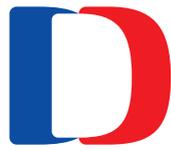


RÉPUBLIQUE FRANÇAISE

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THE

FUNDAMENTAL RIGHTS

OF FOREIGNERS

IN FRANCE

PRESS PACK 2016

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**This press pack is not a summary of the full document but rather a selection of extracts and significant examples illustrative of infringements upon the fundamental rights of foreign persons.**

## Introductory comments

The Defender of Rights takes the view that upholding the fundamental rights of foreigners is an essential marker of the degree of defence and protection of rights and freedoms in a given country.

In this document, the Institution wishes to highlight the obstacles that obstruct foreigners' access to fundamental rights, drawing upon the decisions issued by the Institution in addition to identifying new legal issues.

By way of a preliminary, it should be pointed out that:

- **Concerning entry, residence and expulsion, positive law authorises, *a priori*, differences in treatment** based specifically on the distinction between the legal categories of "national" and "foreigner". In these areas, the discretionary power of the State is considerable. It is not unlimited, however, and may not under any circumstances be discriminatory. It is the duty of the Defender of Rights to point out that even in such a sovereign area, the respect for fundamental rights must be guaranteed.
- **Conversely, in the majority of areas of daily life**, social welfare, child welfare, health, housing, etc., **the law in theory prohibits the establishment of any differential treatment**. However, in addition to those illegal practices that contravene this prohibition, such as the refusal of school registration, or of access to care, for example, the legal rules themselves, in sometimes appearing to establish neutral criteria, in fact limit foreigners' full access to their fundamental rights.

The analysis set out in this document is intended to underscore the measurable disparity between the proclamation of these rights and how they work in practice.

Far from being natural and immutable, the legal rules governing foreigners are choices made by the legislature and are sometimes made on the basis of considerations that vary over time. It is the duty of actors in the defence of rights to play a role in dismantling these preconceptions, these myths.

No period in the history of immigration, no matter how intense it may have been, has altered the foundation of common republican values. Neither the million of returnees and Harkis in the early 60s, nor the many Portuguese, Spanish, Italians, Algerians, Moroccans and Tunisians who came - to work - in the 60s and 70s, nor the sub-Saharan immigrants who were brought to Europe after the independence of African States. Nor the 200,000 "boat people" at the beginning of the 70s,

when the economic situation in France was beginning to deteriorate and when the government suspended immigration for workers and the “control of migratory flows” was already a factor in the political discourse.

The words used in this field are vehicles for ideas and stereotypes, and are not neutral or without consequence. Migrants, refugees, illegals, undocumented workers, immigrants and exiles are all words that are rarely used casually. Although the purpose of this document is to name the category of individuals not having French nationality “foreigners”, the Defender may be inclined to use the term “migrant” to describe the situation of persons who are legal subjects in an emigration, immigration or displacement process. This has long been viewed as the most neutral term. Recently, however, it has tended to be used to disqualify individuals, by likening them to “economic” migrants whose migratory goal is deemed to be utilitarian and therefore less legitimate than that of a refugee. Accordingly, the designation “refugee” is a double-edged sword in that it can lead to a distinction being drawn once again between “good” refugees, those entitled to asylum protection, and “bad” so-called economic migrants.

The distinction leads to discredit and suspicion being cast upon exiles in respect of whom one seeks to determine whether their decision to come to Europe is noble, or “moral” rather than simply utilitarian, and additionally there exists a risk of depriving of protection individuals who are entitled to receive it. This logic of suspicion runs through all French law applicable to foreigners and has even spilled over onto rights as fundamental as child protection and healthcare. As this document will repeatedly demonstrate, the fact that the law views individuals as “foreigners” before seeing them as people, children, patients, workers or public service users, significantly impairs their access to fundamental rights.

## I. Entry, residence and expulsion: sovereign State powers that must be exercised in compliance with the fundamental rights of foreigners

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### Control of entry of foreigners into the country:

Foreigners must, in theory, be able to show a valid travel document, and where applicable, a visa. Although the consular authorities have broad discretionary powers, these are nonetheless circumscribed by the obligation to respect the fundamental rights of foreigners. The Defender of Rights has observed **infringements of rights in the issuance of visas**.

