

Summary of the French Parliamentary Commission Report On the Family And the Rights of Children

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After a year of efforts, round tables and travel to various countries, a special 30 member multi party committee of the French National Assembly recently submitted its report on the evolution of the family and the need to adapt family law to changes in the family and the rights of children.

« *The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.* ». (United Nations Declaration of Human Rights, article 16.) Faced with the desire by individuals to choose their own family structure models, increasing family breakup and new scientific possibilities, the report attempts to protect the basic unit of the family while taking into account these societal changes.

Marriage, adoption and medically assisted reproduction are inseparable, not only in principle, but also in fact as countries that have adopted same sex marriage have also permitted adoptions and medically assisted reproduction for same sex couples.

The Mission believes that it should not simply endorse changing mores but rather needs to set norms which will “allow individuals to build their lives around stable, sure and understandable criteria.”

Articles 7, 9, 18, 3 and 21 of the New York Convention on the Rights of the Child (1989) set out children’s rights. “It is not possible any more to systematically let adult aspirations trump children’s rights.” The Mission deems it essential to enshrine article 3 (“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”) into French law to help guide judges, individuals and other institutions.

Children represent the future of society. Thus the legislator must defend their rights, irregardless of developments in other countries that fail to do so. The best interests of the child must pre-empt the free exercise of some adult freedoms and choice of lifestyles.

French law currently supports three types of family structures: common law, civil unions (PACS) and marriage, each with its own proportionate set of rights and obligations. Because of its higher level of commitment, permanence and judicial support, marriage offers the greatest protection and benefits for children and society. Thus, of the three family structures, marriage is the only structure not available to same sex couples. The Mission renews its support for this tiered system and recommends that the various rights and obligations of each type of union be clearly explained to couples when they register for a common law certificate, a PACS, marry or have a child.

Because of the filiative nature of marriage, it is essential that the male-female nature of marriage be preserved. This reflects the natural fecundity of couples and is best suited to help the child develop his/her identity. The Mission refuses to change the nature of marriage.

The purpose of adoption is not to provide a child to a family but rather provide a family to a child. Children require the judicial and affective security that only marriage provides. Same sex parenting

clearly introduces additional discontinuity for the adopted child. Favoring equality for adults would affect a greater inequality towards children. As in the case of medically assisted reproduction, the report rejects the right to a child.

The report severely criticized the studies it received claiming that same sex parenting carried no ill effects for children. It noted the lack of scientific rigor, inadequate sampling and the flagrant lack of objectivity in these reports. Without criticizing the educative and affective qualities of same sex parents, the report nevertheless concludes with the need to adopt a precautionary principle, as is the case in other domains.

Adoption either replaces previous filial links (plenary adoption) or potentially multiplies them (simple adoption). The report expresses concern about how to limit the potential multiplication of filial links created as adults change partners over time, thus confusing children. The report thus does not support adoption by single parents or same sex couples. With same sex parents, a child would find himself with two fathers or two mothers. Opening up adoption in these circumstances would also open the door to circumventing existing restrictions, lead to abuse and jeopardize children's filiative rights.

Under current law, and in the best interests of the child, medically assisted reproduction is limited to heterosexual couples who are either married or who can prove a minimum of two years of common law relationship. Because these procedures involve a third party donor, a judge must grant permission in a process akin to an adoption (of a foetus).

While medically assisted reproduction now makes it possible for sterile couples, including same sex couples, to have children, the process opens the door to the breakdown between the various dimensions of parenting: the biological (progenitor), the judicial (parental authority) and the social (day to day care). It would also lead to science creating fatherless children. The report cites Québec, where children can thus have two mothers listed on their birth certificates and no father. The report rejects assisted reproduction for single women and same sex couples. It also considers that the child needs the judicial and affective security which is best assured when the biological and the legal ties are aligned.

“Preserving the prohibition on surrogate motherhood is justified ... for two crucial reasons based on the protection of human dignity: first, the fact that the human body cannot be disposed of; and second, the fact that filiation also cannot be disposed of. Revisiting those values would amount to denying the bond that grows between mother and child during pregnancy and opening the door to a wide range of abuses. In California, for instance, the birth of a child might involve as many as five people: a sperm donor, an egg donor, a gestator and the couple who are the legal parents.”

The report rejects claims of discrimination in the case of assisted reproduction, noting that “the difference in situation between couples of different sexes and those of the same sex are so obviously different in terms of reproduction.” It highlights that allowing such “would create discrimination between male and female homosexual couples, unless access to surrogate motherhood is granted to male couples.”

Finally, the report stresses the need, in the medium term, to lift the veil of secrecy in the case of children born from anonymous mothers and allow children to know the identity of their mother when they reach their majority. It recommends increasing the minimum age for marriage to 18 years for both men and women in order to fight forced marriages. It also recommends the creation of a “delegation of parental authority” in order to provide more flexibility to judges “regarding the education of the three million French children who do not live with both parents”. Finally, the report delves extensively into child protection, detection of abuse, care, and coordination between various institutions.