

In the best interests of the child?

Protecting UASC from the Middle East in France

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Introduction

A significant number of unaccompanied and separated children (UASC) have arrived in France in recent years, including many who have travelled from and through the Middle East. France Terre d'Asile, a French asylum association, reports having supported 1,887 UASC between January and 15 October 2017, up from 1,422 in the whole of 2016.¹ Along with other refugees, asylum seekers and other migrants, many UASC have found their way to northwest France in the hope of moving onward to the United Kingdom (UK). As of March 2016, an estimated 500 UASC were living in seven different sites in northwest France, according to a UNICEF report.² While the refugees and other migrants in France originate from a wide range of countries, from Eritrea to Vietnam, significant numbers are from Afghanistan, Iraq, Syria.³ They have journeyed across multiple countries, often for several months, to reach this pocket of France.⁴

A constant feature of the journeys of children moving along the eastern Mediterranean route has been a lack of specific protection support. Having fled protection risks at home, many find scarcely better protection en route, whether in countries of first asylum or as they continue through the Balkans towards Western Europe. MMP research in Jordan and Lebanon, for example, has shown how UASC refugees and migrants are exposed to risks of arrest and detention at the hands of immigration authorities, which can impede their access to basic services and adequate support.⁵ A lack of firewalls (or 'separation') between immigration authorities and child protection services is a recurrent issue along migration routes from the Middle East to Europe, as UASC received by child protection systems can find themselves exposed to immigration authorities. As this paper argues, such protection concerns do not end on arrival in France, where recent policy shifts are increasingly prioritising immigration imperatives at the expense of children's best interests.

¹ UNICEF (2017) [Calais, un an après le démantèlement: des mineurs non accompagnés toujours plus vulnérables](#), 23 October 2017.

² UNICEF (2016) [Neither safe nor sound: Unaccompanied children on the coastline of the English Channel and the North Sea](#), June 2016.

³ An estimated 100-200 Afghan children are among the UASC population spread across the sites, many having travelled through Pakistan, Iran, and Turkey before moving through Europe to reach France. Some 300 Syrians are estimated to be living in the sites, though the proportion of UASC among them is unknown. Significant numbers of UASC from the Kurdistan Region of Iraq (KR-I) are also among those living in the sites, having travelled through Turkey and Europe to reach France. 230 were living in Tétéghem slum as of January 2016, but it has since been closed and updated estimates are not available. UNICEF (2016) [Neither safe nor sound: Unaccompanied children on the coastline of the English Channel and the North Sea](#), June 2016

⁴ Ibid.

⁵ Mixed Migration Platform (2017) [On My Own : Protection challenges for unaccompanied and separated children in Jordan, Lebanon and Greece](#), 18 September 2017.

Many children on the move envisage better prospects upon arriving in France, where a UASC is considered a child regardless of their immigration status, and cared for by child protection services. However, recent changes indicate that their protection prospects in France could be deteriorating. Previously, local administration bodies in France (departements) were initially responsible for young migrants, referring new arrivals to child protection services and initiating a procedure to determine whether they qualify as UASC.⁶ However, recent statements by the French Prime Minister, Edouard Philippe, suggest a centralisation of the process: the state would become responsible for hosting young migrants and evaluating whether they should acquire the status of UASC, as opposed to the local administration's child protection services.⁷ This raises concerns that young migrants and UASC will be subject to immigration controls before their immediate protection needs are met.

This paper argues that such changes are detrimental to UASC in France. Localised services are better placed than the French state to ensure young migrants and UASC are protected and taken care of as children. By contrast, centralisation risks breaking down firewalls between social and protection services that UASC and young migrants should receive by default, and immigration authorities, who may seek to expel those who have entered unauthorised. These risks are highlighted through the case of the youth reception centres for asylum seekers (the Centre d'Accueil et d'Orientation pour Mineurs (CAOMI)), described below. The CAOMI are reception centres that the French state set up to host young migrants following the evacuation of Calais in October 2016, with the aim of evaluating whether these young migrants were eligible for moving forward to the UK, or whether they should be integrated in French reception mechanisms. These centres were set up outside the legal framework of child protection and in response to immigration priorities, despite hosting many young migrants who would become UASC. Not only does this case raise concerns about a deteriorating situation in France, but it also extracts broader lessons for ensuring that response mechanisms along the migration journeys from and through the Middle East prioritise child protection, maintain a distance from immigration imperatives, and adequately serve children's interests.