*The parents of French nationals:* The Defender of Rights has been repeatedly petitioned concerning refusals to issue visas on the ground of “migratory risk” to parents of French nationals wishing to visit their French children and grand-children. The interim relief chamber of the *Conseil d’Etat*, has had cause to point out on a number of occasions the obligation to take into account respect for the fundamental rights of foreigners, particularly the right to respect for their private and family life.

*Issuance of proof of accommodation:* When applying for a visa for a personal or family visit of less than three months, non-EU nationals must submit proof of accommodation provided by the person who undertakes to accommodate them for the duration of their stay. This document is issued by local councils.

*The Defender of Rights has observed that certain councils have developed illegal practices, making issuance of this certification subject to the provision of certifications not required by law, such as the obligation for the host to have a minimum income equivalent to the minimum wage or SMIC or to Eur 1000 after deductions, depending on the case in question, the refusal to take social security benefits into account when calculating income, the obligation to provide a health insurance certificate covering the foreigner being accommodated, etc..*

[MLD-2015-310.pdf](#)

*Visas requested by spouses of French nationals:* The **spouses of French nationals** are, in theory, a category of foreigners that the authorities only very rarely refuse a long-stay visa.

*The Defender submitted observations in a court case concerning the refusal of a visa for the spouse of a French national that had been denied even though the couple had provided a number of proofs attesting to the authenticity of their marital relationship. These observations were endorsed by the Judge.*

[MLD-2015-153.pdf](#)

[Judgement by the Administrative Appeal Court of Nantes on 15 January 2016 No. 14NT02452](#)

*Entry conditions of refugees:*

States are also obliged to respect fundamental rights when they contemplate **border expulsion** of foreigners not entitled to enter France.

The right to emigrate, which is a right guaranteed under international law, is afforded enhanced protection when it is exercised by persons fleeing persecution. However, the effectiveness of this protective legal framework is compromised by border control policy conducted at the EU and national levels. For a number of years, the EU has practised a policy of “joint management” of migratory flows with recourse to third countries and the outsourcing of international protection applications, for example, Turkey.

France now tends to reduce legal immigration routes, even as the situation in Syria increases migratory pressure. The Defender calls upon the authorities to examine visa applications made in order to seek asylum in France in a kind light.

*Family members of refugees:* The family reunification procedure allows beneficiaries of refugee status and subsidiary protection and stateless persons to be joined by certain members of their family, without the precondition of a period of prior lawful residence, income or accommodation, as is required for family reunification.

*The specific case of the arrival conditions of unaccompanied minors:* Whilst limiting this to exceptional cases, the legislature has in principle legalised the keeping of unaccompanied minors in waiting areas. In this case, the Public Prosecutor is to be informed immediately and must appoint an *ad hoc* administrator without delay who is tasked with assisting the minor.

*The Defender wishes to reiterate its recommendation that deprivation of liberty at the border be ended for all unaccompanied minors applying for asylum and for their admission into the country with a view to placement in order to clarify their individual circumstances. Failing this, it recommends that the following be drafted into law: a prohibition on making the appointment of an ad hoc administrator subject to the outcome of medical examinations to verify minor status; and the right of minors seeking asylum to have access to the child protection system in its entirety.*

[Opinion No. 14-10.pdf](#)

## The right of residence of foreigners:

Although the Code on the Entry and Residence of Foreigners and Asylum (the CESEDA Code) circumscribes the right of residence of foreigners in the light of these fundamental rights, for many years there has been a trend towards making the residence of foreigners less secure. Whereas, in 1984, the legislature created the resident card as an ordinary law permit intended for all foreigners planning to live permanently in France, it has now become an exceptional permit that is issued upon successful completion of the integration process. Correspondingly, there has been an increase in the issuance of “temporary” residence permits that are valid for one year. However, the possession of such permits may hinder access by their holders to certain rights (employment, housing, etc.) and consequently, integration.

([Opinion No.15-17](#) dated 23 June 2015, [15-20](#) dated 3 September 2015, and [16-02](#) dated 15 January 2016).

