

[http://www.assemblee-nationale.fr/12/dossiers/mission\\_famille\\_enfants.asp](http://www.assemblee-nationale.fr/12/dossiers/mission_famille_enfants.asp)



## Parliamentary Report on the Family and the Rights of Children

Paris, Thursday, January 26, 2006  
Source: National Assembly

\*\*\*

### S U M M A R Y

	<u>Pages</u>
<b>I. PLACING THE BEST INTERESTS OF THE CHILD AT THE HEART OF FAMILY LAW.....</b>	<b>6</b>
A. NON-RECOGNITION OF A RIGHT TO A CHILD .....	7
1. Preserve the Principles that Apply to Marriage at Present.....	7
2. Preserve the Rules that Apply to Adoption at Present.....	7
3. Consistency with the French Bioethical Model.....	8
<i>a) There must continue to be a medical justification for assisted procreation,</i> <i>under the rubric of “a father, a mother, a child” .....</i>	<i>8</i>
<i>b) The prohibition on surrogate motherhood must be preserved .....</i>	<i>8</i>
<i>c) The principle of donation that applies to gametes and assisted</i> <i>procreation must be reaffirmed.....</i>	<i>9</i>
B. PROTECTING CHILDREN’S RIGHTS.....	9
1. Expediting the Process of Bringing French Law into Compliance with the International Convention on the Rights of the Child .....	 9
2. Better Monitoring of Violations of Children’s Rights.....	9
3. Giving all Children the Right to be Heard by the Courts .....	10
C. CONSOLIDATING COUPLES .....	10
1. Guaranteeing Informed Choice in Organizing Lives as Couples .....	10
2. Making a Civil Solidarity Pact a Coherent Couple Contract .....	11

3. Reaffirming the Freedom to Marry and Combatting Forced Marriages .....	13
D. STRENGTHEN CHILDREN’S CONNECTION WITH THEIR PERSONAL ORIGINS.....	14
1. Making Knowledge of an Abandoned Child’s Origins a Personal Right of the Child .....	14
2. Creating a Two-Track System for Anonymous Donors and Identified Donors of Gametes for Medically Assisted Procreation.....	14
3. Authorizing Transfer of an Embryo <i>post mortem</i> in Specific Circumstances .....	15
E. HOLDING PARENTS ACCOUNTABLE .....	15
1. Encouraging Co-parenting by the Father and Mother.....	15
<i>a) Improving the use of alternating residence.....</i>	<i>15</i>
<i>b) Strengthening family mediation .....</i>	<i>16</i>
<i>c) Ensuring better compliance with parental obligations .....</i>	<i>16</i>
2. Giving Legal Parents the Opportunity to Appoint a Delegate for Matters Affecting Children’s Everyday Lives.....	18
3. Strengthening the Role of Third Parties After the Death of the Parents.....	19
4. Improving the Manner in which Grandparents’ Rights are Exercised by Making them Subordinate to the Best Interests of the Child .....	19
<b>II. GUARANTEEING THAT THE CHILD IS PROTECTED .....</b>	<b>20</b>
A. STRENGTHENING RISK PREVENTION AND DETECTION.....	20
1. Moving Detection Efforts up to Include Pregnancy.....	20
2. Improving Detection Procedures .....	21
<i>a) Responsibility for detecting children at risk must rest with a clearly identified person in authority.....</i>	<i>21</i>
<i>b) Teachers and Doctors Must be More Involved.....</i>	<i>21</i>
<i>c) Professionals must be able to better assess the risk a child is at .....</i>	<i>23</i>
3. Sharing Information .....	23
4. Ensuring Oversight of Identified Families.....	24
B. IMPROVE THE CARE PROVIDED TO CHILDREN AND THEIR FAMILIES.....	25
1. Clarifying the Criteria for Taking into Care .....	25
<i>a) The concept of the best interests of the child must be clarified.....</i>	<i>25</i>
<i>b) Interventions by judges must be more carefully targeted.....</i>	<i>26</i>
2. Reviewing the Procedure for Taking into Care.....	27
<i>a) Providing better services for children and their families.....</i>	<i>27</i>
<i>b) Guaranteeing continuity in placements of children .....</i>	<i>29</i>
<i>c) Respecting the rights of isolated foreign minors.....</i>	<i>30</i>
<i>d) Clarifying the procedure for exercising parental authority.....</i>	<i>31</i>
C. CLARIFYING THE ORGANIZATION OF THE CHILD PROTECTION SCHEME .....	32