French policy towards UASC

As a signatory to international and European treaties that protect children, including the 1989 UN Convention on the Rights of the Child (CRC), France is obliged to ensure that a child's 'best interests' remains a primary concern and prevails over any other considerations.⁸ In contrast to most other European countries, France has a policy which considers a child on French soil legal by default, regardless of his or her status. This exempts children from any obligation to provide legal documentation in order to remain.⁹ In theory, this means migrant children need not apply for asylum in France until reaching adulthood. In practice, they are encouraged to start the process before reaching 18 years of age.¹⁰

Upon arrival to France, the Aide Sociale à l'Enfance (ASE), the French child protection services tasked with supporting vulnerable children and families, takes responsibility for a migrant who reports or is reported to the authorities as being a child and being unaccompanied and/or separated, even if his or her status is not yet confirmed as UASC. This requires the ASE, along with local authorities and other civil society organisations, to provide care and accommodation to the migrant during the age determination process. If he or she is confirmed to be a UASC, the ASE will continue to provide support.¹¹ If the migrant is determined to be above 18, however, all child protection services will cease, leaving the individual in question highly vulnerable to deportation, trafficking, and other protection concerns.¹² Such stark

⁶ This article defines young migrants as those who are yet to have their age officially determined, and UASC, whose age and status have been determined as being under 18 and without a legal guardian.

⁷ This term is used to refer to migrants, refugees and asylum seekers who are identified as potential UASC, but who have not yet gone through the formal evaluation process to determine their status.

⁸ UNICEF [Fact sheet: a summary of the rights under the Convention on the Rights of the Child](#), Observatoire National de la Protection de l'Enfance (2017) [Mineurs non accompagnés: Quels besoins et quelles réponses?](#) February 2017

⁹ France Terre d'Asile et al. (2010) [L'accueil et la prise en charge des mineurs non accompagnés dans huit pays de l'Union Européenne](#), Décembre 2010.

¹⁰ Boitiaux, Charlotte (2017) [Que se passe-t-il pour les «mineurs non-accompagnés» qui arrivent en Europe ?](#) October 2017, The Bureau of Investigative Journalism (2016) [Which countries treat children like children ?](#) May 2016.

¹¹ Amnesty International (2017) [Les mineurs isolés étrangers](#), February 2017, Doineau, Elizabeth and Godefroy, Jean-Pierre (2017) [Rapport d'information fait au nom de la commission des affaires sociales \(1\) sur la prise en charge sociale des mineurs non accompagnés](#), June 2017

¹² Amnesty International (2017) [Les mineurs isolés étrangers](#), February 2017.

consequences between being regarded as a child or an adult are all the more concerning given the limitations of age determination processes. Firstly, dental and bone examinations can be inaccurate and increase the possibility of a minor being misidentified as an adult.¹³ Moreover, the protracted length of both the age determination and asylum determination processes bear a risk that a minor will reach adulthood – or ‘age out’ – before having their situation clarified, heightening the risk of vulnerable young migrants being subjected to adult migrant processes.

Under the 1983 laws on decentralisation, the ASE only has jurisdiction at the local level, and reports to the local administration bodies, rather than to the French state. Its mission is to uphold child protection laws in France by conducting urgent protection actions for minors at risk, and providing them with material, educational and psychological support.¹⁴ The ASE is supposed to apply the same treatment to both migrant and French children in need of care, irrespective of nationality.¹⁵

Due to the length and complexity of the age determination process, and the unclear status of young migrants arriving in France, organisations that ensure the protection of children advocate for the ‘presumption of minority’ principle. While not enshrined in French statutes, it is often used as a key argument in legal texts and has been put forward by several national and international actors working on the rights of UASC, such as the United Nations Human Rights Council.¹⁶ This principle states that as long as the status of the young migrant has not been formally determined, and as long as doubt remains, this young migrant should be treated as a child in legal terms, by default.¹⁷ This is particularly important if there is any doubt during the bone and dental medical examinations to evaluate their age.¹⁸

Following the presumption of minority principle, the ASE is generally expected to provide accommodation to young migrants and UASC in hotels, host families or specialised structures, financial support including daily cost of living, as well as educational, psychological and administrative support. At times, the ASE delegates several of these tasks to civil society organisations or other governmental structures, depending on its capacity to provide the relevant support, but always ensuring the best interest of the child are maintained.¹⁹ Since 2013, however, in order to alleviate the burden on local administration offices, there has been an increasing push towards centralisation of the process with greater state involvement.²⁰

From child protection to immigration law enforcement

Recent changes in the French government’s approach to immigration suggest that the state may be encroaching upon the child protection responsibilities previously delegated to local administration bodies. In part, there is a need for central government support: local administration offices have struggled to handle the increasing arrivals of UASC in recent years. However, while the exact policy implications remain unclear, there are indications that state intervention may go beyond supporting local administration entities, and instead take over their role. Prime Minister Edouard Philippe, announced to France’s local administration assembly on 20 October that the state would not only be responsible for determining the age of young migrants, but also for finding them accommodation and support during the process.²¹ This presents a risk that young migrants who are not determined to be minors fall immediately into hands of immigration authorities, leaving them subject to detention and deportation, and denied the support and protection they may need.