### Improve how foreigners are dealt with in prefectures

*Reception:* The fact that public service users should be required to wait for hours to have any hope of accessing the counters of prefectures is an infringement upon human dignity. Turning them away is a violation of the right of foreigners to have their application examined.

*Issuance of certifications of receipt for residence applications:* Once a foreigner’s complete application has been registered, he or she must be issued with a certification of receipt that allows that individual to work, where necessary.

*The Defender of Rights has been petitioned concerning failure to issue a certification of receipt upon submission of an application for a long-stay visa and residence permit for the spouse of a French national, and also concerning delays in processing these applications by prefectures. The Defender of Rights recommends that foreign nationals applying for residence as the spouse of a French national be issued with a certification of receipt of a residence permit application authorising them to work once the submitted application is complete, and that their application be processed within a reasonable time frame.*

[MLD-2015-311.pdf](#)

*Processing of applications:* Delegates of the Defender of Rights are still finding application processing times excessive, and major lacunae in information provided to users.

### Categories of foreigners particularly affected by the insecure nature of the right of residence

*Victims of trafficking: The Defender takes the view that the mechanism currently in place to encourage foreign victims of trafficking to report or testify against the perpetrators of offences does not provide sufficient protection in that it fails to guarantee the right of residence of victims. It also wishes to reiterate its recommendation that the law be changed to stipulate that the prefect shall be under an obligation, rather than merely having the option of issuing a “private and family life” residence permit to foreigners that apply for one.*

*Minors reaching majority age:* Despite specific legislation, these individuals encounter difficulties in accessing the right to permanent residence upon reaching majority age. These difficulties compromise their inclusion pathway, which is why the Defender of Rights recommends that the law be changed, so that unaccompanied minors are automatically entitled to a “private and family life” residence permit upon reaching majority age, and that those studying for university qualifications and on vocational training courses be issued with “student” residence permits.

*Victims of marital violence:* Where they have been the victim of marital violence after their arrival in France but prior to issuance of their first residence permit, the spouses of French nationals or persons eligible for family reunification must be granted a residence permit automatically. However, this right can be obstructed by unlawful practices, such as refusal to register applications, or a demand that the Immigration and Integration Office (OFII) charge be paid even where an applicant is exempt. Moreover, the stipulations applicable to foreigners who have been victims of marital violence are less favourable. This is in fact subject to the discretionary assessment of prefects and the documents required to assess whether violence is taking place vary considerably from one prefecture to another.

*Foreigners admitted as workers:* The political desire to encourage so-called “selective” immigration for work has played a role in creating significant inequality of treatment depending on the occupational activity of foreign workers. In actual fact, when residence permits are renewed, work permits can be refused not as a result of the employee’s situation, but through a failure by the employer to comply with labour law or social protection or with the working, remuneration or accommodation conditions that are specified by the permit. Moreover, in addition to involuntary loss of employment, the authorities are allowed to refuse the first renewal of a work permit.

## *Discrimination*

*Disability: the HALDE and the Defender of Rights have adopted positions on a number of occasions, through recommendations or observations submitted before the courts, on the discriminatory nature of refusals of family reunifications for individuals receiving the disabled adult’s allowance or AAH on the ground of insufficient income.*

*Taking this stand has not been in vain since the law now stipulates that any foreigner falling under the CESEDA Code and in receipt of AAH shall be exempted from the means-testing imposed in order to exercise the right to family reunification.*

[MLD-2014-168.pdf](#)

*Spouses of French nationals:* Find themselves in a less favourable situation than the spouses of EU nationals living in France for their residence permit applications, since they are not automatically entitled to one (unlike the spouses of EU nationals) and they are under an obligation to be in possession of a long-stay visa (VLS).

*The Defender of Rights recommends that the Interior Minister should:*

- reinstate automatic issuance of residence cards to the spouses of French nationals who have been married for at least two years;*
- remove the obligation for the spouses of French nationals to provide a long-stay visa, required*

*to obtain a temporary “private and family life” residence card;*  
*- provide for renewal of residence permits for victims of violence, even where no protection order has been issued*  
*- exempt the spouses of French nationals from any charge linked with the issuance or renewal of their residence permit.*

[MLD-2014-071.pdf](#)

## Expulsion of foreigners:

Although falling under the discretionary power of the State in the area of controlling the entry and residence of foreigners within its territory, illegal immigration may only be sanctioned in a State of Law, both procedurally and on the merits, in compliance with the fundamental rights of foreigners. The law provides special protection under the right to the respect of private and family life, of the prohibition of inhuman or degrading treatment, and of the best interest of the child.

