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FRANCE TERRE D'ASILE alternative report to the UN
Committee on the Rights of the Child on the implementation of
the Convention on the Rights of the Child

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FRANCE

Special protection measures: unaccompanied and separated children outside their country of origin

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**Abstract in English
(Full version available in French)**

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Introduction

France Terre d'Asile, which was founded in 1971 to promote and defend the right to asylum, works for unaccompanied foreign minors since the late 1990s. It manages three specialized structures in Paris, Caen and Boissy St Léger. In terms of capacity, it is one of the main organizations dealing with these young people in France.

Since the last concluding observations of the Committee related to France in 2004¹, the number of unaccompanied children has considerably increased in the country. Their situation is a major concern for all people working in the field of Children's rights in France. Although several international organizations have denounced human rights abuses on separated children², many provisions of the Convention on the Rights of the Child are not respected. The Committee on the Rights of the Child is invited to express its observations to France about the situation of unaccompanied children at the border, their situation in the territory, the deportation of unaccompanied children and legal developments at the European level.

I. Unaccompanied children at the border

In 2007, 822 young people without entry documents declared being minors at Paris - Roissy Airport³. 680 of them were recognized as such after bone age assessment⁴. Like all foreigners in this situation, they were placed in waiting zone.

A. The systematic detention of unaccompanied children at the border (art. 37b)

Unaccompanied children are systematically detained if they do not justify a regular entry on the territory.

→ *France Terre d'Asile* recommends to the French government to use detention only as a measure of last resort, which implies a search for alternatives solutions when unaccompanied children arrive at the border.

B. The conditions of detention (art. 3-1 & 37c)

Minors over the age of 13 are detained in waiting zone with adults, while those under 13 are placed in a hotel near the airport in rudimentary conditions and in an unclear legal framework.

→ *France Terre d'Asile* recommends to the French government to create a specific area in the waiting zone for all minors under 18, separated from adults and adapted to their specific needs.

¹ Committee of the Rights of the Child, 36th session, Consideration of reports submitted by states parties under article 44 of the Convention, 30 June 2004, CRC/C/15/Add.240

² Report by the Commissioner for Human Rights of the Council of Europe on the effective respect for Human Rights in France, 15 February 2006, Part VII.3 & VII.4, Human Rights Committee (Concluding Observations, 22 July 2008, § 18, CCPR/C/FRA/CO/4).

³ Patrice Bonhaume, Assistant Director in the Border's Police in charge of Roissy-Charles de Gaulle and Le Bourget airports, 20 June 2008, Défenseur des Enfants, Paris. Conference proceedings, p. 13 - http://www.defenseurdesenfants.fr/pdf/Actes_MEI.pdf

⁴ *Ibid.*

C. The representation of unaccompanied children by an *ad hoc* administrator (art. 3-1, 12, 20, 37d)

Minors arriving at the border should be represented by an *ad hoc* administrator², but many children are deported before having been able to meet with him. The number of administrators is limited, and when an administrator is appointed, he may not be available. In 2007, more than 62 % of unaccompanied children have not been represented at the border. Moreover, *ad hoc* administrators are not required to possess special skills in immigration law.

→ **France Terre d'Asile recommends to the French government not to take any measure related to the child without the presence of the *ad hoc* administrator. In addition, administrators should be required to possess some knowledge on immigration law to perform their missions more effectively.**

D. Asylum process (art. 3-1 & 22)

After an interview in precarious conditions, not adapted to children, the Immigration Department (*Ministère de l'Immigration*) decides to admit asylum seeker in the territory when the *Office Français de Protection des Réfugiés et Apatrides* (French Office for Protection of Refugees and Stateless Persons, hereinafter OFPRA) gives a positive opinion. The rate of positive opinions for juveniles at the border (26,5 % in 2007⁶), which should only exclude requests "manifestly unfounded", is significantly lower than that of adults (45,5 % in 2007⁷) and identical to the acceptance rate of minors seeking asylum in the territory (25,7 % in 2007³). Therefore, there is a dysfunction of asylum process at the border, detrimental to unaccompanied children.

→ **France Terre d'Asile recommends to the French government to be less restrictive regarding applications of entry for asylum, in order to enable unaccompanied children to ask for asylum on the territory in accordance with national and international law.**

E. Admission on the territory

1. Admission under child protection system (art. 20)

Despite the dangerous situation in which some children are at the border, their admission on the territory under child protection system is very rare (5 admission following a decision of the Children's Judge in 2005, 6 in 2006⁹).

→ **France Terre d'Asile recommends to the French government to raise *ad hoc* administrators' awareness on the possibility of reporting when a minor may be in danger. It is also invited to give instructions to the Borders' Police to take protection measures.**

² Law n° 2002-305, 4 march 2002, related to parental authority, article 17

⁶ OFPRA, Activity report 2007, p. 12 - - http://www.ofpra.gouv.fr/documents/Rapport_OFPRA_2007_BD.pdf

⁷ *Ibid.*

³ OFPRA Statistics, June 2008

⁹ Sénat, « Rapport sur le projet de loi de finances 2008 : Sécurité, Immigration, Asile et Intégration – II. Les Mineurs Etrangers Isolés », 22 November 2007. Part II.6. - <http://www.senat.fr/rap/a07-096-8/a07-096-811.html>

2. Admission under family reunification (art. 10)

Despite the evidence that they do not have family ties in their countries of origin and that they have such links in France, children are frequently deported. Possibilities for minors to assert their right to family reunification when they arrive in France are limited.

