum Processes”. The aim of the report is to present the main findings collected in the French context in order to assess if article 3 of the United Nations Convention on the Rights of the Child (CRC) is taken into consideration by authorities when dealing with unaccompanied minors (UAMs). The analysis of public and private social Welfare institutions, courts of law and administrative authorities’ practices has enabled us to better understand the way these institutions actually interpret and put the Best Interests Concept (BIC) into practice. Our findings are based on the perception held by the experts we consulted (19 interviews) on the interpretation and implementation of the CRC best interests principle and, more broadly, on their opinion of the different aspects concerning the French model of reception of unaccompanied children. Furthermore, our main aim was to collect the views of the young people themselves on a range of aspects linked to the reception process they had been through [11 individual interviews and 6 series of collective workshops (21 in total) involving the participation of around 70 young migrants].

Field research in the French context was undertaken during an eight-month period between November 2014 and June 2015. Our action took place during a particularly sensitive period, as new regulations concerning reception and territorial relocation of unaccompanied children were in force since June 2013 (Ministry of Justice Circular of 31st of May 2013). This allowed us to explore and verify which changes in policy implementation were operating and what impact this was having on the daily lives of migrant children. Fieldwork started shortly after the publication of two decisions by national independent authorities, highlighting serious obstacles to the full enjoyment of basic rights by unaccompanied minors (Défenseur des Droits, 2012 & Commission Nationale consultative des Droits de l’Homme, 2014). Furthermore, this survey takes place just before the Committee on the Rights of the Child’s periodic control on the implementation of the CRC in France (due in 2016).

After a brief overview of the French legal framework (section 3), we will discuss how the Best Interests Concept is implemented in relation to the legal treatment and status of unaccompanied children, including access to protection, age assessment procedures, access to care, and safeguards in place once children reach majority age (section 4.1). We will also analyse the care provisions in light of the principles included in the CRC, in particular access to accommodation, physical and mental health care, education, paid work, formal and informal support and leisure (section 4.2). We will then discuss the experts’ viewpoints on the determination of best interests in procedures regarding unaccompanied minors, the best practices identified throughout the research, the failures in the system and the main changes needed to improve the situation (sections 4.3 and 4.4). Finally, the concluding section contains recommendations in order to facilitate a better respect of the best interests concept which is designed to “*ensure both the full and effective enjoyment of all the rights recognized in the Convention and the holistic development of the child*” (Committee on the Rights of the Child, 2013).

## 2 Field research parameters

The field research took place mainly in the city of Paris and its surroundings (Seine-Saint-Denis and Val de Marne departments) where large numbers of unaccompanied children arrive every year, probably due to the presence of two major international airports and several railway stations. We have conducted complementary field actions in the town of Calais (where significant numbers of adults and minors got stuck trying to cross the border to the UK); the city of Marseille (third major conurbation in France where the first records of unaccompanied children took place in the early nineties) and the town of Poitiers where the MIGRINTER research centre is based (120k inhabitants, with no tradition of receiving unaccompanied children until recent years).

During one of the first stages of our field research, we carried out 13 interviews with different key informants (19 people in total), mainly professionals working directly or indirectly with unaccompanied children. Our aim was to record the perception of these actors on the interpretation and implementation of the CRC best interests principle when dealing with unaccompanied children and, more broadly, their opinion on the different aspects and challenges concerning the French model of reception. We met different staff from the main associations working in this field (managers and frontline workers), both those supporting and defending unaccompanied children and those acting as delegates of public institutions during the reception procedure<sup>1</sup>. We also met other adult informants committed to working with this population, including psychologists, public schools teachers, staff working for the Ombudsman institution, journalists, etc.

Our approach with child informants followed a field strategy already used in previous research actions (Senovilla Hernández, 2013). This consisted in being regularly present in different strategic public spaces within the city of Paris (mainly in the 10<sup>th</sup> and 19<sup>th</sup> districts, close to the PAOMIE office, service in charge of processing new arrivals and assessing age and identification)<sup>2</sup>. This strategy allowed us to get progressively in touch with children and young people, talking and playing games (football, basketball, skateboarding, table tennis, etc.) or just spending time with them in order to gain their trust and help them understand our role. In our opinion, regular informal talks with unaccompanied children constitute a valuable information-gathering tool, most likely with a lower level of bias and imprecisions than more traditional tools such as formal interviews.

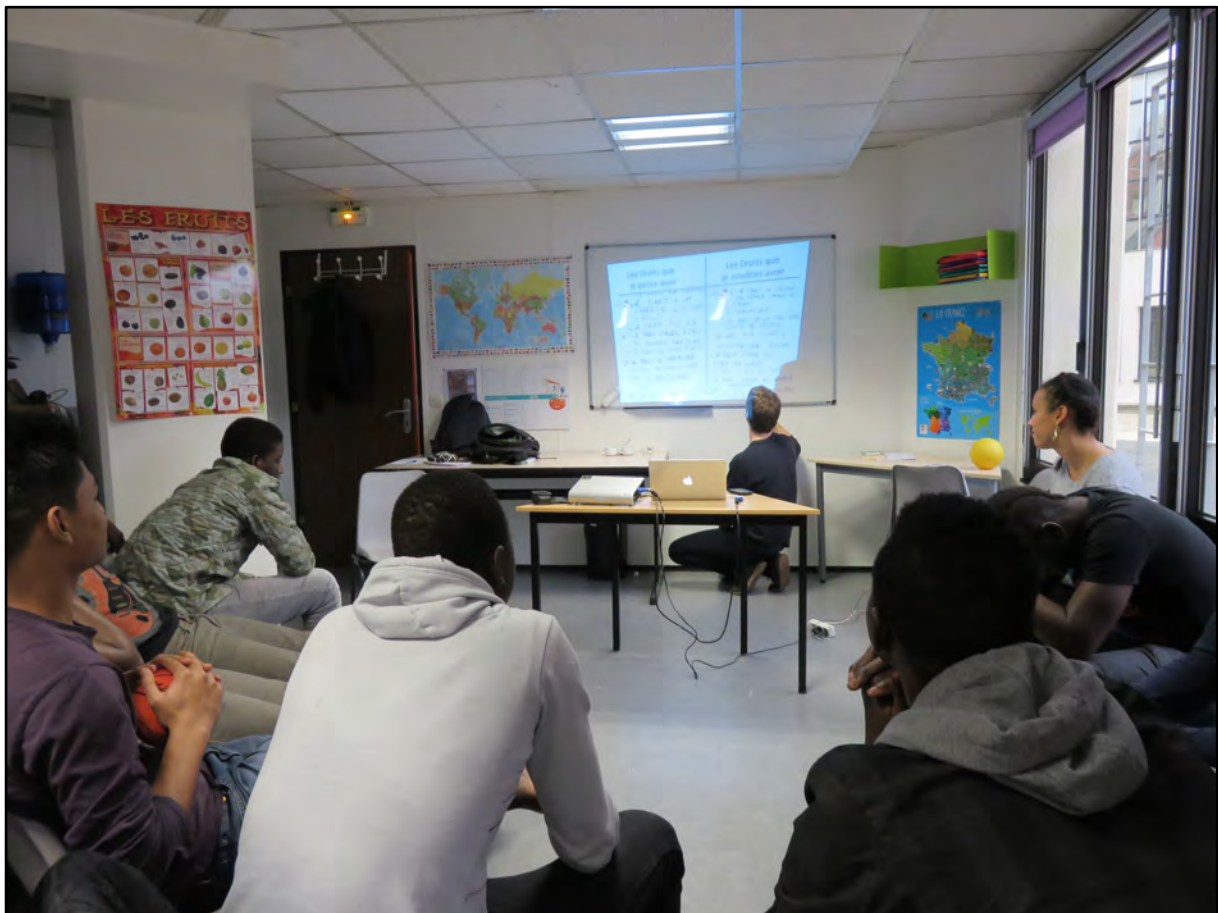
With the aim of getting more precise and less biased results, we also used a new tool involving groups of 6-15 unaccompanied children and young people that we met over 3-4 consecutive days, where we offered various participative and play activities, including sharing information about various legal and social aspects relevant to their situation. The workshops, named 'collective workshops of awareness and talking', aimed to actively involve the participants in different activities: role-plays, games, debates, etc., and created, in most cases, a favourable atmosphere for young people to talk freely about their migration experiences. The sessions tackled topics such as the notion of 'unaccompanied child', the rights of the child, the reception and protection provisions, durable solutions, transition to adulthood, etc. We organised 6 series of collective workshops (21 in total) involving around 70 unaccompanied children and young people.

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<sup>1</sup> *Toit du Monde* (Poitiers), ADJIE/GISTI (Paris), FIDL (Paris), HLR (Paris), *Médecins du Monde* (Calais et Paris), *115 du particulier* (Paris), ADDAP 13 (Marseille), FTDA (Saint Omer and Paris).

<sup>2</sup> The PAOMIE- *Permanence d'accueil et d'orientation des mineurs isolés étrangers*, run by France Terre d'Asile, constitutes a subcontracted clearing service in charge of unaccompanied children's identification and age assessment in Paris. More information here: <http://infomie.net/spip.php?article734>

Both the observation periods and the collective workshops facilitated access and consent for individual interviews with unaccompanied children and young adults. 11 formal individual interviews were conducted, 9 with self-declared unaccompanied children (several of them disputed cases) and 2 interviews with young adults. Most of the interviewees were going through the first stages of the reception procedure, i.e. children in the phase of identification and assessment, age disputed cases, children living in hotels or ad-hoc shelters (gymnasiums), children at first reception facilities, etc. A number of them were also living in the street or were in a very precarious situation at the time of the interview. All interviewees were informed about the aims and objectives of the research, the guarantees (particularly ensuring full confidentiality) and they were asked to give their consent prior to the interview. Interview settings were varied and depended on the situation of the informant. Those with children living in the street were mainly conducted at public spaces as coffee shops or parks. Interviews with children in care were usually conducted at their current accommodation facility but without the presence of members of the staff or other adults.



Collective workshop in a first reception facility, Val de Marne (OMM, 2015. All rights of reproduction reserved)

Most of the children who participated in the research came from West African countries (Mali, Senegal, Guinea, Ivory Coast, Gambia, Ghana, Sierra Leone, Cameroon and Angola), North Africa (Algeria), East Africa (Egypt, Sudan and Eritrea), Europe (Romania) and Asia (Afghanistan, Pakistan and Bangladesh). A large majority of them were boys and the average declared age was between 15 and 17 years old. Only a few girls participated in one of the series of collective workshops, and we also met a few more during fieldwork observation.

### 3 Overview of the French national context

#### 3.1 Contextual country information

In April 2013, according to the Direction of Judicial Protection for Young People (DPJJ)<sup>3</sup>, there were around 9,000 unaccompanied minors in France (*Direction de la Protection Judiciaire de la Jeunesse*, 2014). It should be noted that this estimate does not include the approx. 3,000 unaccompanied minors living in the French overseas department of Mayotte.

On an indicative basis, in 2013 an overall number of 113,772 minors (all nationalities) were in the care of the Children Welfare Services- ASE (Slama & Bouix, 2014). Therefore, unaccompanied minors represent only 6% of the total number of children protected<sup>4</sup>. Most of the UAMs are male (80% of them) while this sex only represents 59% of the national minors under care. Most of them are aged between 15 and 17.

The DPJJ recently published an activity report for the period from the 1st of June 2013 until the 31st of May 2014<sup>5</sup>. During this time, 4,042 cases were assessed as UAMs<sup>6</sup>. 47% of them were 16 years old and 87% were boys. Minors mainly came from Sub-Saharan Africa (61%) and Asia (16%) and, to a lesser extent, from North Africa and the Middle East (13%).

Most UAMs were based in the following French departments: Paris (442), Nord (258), Seine Saint Denis (247), Val d'Oise (183) and Bouches du Rhône (176). Their strong presence in Paris is due to its attractiveness as the capital city and their presence in Seine Saint Denis can be explained by the proximity of the biggest French international airport (Roissy Charles de Gaulle). There is also a significant number of UAMs on the north coast around the town of Calais close to the border with the UK. There are lower numbers of arriving UAMs in other departments.