### ➤ Some specific cases

*Foreigners requiring medical treatment:* The CESEDA Code prohibits the expulsion from France of an individual when there is an exceptional risk to their health due to the lack of an appropriate treatment in his or her country of origin. These stipulations safeguard the minimum level of protection of the rights of the individual.

Almost 20 years on, obstacles to the granting of residence for medical treatment are becoming increasingly frequent. The expulsions of persons with HIV to Nigeria or Suriname are a retrograde step illustrative of the inversion of priorities between the “control” of migratory flow and respect for fundamental rights, including the right to life.

*Unaccompanied minors:* Although the law does not oppose the expulsion of minors at the same time as their parents, it does however prohibit them from being made the object of an expulsion measure themselves. However, the Defender of Rights is frequently petitioned concerning situations involving young persons stating themselves to be minors who are placed in detention following hastily made evaluations of their minor status. It is led to intervene before prefects in order for age evaluations to be carried out in accordance with the recommendations of the Ministry of Justice, or to submit observations before courts petitioned concerning the lawfulness of expulsion measures.

*The complainant states that he was born on 10 April 1999, and is a Burkina Faso national. The Defender of Rights has submitted observations before the court and has highlighted the importance of conducting a social and educational evaluation, stressing the extremely random nature of bone age examinations and the presumption of authenticity that civil status documents are afforded. The order setting out the obligation to leave the country at no point states precisely how the documents in the application contradict the statements made by the applicant concerning his age. The decision by the prefect appears to contravene the best interests of the child, who ought to be treated as an unaccompanied minor in France.*

*The case of unaccompanied minors in Mayotte:* On a number of occasions, the Defender of Rights has submitted observations before courts petitioned concerning the practice of the Mayotte authorities consisting in establishing an artificial link between a minor who entered unlawfully into the country and an adult who has entered the country by the same means in order to proceed with expulsion of the minor.

This practice, which results in the placement in detention and expulsion of minors who are sometimes very young and who can prove family ties in Mayotte, violates a number of stipulations of the ECHR and also fails to respect the best interests of the child. In a recent judgement, the interim relief judge of the *Conseil d'Etat* endorsed the observations of the Defender of Rights and stipulated the procedural obligations that must be followed in the expulsion of a minor, ordering government authorities to examine the application for family reunification submitted on behalf of the minor.

*The Defender of Rights has been petitioned by a Comorian national lawfully residing in Mayotte whose 9-year old son was placed in administrative detention then sent on to the destination of Anjouan Island (Union of the Comoros) having been linked to an adult with whom it was not established, through the identity check conducted and the statements made by the adult in question, that any legal link with him existed.*

[Defender of Rights Decision No. MDE-MLD-2015-002](#)

[Conseil D'Etat, 9 January 2015, No. 386865](#)

- Expulsion measures carried out with a disregard for certain fundamental rights

*Right of victims to make reports:* The Defender wishes to reiterate its recommendation that the extent of the case law built up by the ECHR and the Court of Cassation in the area of unlawful arrest be pointed out to law enforcement agencies and calls for provisions be made to ensure that at the time a police report is made, individuals are informed of the protective stipulations of the CESEDA Code that may apply to them.

*The Defender of Rights has been petitioned concerning the circumstances relating to the arrest of a young woman unlawfully present who had come to report violence and who was deported to Morocco. The Defender of Rights has found that the fact that the immediate deportation of an individual who has come to report a crime of which he or she was a victim to law enforcement, has the effect of dissuading victims of crimes without a residence permit from reporting perpetrators and getting them punished. It therefore recommended disseminating a reminder in any form to judicial police officers within the national police force and the gendarmerie of the good faith requirements recommended by the European Court of Human Rights and by the Court of Cassation concerning the arrest of foreigners present unlawfully.*

[MDS-2010-66.pdf](#)

*Guarantee upholding of the required formal proceedings in order to deport an individual to the destination country:* A foreigner made the object of an expulsion order may not be sent back to his or her country or to any other country that has issued him or her a passport or travel documents. Where not in possession of such documents, he or she may only be deported if the destination country has issued a consular laissez-passer document. The Defender has been petitioned on a number of occasions concerning practices that tend to circumvent these requirements, namely in Guyana, where foreigners with no legal right of entry are deported to neighbouring countries such as Suriname and Brazil.