1. Strengthening Coherency in Actions Taken by Departments.....	32
2. Modernizing the Operation of Children’s Courts.....	33
3. Strengthening Oversight and Harmonizing Practices in the Departments.....	33

The family is the first locus for the development of social relationships, rearing children and transmitting values. The people of France have always exhibited attachment to this institution. The family has changed, however, as individual aspirations have changed, marriages have become more subject to breakdown and scientific advances have been made. The course of family relationships has become more diverse and less institutionalized.

The purpose of the Information Mission, which was created at the request of the President of the National Assembly, was to propose any change to the law and to administrative practices that are necessary to better protect the rights of the child and to reflect changes in the French family. For the purpose of this examination, the Mission chose the best interests of the child as its guiding principle because it is the responsibility of society, and especially of its legislative bodies, to ensure that children are able to develop harmoniously. This principle led to the Mission's decision to affirm and protect children's rights and the primacy of those rights over adults' aspirations.

The Mission made every effort to hear all views on this subject. It organized 14 round tables and heard 130 people, an expression of the diversity of French society. It travelled to Spain, the United Kingdom, Belgium, the Netherlands and Canada to assess the reforms that have been undertaken in other countries.

The report sets out 100 proposals that require amendments to existing statutory or regulatory provisions. Protecting children's rights without recognizing the existence of the "right to a child", supporting couples, holding parents accountable, strengthening children's connections with their origins, affirming the role of adults who rear children alongside their parents, in single-parent or blended families, and thoroughly reforming child protection: these are the broad focuses of the work done by the Mission.

\* \*

\*

## **i. Placing the Best Interests of the Child at the Heart of Family Law**

The Mission wanted to begin its work by examining the foundations of the family and considering how it has changed and where it now stands, because it wanted to see France as it is and not as it imagines it is. This enabled the Mission to assess the extent to which families are child-centred at present: given the rising instability of couples' relationships, the child is increasingly seen as underlying the parents' identity and as the foundation of the family unit; children today are wanted, chosen; sometimes, children are even said to be a right. Given these developments, the Mission is persuaded of the need to make the best interests of the child the central factor in family law.

### a. Non-recognition of a Right to a Child

The desire for a child seems to have become a right to a child, which society to allow to be exercised by any means necessary. Given that claim, trying to systematically adapt the law to the demands made by adults may give rise to ethical questions and lead to questioning of the fundamental principles of the law of filiation. A majority of the Mission is of the view that when children's lives are the issue, legislators must act very cautiously and calmly seek a social consensus, rather than trying to bring about changes through a legislative revolution. The norm adopted must allow individuals to build their lives based on stable, certain and understandable criteria. The symbolic weight of the law must meet the needs expressed by our fellow citizens for standards to be set.

Globalization, which contributes to departures from French law abroad, must not mean that any State is deprived of its sovereign liberty to choose its own laws, other than by placing an obligation on every country to stand firm against the laws that are most violative of basic principles. Every country is entitled to provide its own responses to the needs of its society, in accordance with its ethical principles, traditions and political choices. This is in fact what France did when it adopted legislation relating to bioethics or assisted suicide. The Mission is of the view, when it comes to the family specifically, that a right to a child must not be recognized.

### **1. Preserve the Principles that Apply to Marriage at Present**

The Mission considered the call for marriage to be available to same-sex couples, and is of the view that it is not possible to think about marriage separately from filiation: the two questions are closely connected, in that marriage is organized around the child. Marriage is not merely the contractual recognition of the love between a couple; it is a framework that imposes rights and duties, and that is designed to provide for the care and harmonious development of the child. Foreign examples demonstrate this: countries that have made marriage available to same-sex couples have all, simultaneously or subsequently, authorized adoption by those couples and developed systems for assisted procreation or surrogate gestation, to enable those couples to have children.

It would in fact be incoherent, if couples were regarded as equal, to remove the prohibition on marriage and preserve it for filiation.