Another source of statistics relates to the asylum process. The French Office for the Protection of Refugees and Stateless Persons (OFPRA)<sup>7</sup> collects data about unaccompanied minors seeking asylum. In 2014, there were 273 asylum applications filed by UAMs, most of them coming from Democratic Republic of Congo (28.9%), Guinea (10.3%), Afghanistan (9.9%), Angola (6.2%), and Syria (4.4%)<sup>8</sup>. A vast majority were boys (65%) aged from 16 to 17 years old (93%). The acceptance rate was of 41%: 74 beneficiaries of refugee status and 47 beneficiaries of subsidiary protection<sup>9</sup>.

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<sup>3</sup> *Direction de la Protection Judiciaire de la Jeunesse- DPJJ, Ministère de la Justice.*

<sup>4</sup> This percentage approximately corresponds to the proportion of foreigners amongst the French population (estimated at 6,1%). See INSEE, *Recensement de la population, population étrangère et immigrée par sexe et âge en 2012*.

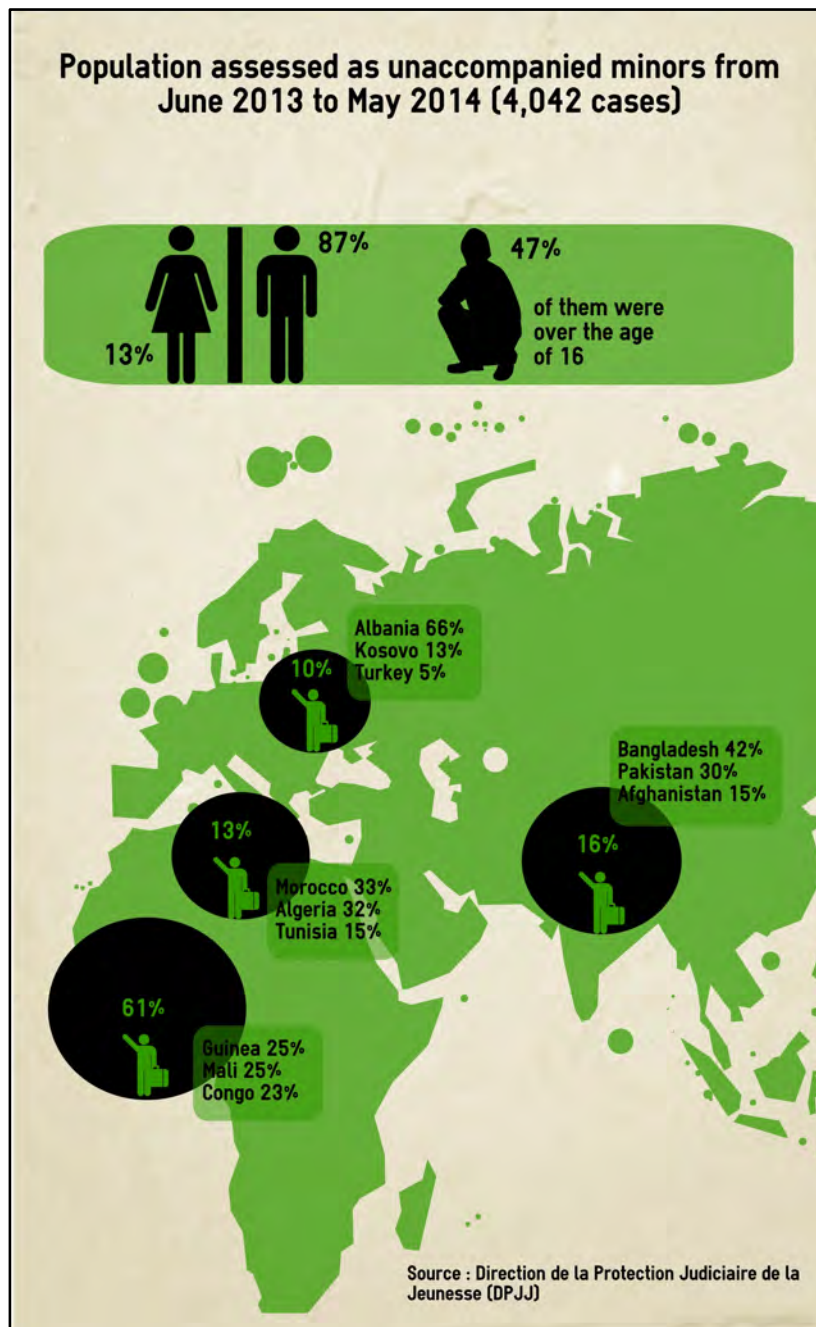
<sup>5</sup> *Direction de la Protection Judiciaire de la Jeunesse- DPJJ (2014), Rapport d'activité du dispositif national de mise à l'abri, d'évaluation et d'orientation des mineurs isolés étrangers*, 1st of June 2013- 31th of May 2014.

<sup>6</sup> According to more recent information provided by a representative of the Ministry of Justice, 19,000 young people claiming to be UAMs have been assessed between the 1st of June 2013 and the 31st of December 2014. Around 7,600 (40%) were identified as such.

<sup>7</sup> OFPRA- *Office français de protection des réfugiés et apatrides*.

<sup>8</sup> OFPRA Activity report 2014.

<sup>9</sup> *Ibid.*



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### 3.2 Institutional framework

The French authorities apply different common legal provisions to unaccompanied children (there is not specific legislation concerning this population). Firstly, unaccompanied children must be considered as 'children in need', which involves the implementation of Children's Welfare legal provisions with no nationality restrictions. Secondly, their status as migrants or asylum seekers is regulated by a legal Code (Code for Entry and Residence of Foreigners and Right of Asylum, CESEDA)<sup>10</sup>, which compiles all the main provisions concerning migration and asylum in France.

<sup>10</sup> CESEDA- *Code de l'entrée et du séjour des étrangers et du droit d'asile*.

### 3.2.1 First contact with French authorities

A child who is intercepted at the French border may be deprived of liberty in international transit zones for up to twenty days, either because he does not fulfil conditions of access to the territory or because his identity documents are lacking or false. In this period he can be sent back to his country of origin or to his last country of transit. Most detentions of this sort take place at international airport Roissy Charles de Gaulle (Anafé, 2013, pp. 27-34)

A young migrant who is identified as an unaccompanied child when he is already on the French territory cannot be deported while he is a minor and does not have to have a leave to remain or a residence permit (the French Law does not consider foreign children as 'irregular migrants')<sup>11</sup>.

Moreover, if the young person is evaluated as being 'underage' and as 'unaccompanied' (see the identification process in part 4.1.2) he must be considered as a 'child in need' as it is defined by section 375 of the French Civil Code. As a consequence of this qualification, the unaccompanied child will be entitled to institutional protection, including access to fundamental rights granted to all children, without distinction of nationality. The child will be under the jurisdiction of the Children's Judge (*Juge des enfants*) who will be in charge of monitoring his care provisions. The child should also be under the jurisdiction of the Guardianship Judge (*Juge des tutelles*) in order to be appointed a legal guardian but in practice, guardians are rarely appointed.

### 3.2.2 Heterogeneous practices of admission into care along the territory

As mentioned, the Children's Judge makes decisions concerning unaccompanied children's access to care. Protection is delegated to Children Welfare services (*Aide Sociale à l'Enfance*), which are the responsibility of French departments (96 in continental France + overseas territories)<sup>12</sup>.

Traditionally, practices of identification and admission into care have been very different from one department to another. A few departments dealt with the most part of arrivals and care of unaccompanied minors (amongst others, those of Paris, Seine Saint Denis, Bouches du Rhones and Nord). These affected departments regularly complained about the financial burden of receiving this population. In October 2011, the President of the Seine Saint Denis department, where the Charles de Gaulle international airport is located, decided to halt the reception of unaccompanied children and demanded that the Central State assume its financial responsibility in order to receive this population. Several other departments followed this initiative (obviously against the law) in the following years (GISTI, 2013).

On the 31st of May 2013, the Ministry of Justice delivered a Circular (Ministry Circular concerning UAMs reception procedures: sheltering, assessment, and orientation for UAMs, 31 May 2013)<sup>13</sup> that set up a new protocol of reception with the aim of establishing uniform treatment across the French territory. Two main issues were addressed:

- The central Government will assume the financial cost of a first five-day period in order to evaluate the age of the child and his status as 'unaccompanied'

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<sup>11</sup> Article L311-1 and article L511-4 1° of the CESEDA.

<sup>12</sup> In the administrative divisions of France, the department is one of the three levels of government below the national level, between the administrative regions and the municipalities.

<sup>13</sup> *Ministère de la Justice, Circulaire relative aux modalités de prise en charge des jeunes isolés étrangers: dispositif national de mise à l'abri, d'évaluation et d'orientation*, 31st of May 2013.



- The identified unaccompanied children will be relocated throughout the French territory (in order to avoid the previous concentration in a few departments)

This new system has significantly transformed existing practice, but has worsened the situation. The evaluation process has been subcontracted to private institutions in the traditional departments of reception. The five-day evaluation period is far from being respected (in some cases it can last for months). As a result, an increasing number of children and young people lack adequate protection and are left to survive in the streets or in informal fostering arrangements while waiting for their admission into care. Besides that, the number of age-disputed cases has strongly increased.

In other departments, mostly rural or who are not used to receiving unaccompanied children, the numbers have also increased due to the new relocation pattern. However, these rural Children Welfare services have not been adequately prepared to this new responsibility. There is a generalised lack of places at the existing reception facilities and children are often accommodated at hotels for long periods of time without or with very limited educational and social support. We will examine the shortcomings and consequences of this new evaluation system in the light of our fieldwork results in part 4.1.2.

### **3.2.3 Models of regularisation when unaccompanied children become of age**

According to the law, the status of migrant children is considered to be 'regular' in France whether they are unaccompanied or not. Consequently, getting an immigration status (getting the 'papers' as most children say) becomes an issue when they legally come of age.

Section L313-11 2 bis of the CESEDA<sup>14</sup> requests that an unaccompanied child must be admitted into care before the age of 16 in order to obtain a residence permit. Besides this objective condition, there are three other conditions of discretionary assessment:

- The former unaccompanied child must provide evidence of having successfully followed mainstream education or professional training
- He also has to provide evidence of a successful integration into the French society (a report from the reception institution will be requested)
- His family links in his country of origin will also be examined (this condition is not defined by law, but in practice indicates that the child should not have links with his family in order to be granted with residence status)<sup>15</sup>.

Children who have been admitted into care after the age of 16 must respect identical conditions but their regularisation is at the discretion of the authorities. Finally, it is worth mentioning that return to the country of origin, either voluntary or forced, is rarely put into practice with unaccompanied children in France (see section 4.1.5).

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<sup>14</sup> *Op. cit.*, note 10.

<sup>15</sup> *Ministère de l'Intérieur* (Home Office), Circular of 28th of November 2012.

## 4 Findings

### 4.1 Legal status

#### 4.1.1 Asylum/Migration/International protection procedures

While in most European countries the unaccompanied children's access to institutional care is concomitant to their condition as asylum seekers (the so-called 'undocumented migrant children' usually do not 'exist' in a legal sense if they do not register an asylum application), it is very important to point out that France is an exception to the prevailing European model (as it is the case in Italy and Spain, and to a lesser extent in Belgium). In contrast with other European countries, most unaccompanied children arriving in France do not seek asylum but claim State protection as 'children in need'.

Unaccompanied minors in France should be considered as 'children in need' under the Civil Code (article 375), which involves the implementation of Children's Welfare legal provisions (Social Work and Family Code- CASF)<sup>16</sup> with no restriction concerning nationality<sup>17</sup>. The Public Welfare Services (ASE)<sup>18</sup> has to provide them with the same assistance as they do with national children, including material support, as well as educational and psychological assistance.

The notion of 'being in need' applies when the health, the security or the morality of a non-emancipated minor are in danger and when the conditions of his education and his physical, intellectual, affective or social development are seriously compromised<sup>19</sup>. The ODAS (National Observatory of Decentralized Social Action)<sup>20</sup> evaluates this notion as a multidimensional concept and considers that 'children in need' are those whose living conditions can be a source of danger when it affects their health, security, morality or education, even if they are not considered as mistreated persons (ODAS, 2001). An Appeal Court decision on the 7th of November of 2002 confirmed that unaccompanied minors *have to be* considered as 'children in need'<sup>21</sup>.