→ **France Terre d'Asile recommends to the French government to take all necessary measures to make the right to family reunification at the border effective. As such, the "Juge de la Liberté et de la Détention" should be competent for the attribution and exercise of parental authority.**

F. Age assessment (whole Convention)

The Committee has already denounced the imprecision of the age assessment procedure in force in France¹⁰. This situation leads to deprive of protection children considered as adult. Therefore all measures dedicated to minors are not applicable, which has consequences at multiple stages (exclusion from child protection system and guardianship's measures, possibility of detention and expulsion...).

→ **France Terre d'Asile recommends to the French government to consider more precise methods of age assessment than those currently in force. The benefit of the doubt should be applied to children and appealing should be possible. The law should regulate the use of expertise, applicable methods and communication of results. In any event, the expertise of physiological age should be only one factor among others in assessing the minority of an individual.**

II. Unaccompanied children within the territory

If the number of unaccompanied children in France is difficult to determine because of the lack of centralized statistics (contrary to the recommendations of the Committee¹¹), the available data highlights important differences between *departments* (French counties). It is estimated that there are between 4,000 and 6,000 unaccompanied children in France.

A. Access to emergency protection (art. 20)

The emergency protection of foreign minors is deficient on the entire territory. Jurisdictions frequently verify the age of young people before considering the implementation of protective measures. The reluctance of some local services to apply legal dispositions allowing an emergency protection¹² and the lack of national or local guidelines on this issue are additional obstacles to good protection.

→ **France Terre d'Asile recommends to the French government to provide a legal framework for emergency protection, including a protocol for reporting applicable on the entire territory. Authorities should give priority to protecting minors and should only verify the minority subsequently. Finally, the government should be sure that each *département* includes guidelines for emergency protection in its program.**

¹⁰ Committee on The Rights of the Child, *Op. Cit.*, §51 c)

¹¹ *Ibid.*, §51 a)

¹² Code de l'Action Sociale et des Familles, article L 223-2

B. Access to common child protection services (art. 2 & 20)

Disparities are very important between different departments, resulting in various degrees of protection depending on where the minor has been placed. In addition, unaccompanied foreign minors close to 18 are not protected as well as French minors.

→ **France Terre d'Asile recommends to the French government to play a role of regulator in order to lead to the harmonization of practices between *départements*, based on a high standard of protection. The enactment of standards and guidelines at the national level should allow unaccompanied children to have access to legal representation, to integrate a structure suitable to their needs, and not be the victim of the imprecision of age expertise.**

C. Access to a protective status

1. The determination of a civil status (art. 8)

If the identity claimed by a young is challenged, for example in light of age expertise, the authorities have to restore their civil status through a "*jugement déclaratif de naissance*" (declaratory judgement of birth)¹³. However, French authorities consider age determination only from a medico-legal point of view, what has the effect of excluding many children from protection's system without provide them a civil status.

→ **France Terre d'Asile recommends that the French government should make the civil acts established abroad prevail on medico-legal methods, in accordance with legal provisions in force. The government should remind Prosecution offices their obligations in matter of civil status determination. This involves developing the application of "*jugements déclaratifs de naissance*", the only procedure that can provide a civil status to unaccompanied children.**

2. The establishment of guardianship (art. 12 & 20)

The establishment of guardianship, which can be entrusted to child protection services, faces many obstacles for unaccompanied children. Although the institution of guardianship is a matter of public order and the minor residing in France is required to be represented, it appears that some judges refuse to rule on guardianship because they are not sure of the minority of the young person, his identity or his family ties.

→ **France Terre d'Asile recommends to the French government to ensure that all children in care under child protection services receive legal representation. During investigations related to guardianship, the mandate of the *ad hoc* administrator should be extended to cover all situations where a minor needs to be represented quickly. Once it is found that parents are unable to exercise their parental authority, a measure of guardianship should be pronounced.**

3. Asylum process (art. 22 & 37)

Some government representatives refuse to take into account the asylum applications of unrepresented minors, so far without taking measures to ensure this representation. This leads to discourage some minors, already distressed by persecutions in their country and the difficult conditions of their trip, to seek asylum, or to refer this issue to their majority.

Moreover, the procedure of OFPRA is not adapted to the specific needs of minors. It is identical to the one used for adults. In addition, the cancellation rate of OFPRA decisions by

¹³ Code Civil, art. 55 al. 2

the *Cour Nationale du Droit d'Asile* (National Court of Asylum, hereinafter CNDA), the appeal jurisdiction, reflects a major failure in the system of protection. Between 2004 and 2007, nearly one in four unaccompanied children obtained a protective status from the CNDA and not from the OFPRA¹⁴. Maintaining such a situation that encourages children to form systematically long and stressful appeals before the CNDA, is contrary to the right to asylum.