Making marriage available to same-sex couples therefore presupposes that they will also be given the right to adopt and receive medical assistance for procreation, and even the right to use surrogate mothers, because such couples are not fertile. The Mission is divided on this subject. It considered the consequences for the child's development and the construction of his or her identity of creating a fictitious filiation by law – two fathers, or two mothers – which is biologically neither real nor plausible. Diametrically opposed representations were made by the people heard on this point, and they failed to persuade a majority of the Mission to support recognizing a right to a child or a right to marriage, for same-sex couples. A majority of the Mission does not wish to question the fundamental principles of the law of filiation, which are based on the tripartite unit of “a father, a mother, a child”, citing the principle of caution. For that reason, that majority also, logically, chose to deny access to marriage to same-sex couples.

### **2. Preserve the Rules that Apply to Adoption at Present**

A majority of the Mission wanted to preserve the rules that apply to child adoption, which provide that this option is available solely to married couples and single individuals. That

majority did not go down the road of making adoption available to unmarried couples, because of the lesser permanency of such couples and the fact that there is no judicial involvement in the event of separation. Adopted children have already suffered the trauma of being abandoned, and, quite often, being uprooted. They must therefore be given the greatest possible protection from the risk that their parents will separate. Marriage therefore offers children better legal security.

### **3. Consistency with the French Bioethical Model**

A number of rules derived from bioethics laws were challenged in submissions to the Mission: the prohibition on the insemination of women who live alone or with another woman, the use of surrogate mothers and the paying of fees for donated ova. However, a majority of the Mission is of the view that there is a French bioethical model that must be strengthened.

#### ***a) There must continue to be a medical justification for assisted procreation, under the rubric of “a father, a mother, a child”***

The rules governing access to medically assisted procreation are intended to limit it strictly to prescription for medical reasons, to counteract sterility arising from a pathology or to avoid transmission of a serious illness. The reason that this very expensive procedure<sup>1</sup> is covered by social security is that it is medically justified. Expanding access to medically assisted procreation would be flatly contrary to that reasoning, by opening the door to medically assisted procreation for convenience, independently of any medical considerations.

In addition, making assisted procreation available to all women, without their being part of a couple and without any medical reason, would reinforce the natural inequality between men and women, and thus lead to discrimination between female and male homosexual couples, unless the latter were allowed to use surrogate mothers.

In the case of insemination of single women, a majority of the Mission is of the view that medically assisted procreation must not be separated from its medical purpose to encourage the birth of fatherless children. In the case of female couples, as on the issue of adoption, and in the best interests of the child, the Mission wants to see the prohibition on insemination preserved so as not to undermine the fundamental principles of the law of filiation.

#### ***b) The prohibition on surrogate motherhood must be preserved***

Certainly, in the modern global community, one need only connect to the Internet to find organs for sale, a “uterus for rent”, and even a newborn baby available for purchase, as occurred last spring when a Belgian woman pregnant by surrogacy tried to sell a neonate to the highest bidder. However, the fact that a country’s laws can be skirted must not be taken to deprive legislators of their duty to establish limits and ethical principles.

Preserving the prohibition on surrogate motherhood is justified, in the eyes of a majority of the Mission, 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.

---

<sup>1</sup> *In vitro* fertilization costs on the order of 15,000 Euros for the six attempts that are covered.

***c) The principle of donation that applies to gametes and assisted procreation must be reaffirmed***

Organ, tissue and gamete donations must continue to be totally free of charge. Compensation, even in the form of merely covering costs, would be an incentive for economically disadvantaged women to give up their ova to earn money, as is the case in some other countries, and in particular the United States.<sup>2</sup> The Mission is opposed to any undermining of the principle of donation, which is an inherent part of the unique nature of the French bioethical model, even though ova are scarce in this country.

**b. Protecting Children's Rights**

The Mission is persuaded that legislators' primary responsibility is to ensure that children who are faced with alterations to family models are given the fullest consideration and do not suffer as a result of the situations imposed on them by adults. The best interests of the child must prevail over adults' exercise of their liberty. Legislators' response to social change must therefore be to place the primary stress on affirmation of the rights of the child, including when the child's rights conflict with the parents' lifestyle choices.

The International Convention on the Rights of the Child enshrines the principle that the child is a person, and recognizes the civil and social rights of the child, as a person, but also the child's public liberties, which are based squarely on human rights.