Provided the weak proportion of unaccompanied children seeking asylum in the French context, our survey has prioritised other much more sensitive aspects, particularly the age assessment procedure and the identification of young migrants claiming to be unaccompanied children as a necessary step prior to their acceptance within the institutional protection system.

#### 4.1.2 Age assessment procedures

Age assessment practices have no basis in French law but must comply with the protocol set up in the 31st of May 2013 Circular<sup>22</sup>. According to the protocol, the assessment may address three main aspects: the minority of age, the fact of being unaccompanied and the territorial responsibility (to ensure that the minor is not in transit). Despite the fact that there

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<sup>16</sup> CASF- *Code de l'Action Sociale et des Familles*.

<sup>17</sup> In France there is no formal distinction between UAMs coming from non-EU countries and UAMs coming from EU countries, which is in contradiction with the definitions proposed by the EU legal instruments.

<sup>18</sup> ASE- *Aide Sociale à l'Enfance*.

<sup>19</sup> « *Si la santé, la sécurité ou la moralité d'un mineur non émancipé sont en danger, ou si les conditions de son éducation ou de son développement physique, affectif, intellectuel et social sont gravement compromises* ».

<sup>20</sup> ODAS- *Observatoire de l'Action Sociale décentralisée*.

<sup>21</sup> Appeal Court of Poitiers, 7th of November 2002, n°02/184.

<sup>22</sup> *Op. cit.*, note 13.

are significant differences amongst territories regarding the undertaken assessment practices, it can be said that three main tools are used:

(1) A social assessment

This assessment consists of one or several interviews with the young person, in most cases conducted by staff of the relevant Children Welfare services or a subcontracted NGO. During the social assessment interviews, the young migrant is asked to describe his situation, to show his documents and explain how he got them, to talk about the life conditions in his home country and the links with his family. Furthermore, he has to accurately outline his migration path from departure to arrival in France, including dates of arrival and departure from transit points, means of transportation, etc. A first initial assessment is undertaken at this stage with regard to the child's declarations, the identification documents (if any), his physical appearance and any other information relevant to his identification as unaccompanied minor.

Recent statistics show that around 60% of the young people claiming to be unaccompanied minors were excluded from institutional care as their minority or isolation were contested during this initial assessment (*Direction de la Protection Judiciaire de la Jeunesse*, 2014). This percentage of exclusion leads to a strong presence of children and young people lacking protection, particularly in important conurbations like Paris or Marseille. During our fieldwork, we met a significant number of young migrants who were denied institutional protection following an initial social assessment disputing their age or their status as 'unaccompanied'. These young persons can appeal to the Children's Judge who will either confirm or not the initial assessment made at the administrative level and may order a medical assessment and an investigation on the validity of the identity documents that the young person possesses.

(2) An evaluation of the young person's identity documents

Section 47 of the French Civil Code establishes a presumption of validity of foreign identity documents. Only if the administration has a solid doubt about validity, it may order an experts' examination of these documents. However, we have noticed that in practice a significant number of initial assessment decisions do not comply with this presumption of ID documents' validity and children are rejected from institutional care based only on subjective criteria (physical appearance, clothing, coherence of discourse, etc.) Even in those cases where the documents have been deemed authentic, the Children Welfare services (or the organization under delegation of the public authority) may dispute the credibility of the document owner. In particular, as many young people coming from West Africa only possess a birth certificate without photographic identification, authorities may argue that there is no evidence that the young person is the real holder of the document presented. Finally, in cases where the young person's entourage has sent the ID documents by mail after he has arrived in France, authorities may deliver a negative decision based on this practice (which is usual in a number of African countries).

(3) Medical age estimations

Abundant literature refutes the validity and accuracy of medical methods used to estimate a young person's age [Committee on the Rights of the Child, 2005 & 2009; Separated Children in Europe Programme, 2012; UNICEF, 2009; *Haut Conseil de*

*Santé Publique*, 2014; *Académie Nationale de Médecine*, 2007; *Commission Nationale Consultative des Droits de l'Homme*, 2014; *Défenseur des Droits*, 2012; *Comité Consultatif National d'Ethique*, 2005]. The most frequently used methods in the European context consist in an assessment of bone development (wrist or clavicle); of dental maturity (specifically the scale of development of third molars); or an examination of the young person's puberty development (European Asylum Support Office, 2014). In all cases, scholars state that these methods are highly uninformative and only allow an approximate estimation of the age with a significant margin of error (around 18 months or more). Some of the methods, in particular the frequently used X-ray of the wrist bones, appear as particularly inadequate and inaccurate to estimate the age of children older than 14.

In France, there is no consistent practice regarding medical examination of unaccompanied children's age. Some territories practice the classical methods to estimate bone development, while some others practice a combination of methods including an examination of dental maturity and puberty. There are also a few territories that do not practice medical examination of age (as in the Pas de Calais department).

French regulations require the young person's informed consent prior to a medical examination<sup>23</sup>. However, informed consent is rarely requested in practice. Young migrants are systematically led through medical examinations of their age and their eventual refusal may be interpreted as an evidence of being beyond minor age.

#### *Children's perceptions on age assessment procedures and the analysis of their impact*

The above-described tools for assessing the identity and age of the young people claiming to be unaccompanied minors present a number of gaps in terms of procedural guarantees that could have a negative impact on the children's fundamental rights and particularly undermine their development by exposing them to vulnerability and marginality.

In Paris and Marseille, young people waiting for the initial social assessment or already rejected at this stage (and waiting for a judicial decision) often lack protection and are therefore denied their basic fundamental rights. With regard to this initial social assessment, the young people consulted highlighted a number of failings susceptible to hamper their rights as children that are obviously against the best interests principle.

Social assessment interviews are too short to properly understand the complexity of the young people's migratory paths. In Paris the initial assessment is under the purview of the PAOMIE service<sup>24</sup>. Interviews at this service can last between 15-90 minutes. The young people evoked their incapacity to talk freely in an environment where they feel unwelcome.

*"I could not talk about everything. She (the interviewer) had not asked a lot of questions. It's them who talk a lot in fact, us - we don't even talk much. They ask you questions, you have not finished yet answering, and they ask you another question; you end up forgetting what you were talking about. By the end of the interview, I did not even understand what she was saying to me, she talked too fast. It's not a real dialogue"*

Ousmane, 17 y/o, Paris

<sup>23</sup> See sections 371-1 of the French Civil Code (*Code Civil*) and L1111-4 of the Public Health Code (*Code de la Santé Publique*).

<sup>24</sup> See note 2.

Besides interview length, it is the rapport between the evaluator and the young person that is of great importance. According to the young people we met, the interviews are far from being 'child-friendly'. Being aware of the importance of this first assessment in order to be qualified as an unaccompanied child and to be admitted into care, young people face the interviews with a high degree of anxiety and fear.

*"We are under a lot of stress and we make mistakes. In Africa we are not used to this kind of interviews, so we freak out"*  
Amadou, 16 y/o, Paris

*"When we see the evaluator, we are afraid. So when he asks questions we fail to answer properly"*  
Ousmane, 17 y/o, Paris

Another issue during interviews is the role of interpreters. On the one hand, requesting an interpreter may considerably delay the date of the interview (during the waiting period for social assessment, in most cases, children have to provide for themselves). On the other hand, the young people consulted stated that the quality of interpreters was poor (on some occasions an interpreter is appointed without real proficiency in the mother dialect of the young person). Sometimes they also felt that translations were partial, interpretative and biased.

Fieldwork note

*During one of the collective workshops run in Paris, we organised a role-play activity and asked the participants to act out a scene reproducing the social assessment interviews they had been through at the PAOMIE headquarters. During the play, the young person playing the role of interpreter asked a lot of questions to the young person acting as an unaccompanied child. Most of this dialogue was in an African dialect and, at the end, the interpreter summarised all the exchanges (several minutes) in only a few sentences. During the discussion that followed, the other young people confirmed this kind of practice as usual.*

Moreover, a number of young people expressed their feeling that having a good level of communication in French language may play against their interest to be qualified as unaccompanied children. They suggested their feeling that - in terms of their assessment - a good level of expression in French is considered not to be compatible with their condition of 'unaccompanied'.

*"Some people have to wait for two months, maybe one, to do the interview. It depends if you speak French, Soninke or Wolof. I preferred doing the interview in French because it was faster"*  
Sikou, 16 y/o, Paris

*"I myself sometimes have regretted that I learnt French at school and came to France. I think if I would have been illiterate, it'd maybe have been easier"*  
Amadou, 16 y/o, Paris

Another important aspect relates to the content of the interview. As mentioned above, the analysis of different assessment decisions (which is consistent with the declarations of the young people consulted), indicated that the social assessment of the young person's identity

tackles a number of factual issues which are initially not relevant to qualify the person as an 'unaccompanied child'. Specifically, there is a continuous request from the interviewers to provide exact dates and the name of the transit points where the young person has been in order to trace the migratory journey. A number of questions relate also to family aspects and living conditions in the country of origin.

*"She was asking me exact dates and I said I didn't remember. She asked me why and I answered that I don't know. I said I didn't know and she insisted for me to provide a date. She made me to talk 'in dates'"*

Ousmane, 17 y/o, Paris

The decisions following the initial assessment confirm this practice. In a number of cases, refusals do not really refer either to the minority or the status as 'unaccompanied'. The assessment decisions in figure 2 below reproduce, in all cases, a similar argument based on the incoherence of and the inconsistencies in the discourse. Young people's credibility seems to be systematically disputed at this stage.

Cultural codes are also often ignored or misinterpreted. Some African young people expressed that they were often reproached for avoiding eye contact with the interviewer (and they explained that avoiding eye contact is a sign of respect to elder people in their culture). A young person also stated his incomprehension when the interviewer compelled him to provide the age of his parents.

*"In Africa we know neither the age nor the date of birth of our parents. If I ask my father how old he is, he'll get mad. We don't do that"*

Statement collected during a collective workshop in Paris, 23rd-27th of March 2015

Physical appearance, clean new clothes and use of electronic devices (mobile phones in particular) may also be criteria to dispute children's credibility. During collective workshops, the participants expressed how they were invited to stand up while the interviewers carefully examined them. They also expressed that interviewers examined them underneath the interview table to check their shoes. A participant expressed how the interviewer reproached him that his glasses were of a French brand and argued that wearing those glasses was incompatible with his alleged condition of being 'unaccompanied'. As a matter of fact, the condition of being 'unaccompanied' is challenged as far as the young person has some relatives or friends likely to accommodate him, even on a provisional basis.

*"I called the PAOMIE and I asked them to shelter an unaccompanied girl who was living in the street. But their answer was 'No, when she arrived in Paris she was accommodated by her brother's friends; she can go again with them. She's not unaccompanied, she has friends'"*

NGO representative, Paris

Concerning the other instruments used to assess age and identity, many unaccompanied children (particularly Africans) do not understand the importance of presenting ID documents as they come from a context where birth registration and administrative documents are not systematic and registration practices do not match with industrialized countries' expectations. A secondary school teacher talked to us about the case of a boy who was pursued for criminal charges when his father in the country of origin sent him an ID card with the fingerprint of another person<sup>25</sup>.

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<sup>25</sup> Interview with a teacher in charge of unaccompanied children's adapted schooling, Paris, 5th of February 2015.

## Figure 2- Examples of initial assessment decisions

Decision of 11/02/2015 (upper left corner): "Your statement lacks precision and presents several incoherencies. You do not provide any evidence of your alleged minority"

Decision of 25/02/2015 (upper right corner): "Your statement, lacking precision and coherence, presents several improbabilities. You do not provide any element allowing to conclude the minority and the fact of being allegedly unaccompanied"

Decision of 17/03/2015 (lower left corner): "Your statement is full of gaps and stereotypes. You do not provide any evidence of the minority alleged"

Decision of 16/02/2015 (lower right corner): "Your statement is full of gaps and present several incoherencies. You do not provide any element allowing to conclude the minority and the alleged fact of being unaccompanied"

The figure displays four examples of initial assessment decisions from the French Department of Paris, illustrating various inconsistencies and lack of evidence in asylum seekers' statements.

**Example 1 (Top Left):** Decision of 11/02/2015. The applicant claims to be a minor from Guinea, born in 1984, and states that their father died in 1987. The decision notes that the applicant's statement lacks precision and presents several incoherencies, and that they do not provide any evidence of their alleged minority.