*One Chinese national, who entered Guyana unlawfully in January 2006, requested issuance of a residence permit from the prefect in 2013. The prefect refused and issued an order to leave French territory setting China, his country of origin, as his destination country. The complainant was deported to Suriname, a neighbouring country, since the prefect held that he has a legal right of entry for that country. He in fact took the view that he had entered Guyana via Suriname, where he obtained a Chinese passport from the Chinese embassy. The Administrative Appeal Court struck down the judgement of the Administrative Court and the implicit decision to set Suriname as the country of origin. The fact that the person concerned was in possession of a Chinese passport issued by the Chinese embassy in Suriname, does not mean that he would have the right to enter and stay in Suriname. The prefect of Guyana therefore acted with a disregard for the stipulations of the CESEDA Code which provide that a foreigner made the object of an expulsion order may be deported to the country of which he is a national or to the country that issued him with his currently valid travel document or to another country for which he has a legal right of entry.*

[MSP-2015-073.pdf](#)

[Administrative Court of Appeal, Bordeaux, 11 May 2015, No. 14BX03064](#)

➤ **Infringements of rights during administrative detention prior to expulsion**

In the light of the ECHR judgement in 2012, the Interior Minister issued a Circular on 6 July 2012 providing that the placement of families in administrative detention centres ought only now to be envisaged as a last resort, where the less coercive house arrest measure cannot be ordered. Despite these recommendations, the Defender still finds itself regularly petitioned concerning minors placed in detention centres with their parents. After publication of the Circular of 6 July 2012, it even appears that the number of children placed in detention increases considerably each year. Accordingly, in 2014, 5,692 children were placed in detention, compared with 3,608 in 2013, which constitutes an increase of 57%.

## II. Fundamental rights of foreigners present in France: equal treatment with nationals put sorely to the test

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In theory, foreigners are entitled to equal treatment with nationals, since nationality is now a prohibited criterion for discrimination. However, immigration control objectives result in this equality being undermined, both by overtly illegal practices and by laws that undermine the fundamental rights of foreigners.

### Civil and political rights:

*Although the freedom of movement of foreigners in France is in fact circumscribed by immigration law it can nevertheless not be totally curtailed by that law. The Defender of Rights has highlighted these types of practices against the Calais migrants, namely in its report of October 2015.*

*[Report “Exiles and Fundamental Rights: the Situation in the Territory of Calais](#)*

*The Defender of Rights has been petitioned by a large number of organisations, collectives, unions and associations regarding a complaint of constant daily harassment of migrants present in the Calais area by law enforcement officers, since September 2009 and the dismantling of the “jungle”. The Defender of Rights has found that identity checks, questioning and escorting to the police station are often carried out on the same person, within a short time frame, and that such interventions often take place near eating areas and health centres, in violation of the Circular of 23 November 2009 concerning humanitarian assistance to unlawfully present foreigners.*

*[MDS-2011-113.pdf](#)*

In two decisions, the Defender of Rights criticised illegal restrictions on freedom of movement imposed on a number of persons following the destruction of the make-shift settlement in which they were living.

*The Defender of Rights had been petitioned concerning the circumstances under which so-called “Roma” families were apparently deprived of their freedom of movement following the evacuation of their encampment located at Ris-Orangis on 3 April 2013. These families, accompanied by volunteers, had set out by bus in search of accommodation solutions. When it was returning to Ris-Orangis, the families’ bus was commandeered by police personnel who had been assigned the task of escorting them to budget hotels.*

*[MDS-2015-288.pdf](#)*

**Identity and residence controls:** The legal mechanism concerning identity controls and checks creates differential treatment based on nationality, as the applicable rules differ depending on

whether one is a French national or a foreigner. Although foreignness is the basis for a specific regime for the control and checking of identity and residence, it is often ordinary law identity control rules that are used to target foreigners or individuals presumed to be foreigners.