While the Mission is of the view that France has no cause for shame, overall, in relation to how it treats children, and that much progress has been made in recent years, not all of the provisions of the Convention are being perfectly observed, whether the fault lies in the legislation in force or in the practices applied.

**1. Expediting the Process of Bringing French Law into Compliance with the International Convention on the Rights of the Child**

The Mission advocates establishing a transcription commission with the task of drawing up a list of amendments to be made to French law to bring it into compliance with the Convention. In addition, the best interests of the child, the foundational principle of children's rights as enshrined in the Convention, must be given primacy in French law, through a statutory provision of general application.

*Proposals:*

*– establish a transcription commission relating to the International Convention on the Rights of the Child, under the aegis of the ministries responsible for justice and the family, with the task of drawing up a list of amendments to be made to French law to bring it into compliance with the Convention*

*– incorporate paragraph 1 of article 3 of the International Convention on the Rights of the Child into French law, through a statutory provision of general application, affirming the primacy of the best interests of the child*

**2. Better Monitoring of Violations of Children's Rights**

The Mission proposes that the opinion of the Defender of Children regarding bills relating to children or children's rights be made mandatory, and that parliamentary delegations for the

---

<sup>2</sup> In the United States, ova are sold, in particular by young women who use this method to pay their tuition fees. The financial consideration paid is still considerably higher than the mere *pretium doloris* that exists in Spain.

rights of the child be created. The Government must abide by the obligation placed on it by law to submit a report annually to Parliament on the status of the rights of the child in France.

*Proposals:*

- make the opinion of the Defender of Children regarding bills relating to children or children’s rights mandatory*
- create parliamentary delegations for the rights of the child*
- remind the Government of its obligation to submit a report annually to Parliament on the status of the rights of the child in France*

### **3. Giving all Children the Right to be Heard by the Courts**

The law must give all children the right to be heard, if they so wish, in judicial proceedings that affect them, while also guaranteeing that they have the opportunity to decline a hearing when it is requested by the judicial authority, and courts must be required to explain to children the judicial decisions made to the extent that they affect them, including decisions to release accused persons and decisions not to act on complaints.

There should be encouragement for minors to be assisted by counsel, by expanding access to legal aid for child victims and providing appropriate training for lawyers. As well, we must review the terms on which *ad hoc* administrators are appointed to represent the interests of minors in the courts to guarantee that they are independent, and increase the fees paid.

*Proposals:*

- give children the right to be heard, if they so wish, in all judicial proceedings that affect them, while also guaranteeing that they have the opportunity to decline a hearing when it is requested by the judicial authority*
- require courts to explain to children the judicial decisions made to the extent that they affect them, including decisions to release accused persons and decisions not to act on complaints*
- provide encouragement for minors to be assisted by counsel by expanding access to legal aid for child victims and providing appropriate training for lawyers*
- review the terms on which ad hoc administrators are appointed to guarantee that they are independent, and increase the fees paid*

#### **c. consolidating couples**

The Mission wants to consolidate couples, to help them to overcome crises and conflicts. Couples must be given better information about the forms of conjugal relationships available under our legislation, so that they are in a better position to choose how to organize their lives as couples. The flaws in the PACS [civil solidary pacts] must be rectified to provide the partners with greater legal security, and liberty in relation to marriage must be reaffirmed.

### **1. Guaranteeing Informed Choice in Organizing Lives as Couples**

The Mission is of the view that the graduated levels of duties and rights offered by the three forms of organization of a couple (marriage, PACS and common-law relationships) are entirely justified and enable everyone to choose the form of life as a couple that best suits him or her, based on each person’s own situation. That freedom of choice, however, can be exercised only if individuals have precise knowledge of the rights and duties that flow from each type of union. For that reason, the Mission regards it is essential that, while respecting



every person's choice, couples be informed about the protections and obligations that arise from the various forms of life as a couple.

*Proposal:*

– *to guarantee free and informed choice, inform couples, especially at the time they enter into a PACS, apply for a common-law relationship certificate, a marriage certificate or certificate of birth for a child, about the differences between the rights and duties associated with marriage, a PACS and a common-law relationship.*

## **2. Making a Civil Solidarity Pact a Coherent Couple Contract**

The PACS was developed in a very heated context, and has flaws that warrant rewriting the law of 15 November 1999. That law is lacking in coherence, and may put couples who have entered into a PACS in a difficult legal situation. The primary flaws in the law relate to the complexity of the rules governing property, which are based on two different presumptions of undivided ownership, with no exception to the rule of joint and several liability for debts, and the difficulty for third parties of determining whether or not a person is a party to a PACS.