**Example 2 (Top Right):** Decision of 25/02/2015. The applicant claims to be a minor from Guinea, born in 1984, and states that their father died in 1987. The decision notes that the applicant's statement, lacking precision and coherence, presents several improbabilities, and that they do not provide any element allowing to conclude the minority and the fact of being allegedly unaccompanied.

**Example 3 (Bottom Left):** Decision of 17/03/2015. The applicant claims to be a minor from Guinea, born in 1984, and states that their father died in 1987. The decision notes that the applicant's statement is full of gaps and stereotypes, and that they do not provide any evidence of the minority alleged.

**Example 4 (Bottom Right):** Decision of 16/02/2015. The applicant claims to be a minor from Guinea, born in 1984, and states that their father died in 1987. The decision notes that the applicant's statement is full of gaps and presents several incoherencies, and that they do not provide any element allowing to conclude the minority and the alleged fact of being unaccompanied.

With regard to medical examinations, we have found several young people stating that they were not asked to provide their consent before the test.

*"It's something which is not good. It does not tell the truth. In my case, they scanned everything, even my sex. They didn't ask my permission, they just did. When they finished doing that, the doctor told me 'you are not 16'; and I answered 'your machine does not work properly, your machine is sick'. He was mad when I told him that. When they gave me the results the day after, they told me 'No, you are over 19"*

Amadou, 16 y/o, Paris

Summing up, beyond the impact that a refusal on the qualification as an unaccompanied child may have on everyday life and on access to fundamental rights (we will examine these aspects in detail later), the young people we interviewed struggled to understand the reasons for their refusal from institutional protection. In most cases, they did not understand the lack of credibility of their narratives or the doubts about the authenticity of their documents and they felt discriminated against in comparison to others who succeed to be qualified as 'unaccompanied children' and to access institutional protection.

*"It shocked me (the negative decision) because I brought my birth certificate. White people here do not know black people, they do not know if we are children or adults"*

Ibrahima, 16 y/o, Paris

*"What hurts me it's the suspicion at the PAOMIE. If they like your face they take you in, otherwise they kick you out"*

Ousmane, 17 y/o, Paris

#### **4.1.3 Care/guardianship appointment procedure**

Access to care relies on the results of the assessment of age and on the 'unaccompanied' condition described in the previous section. If the candidate gets a positive evaluation as 'unaccompanied child', he will be transferred to the relevant Children Welfare services and will get provisional accommodation. Nevertheless, the initial decision has to be confirmed by the Children's Judge (or the Prosecutor) who may summon the young person to a hearing. If the Children's Judge confirms the initial assessment, he will place the unaccompanied child under the responsibility of the Children Welfare Services of the department he is living in, services that must initially provide all care provisions to the child until he becomes of age. However, following the 31st of May 2013 Circular, unaccompanied children may be subjected to relocation to another French department. This decision about relocation is simply based on statistical criteria and does not evaluate either the profile or the needs and wishes of the concerned child. Moreover, certain departments proceed to a new identification process of the relocated children. Occasionally, unaccompanied children who have already qualified as such must go through a new social and medical assessment. During fieldwork, we have come across several cases of young people who, following relocation after their qualification as unaccompanied children, have been assessed as adults by the authorities of the department where they were relocated.

Those young migrants who are rejected at the initial identity assessment have to request a Children's Judge hearing. Depending on the territory, the waiting period for a hearing can be of 3 to 8 months (in Paris it is of 5 to 6 months). During this waiting period, children may provisionally be placed at a shelter until the date of the hearing, but this decision is at the



discretion of the Children's Judge. In Paris, the number of placements pending hearing has consistently dropped in the last few years (71% in 2013; 54% in 2014; around 20% during the first months of 2015 according to recent internal statistics provided by an NGO)<sup>26</sup>. All young people who are not sheltered before the hearing have to provide for themselves.

Moreover, access to a hearing with a Children's Judge is not systematically guaranteed. Certain Children's Judges declare themselves as having no competence to evaluate the situation of an unaccompanied child (they consider that unaccompanied children should be the responsibility of the Guardianship Judge). We have also recorded some cases where the Children's judge has delivered a decision without seeing the concerned unaccompanied child at the hearing<sup>27</sup>. One of the youths met expressed his disbelief about this:

*"How can a Judge reject a child without even seeing his face?"*  
Sikou, 16 y/o, Paris

Our findings show that Children's Judge hearings may be extremely brief (we had the opportunity to be present at a young person's hearing which lasted exactly 9 minutes). Judges do not usually proceed to an evaluation of the child's needs but focus only on the results of the medical examinations or other investigations regarding identity. The role of interpreters seems again dubious and the legal support of a lawyer is not systematic.

*"There was a Soninke interpreter but he didn't translate anything. As the Judge said that I understood a bit of French, he talked straight to me. I could understand almost everything of what he told me but I was unable to talk myself"*  
Mamadou, 15 y/o, Paris

*"Yes, I saw the Judge. I was alone with the Judge. There was no social worker or lawyer"*  
Abdoul, 16 y/o, Paris

Concerning guardianship, once an unaccompanied child has been placed under institutional care by the Children's Judge, the Guardianship Judge should be informed in order to tackle the absence (definitive or provisional) of the child's legal representatives. Guardianship is delegated to the President of the territorial department where the child is living. In practical terms, this responsibility transfer (from the Children's Judge to the Guardianship Judge) does not involve major changes for the concerned child, as the institution caring for him will remain unchanged. However, in practice, the Guardianship Judge is rarely informed and a guardian is rarely appointed. In the four territories of our survey, the responsibility remains that of the Children's Judge until the age of majority.

#### **4.1.4 Transition to 18**

As already pointed out, the status of migrant children is considered to be 'regular' in France and getting residence status only becomes an issue when those concerned become of age. Conditions to get immigration status have already been outlined in section 3.2.3 of this document.

During our fieldwork, we noticed that unaccompanied minors are often unaware of the criteria to qualify for immigration status. However, a vast majority expressed the key

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<sup>26</sup> Statistics provided by the ADJIE- *Accompagnement et défense des jeunes isolés étrangers*.

<sup>27</sup> During an interview with the Ombudsman's representative, he confirmed these two practices of Children Judges' refusing to deal with unaccompanied children cases or to issue decisions without summoning the young person to a hearing. Interview with an Ombudsman's representative, Paris, 26th of November 2014.

importance of being regularized in their life project (getting documented involves access to a regular life, but most importantly, the chance to go back home). In a number of cases, members of staff at care facilities are not always well-trained in the legal issues surrounding immigration or asylum.

*"The key point is the knowledge social workers have about all these legal aspects. In this centre, they are more confident because they have been working with this population for four years now. Well, more or less confident. Young people also feel safer. It wasn't like this before"*

Psychologist at a reception facility, Paris

The uncertainty of being granted residence status once majority is reached shows that unaccompanied children's integration into France is not associated with permanent residence status and cannot be considered as a valid long-term solution in their best interests. In fact, many unaccompanied children switch to irregular status once they reach the age of majority.

Considering all administrative difficulties and the complex path to autonomy that unaccompanied children face, extending their protection after the age of majority appears to be good practice and in their best interests. Indeed, French Children Welfare regulations provide the possibility of granting an extension of care provisions from 18 until 21 years of age.

This possibility applies for all children - national or foreign - allowing them a smoother transition to adulthood and autonomy. The so-called 'young adult contract'<sup>28</sup> can provide financial, accommodation, legal, educative and psychological support. Furthermore, being granted this care extension makes the regularisation process easier.

The authority to grant a 'young adult contract' belongs to the French departments and is optional and discretionary. Criteria are not legally defined, but are most commonly based on the child's educational success and the possibilities of integration into the labour market. However, a lot of French departments are currently reluctant to grant this protection declaring a lack of financial resources while others only provide limited extension in terms of duration. In Paris, for example, some 'young adults contracts' only last three or six months, while others are limited to a specific amount of financial support.

Children we met at reception facilities are aware of this possibility and know it is not an entitlement but a rather random decision. Members of staff at these facilities often insist on the importance of being 'good' and 'obedient' in order to have better chances of being granted with an extension of care. One of the children we met expressed this feeling to us (even if he misunderstood and thought that this power belonged to the Judge instead of the General Council):

*"They told me that until 21 y/o is a bit difficult now. If your behaviour is good, the Judge can take you until 21, if you are serious, if you do well at school, he can help you until 21"*  
Balla, 15 y/o, Paris

#### **4.1.5 Return procedure**

Return to the country of origin is rarely put into practice when it comes to unaccompanied children in France. Forced return is not considered as a valid policy (with the exception of a

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<sup>28</sup> Contrat jeune majeur.

bilateral agreement between France and Romania where there were less than 50 forced returns between 2002 and 2004)<sup>29</sup>. The OFII - French Office for Immigration and Integration - provides support for voluntary return but very few children express a desire to go back to their country of origin<sup>30</sup>. We found hardly any cases of children willing to go back home during our fieldwork, even if practitioners evoked some isolated cases.

## 4.2 Care provisions and day-to-day living

### 4.2.1 State funding and financial arrangements

As it has been already been mentioned in section 3.2.2, practices of identification and admission into care of unaccompanied children have traditionally been very different from one department to another in France. The 31<sup>st</sup> of May 2013 Circular has set up a new protocol of reception with the aim of establishing a uniform treatment across the French territory. The new measures proposed in the Circular seek to harmonise the identification process and to establish a territorial relocation pattern in order to avoid the previous concentration of unaccompanied children at a few departments. These provisions aim to distribute the financial burden of the unaccompanied children's reception.

Regarding relocation criteria, the number of UAMs received in each department must match the number of young people under 19 already living in that territory. For example, if there are 13% of French nationals under 19 in one department, 13% of the total number of UAMs received in France will be relocated there. This distribution is organised without taking into account the youth's views and choices or their social networks (and as a consequence, without taking into account their best interests).

*"Since I am living here, there are a lot of guys that have left to another region. A lot went to Barcelonnette<sup>31</sup>. Well, I'd like to stay in Paris. Ibrahima did not want to go there, but his social worker told him 'you go there'. Every man for himself"*  
Balla, 15 y/o, Paris

However, our fieldwork actions, particularly the collective workshops, showed that the choice of location - a place they can call 'home' as Kohli points out - is of great importance for young migrants (Kohli, 2014, pp. 83-104). Many of the young people we met (particularly West Africans) had chosen France as their final destination. Considering the long journeys that many of them faced, it seems paradoxical to impose their final location. During our conversations, they often evoked their preferences for urban or rural areas. In general, unaccompanied minors identify urban areas as places where a lot of opportunities may arise, where it is possible to have cultural (religious) references, to meet people, to have fun, etc. On the contrary, some unaccompanied minors prefer rural areas as they feel they will be safer and less exposed to 'distractions' in order to succeed at school.

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<sup>29</sup> Accord entre le Gouvernement de la République française et le Gouvernement de la Roumanie relatif à une coopération en vue de la protection des mineurs roumains isolés sur le territoire de la République française et à leur retour dans leur pays d'origine ainsi qu'à la lutte contre les réseaux d'exploitation concernant les mineurs, 4th of August 2002.

<sup>30</sup> According to the OFII, 78 unaccompanied minors (46 of them Romanians) were returned to their country of origin between 2003 and 2009. Source: *Les politiques relatives à l'accueil, l'intégration et le retour des mineurs non accompagnés*, Ministère de l'immigration, de l'intégration, de l'identité nationale et du développement solidaire, 2010, pp. 16-17.

<sup>31</sup> Small town in South-East France.

*"I'd like to live here in France, but not in Paris. There are too many people here and I am not used to that. When I see too many people, there's something in my eyes I cannot understand. I'd like to live by the countryside"*  
Ousmane, 17 y/o, Paris

On occasion, once an unaccompanied minor is relocated after identification as such, their new department of reception may demand that their age and identity be assessed again. Another shortcoming of this policy relates to the long periods (1-3 months according to one of the consulted practitioners) needed to organize the transfer. This period involves, on the one hand, a lack of interest and proper care of the unaccompanied minor from the Welfare services of the original department where the child was initially received, as it is known that the young person is going to be transferred. On the other hand, it may also mean abandoning all the integration progress made in the original host department. A teacher dealing with unaccompanied children illustrated well this kind of situation:

*"We had quite a lot of cases like that, and they move in the middle of the (school) year. We had a project for a boy, he wanted to be a butcher and he started an apprenticeship in a butcher's shop. Then he had to leave. His social worker told me 'I don't care about his project, he has to pack up': and he left"*

Teacher in charge of unaccompanied children's adapted schooling, Paris

#### **4.2.2 Accommodation and access to food**

In order to address the accommodation conditions of unaccompanied children within the French context, it is important to differentiate between two categories: those who are waiting for, or are in the process of, identification assessment and who are accommodated in provisional shelter facilities if there are available places; and those who have already been qualified as unaccompanied children and have access to regular care and accommodation.