*The right to marry* is a fundamental right protected both by constitutional and EU standards. Despite the range of guarantees afforded to French-foreign couples, they often still face a number of difficulties in exercising their freedom to marry: controls for sham marriages and marriages of convenience, and the same-sex marriage of foreigners who are nationals of certain countries.

*The Defender of Rights has been petitioned regarding a complaint concerning a Public Prosecutor's decision to oppose the celebration of a same-sex marriage between a French national and a Moroccan national.*

*The Defender of Rights submitted observations before all of the courts, including the Court of Cassation which endorsed its analysis that the provisions of the French-Moroccan agreement requiring application of the law of the Spouses respective countries should be disregarded, since the national law in question violated the principle of equality and the stipulations of the European Convention on Human Rights, which prohibits any discrimination on the basis of nationality and sexual orientation, which form a part of France's international public order.*

[MLD-2014-072.pdf](#)

[Court of Cassation, 28 January 2015, No. 13-50059](#)

*Access to legal aid:* Between 2013 and 2015, the Defender of Rights has been petitioned by lawyers and associations concerning complaints about recurrent difficulties encountered in accessing legal aid by foreign nationals without a residence permit and in circumstances of extreme insecurity. However, Article 3 of the law of 1991 expressly provides that EU nationals shall be entitled to legal aid without the need to be lawfully resident. These refusals were annulled by the Judge.

*Access to an interpreter:* The Defender of Rights is also regularly petitioned concerning situations in which foreigners made the object of a deprivation of liberty order face difficulties in accessing the assistance of an interpreter. Certain petitions currently being processed accuse law enforcement agencies of having provided an interpreter who was not a specialist in the language spoken by the foreigner or to have over-estimated the understanding of French of the individual made the object of expulsion proceedings.

## Economic and social rights

*The right to health protection*, enshrined by both international and domestic law, imposes positive obligations upon the authorities, particularly in the area of access to treatment. The general Social Security regime continues to exclude foreigners present unlawfully who fall under the separate medical system of State Medical Aid (AME).

*The Defender of Rights has been petitioned by a Romanian national complaining of a refusal of AME cover by a health insurance fund, the Caisse primaire d'assurance maladie (CPAM), on the ground that she was an EU national with no income who did not possess a residence permit. The Defender of Rights informed the CPAM that the Circular of 9 June 2011, the object of which was to set out the conditions that non-working EU nationals must meet for entitlement to a residence permit, had no bearing on the conditions for AME cover, which were set by the Social Action Code. Following this, the CPAM decided to re-examine the complainant's application.*

[MSP-MLD-2013-130.pdf](#)

*The right to housing and crisis accommodation:* The Defender of Rights wishes to point out the unconditional nature of the right to crisis accommodation that is enshrined by law. The public authorities are required to make every effort to provide an adequate accommodation offer, and selection of the individuals concerned may not, in any case, constitute the adjustment variable.

*Asylum seekers: obstacles to accessing material reception conditions.* The right of asylum-seekers to have access to decent material reception conditions, included in EC Directive 2003/9/EC of 27 January 2003, known as the "Reception Directive" was reaffirmed by the "Recast" Directives of 2013. These Directives set in place a joint EU regime guaranteeing all asylum seekers a dignified standard of living and minimum reception conditions. These conditions include housing, food, clothing, and a daily allowance. Since its creation, the Defender has on a number of occasions highlighted to parliamentary missions and the ECHR the difficulties faced by asylum-seekers in accessing decent material reception conditions.

*The right to social protection:* The conditions specifically targeting foreigners create barriers in the access to law and the continuity of rights in accessing family benefits and the minimum old age pension. The Defender of Rights makes every effort to identify and condemn this discrimination, which may be termed "legal" discrimination.

*Family benefits:* On a number of occasions, the Defender of Rights, and before it the Defender of Children, the HALDE and the Mediator of the Republic, have highlighted the discriminatory nature of stipulations of the Social Security Code requiring foreign claimants of family benefits to

prove not only that they are legally resident but also that their children entered France under the family reunification procedure.