Following Philippe’s announcement, several NGOs and INGOs have raised concerns and requested that the government clarify its intentions. These organisations worry that the state taking on the role will result

¹³ Conseil national des Barreaux les Avocats (2017), [Pour le Respect des Droits Fondamentaux des Mineurs Isolés Etrangers et l’Abandon de la Pratique des Tests Osseux](#), 16 June 2017.

¹⁴ Info MIE (2016), [L’Aide Sociale à l’Enfance et ses missions](#), 18 September 2016.

¹⁵ Défenseur des droits (2016) [Rapport d’observation : démantèlement des campements et prise en charge des exilés Calais-Stalingrad \(Paris\)](#), December 2016.

¹⁶ Info MIE (2016) [La présomption de minorité](#), September 2016.

¹⁷ Ibid.

¹⁸ Conseil national des Barreaux les Avocats (2017), [Pour le Respect des Droits Fondamentaux des Mineurs Isolés Etrangers et l’Abandon de la Pratique des Tests Osseux](#), 16 June 2017.

¹⁹ Doineau, Elizabeth and Godefroy, Jean-Pierre (2017) [Rapport d’information fait au nom de la commission des affaires sociales \(I\) sur la prise en charge sociale des mineurs non accompagnés](#), Sénat, 28 June 2017.

²⁰ Ibid.

²¹ Ligue des droits de l’homme et al. (2017) [Lettre ouverture au Président de la République concernant les mineur-e-s isolé-e-s étranger-e-s](#), 24 October 2017.

in young migrants being treated as adults and being denied child protection.²² NGOs and lawyers underline the fact that, by virtue of being a signatory of international conventions that protect children, the French state already has in place mechanisms under which UASC should be placed, namely, the ASE. They add that it is important to ensure that a young migrant is considered a child until proven otherwise, and that they receive emergency and immediate protection from child protection services. Lastly, they warn of the risks with setting up 'specific mechanisms' outside the legal framework of child protection, which are likely to result in a differential treatment between young migrants because they are foreign nationals, and other French children.²³

The debate highlights clear tensions between child protection and immigration law enforcement, relevant in France as well as many other countries through which refugees and migrants from the Middle East move. Because UASC stand at the crossroads between the two legal frameworks of immigration and child protection, they are faced with two types of public policies: immigration policies which seek to control the influx of migrants, refugees and asylum-seekers coming into a territory, and child protection policies.²⁴ This issue is exacerbated for young migrants, whose status is initially unclear and could lead to a temptation to consider them as adult migrants rather than children. The case of the emergency youth reception centres for asylum seekers, the CAOMI, which were set up by the state as part of an emergency response to accommodate young migrants during the dismantling of the Calais jungle in October 2016, highlights the potential consequences of having a system outside the law of children that primarily responds to immigration concerns.

CAOMI: Emergency response, or here to stay?

When the French state dismantled the Calais Jungle in October 2016, it set up emergency reception centres (CAOMI) to accommodate affected refugees and other migrants. Young migrants were sent to these, which were dismantled about six months later, when each young migrant was redirected to the next destination.²⁵ Assessments of the CAOMI conducted by both non-governmental and governmental bodies have come to mixed conclusions.²⁶ While good practices were identified in certain centres, such as the presence of translators and proper services to respond to young migrants' needs, others failed to ensure adequate protection for them.²⁷ Overall, the assessment conducted by the Rights' Defender organisation (Defenseur des droits), a French institution independent of the state, concluded that the CAOMI lacked planning and derogated from the usual child protection framework.²⁸ The CAOMI were created primarily to speed up the immigration process and respond to overcrowding in Calais – their priority was to respond to immigration concerns, rather than to protect children.