Also, the Dublin II Regulation is likely to lead to the return of unaccompanied minors to countries that do not provide good protection for minors. This is the case with Greece, a transit country for many Afghans minors arriving in France.

Finally, there is only one specialized structure in the welcoming of unaccompanied minors seeking asylum. Yet, these children need devices to secure them, guide them in the asylum application procedure, encourage their integration and implement individual orientation projects.

→ ***France Terre d'Asile* recommends to the French government to draw the consequences of the many cancellations of the OFPRA decisions by the CNDA and to adopt procedures to better recognition of refugee status of unaccompanied children. The creation of a special “unaccompanied children” section within the OFPRA is essential to ensure that applications are not treated differently between the divisions and are systematically investigated by agents of protection who have acquired competences for the listening of minors.**

***France Terre d'Asile* encourages the French government to apply systematically for minors Article 3-2 of the Dublin II Regulation, which allows examining an application “even if such examination is not its responsibility under the criteria laid down in this Regulation”.**

***France Terre d'Asile* invites the French government to create specific structures for unaccompanied children seeking asylum.**

D. Access to school and vocational education

The unaccompanied children, unlike French minors, face several challenges in the effective exercise of their right to education: integrating a class adapted to their situation before 16 years old (the number of classes is insufficient), being schooled between 16 and 18 (there is no schooling obligation after 16) and finally having opportunity to follow vocational education from 16 (need to obtain a work permit).

→ ***France Terre d'Asile* recommends to the French government to provide to all minors under 18 the possibility to fully exercise their right to schooling and vocational training, without distinction with French minors. This involves in particular a larger eligibility to work permits, not subjected to the age of admission in child protection services.**

III. The deportation of unaccompanied children (art. 3-1 & 37a)

The control of minors at the door of the plane is very common and it leads to a return of minors in the country of destination of the plane (which is not necessarily the country of origin of the child), without any procedure or guarantee regarding the situation on arrival. This practice has been recently criticized by the Committee on the Rights of the Child¹⁵.

¹⁴ OFPRA statistics, 2008

¹⁵ [CRC](#), *Op. Cit.*, § 50 ; [CRC](#), 2007, CRC/C/OPSC/FRA/CO/1, §25

The frequent lack of representation, the late intervention of a judge (after 4 days, while juveniles remains an average of 3 ½ days in the waiting area) and the shortcomings of the asylum procedure at the border accentuate this dramatic situation.

In addition, the specific agreement established in 2002 between France and Romania for the return of Romanian minors does not provide the children a good protection. This agreement has been renewed in 2007, and this second text will probably be ratified soon by the French parliament. While the implementation of the 2002 agreement provoked repatriations not in the best interest of the child, the 2007 agreement provides that the prosecutor and not only the judge can now initiate repatriation procedure without any prior inquiry.

→ *France Terre d'Asile* recommends to the French government to grant the benefit of the "jour franc" (which makes repatriation impossible during the first 24 hours at the border) for unaccompanied children, not returning minors to third countries and more generally to implement procedures to ensure that each return of unaccompanied children is consistent with its security, its dignity and its best interest.

In addition, *France Terre d'Asile* recommends to the French government not to implement the Franco-Romanian agreement, in order not to create a special regime contrary to national and international law.

IV. Developments at European level (art. 3-1, 20, 22, 37)

The European parliament has adopted in June 2008 a Directive on common standards and procedures in Member States for returning third-country nationals staying illegally (the "Return Directive"). Some provisions of this text relating to minors show a decline vis-à-vis the French standards currently in force but also international standards of protection.

→ *France Terre d'Asile* recommends to the French government not to implement the Directive's provisions which violate the fundamental rights of children and are contrary to articles 3-1, 20, 22 and 37 of the Convention.

CONCLUSION

Many aspects of the standards and practices governing the situation of unaccompanied children in France are contrary to rules and principles of the Convention on the Rights of the Child. The protective status from which foreign minors should benefit is often put in withdrawal: these children are primarily regarded as foreigners and therefore subject to immigration law. Yet, international human rights provisions constitute higher standards of protection that are imposed on states and that cannot be excluded for reasons of national policy. The growing willingness of the French government to limit immigration to its territory and the restrictive policy it implies should not reduce the protection due to all minors under 18, regardless of their nationality or the regularity of their stay.

Concerning unaccompanied children, France must fully comply with its commitments under the International Convention on the Rights of the Child. With this prospect, it should review in depth the many shortcomings of its legislation which lead to practices contrary to this text. The best interest of the child must permeate all laws relating to unaccompanied children and must constitute the main concern in all decisions affecting them, regardless of their nationality. *France Terre d'Asile* hopes that the Committee on the Rights of the Child will invite France to follow this way in order to soon reach complete protection of all unaccompanied children on its territory.

N.B.: This text is an abstract. The full version of this alternative report is available in French.