The Mission supports reforming the PACS to resolve the difficulties that have become apparent since it was created, while adhering to the principle of the unique nature of marriage. To that end, the Commission adopts the conclusions of the working group created in the Chancellery by Dominique Perben, which propose a set of measures designed to improve the balance between the rights and duties of partners in a PACS, provide them with legal security and guarantee them the same social rights, regardless of who their employer is. To avoid people entering into “blank PACS” contracts, the Mission would like to make the social rights conferred by the pact subject to proof that the partners are being taxed as a unit, as they are required to be. Because of the freedom to separate offered by a PACS, it provides greater opportunity for fraud than does marriage. Before they are granted rights (preferential transfers within their business or organization, for example), the genuine nature of the partners' commitment should therefore be confirmed.

In addition, the Mission considers it to be fair, as the working group suggests, to improve the situation of the survivor in the case of the death of a partner. The Mission proposes that entitlement to a reversionary pension be granted provided that the PACS lasted at least five years, and to give the surviving partner the benefit of the specific abatement of 50,000 Euros in the entire assets of the estate, which has been available to surviving married spouses since 2005, while preserving the much more onerous tax burden for partners than for spouses. Surviving partners should also be guaranteed the right to remain in the couple's residence and, if the deceased partner was the owner of the property, to have a right of enjoyment free of charge for one year after the death, and, where there is a will for the benefit of the surviving partner, a life interest for the purpose of residence and a preferential right to ownership of the property.

*Proposals:*

– ***entering into and registering the PACS:***

- *specify that the written agreement that is a condition of entering into the pact may be a deed under private seal or an authentic deed entered into before a notary*
- *preserve registration by the clerk of the lower court, but incorporate a reference to the existence and, where applicable, the dissolution of the pact into the birth certificate of each of*

*the partners, by entering a simplified reference that does not disclose the identity or sex of the partner*

*– eliminate the prohibition on entering into a pact for persons of the age of majority under tutorship, provide that persons of the age of majority under curatorship must be assisted by their curator when they enter into and dissolve a civil pact, and grant persons who are incarcerated the right to enter into a PACS*

***– rules governing property:***

*– replace the existing presumptions of undivided ownership with rules providing for separation as to property, with the partners being able at any time to opt, by agreement, for rules providing for organized undivided ownership*

***– social rights:***

*– provide for authorization for a day's absence for entering into a PACS*

*– allow contracts with fixed terms to be used to replace a partner who actually participates in the professional activity of the business*

*– allow temporary employment agency employees to be used to replace a partner who actually participates in the activity of the business*

*– consider a person who works with his or her partner to be a home-based worker*

*– consider a partner to be a dependant for the purpose of calculating the portion of earnings subject to seizure and assignment*

*– extend cash benefits for disability insurance and maternity to partners*

*– extend rights in relation to workers' compensation to partners*

*– allow a partner who works in the business of a self-employed worker to participate in that partner's old age insurance scheme*

*– extend the right to a reversionary pension to partners who have been parties to a PACS for five years*

*– make entitlement to the social rights provided by the PACS subject to proof that the partners' incomes have been taxed jointly*

***– estate taxes:***

*– extend the supplementary abatement of 50,000 Euros that has been granted to the surviving spouse since 2005 to the surviving partner*

***– succession rules applicable to the residence:***

*– give the surviving partner a temporary right of enjoyment of the residence free of charge for one year*

*– where the surviving partner is a legatee, give him or her a life interest for the purpose of residing in the residence*

*– where the surviving partner is a legatee, give him or her a preferential right to ownership of the residence*

***– rights of foreign nationals:***

*– specify, by circular, the requirements relating to the length of cohabitation required in order for the foreign partner of a French citizen to obtain a "private and family life" temporary residence card*

***– duties as between partners:***

- balance mutual and material assistance between partners, having regard to their capacities to contribute*
- limit the rules regarding joint and several liability to third parties for debts contracted by one partner for everyday needs, excluding excessive expenditures*
- create a duty of support between partners*

### **3. Reaffirming the Freedom to Marry and Combating Forced Marriages**

The practice of forced marriages is a violation of a fundamental human right, the right to love and marry freely. The Mission proposes a complete scheme for combating forced marriages, consisting of fourteen measures designed to strengthen methods of preventing such marriages from taking place, or having them annulled. At the initiative of the Mission, the statutory aspect of this scheme was enacted by the National Assembly on December 15, 2005, when the bill to strengthen measures for preventing and enforcing the prohibition on violence within couples was given first reading.