Deprioritisation of child protection

CAOMI were not established under the legal framework of child protection. While a set of specifications and guidance were drafted around the CAOMI, these recommendations lacked detail and applicability.²⁹ This meant that the centres did not necessarily meet accommodation and child care standards set by the French Social Action and Family Code (Code de l'action sociale et des familles). Further, this created legal challenges for young migrants to access basic services. Not protected by this law for children, young migrants did not have a legal status for the months they spent in the CAOMI.³⁰ In the short-term, this impeded young migrants from accessing services such as medical treatment that can only be granted with

²² Ligue des droits de l'homme et al. (2017) [Mineurs non accompagnés : non au recul des droits de l'enfant dans notre pays !](#) 26 October 2017, Ligue des droits de l'homme et al. (2017) [Lettre ouverture au Président de la République concernant les mineur-e-s isolé-e-s étranger-e-s](#), 24 October 2017.

²³ Ibid.

²⁴ Helfter, Clémence (2010) [La prise en charge des mineurs isolés étrangers par l'Aide sociale à l'enfance](#), April 2010.

²⁵ Damgé, Mathilde (2017), [Auvergne, Aquitaine... l'accueil des migrants dans les régions](#), Le Monde, 28 October 2017.

²⁶ UNHCR (2017), [L'expérience des centres d'accueil en France](#), October 2017, Defenseur des droits (2016) [Rapport d'observation : démantèlement des campements et prise en charge des exilés Calais-Stalingrad \(Paris\)](#), December 2016.

²⁷ UNHCR (2017), [L'expérience des centres d'accueil en France](#), October 2017.

²⁸ Defenseur des droits (2016) [Rapport d'observation : démantèlement des campements et prise en charge des exilés Calais-Stalingrad \(Paris\)](#), December 2016.

²⁹ Ibid.

³⁰ Ibid.

parental or guardian authorisation.³¹ Child protection services play an important role in facilitating the derogation process to enable UASC to access services despite the lack of a legal guardian.³² In the long-term, deficiencies in the legal framework for child protection delayed the integration process for UASC.³³

In addition, the ASE and other civil society organisations working to protect children were not involved in the process in a systematic manner. The French state set up the CAOMI very quickly (it took just two to three days) with little consultation with civil society organisations working in this field, and the mandated organisation that did not always know how to deal with the particular issues of UASC.³⁴ While teams to support young migrants were created, they were often incomplete and lacked preparation due to the quick set-up. In several cases, these teams and mobilised organisations had no experience with UASC and had limited information on the background of those they were supporting.³⁵ While strategic committees bringing together child protection organisations and local authorities were created soon after the opening of these centres, civil society organisations mostly had to improvise a response in an unstructured context.³⁶ Child protection was not a priority in this process.

Predominance of immigration priorities and protection issues

There is evidence that immigration authorities treated the young migrants as adult migrants, in line with their immigration policy objectives. An emergency mindset meant the priorities were first to get the process going, before ensuring that the children and young migrants were safe, living in good conditions and protected. This is best highlighted by the rapid and opaque interviews that British authorities conducted with young migrants to evaluate who was eligible to cross to the UK for family reunification.³⁷

With no child protection services and only sporadic presence of CAOMI personnel, the youths were at times alone with immigration authorities and without translators, during interviews that sometimes took place simultaneously in the same room.³⁸ The different options they had in either the UK or France were not explained to them. Decisions made by immigration authorities were opaque. Following the interviews, the written decisions made by British immigration authorities regarding the fate of the young migrants made vague statements such as “family links not established”, or “doesn’t respond to criteria” to refuse some of the young migrants’ entry into the UK.³⁹ Transfers to the UK following interviews conducted by the UK’s Home Office had to be temporarily halted, partly based on unclear criteria adopted by British authorities regarding the rights of UASC to enter the UK. This rushed process created distress amongst the young migrants.⁴⁰

Lessons learnt for dealing with UASC along the migration routes

The case of the CAOMI demonstrates the importance of considering young migrants who are awaiting the evaluation of their status as children, until proven otherwise, and ensuring they have immediate access to child protection services. Under international, European and French law, UASC must be treated as children and protected, before they are considered a migrant. Although the ASE in France faces several challenges to fulfil its mandate, including a lack of resources, capacity and training for staff, it remains better placed than the state to protect young migrants and UASC: firstly, because it creates a firewall between child protection and immigration authorities, and secondly, because it has an existing structure and network suited to responding to the needs of UASC.⁴¹

As UASC from Iraq, Syria and Afghanistan converge towards Turkey and continue through eastern Europe, they face protection issues from reception systems that are not always child protection-oriented,

³¹ Ibid.

³² Info MIE (2016) [Accès des mineurs isolés étrangers aux soins](#), 17 November 2016.

³³ Défenseur des droits (2016) [Rapport d’observation : démantèlement des campements et prise en charge des exilés Calais-Stalingrad \(Paris\)](#), December 2016.