***Access to minimum welfare benefits:*** Another source of “legal” discrimination, i.e. legitimised by domestic law, is the prior residence condition set for foreigners alone to access certain minimum welfare benefits, among which are the working person’s supplementary benefit (RSA) and the elderly person’s solidarity allowance (ASPA).

***Strict interpretation of conditions for entitlement:*** In other cases, it is the strict application of ordinary law rules, failing to take into account specific situations, that tends to exclude certain foreigners from being eligible for certain welfare benefits. Households taking in a child under the *Kafala* system are victims of such exclusions, as they are deprived of the adoption benefit, or the widows of Moroccan nationals who married before the age of 15 who are refused payment of the deceased spouse’s pension on the ground that their marriage could be declared null.

## Restrictions in accessing employment

***The fluctuating concept of hard-to-fill posts:*** Certain residence permits include a work permit and grant access to any form of professional activity. Where this is not the case, authorisation must be requested from the foreign personnel unit by the employer wishing to employ a foreigner. This may vary depending on the country, the department and the professional skills concerned.

***Occupations subject to a nationality condition:*** In France, access to many occupations are still subject to a French or EU nationality condition. Furthermore, other jobs, particularly among freelance professions, are reserved for EU nationals or for those of countries that have concluded a reciprocal agreement with France. In 2009, the HALDE took the view that these restrictions had no legitimate justification ([2009-139](#)). The Defender finds that the situation regarding restricted jobs has not significantly changed since 2009. Ten years ago, out of 52 jobs only ten or so were open to foreigners. Since then, some other provisions have periodically been implemented to eradicate the nationality condition. Moreover, the legislature has relaxed the EU nationality condition set for access to the professions of doctor, dental surgeon and midwife, which are now open to non-EU foreigners where they qualified in France.

### ***Restrictions on access to employment by asylum-seekers***

*In providing that asylum-seekers may access the employment market after 9 months, the asylum law reform adopted in July 2015 transposed the minimum requirements of EU law in the area. Accordingly, the Defender recommends that the law be changed to: allow asylum-seekers to request a provisional work permit under ordinary law conditions; provide for access to the*

*employment market by asylum-seekers without being subject to job restrictions where, after 9 months, their application has still not been decided; from the beginning of the procedure, allow asylum-seekers access to the vocational training initiatives provided for under the Labour Code.*

Concerning *the right to a bank account*, complaints received by the Defender of Rights principally concern refusals to open an account.

*The Defender of Rights has been petitioned with a complaint about closure of a bank account that was open under the right-to-an-account procedure. The bank required non-EU nationals to present a passport with a visa and a minimum residence time in France (one year). The Defender of Rights pointed out that no provision in the Monetary and Financial Code authorises banks to require that their foreign customers provide proof of lawful residence in order to open a bank account. The Defender of Rights decided to recommend to the banking group to which this bank belonged to ensure that the conditions for opening bank accounts of all of their banks complied with the stipulations of the criminal code concerning discrimination based on nationality.*

[MLD-2015-302.pdf](#)

### III. Rights specific to minors

#### The right of unaccompanied minors to protection

The number of unaccompanied minors present in France, although estimated to be between 8,000 and 10,000 (sources: Eurostats 2014), has not been officially established. The Defender of rights, and before it the Defender of Children, have regularly been petitioned concerning the reception, care and protection of unaccompanied minors in France.

Children are afforded special protection, and this was explicitly reiterated by the recent law of 14 March 2016 concerning child protection. In this regard, unaccompanied minors are entitled to care. Finding that the protection of unaccompanied minors has certain shortcomings, the Defender is setting out recommendations to increase the effectiveness of the following rights:

The Defender of Rights issued its opinion on the Child Protection Bill and was interested to learn of the inter-ministerial Circular of 25 January 2016 concerning the mobilisation of State services to Departmental Councils for minors temporarily or permanently deprived of the protection of their family.