With regard to the former, in many departments authorities are arguing about the lack of available places in clearing reception facilities. During our fieldwork in Paris, we identified minors who were still in the age assessment process and did not benefit from any accommodation provisions. In Marseille, most of the youth we interviewed had been received by the Police services on arrival. The Police take them to a day centre managed by an NGO in charge of unaccompanied minors' first reception, which does not provide any accommodation.

As a consequence, many young migrants are forced to live in the street (metro stations, parking-lots, the actual street) while relatives, friends or members of their entourage informally accommodate some others. During our fieldwork in Paris, we were regularly in touch with a group of young Africans (between 30-50) who organized to settle in an informal camp nearby the PAOMIE office, and later on in a central well-known square (*Place de la République*). After more than two months camping in the street during winter-time, this group of young people was finally housed at different reception facilities for the adult homeless (see section 4.2.7).

Other informal arrangements were reported by some of the youth interviewed (sleeping in the waiting room of hospital emergency services, sleeping in the kitchen or the corridors of reception facilities for adult migrant workers, etc.) Other children met in Paris were put up in a gymnasium (overnight shelter organised by the PAOMIE office) or in hotels (usually those who were provisionally placed by the Judge until a definitive decision on their identification assessment is made).



Boulevard de la Villette, Paris. At the bottom we can see the PAOMIE office. This area is one of the main spots of observation during our fieldwork in Paris. (OMM, 2015)



Gymnasium where a number of young migrants are sheltered overnight. Places are often insufficient for all candidates (Photo taken by a young migrant, 2015)





Informal camp close to the PAOMIE office (OMM, 2015)



Informal camp close to the PAOMIE office (OMM, 2015)

Regarding qualified unaccompanied children, following the Children's Judge hearing, the choice of accommodation has to be made taking into account the age, the degree of autonomy and available places. However, we noticed that the decision depends mainly on the available places and does not result from best interests assessment.

There is significant diversity around the country in the type of accommodation proposed to unaccompanied minors.

First reception centres providing night shelter and some educational activities seem to be one of the adequate solutions observed during fieldwork. We had the opportunity to be in touch with a group of children accommodated at a Red Cross specialized reception centre in the Val de Marne department (inside the Paris conurbation). In contrast with those we met in the streets, these children seemed thriving and, most importantly, safe. The group was globally living in harmony and they were attending regular languages classes and other recreational and educational activities (sports, cultural visits, etc.) A good indicator of the quality of the reception was that, during our visits, we noticed that other children or young people who had previously been accommodated at this centre came by to spend some time with their peers, to talk to the social workers, etc. However, we saw that children could remain during excessive lengths of time at this kind of facility before their definitive placement.

Placement in foster families appears to be a possible accommodation solution with widely varying results. The quality of welcome of the families is variable. We recorded statements mentioning families that were really looking after and providing affection to the received unaccompanied children, while other families appeared much more hostile and seemed to be involved in fostering for financial gain only. The consulted children do not have a consistent opinion about this kind of accommodation. While some seemed reluctant to integrate a space with precise rules and restrictions, others felt attracted by the opportunity to live with a family (maybe because they had always lacked one or they missed their own one). Cultural and religious codes may also be a source of anxiety for children accommodated in host families.

*"When I heard the word 'foster family', I said to myself 'this is going to do it'. I was terribly missing my own family"*  
Tazim, young adult, Poitiers

*"Well, I don't want to be in a family. Because being in a family if you eat something and your religion does not want you to eat that, it'll be hard"*  
Balla, 15 y/o, Paris

Living in shared flats (with some educational support) is a solution of great attraction for most of the young people we consulted (in particular for those aged 16 or 17). Being partially autonomous and - most importantly - to have some space for private life, studying, etc., seems to be a key factor for them. In Saint Omer, close to the town of Calais, unaccompanied children go through an adaption period in a shared apartment before being definitively placed in it. Indeed, a period of adaptation could be a systematic good practice for children regardless of the accommodation solution.

*"It's great. The good things are the autonomy, the tranquillity, less conflicts, and being able to invite girls! Having your own apartment it's really cool!"*  
Mamadou, 15 y/o, Paris

There is a wide diversity of different reception centres but the quality of the reception is variable. As a general rule, there are specialized centres which cater only for unaccompanied children, while other centres also receive French national children in need (or migrant children with families). As was the case in our previous research findings (Senovilla Hernández, 2013), one of the more unpopular attributes of this kind of accommodation is obeying strict rules, particularly limitations on going out.

*"I have already visited two centres. It does not interest me because you cannot go out, even during weekends. You have shared rooms, not individual. I refused. I prefer to be here than there. It's not normal not to be allowed to go out during weekends!"*

Abdoul, 16 ans, Paris

Our findings show that unaccompanied children's opinions regarding the place of accommodation are not always heard and, when they are, they have variable impact on the outcomes. In certain territories, reception centres are synonymous of simply 'being placed', as there are rarely other alternatives. It was the case in Marseille. In Paris, accommodation places are so rare, that expressing reluctance to a placement it is usually not well perceived by the Welfare services staff. In Poitiers and Val de Marne, choice seemed more open to negotiation with the social workers in charge.



Young migrants waiting for food at a soup kitchen for homeless people in Marseille (OMM, 2015)

With regard to access to food, minors placed in reception centres can access food without difficulties. For those accommodated in hotels, they are provided with meal vouchers and as a consequence, they often eat unhealthy food in fast food or kebab shops.

Children living in the street usually eat at soup kitchens for the homeless. It can be difficult for many UAMs to be relegated to homeless services. It has to be underlined that in Paris, a group of NGOs traditionally taking care of the homeless has recently embraced the issue of



UAMs living in the street. During our fieldwork period they were mainly providing basic assistance, including food distribution.

#### **4.2.3 Access to physical and mental health care**

Again, two categories may be differentiated in terms of access to health: (1) young people waiting for, or in the process of, identity assessment or age-disputed cases; (2) qualified unaccompanied children under institutional protection.



Young migrants among other adults waiting for health care provided by a NGO in Paris (OMM, 2015)

When unaccompanied children's status is contested, we have observed obstacles to accessing health care provisions. Even when they are lacking institutional protection, they should be entitled to basic health care provisions just as any other undocumented migrant<sup>32</sup> but they have to provide proof of their current residence in France (which might be impossible given their situation). This may become an overwhelming obstacle for those young persons living in the streets or at provisional shelter solutions. In Paris, some support organizations accept to domicile unaccompanied children at their headquarters address in order to facilitate their access to health care provisions.

If UAMs try to get health care directly in a hospital, care can be refused as physicians may argue they do not have the right to treat children without the agreement of their legal

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<sup>32</sup> Section L115-6 of the Public Health Code (*Code de la Santé Publique*).

representatives. The decision to accept or refuse care without consent of legal representatives belongs to each physician. Section 1111-5 of the Code of Public Health allows doctors to overstep parental authority if they consider it essential for the child's health.

*"I have a tooth problem. When I go to the hospital, the doctor tells me, 'you are a minor, I cannot pull out your teeth'. He just puts some plaster and I cannot sleep"*  
Amadou, 16 y/o, Paris

UAMs under institutional protection are entitled to the same full health care provisions as national citizens<sup>33</sup>. Most of the children we met were benefiting from convenient access to health care and were affiliated to the social security system (even if some of them were not aware of their entitlement). However, some children waiting for relocation to another department (see section 4.2.1) may, on occasion, be excluded from health care as authorities consider that the process should be launched at the final destination.

Some problems linked to language difficulties, cultural codes and inadequate follow-up by the social workers in charge of the children may arise. In the case of Tazim, he recounted how, after breaking his arm, he did not understand the doctor's instructions to follow his treatment and nobody at the reception centre helped him to cope with this problem:

*"I broke my arm and I went alone to the hospital. The staff at the reception centre just came once to visit me. The doctor didn't explain anything to me; particularly, he didn't say that I should not be exposed to the sun. He did not give me any ointment. I had some pins and after two and a half years I had an appointment to take the pins out. And then they told me: 'But you should have put some ointment on!' At that moment I spoke good French, so I replied: 'What ointment, you did not tell me anything about that!'"*  
Tazim, young adult, Poitiers

In terms of mental health and psychological wellbeing, a vast number of the young people we met had gone through stressful experiences during their migratory journey. Most of them had gone through a Mediterranean crossing, and they also expressed traumatic experiences at transit points, particularly those who lingered for a while in Morocco or Libya.

*"There was that guy who fell in the sea. I can still see his face. He died"*  
Ousmane, 17 y/o, Paris

Their precarious situation may reinforce their psychological troubles. The young people lacking protection we met often evoked their deep unease. They brood a lot, they have headaches, sleeping problems, nightmares, etc. Sometimes, the young people we met did not know what a psychologist or a psychiatrist was. During one of the collective workshops we explained to the participants the possibility of getting care for mental health troubles, as they had never heard about that before.

*"At the centre I was scared, but I didn't have the opportunity to talk to someone else. I didn't speak French either. The most important is to get integrated in good conditions. Better than a psychologist by the way"*  
Tazim, young adult, Poitiers

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<sup>33</sup> Ministère du Travail, de l'Emploi et de la Santé, Circular of the 8th of September 2011.

#### 4.2.4 Access to education

French law ensures the right to education with no restriction on nationality. However, during our fieldwork we have recorded some obstacles hindering unaccompanied children's effective access to this fundamental right.

Unaccompanied children in the first stages of the reception process often simply benefit from language courses, sometimes with a low number of weekly hours. All newly arrived children (whether unaccompanied or not) must go through an assessment of their level of schooling. After this assessment, we have observed long delays to get a school affiliation. This is due to the lack of available places in adapted classes or, for those with a sufficient level of French language, the lack of available places in regular schools.

For children over 16, education is no longer a duty but is still a right<sup>34</sup>. However, on occasion, we have noticed cases of unaccompanied children who reached 16 or 17 years of age and were not integrated in school. In these cases, Children Welfare services may suggest that they engage in short training courses ending before their age of majority (language classes or vocational training). These training classes (subcontracted to private structures) do not always allow a satisfactory integration into the labour market, as the degrees obtained are not official.

Young people waiting for or in the process of identification assessment find extensive difficulties to get access to schooling. During our fieldwork timeline (November 2014 to June 2015) we observed two different practices in Paris. Before December 2014, the institution (CASNAV)<sup>35</sup> in charge of assessing the level of schooling and assigning pupils to an education establishment accepted to evaluate and assign 8 unaccompanied children lacking protection per week. However, since January 2015, the same institution decided to keep on assessing the school level of young migrants lacking protection but decided not to assign them into school until they were in institutional care. This new practice was a source of disappointment for the young people concerned.

*"Why they allow us to pass the level exam? They should tell us straight away that we are not allowed to go to school"*  
Mamoudou, 16 y/o, Paris

Another important issue to address is that of professional training orientations. In most cases the choice is made bearing in mind the conditions requested for the unaccompanied child to get an immigration status and a possible extension of the care provisions once they become of age. Children are aware of the importance of succeeding in school in order to have better opportunities to become integrated in France when they become of age. They have to adapt their ambitions and schooling expectations to the challenges and constraints linked to their situation.