#### *Proposals:*

- raise the minimum age for marriage:***
  - set the minimum age for marriage at 18, while allowing the public prosecutor the discretion to grant exemptions from the age requirement for serious reasons*
- review the formalities for the solemnization and registration of marriage:***
  - make express provision regarding absence of consent in provisions relating to hearing the future spouses, staying the solemnization of the marriage and staying the registration of the marriage*
  - allow the officer of civil status with jurisdiction to request that the hearing be held at a French consulate in the future spouse's country of residence*
  - authorize officers of civil status and consular officers to delegate the holding of the initial hearing to an official in their department*
  - where the spouses refuse to be examined, make the failure to respond to the summons forwarded to the prosecutor's office by a consular officer a ground for non-registration of the marriage*
- facilitate applications to have marriages annulled for absence of consent:***
  - make it possible for the public prosecutor to challenge a marriage entered into without the freely given consent of one or both spouses*
  - increase the limitation on actions for annulment based on the absence of consent or defective consent of one or both spouses to two years, in the event that cohabitation was undertaken after the spouse or spouses were once again free*
  - increase the limitation on actions for annulment based on the absence of familial consent to the marriage of a minor to two years from the date of the marriage*
  - provide that the provisions of article 1114 of the Civil Code (reverential fear of parents) do not apply to marriage*
- protect victims by providing educational and supportive measures:***
  - organize information sessions in the schools regarding free consent to marriage and the rights that derive from marriage*
  - raise awareness among people likely to know about plans for forced marriages (diplomatic and consular officials, magistrates, the police, social workers, teachers)*

- *develop places for people who are being threatened with or have been victims of forced marriages to talk, get assistance and advice, and take refuge, in particular at women’s rights information centres*
- *develop housing solutions that are appropriate for people who are being threatened with or have been victims of forced marriages*
- ***refuse to institute a specific penal sanction for forced marriage:***
- *provide that the existence of constraint to marry constitutes grounds for annulment of the marriage*

d. strengthen children’s connection with their personal origins

### **1. Making Knowledge of an Abandoned Child’s Origins a Personal Right of the Child**

Article 7 of the International Convention on the Rights of the Child gives a child, “as far as possible, the right to know his or her parents”. As our legislation now stands, however, a child born “*sous X*” [anonymously] has no right to know his or her origins, and has the opportunity to know only whether his or her birth mother agreed to a record of her identity and whether, if the child so requests, she agrees to it being disclosed to the child.

The Mission is of the view that both to comply with the Convention and as a result of changes in society, in which single mothers rearing their children are no longer stigmatized and which aspires to greater transparency, there is justification, in the medium term, for giving children born under the secrecy rules to learn the identity of their birth parents. The Mission believes that when these children reach the age of majority, they should be able to know the name of their mother, since the 18 years that have passed since their birth should have enabled their mothers to overcome the problems that resulted in their giving birth in secret. The birth should not be able to remain anonymous, and the secrecy could be lifted 18 years later. This would mean moving from anonymous birth to birth “subject to discretion”.

Nonetheless, the law now in force is still very new, and the Mission does not think it appropriate to revisit, today, the balance it has established, which will have to be evaluated.

On the other hand, the Mission would like to see the search for origins be a personal effort for the child alone, as of now. To avoid the premature intrusion of a birth parent’s identity into the child’s life undermining the child’s bonds with his or her adoptive parents, we should give the child the exclusive opportunity to request access to his or her origins, provided that the child’s legal representatives agree, and grant that access once the child has reached the age of discernment.