*The law of 14 March 2016 concerning child protection provided a legal basis for bone x-ray examinations which they had not previously been afforded. The Defender of Rights wishes to reiterate its recommendation that medical age examinations should be stopped. If they are not stopped, it recommends that particular attention be given by the legal authorities tasked with ordering and assessing the conclusions of bone x-ray examinations to respect for the freedom of the young person to participate or not to participate in these, and to strictly apply the legal stipulation granting the benefit of the doubt to the individual concerned.*

[MDE-2016-048.pdf](#)

#### Care of minors

Findings related to failure to uphold the guarantees afforded by the system have led the Defender of Rights to intervene on a number of occasions before the authorities and national courts in proceedings as a third party intervener.

The UN Committee on the Rights of the Child, in its final observations dated 29 January 2016 on implementation of the CRC in France, also stated its concern regarding the situation of these minors who did not have access to the child protection system.

Unaccompanied minors who have petitioned the Defender of Rights have had their identity, age, story and route challenged. During the period of assessment of their situation, prior to potentially granting them access to care, these children ought to be protected unconditionally, which is not always the case. This sometimes flawed protection is accompanied by failings in access to rights and to justice.

#### Care

The conditions under which care is withdrawn are also cause for concern. The Defender of Rights has been petitioned concerning multiple situations revealing difficulties relating to the care of minors, several of whom did not have access to provisional reception, and where it was set in place, the conditions of this reception were inadequate (inappropriate hotels, unsanitary establishments, etc.).

The Inspectorates General stated in their 2014 report that the majority of decisions taken by departments withdrew care without informing the Public Prosecutor and that no grounds or notification were provided.

They also remarked that decisions that educational assistance for young persons deemed to be of majority age were unnecessary were not systematically set out formally in writing and sent to the department so that the young persons could be notified, even though such individuals are entitled to directly petition the children's judge for educational assistance, in accordance with Article 375 of the Civil Code.

### **Evaluation**

The Defender of Rights has pointed out that a complete evaluation of the situation of a foreign minor by the social and educational services must take place prior to their being presented to the police, which may prove to be particularly destabilising.

The Defender of Rights wishes to reiterate its recommendations and observations and calls upon the Interior Minister to remind the police and gendarmerie, by whatever means, that the situation of a young foreigner stating him or herself to be an unaccompanied minor in France must be assessed by the services of the Departmental Council in the location where he or she was found, before being subjected to any other type of investigation.

## Difficulty in accessing rights

*Difficulties faced by unaccompanied minors in accessing the asylum procedure:* The asylum reform introduced by the previously cited law of 29 July 2015 provides no specific procedure for minors, who are simply required to be appointed an *ad hoc* administrator to assist them with their applications. However, the Defender of Rights finds that they encounter difficulties in accessing asylum due to this requirement.

### HEALTH

*The Defender of Rights recommends that the Departmental Councils make provisions for a health assessment to be systematically conducted from the outset of the provisional reception and assessment stage, so that any serious, urgent, contagious medical conditions can be detected. The Defender of Rights calls upon the Departmental Council to incorporate into care provided to unaccompanied foreign minors the issue of mental health care needs, particularly at the time a pathway is prepared for the child, and to ensure that this care is provided, where necessary, by qualified professionals.*

### RIGHT OF ASYLUM

*The Defender of Rights recommends the setting in place of simplified, efficient, fast procedures to reunite unaccompanied minors with their families, wherever this is possible and in the best interests of the child.*

### VOCATIONAL TRAINING

*The Defender of Rights calls upon the Labour Minister to enact legislative reform or to intervene at the regulatory level in order to stipulate that the work permit referred to in Article L.5221-5 of the Labour Code shall be granted automatically to a foreign minor requesting one in order to conclude an apprenticeship or qualifying contract.*

## Access to education remains difficult

In line with consistent case law, the refusal to register a child for school may not be justified by a failure to provide a residence permit or by the unlawful presence of the parents. The HALDE had, on a number of occasions, observed the discriminatory nature of refusals of registration based, either directly or indirectly, on the origin and/or nationality of the persons concerned. The Defender of Rights has also been petitioned concerning refusal to register for schooling based on the unlawful presence of a child's parents. In particular, it emerges from the examination of one case that a mayor had a table setting out the unschooled children in the commune and specifying the situation of their parents (asylum applicants, refused asylum) and the dates on which their provisional residence permits expire.

RÉPUBLIQUE FRANÇAISE

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