*"They are all aware of that, they need to follow an official educational programme to have the opportunity of being granted with an extension of care. As a result, they follow their training even if they are not satisfied with it. They know that anyway they have no choice"*  
Psychologist at a reception facility, Paris

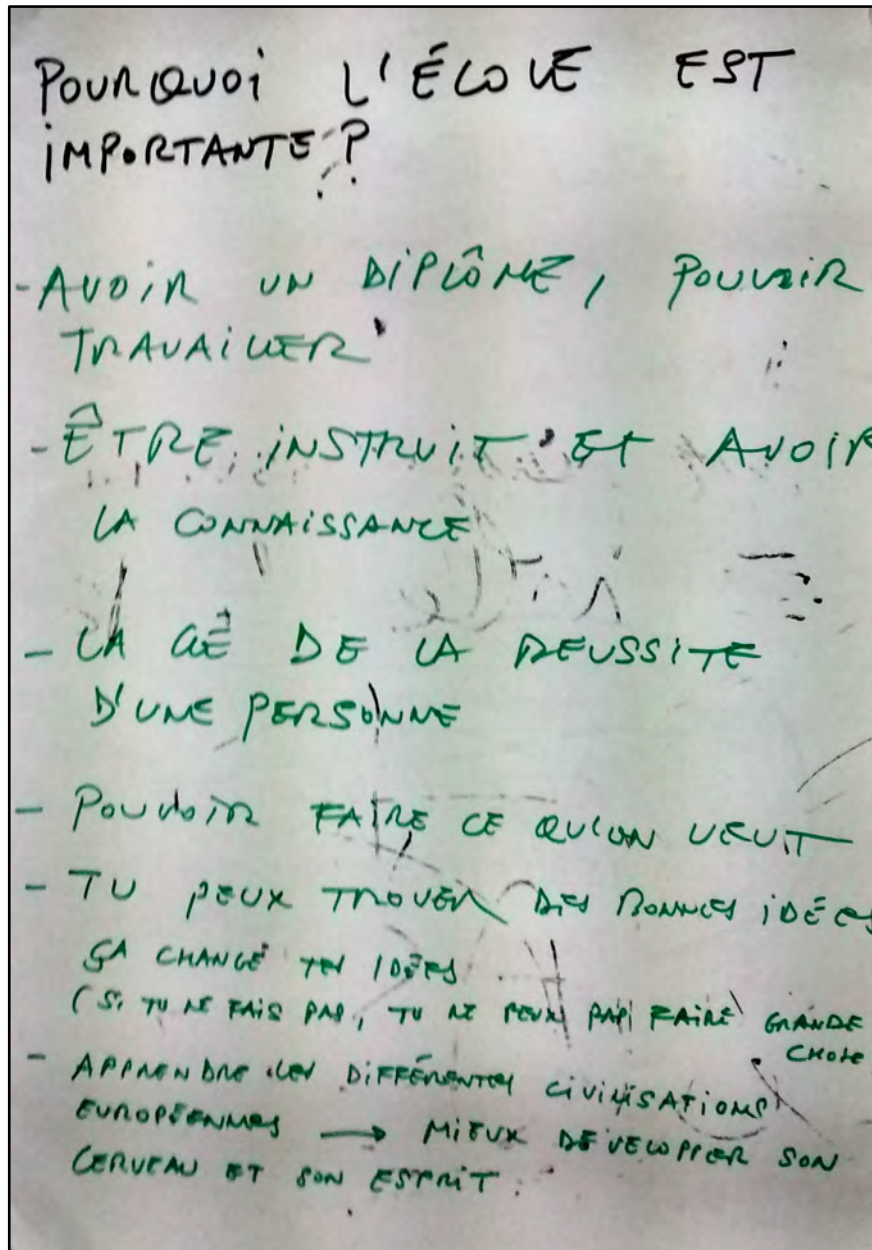
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<sup>34</sup> See section L122-2 of the Educational Code (*Code de l'éducation*) and Circulars of 20 of March 2002 and 2 of October 2012.

<sup>35</sup> CASNAV- *Centre académique pour la Scolarisation des enfants allophones nouvellement arrivés et des enfants issus de familles itinérantes et de voyageurs*.

### Figure 3- Importance of schooling for young migrants<sup>36</sup>

Translation: Why school is important? - To have a diploma and be able to work; - To be instructed, to have knowledge; - Because it is the key to success for every person; - To do what we want; - Because you can find good ideas (and if you don't go, you can barely do anything); - To learn about European civilisations -> To better develop one's brain and one's spirit.



It is worth mentioning that many of the young people consulted put schooling and getting instruction at the top of their migration priorities (see figure 3 above). In the case of West Africans, school was a major challenge for all of them (they have a high consideration of French public education, as many of them did not have the opportunity to attend school in their home countries). Many of them were highly motivated and committed to doing well in school; all the staff from the educational institutions we have consulted confirmed this trend.

<sup>36</sup> Open discussion at a collective workshop run in the city of Paris in March 2015. Photo: OMM, 2015.

School is also a basic space of integration, the first space where young migrants are able to meet and be in contact with French people of their age.

*"They did not ask me what I wanted to do. I wanted to study first and then get a degree to have the papers. I am a bit scared because I hope I'll be able to get my degree"*  
Ibrahima, 16 y/o, Paris

*"When I went to take the level exam, I said my ambition is to become a journalist, but when they asked me what I wanted to do, I said construction industry. If I do well in construction, I may be able to follow my studies later"*  
Amadou, 16 y/o, Paris

#### **4.2.5 Access to paid work**

French legislation allows children over 16 access to regular work<sup>37</sup>. Unaccompanied minors following professional training courses may access work within the framework of traineeships or apprenticeships (linked to their training programme) but they need to be granted an authorisation to work. This authorisation is not systematically granted, which may jeopardize the continuity of the children's training programme.

Access to employment becomes a major challenge for former unaccompanied children when they come of age. This access requires getting regular immigration status once adult, which is itself subject (amongst other criteria<sup>38</sup>) to the achievement of an official training programme.

A group of young adults we met during our fieldwork (they were all under extension of the institutional care provisions) expressed the difficulties they had had in accessing employment either because they had not been granted with an immigration status allowing them to work on a regular basis or because their access to employment was seriously compromised due to the long delays in obtaining this status. They were also surprised by the existing limitations in terms of accessing certain types of employment.

Together with education, access to employment in the short or medium term constitutes one of the main priorities and objectives expressed by most unaccompanied children we met.

#### **4.2.6 Formal support experiences**

For those young people who are waiting for or in the process of identity assessment, institutional practices of educational and social support vary widely and are - generally speaking - ineffective.

In the case of children in the process of evaluation who are housed in hotels or gymnasiums in Paris, institutional support was based around a periodical meeting with the child in order to provide him with meal vouchers and a public transportation pass and, at best, some addresses of NGOs or public services where he can find further support. Besides, they are not properly informed in a friendly manner on their administrative and legal situation.

In Poitiers, during our fieldwork, around 40 young people were in provisional placement at a couple of hotels, while only two institutional agents (one of them recruited part-time) were in charge of them (apart from other additional children). These two people were barely able

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<sup>37</sup> Section L4153 of the Labour Code (*Code du Travail*).

<sup>38</sup> See sections 3.2.3 and 4.1.4 of this document.

to organise all the domestic and logistical aspects linked to the placement of this group every week. As a result, real educational support was very limited, consisting in a few hours of language classes per week and the organisation of some sports activities.

In Marseille, children in the process of identification had to provide for themselves in terms of accommodation and access to food. The association in charge of the identification process offered educational support and recreational activities for them (advice in health related issues, language courses, cultural activities, sports, etc.)

Regarding unaccompanied children qualified as such, support differs and depends on the institution or delegated actor in contact with the child. Generally speaking, childcare workers are in charge of providing most of the educational, social and legal support that the child requires. The referent staff in charge of monitoring the situation of the child (by Judicial delegation) barely meet the children, and when they do, it is for purely administrative and logistical follow-up. Children housed in hotels (where there are no childcare workers), rely exclusively on these punctual meetings with the Welfare services referents.

*"Most of the time, the so-called 'educational follow up' takes place once a week. The child goes to the referent office, he gets his pocket money, his meal vouchers and it's over. Follow up does not exist. Building a life project, monitoring their school progress, helping them with daily problems of an adolescent, etc., it is the childcare workers at the reception facilities who do all that. Children at hotels must cope with all this alone, as the Welfare services referent is clearly overworked"*

Ombudsman's representative, Paris

Finally, it is worth mentioning that Children's Judges must also monitor the social and educational situation of all children under protection. However, in practice, and following an initial decision on placement, many Judges do not follow up on the situation of unaccompanied children under protection.

#### **4.2.7 Informal support networks and social life**

Family represents a major reference and source of personal values and courage for many of the children we met. Many of them expressed the significant gap of affection that being far from their family represents.

*"I think that if I'd be with my family I'd feel better, I'd be doing better in life. Considering everything, lack of love and loneliness are not easy to cope with. I have learnt a lot and discovered loads of things, but I have also lost a lot of things"*

Tazim, young adult, Poitiers

Therefore, many unaccompanied children keep regular contact with their relatives via social networks or by telephone. In some cases, even at a distance, parents still play an important role in terms of education. They provide advice, they tell their children what they must do, etc.

*"They give me information on the situation in my home country, what I should do here, not to smoke, not to steal, not doing forbidden things and it should be good for me"*

Sikou, 16 y/o, Paris

When they are in a precarious situation, a number of the young people we met hide the reality they are going through in France from their family and their entourage in their home

country. They are afraid of disappointing them. This point was raised at one of our collective workshops. When we asked them why they do not tell the truth about their situation to their families and friends, the participants (all of them Africans) agreed that nobody would believe them if they told them the truth.

*"I don't say anything. If they ask, I simply say it's fine. Because people in Africa, many want to come here, so they won't believe you"*

Amadou, 16 y/o, Paris

Regarding friends, many of the young people build a solid link of friendship and solidarity with those peers who are living or have gone through a similar situation. This finding applies both for those who are living at the same destination place (even if provisional) and for those met during the journey or at transit points and who have followed a different path. Distance friendships are kept via social networks, in particular Facebook.

For peers living in the same city or town, the network of friends acts as a source of information, support and know-how. While we were spending time with a group of West Africans based in the street camps of *Boulevard de la Villette* and *Place de la République* in Paris, we saw how the newly arrived received advice from those already in place on the good opportunities and tips (where to wash your clothes for free, where to go for legal support, for food, etc.). In Marseille, the network of peers or adult migrants from the same ethnic or linguistic community is of key importance for day-to-day survival. We have been regularly in touch with two young Ghanaians who were allowed to spend nights in an African restaurant after closing time. This informal community network is fundamental for unaccompanied children to organize their survival until they are identified and admitted into care or until an alternative solution is found for them. In Paris, we were also in touch with another young person who voluntarily decided to stay on his own and keep distance from his group of peers. In the end, he struggled to find opportunities of survival and ended up moving to another territory.

Concerning friendship with national peers, this opportunity arises when unaccompanied children are integrated into mainstream reception centres or in regular schools. Friends in the country of origin or at other countries are contacted on social networks and the Internet.

An important source of support is that of NGOs or that of organisations from the civil society. In Paris, a group of associations and NGOs has created a platform (Adjie) to provide legal counselling and support to all young persons who have been refused at the initial assessment, notably to appoint the Children's Judge (otherwise these youths will not have, in most cases, the personal resources and know-how to obtain this appointment on their own). This platform represents a valuable service for young migrants to cope with all the difficulties linked to their precarious administrative situation. Other NGOs (Hors la Rue, Médecins du Monde, RESF, etc.) provide a different range of services and support for unaccompanied children and young migrants.

During our fieldwork in Paris, we also observed the presence of a new association of support to homeless people that was helping a group of migrant children and youth living in the streets. They provided them with tents, sleeping bags and other camping gear, and also encouraged this group to political mobilisation in order to claim their rights. This association (called '*115 du Particulier*') organised two informal camps of between 25-50 children and youths, firstly in front of the PAOMIE office in the 10<sup>th</sup> district of Paris, and later in *Place de la République*, a central and busy square in the centre of Paris. The action of this association



and their different mobilisations resulted in a list of 43 children and youths who were accommodated in reception facilities for adults and, most of whom got access to school<sup>39</sup>.



Young migrants demonstrating in Paris: Minors on the street = Lawbreaker State (Photo: J.C. Saguet)

#### 4.2.8 Leisure

Leisure and recreational activities have a place of particular importance in every child's development. Unaccompanied children are no exception, even if their past experiences and their current challenging situation means that leisure becomes subsidiary to other major challenges such as surviving, learning the language, getting integrated into school, getting an immigration status, finding paid work, etc. During our collective workshops with young migrants, we questioned them about what they liked to do in their leisure time, their passions, their likes and dislikes and their favourite activities. We observed that a number of them have had restricted access to leisure in their previous lives. Therefore, sports or cultural activities represent a new discovery and attraction for them that definitely favour their development (Gernet, 2013).