³⁴ UNHCR (2017), [L’expérience des centres d’accueil en France](#), October 2017.

³⁵ Défenseur des droits (2016) [Rapport d’observation : démantèlement des campements et prise en charge des exilés Calais-Stalingrad \(Paris\)](#), December 2016, UNHCR (2017), [L’expérience des centres d’accueil en France](#), October 2017.

³⁶ Ibid.

³⁷ UNHCR (2017), [L’expérience des centres d’accueil en France](#), October 2017.

³⁸ UNHCR (2017), [L’expérience des centres d’accueil en France](#), October 2017, Défenseur des droits (2016) [Rapport d’observation : démantèlement des campements et prise en charge des exilés Calais-Stalingrad \(Paris\)](#)

³⁹ UNHCR (2017), [L’expérience des centres d’accueil en France](#), October 2017.

⁴⁰ Ibid.

⁴¹ Ibid.

such as in Lebanon, Jordan or Greece. The French case is therefore interesting because it allows to extract three broader lessons for reception systems in countries along the migration routes from the Middle East to Europe:

1. Child protection services and civil society organisations must be the primary actors involved in receiving and caring for UASC. Countries such as Lebanon lack a developed asylum system that accounts for UASC and their specific needs. There is no formal state-led reception framework, prompting civil society organisations to step in to fill the gap. Minors over the age of 15 can only legally reside in the country with the presence of an adult, and Lebanon does not provide for their guardianship or legal representation.⁴² In addition to a lack of a legal framework, many countries along the route initially place UASC in centres where they immediately face immigration authorities, including France, as demonstrated the case of the CAOMI. In Greece, to give another example, UASC often find themselves directly facing authorities who sometimes take arbitrary decisions regarding their status, which are difficult to challenge. There are reports that authorities have a wide margin of discretion to assess unaccompanied minors at entry points, due to a lack of uniform procedures and specialised staff.⁴³
2. Firewalls between child protection services, civil society organisations and immigration authorities must be strengthened. In Lebanon, the Union for the Protection of Juveniles in Lebanon (UPEL), a public service association that monitors and manages children at risk in the country, can only place a UASC in a shelter after receiving approval from a juvenile judge, who needs to ensure that the child is legally residing in the country. If the child is found to be illegally residing in the country, judicial authorities must bring the child to the police station and the child may be arrested.⁴⁴ In sum, requesting UPEL's assistance bears the risk of being arrested, and likely disincentives UASC who are illegally residing in the country to ask for assistance. This creates severe protection concerns. It is necessary that child protection systems remain distant from immigration authorities, so that a child's best interest is protected and continues to prevail over immigration imperatives.
3. Child protection services and civil society organisations must have adequate capacity to respond to the needs of UASC. Greek legislation requires that specific actors are involved in caring for and protecting UASC, but with limited resources, it lacks the capacity to implement such an adequate protection system. UASC have difficulties accessing asylum, education and healthcare, which often results in local and international NGOs stepping in to provide these services.⁴⁵ With limited capacity to provide assistance, such as a lack of available spaces in specialised shelters, UASC have found themselves in prolonged arbitrary detention, raising severe protection concerns.⁴⁶ States must therefore increase their support for child protection actors, ensure that they are trained and have the adequate resources to respond to the needs of UASC.

Underdeveloped child protection systems, the disregard of these systems, and a lack of capacity to apply them are recurrent issues that UASC face along their journeys. The protection concerns that arise clearly call for improving mechanisms to respond to UASC's needs, not only in France, but along migration routes. These systems need to be specifically designed to respond to children's protection needs, first and foremost. Poor protection prospects, in turn, are likely to continue to prompt onward movement and exacerbate protection concerns for young migrants on the move.

⁴² Mixed Migration Platform (2016) [Underage, undocumented and alone: a gap analysis of undocumented unaccompanied and separated children on the move in Jordan, Lebanon and Greece](#), June 2016.

⁴³ Fili, A. ad Xythali, V (2017) [Unaccompanied Minors in Greece: Who can 'save' them?](#) February 2017.

⁴⁴ Mixed Migration Platform (2017) [On My Own: Protection challenges for unaccompanied and separated children in Jordan, Lebanon and Greece](#), 18 September 2017.

⁴⁵ Fili, A. ad Xythali, V (2017) [Unaccompanied Minors in Greece: Who can 'save' them?](#) February 2017.

⁴⁶ Human Rights Watch (2016), [Why Are You Keeping Me Here? Unaccompanied Children Detained in Greece](#), 5 September 2016.