*"I don't feel comfortable when I speak in front of other people, but when I play football I would like a lot of people to stare at me"*  
Sikou, 16 y/o, Paris

Apart from some exceptional cases who mentioned chess, cricket, basketball or snooker as their favourite activity, football appears as *the* activity most unaccompanied children prefer. A lot of them mentioned with different wording that playing football - and generally speaking playing sports - constitutes also a way of escaping from the difficult and uncertain situation they are living in, forgetting for a few hours their condition as 'unaccompanied minors', getting away from the associated 'stigma' and becoming like any other adolescent.

<sup>39</sup> Paradoxically, even if these young Africans were claiming their status as unaccompanied minors, they finally gained support from institutions (*Préfecture de Paris*) with no jurisdiction in child protection.



*"If a see a ball, if we are going to play with a ball, I am going to be joyful, I am going to forget everything. If I stay alone, I start thinking; if during the night it is cold, I start thinking. I want to play, to meet people, to forget my problems. I keep on going but I am sad. I want to be alive"*  
Ousmane, 17 y/o, Paris

As we have already mentioned in section 2, during the fieldwork observation process we played different sports with some unaccompanied children we met in the streets. This strategy was an excellent way of approaching them and gaining their trust. In front of the PAOMIE office, there is a small city multisport track where different groups and nationalities of unaccompanied children played football. We had the occasion to play with them once and this moment gave us the opportunity to approach a group of Albanians, a nationality who is usually much less visible in the public space. At the informal camp in *Place de la République* in Paris, one of the unaccompanied children in the group had found an abandoned skateboard (this square is a well-known skateboarding spot in Paris). This gave us the opportunity to demonstrate to some of the young people some of the basics of a sport they had never experienced before. From time to time, we also invited some of the youth to play table tennis or basketball with us.



Young migrant skating (OMM, 2015)



Playing table tennis with a young migrant, Paris (OMM, 2015)

Nevertheless, some obstacles may hinder unaccompanied children's fundamental right to play and leisure. For those living in the streets, the impossibility of taking a shower or changing clothes may be a major obstacle to playing sports. They are of course also excluded from paid activities. Some public services or private sports clubs may put obstacles to unaccompanied children being accepted. We accompanied one child to register in a public library, and the clerk wanted to refuse access because his birth certificate did not have a photograph. For those who try to join football clubs, getting an official licence is not always possible.

#### **4.2.9 Living in accordance to cultural orientation**

As most children and young people met were at the initial stages of their reception process, we had scarce opportunities to tackle questions linked to the respect of their cultural codes and traditions at the reception facilities. Nevertheless, with some practitioners, we touched on certain differences that the geographical origins may give rise to (even if every child is unique). These differences lead staff from Welfare services to adapt to the variations in the profiles of newly arrived children. Indeed, a few years ago, minors from Asia were a majority, particularly from Afghanistan, and most experts we consulted agreed to say that this profile was highly independent and autonomous. Currently, West Africans are the predominant minors in the field. This group seem in many cases to be more vulnerable or more dependent on receiving instruction and care provisions.

Besides, most of the children and young people observed were Muslim (although some children from Ghana and Cameroon were Christian). Many of them often mentioned the high importance of religion in their lives, and a high number were practicing. They also use religion and faith as a way of coping with the difficulties of their precarious and challenging situation (Ní Raghallaigh, 2008)

*"When I pray, I forget everything. I have the feeling of forgetting all hassles, that I don't have problems and all that"*  
Amadou, 16 y/o, Paris

Reception facilities usually offer an adequate environment and respect young people's desire to practice their religion as long as it does not interfere with other activities and cohabitation. However, children and young people living in the street may face obstacles to practice their religion, especially in complying with the hygiene requirements and codes for praying or going to the mosque or the church.

*"I cannot practice my religion as my clothes are dirty, and it's difficult to find a good place for praying"*  
Souleyman, 15 y/o, Paris

*"I am not 'unaccompanied' because God is very important to me. But I cannot go to church, as I am ashamed of my clothes and not having a shower every day. So I pray outdoors"*  
David, 17 y/o, Marseille

#### **4.2.10 Life plan perspectives**

We have regularly questioned the children and youth we met about their dreams, objectives and ambitions for the future. Those of the sample still lacking protection had difficulties projecting into the future, as all their energy was being channelled to cope with their immediate situation.

*"I have quite lost hope here, I don't think I'll be able to achieve my dreams"*  
Souleyman, 15 y/o, Paris

*"In our current living conditions, we cannot accomplish our dreams"*  
Sikou, 16 y/o, Paris

Projections in the future were usually linked to success in certain professions (become a football player, a lawyer or a doctor), building a family in France or in the country of origin or fulfilling material and/or financial ambitions (having a big house, an expensive car, etc.) A number of children and young people also expressed their will to commit to supporting other unaccompanied minors in the future.

*"If football player does not work, I'd like to be a doctor in the army"*  
Sikou, 16 y/o, Paris

*"I'd like to be a football player or lawyer to support women and children"*  
Souleyman, 15 y/o, Paris

*"I'd like to get married and have children here in France, maybe in Mali as well"*  
Balla, 15 y/o, Paris

*"I'd like to help people, because there was other people who helped me, I'd like to help too"*  
Sikou, 16 y/o, Paris

*"I have learnt a lot these years, I know now that becoming a professional football player is too hard. I'd better work helping others when I see all these youths struggling"*  
Bakary, young adult, Paris

### 4.3 Best interest of the child determination

If the 'best interests' notion is contained in French mainstream regulations on child protection<sup>40</sup>, there is no specific legal provision on how to determine the concept for national or for unaccompanied migrant children. During our conversations with adult informants we collected different points of view on how the notion is interpreted and implemented among this population.

Certain observers think that authorities consider the BIC notion when dealing with unaccompanied children as a constraint. It is a legal principle they have to try to circumvent or ignore in order to prioritise the real principle applied in practice, that is, preserving institutional interests, and in particular, giving priority to budget limitations in Social Services in a context of post economical breakdown and high rates of unemployment in France.

*"We provide institutional actors with means and legal coverage to take the wrong decisions and in any case to avoid considering the best interests principle. It is a fact that if we look at most individual decisions concerning unaccompanied children, their best interests is not what we are looking for"*

Project coordinator on unaccompanied children, International NGO, Paris

The notion is therefore highly exposed to political manipulation. Its subjectivity and vagueness allows institutional actors (Welfare services, policy-makers and even judicial actors) to interpret the best interests of the child in a way that fulfils the administration's interests, which are mainly financial, but also political (Senovilla Hernández, 2007).

A first example of this trend pertains to the identification of the best interests notion with the French republican 'principle of Equality'. Based on this principle, French legislation does not foresee a single provision regarding unaccompanied children. The legal category 'unaccompanied minor' simply does not exist in the law. The only references to this category and its treatment are to be found in Governmental legal instruments, such as the Ministry of Justice Circular of 31st of May 2013. Still, this legal instrument makes reference to 'unaccompanied children' and organizes their first reception and identification without really defining who this group are. In practice, this leads to a misinterpretation of the 'unaccompanied' notion: as we have highlighted in this document, children can be excluded from care if it is considered that they have relatives or friends that can support them or have previously supported them, even if this support is no longer valid or without considering if these relatives are the actual legal representatives of the children. This interpretation, widely implemented in practice, is in clear contradiction with the recommendations from international agencies, in particular with the definitions of the category proposed by the UN Committee on the Rights of the Child, the UNHCR and the EU Directives that link the fact of

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<sup>40</sup> Article L112-4 of the CASF (see note 16): "*L'intérêt de l'enfant, la prise en compte de ses besoins fondamentaux, physiques, intellectuels, sociaux et affectifs ainsi que le respect de ses droits doivent guider toutes décisions le concernant* (All decisions concerning children must take into account their interests, the fulfilment of their fundamental, physical, intellectual, social and affective needs, as well as respecting their rights)"; Article L221-1 paragraph 6° of the CASF: "*Les services de l'Aide Sociale à l'Enfance sont chargés de veiller à ce que les liens d'attachement noués par l'enfant avec d'autres personnes que ses parents soient maintenus, voire développés, dans son intérêt supérieur* (Children Welfare services must ensure that the child's affective links with persons other than his parents have to be preserved, even developed, if this is in his best interests)"; Article 375-1 of the Civil Code: "*Le Juge des enfants est compétent pour tout ce qui concerne l'assistance éducative et doit se prononcer en stricte considération de l'intérêt de l'enfant* (The Children's Judge is responsible for child protection issues and must rule in strict consideration of the child's interests)".

being unaccompanied with the definitive or provisional absence of the child's parents or legal representatives<sup>41</sup>.

Furthermore, the 'integration' of this population into mainstream regulations concerning children in need gives rise to a number of dysfunctions and different interpretations of the law. As a result, an unaccompanied child will be treated differently if he arrives in Paris, Marseille or Lille. The complexity of French legal provisions for children in need, produced initially for national children with completely different profiles and needs than unaccompanied children, provokes what a number of practitioners have called 'the need to improvise'<sup>42</sup>, where existing protocols, facilities and practices for national children are adapted in an attempt to fit this population.

*"The best interests notion should involve, in terms of procedure, to respect all the rights of the child. We (the Ombudsman institution) try to compare (in an equivalent situation) how authorities would have acted in the case of a French child to how they act with an unaccompanied child. In France, we are very far from being equal"*  
Ombudsman's representative, Paris

In practice, field practitioners and members of civil society (teachers, lawyers, doctors, social workers, care-workers) who are committed to supporting this population in their professional or private actions, whether individual or collective, represent today the main keepers of the best interests notion in favour of unaccompanied children within the French context.

## 4.4 Towards durable solutions

In light of the different and varied obstacles that unaccompanied children are faced with in asserting their fundamental rights in the French context, we have questioned a number of experts on the improvements and changes needed. We were particularly interested in the reception model, the care provisions and the identification of durable solutions in order to improve policies and practices and make them take into consideration and respect the best interests principle.

A significant number of the practitioners and experts we consulted pointed out the importance of overcoming the current logic of budgetary cuts to progress towards a real consideration of unaccompanied children's best interests. The long-term duel between the Central Government and the territorial departments to establish which institution carries the financial burden of receiving this population has to come to an end, and if it does not, it is

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<sup>41</sup> According to the UN Committee on the Rights of the Child, unaccompanied children are "children who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so" and separated children are defined as "children under 18 years of age who have been separated from both parents, or from their previous legal or customary primary caregiver, but not necessarily from other relatives" (UNCRC General Comment n° 6 on the treatment of unaccompanied and separated children outside their country of origin CRC/GC/2005/6, 1st of September 2005, paragraphs 7-8).

According to UNCRH "an unaccompanied child is a person who is under the age of eighteen, unless, under the law applicable to the child, majority is, attained earlier and who is separated from both parents and is not being cared for by an adult who by law or custom has responsibility to do so" (UNHCR Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum, February 1997).

According to article 2 of the Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 an unaccompanied minor is a "minor who arrives on the territory of the Member States unaccompanied by an adult responsible for him or her whether by law or by the practice of the Member State concerned, and for as long as he or she is not effectively taken into the care of such a person; it includes a minor who is left unaccompanied after he or she has entered the territory of the Member States".

<sup>42</sup> "Le besoin de bricolage". The term 'bricolage' (DIY) is widely used in practice by practitioners to explain how they adapt their usual work protocols to the particularities of unaccompanied children.

not acceptable that this quarrel leads to the poor conditions of reception and to the violation of fundamental rights that we have already noted.

Furthermore, it is the identification and age assessment process that are a key focus of concern. Most of the experts we consulted condemn the identification and age assessment process as it is implemented nowadays. If there is doubt in certain cases, systematic suspicion is no longer tolerable. The presumption of minority that is recommended by international and national agencies is methodically ignored during the assessment process. Instead, when a doubt exists, administrative and judicial instances tend to apply a presumption of majority<sup>43</sup>. In any case, it is urgent today to rethink this process to guarantee a number of procedural safeguards that are completely ignored. First of all, all persons declaring to be minors should be provisionally admitted into care in similar conditions to all other children in need. The assessment should be undertaken by independent professionals over a sufficient period of time (the 5 day period set up by the 2013 Circular is obviously insufficient and not respected) and include a holistic and child-friendly approach. Uninformative medical tests should be avoided and the presumption of minority respected. Decisions should be motivated in substance and procedures and mechanisms of appeal incorporated. All persons claiming to be unaccompanied minors should have access to an independent legal counsellor during the whole process. Last but not least, a parallel assessment of the real needs of the child, which does not currently exist, should be introduced into the process.

In what concerns the content and provisions of institutional protection for those who have succeeded in being qualified as unaccompanied children, we can also highlight a number of failures and shortcomings. An important point to address is the number of breakdowns and false starts that unaccompanied minors have to go through in the protection path, a trend that has been accentuated since the new protocol of territorial relocation. Children are likely to be sent from one department to another, from one reception facility to another, from one educational centre to another, in most cases without really considering if these movements are in the child's best interests, but just a matter of institutional organisation linked to the number of available places. Children have to present themselves and recount their experiences (often traumatic) over and over again to different interlocutors. It is urgent to ensure a coordinated action of all actors involved at administrative, judicial and associative levels in order to share information and work together comprehensively. Children's participation must also be ensured in order to identify the best decisions to be taken.

Regarding durable solutions, there is a tacit priority in the French context towards an integration of children into the host society. Returns to the country of origin or resettlements in third countries are hardly ever considered. Nevertheless, this option is not seconded - as the Committee on the Rights of the Child recommends - by the granting of a durable immigration or asylum status. As we have previously underlined, conditions to obtain a residence permit once children become of age are mainly based on the age of admission into

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<sup>43</sup> For instance, we have followed an African teenager for several months during his initial identification assessment at administrative level until a decision of the Children's Judge. This youth declares to be 16 y/o, he possesses a birth certificate corroborating this age and looks even younger (at first sight we thought he was 14 or 15 y/o). In its decision excluding this young person from care protection, the Judge expressed doubts on his age but considered there was not enough evidence to identify him as a minor. Unfortunately, this kind of decision is not an isolated case but a real trend. It is worth recalling that the Committee on the Rights of the Child recommends that age assessments "*must be conducted in a scientific, safe, child and gender-sensitive and fair manner, avoiding any risk of violation of the physical integrity of the child; giving due respect to human dignity; and, in the event of remaining uncertainty, should accord the individual the benefit of the doubt such that if there is a possibility that the individual is a child, she or he should be treated as such*" (UNCRC General Comment n° 6 on the treatment of unaccompanied and separated children outside their country of origin CRC/GC/2005/6, 1st of September 2005, paragraph 31).

care (lower than 16 y/o) and other subjective criteria. Once again, this pattern does not take into consideration the best interests of the child, but only tries to set up conditions allowing authorities to apply their discretionary power. Integration and granting of immigration status should be decided in light of the best interests' determination process, taking into account the profile, the needs of the child and his opinion and expectations, regardless of the age of arrival and other vague criteria.

## 5 Conclusion

Best interests determination is a complex process that has to be implemented considering both the holistic development of the child and the full and effective enjoyment of all the rights established by the Convention on the Rights of the Child. However, it appears that French authorities and stakeholders surrounding UAMs are struggling to adapt their practices to the principles of international Law. Our fieldwork - consisting of 11 interviews between unaccompanied minors and young adults and 19 experts, as well as the organization of 6 series of collective workshops which involved around 70 young migrants - allowed us to collect the views and perceptions on authorities' practices dealing with UAMs and to put them into perspective with the provisions of the CRC. In these concluding remarks, it seems appropriate for us to compare our findings with a recent report<sup>44</sup> published by UNHCR and UNICEF addressing *"what States can do to ensure respect for the best interests of unaccompanied and separated children in Europe"*. According to this source, *"best interests determination (BID) (...) starts in principle as soon as an unaccompanied or separated child is discovered and ends when the child has obtained a durable solution"*. However, our findings highlight that there is a differentiated implementation of the principle depending on a range of factors, which can be summarized as follows.

### *Limited access to institutional protection*

First and foremost, one of the main focuses of the research in France has been observing the UAMs' first contact with authorities and their access to institutional care provisions. Our findings show that doubts and suspicion at this stage prevail over the establishment of a relationship of trust and the assessment of risk factors and needs in terms of protection. The identity and age of the consulted minors was systematically investigated, whereas international institutions recommend that *"age assessment procedures are only to be undertaken as a measure of last resort when there are grounds for serious doubts"*<sup>45</sup>. According to the young people we met, assessment interviews are far from being 'child-friendly' and, given the importance of this first assessment in order to be qualified as an unaccompanied child and be cared in, many youths face them with a high degree of anxiety and fear. This practice contradicts the recommendations of The Committee on the Rights of the Child which estimates that *"the assessment process should be carried out in a friendly and safe atmosphere by qualified professionals who are trained in age and gender sensitive related interviewing techniques"*<sup>46</sup>. By analysing the children's and young people's perceptions on the French assessment process, we have noted that fundamental safeguards such as access to effective interpretation, child-friendly information or the conduction of several interviews carried out by qualified workers are far from being respected. Furthermore, the persistent use of contested medical methods in order to estimate the age without the informed consent of the child constitutes another serious concern. The fact that around 60% of the young people claiming to be unaccompanied minors is excluded from care as their minority or isolation is contested at the initial assessment<sup>47</sup>, challenges the unconditional application of the child's right to institutional protection set up by article 20 of the CRC and article 24 of the EU Charter of Fundamental Rights. We have also noticed that, following the initial assessment, a written and reasoned decision is not always provided to the young people concerned, and that many obstacles may prevent them from appealing the

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<sup>44</sup> UNHCR & UNICEF, *Safe and Sound: What States can do to ensure respect for the best interests of unaccompanied and separated children in Europe*, October 2014.

<sup>45</sup> *Ibid.*

<sup>46</sup> UN Committee on the Rights of the Child, General Comment n° 6 on the treatment of unaccompanied and separated children outside their country of origin CRC/GC/2005/6, 1st of September 2005, paragraph 20.

<sup>47</sup> See note 6.



decision (nonetheless, these safeguards are guaranteed by article 13 of the European Convention on Human Rights and article 47 of the Charter of Fundamental Rights of the EU).

The intervention of the judicial authority, which should be the main defender of the best interests of the child, showed room for improvement due to several reasons: obstacles in accessing Justice for young migrants; the brevity of the hearings, and, in most cases, the failure to take full account of all the elements concerning the situation of the unaccompanied child. Judges usually do not proceed to a real evaluation of the child's needs but rather focus on the results of the age assessment process (medical methods or other). Instead, the Judges' decisions should take into account a body of different elements when assessing and determining unaccompanied minors' best interests<sup>48</sup>. Additionally, Children's Judges rarely follow up UAMs once they have been admitted into care, in most cases until they reach the age of majority. However, according to the Committee on the Rights of the Child, decision-makers should consider that "*the capacities of the child will evolve (...) and measures should be revised or adjusted accordingly, instead of making definitive or irreversible decisions*"<sup>49</sup>.

### *Unequal implementation of care provisions*

The analysis of care provisions' content revealed an unequal and diverse implementation depending on the UAMs' status, the department where they were, the type of accommodation proposed and the nature of the educational support provided. Foremost, the high rate of young people excluded from care after the first assessment creates, *de facto*, a two-tier system of rights (in terms of accommodation, access to healthcare, to education, educational support, etc.)

During our fieldwork, we recorded adequate solutions proposed to some UAMs we interviewed (first reception centres providing night shelter and educational activities), but we also observed young people who were forced to live in the streets or were precariously accommodated in hotels. Most of the UAMs in care had convenient access to healthcare, while young people lacking institutional protection depended on NGO medical services or understanding physicians from public hospitals. Many of the young people consulted put schooling and getting an instruction at the top of their migration priorities, but we noticed that a lot of them found extensive difficulties in getting access to schools or to vocational training programs. Regarding the unaccompanied children that qualified as such, educational support differs depending on the institutional or subcontracted actor in charge of them. For young people who were waiting for or in the process of identity assessment, institutional practices of educational and social support were globally ineffective. UAMs access to leisure activities is also conditioned by their status and we observed that young people lacking protection faced broader difficulties to take part in sport and leisure activities.

Three main obstacles impede the effective implementation of care provisions: the lack of an independent legal representative or guardian (in most cases, a guardian is not appointed in France and Children Welfare Services assume this function indirectly, leading to a potential conflict of interests); the lack of a coordinated action between all actors surrounding unaccompanied children (that leads to multiple breakdowns during the implementation of care); the lack of durable solutions that take into account the UAMs life projects and expectations.

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<sup>48</sup> Several non-exhaustive lists of Best Interests elements have been published in UNHCR & UNICEF, *Safe and Sound*, *op.cit.*, note 44.

<sup>49</sup> UN Committee on the Rights of the Child, General Comment No.14 on the right of the child to have his or her best interests taken as a primary consideration, 29 May 2013, CRC /C/GC/14, paragraph 84.

### *Lack of durable solutions*

Caregivers must prepare unaccompanied children for the moment they will reach the age of majority, keeping in mind that *"the time factor is more pertinent for children in light of the relatively short trajectory of their development"* (UNHCR & UNICEF, 2014, page 21). Reaching 18 is often associated with the end of care provisions, the fall into irregular status and the risk to be deported to the home country. UAMs approaching the age of majority are often unaware of the conditions to get immigration status (even if they express the decisive importance of being regularized in their life project), which is mainly due to the lack of specific training for care workers in charge of them. *"Waiting until the child turns 18 to embark on asylum/immigration procedures would generally not be in the best interests of the child, who as an adult, would no longer have access to the services and guidance he or she may still in fact need"* (UNHCR & UNICEF, 2014, page 40).

Solutions included in the French legal provisions for former UAMs (getting residence status or benefitting for an extension of care) are not entitlements but are submitted to a broad marge of appreciation. Authorities are often reluctant to grant care extension or provide limited extension in terms of duration, justifying this by a lack of financial resources. Yet, the Council of Europe recommends to establish *"a special transition status, between the ages of 18 and 25, to help young migrants until they can act independently, by taking policy measures on welfare assistance and education; access to information on the relevant administrative procedures; extension of housing assistance until solutions are found; access to health care; and measures to ensure specific training for social workers"*<sup>50</sup>.

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This report shows that young people, far from being passive, use survival strategies and often resort to their networks and informal sources of support in order to overcome the obstacles they are facing. We found that personal networks are an important source of support for unaccompanied children as much as NGO support. Leisure, sports and religion also play a key role in the UAMs' development. These aspects must also be kept in mind by Welfare institutions, courts of law and administrative authorities when dealing with this population. Best interests determination is a complex process involving the consideration of a wide range of factors. Unaccompanied minors must be actively involved in the process, their opinions heard and provided due consideration. This implies going beyond the approaches giving priority to their status as migrants and focusing on their condition as children deprived of their family environment.

The current situation of unaccompanied children in France is of extreme concern. France will be examined by the Committee on the Rights of the Child in 2016. This audit represents a good opportunity to denounce all the bad practices and rights violations occurring in this country, and, hopefully, to set up the basis for a new and respectful treatment based on the best interests of the child principle, instead of the institutional interests that prevail today.

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<sup>50</sup> Council of Europe, Parliamentary Assembly, *Migrant children: what rights at 18?*, Doc. 13505 of 23rd of April 2014, Rapporteur Ms Mailis Reps, page 9.

## 6 Executive summary

*This report analyses the interpretation and implementation of article 3 of the Convention on the Rights of the Child regarding the legal treatment and practices concerning unaccompanied children within the French context. By analysing the authorities' practices and gathering the views of the young people themselves on a range of aspects linked to the reception process they have been through, the report shows that the right of UAMs to have their best interests taken as a primary consideration is far from being true. This document illustrates how French authorities and stakeholders surrounding UAMs are struggling to balance the principles of international law with their practices. Doubts and suspicion surrounding the child's identity and discourse often prevail over the establishment of a relationship of trust and over the assessment of risk factors and needs in terms of protection during the first stages of reception. Besides, durable and long-term solutions are rarely found when unaccompanied children reach adulthood. By analysing the age and identity assessment procedures, access to care provisions, access to accommodation, to food, to physical and mental health care, to education, to paid work, to formal and informal support and leisure, to support once majority is reached, the findings presented in this report suggest that the Best Interests of UAMs are often exceeded by the interests of the authorities and institutions, mainly those relating to general migration control and budget limitations in Welfare services.*

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