#### *Proposal:*

- *when a child who has been abandoned is a minor, give the child the exclusive opportunity to request access to his or her origins, provided that the child has reached the age of discernment and his or her representatives agree.*

### **2. Creating a Two-Track System for Anonymous Donors and Identified Donors of Gametes for Medically Assisted Procreation**

While the number of anonymous births is on the decline, the development of medically assisted procreation with a third party donor is creating new situations in which a person does not know his or her biological origins.

The Mission is of the view that couples requesting assistance, like donors, should be able to choose between an anonymous donation and a personalized donation. The Mission is therefore favourable to establishing, experimentally, two donation systems: one anonymous, the other not anonymous. Individuals who chose the first system would continue to enjoy the provisions of the present system; if the donor and the future parents opted for the second, the child could get access to the identity of his or her biological parent on request.

*Proposal:*

*– create a two-track system: two systems for donating the gametes that comprise a child's genetic heritage, the first guaranteeing the donor's anonymity and the second allowing for access to the donor's identity*

### **3. Authorizing Transfer of an Embryo *post mortem* in Specific Circumstances**

The law prohibits implanting an embryo conceived *in vitro* if the father is deceased. That prohibition leads to unjustified and tragic situations, in which the mother has no alternative but to have the embryo gestated by another couple. The Mission would therefore like *post mortem* transfer to be permitted. The embryo was conceived from the gametes of a couple which has, yes, been divided by a death, but the couple had wanted a child and was in the process of carrying out that desire. A child brought into the world in this way would undeniably have a father, even if he were deceased, and family on the father's side. Given the strong symbolic presence of the father, the mother could be authorized to have the embryo implanted between six and twelve months after the death.

*Proposal:*

*– where the father is deceased, authorize the mother to have an embryo implanted between six and twelve months after the death*

#### **e. holding parents accountable**

Parental authority is naturally exercised by two parents who form a couple and live together. If they separate, that authority is still legally shared, in most cases, but the actual situations are often very different: it is not uncommon for one of the parents to become distant from the child, responsibility for whom rests solely on the other parent; it is also common for at least one of the parents to form a new couple, and for the step-parent to take on an important role in the child's life. Grandparents too often seek to play a role in rearing their grandchildren.

### **1. Encouraging Co-parenting by the Father and Mother**

The Mission would like to strengthen methods for ensuring that after a child's parents separate, the child does not lose his or her connection with one parent.

#### ***a) Improving the use of alternating residence***

Expert opinion is divided as to the consequences of alternating custody of very young children: some believe that it prevents the development of the bond between mother and child, where the mother is the child's primary locus of attachment; others, on the contrary, argue that it prevents a dominant relationship with the mother.

After lengthy discussion, the Mission believes that the issue is less the principle of alternating residence than the terms on which it is implemented. Prohibiting it for some children does not seem to be the most appropriate solution. For the child, the most important thing is that his or

her parents agree on how their life will be organized. If they want alternating custody, they must be provided with the resources for carrying it out in the best interests of the child.

Leaving it up to a judge, after seeking the opinion of psychologists, if necessary, to determine on a case by case basis whether alternating residence is in the best interests of the child thus seems to be the best solution. The judge must still be particularly attentive to the age of the child, a criterion that is in fact set out in the Civil Code to be taken into account in the decision. A guide to best practices for alternating custody could be usefully prepared by the ministry of justice, under expert supervision, to help parents and judges in family law cases to determine the best terms to set for sharing custody.

In addition, the Mission would like to give a child who has reached the age of discernment the right to apply directly to a judge to request a variation in the terms for exercising parental authority, and ultimately, then, the terms that apply to the child's residence.

As well, the right to family benefits must be adapted to alternating custody, to enable the two parents to share the allowances.

*Proposals:*

- have the ministry of justice prepare a guide to best practices for alternating residence*
- allow a child who has reached the age of discernment to apply to a judge to vary the terms on which parental authority is exercised*
- adapt the family benefits scheme to alternating residence*

***b) Strengthening family mediation***

It is undeniably in the child's best interests for his or her parents not to battle over the terms on which parental authority will be exercised, and to come to an agreement that they will abide by because it appears to each of them to be satisfactory.

The Mission therefore believes that it is essential to encourage the use of family mediation. While parents should not be required to attend an information session before applying to a judge, the Mission would support having judges systematically propose mediation to parents, where there is disagreement regarding the terms for the exercise of parental authority, and requiring that they meet with a family mediator. In addition, to develop the use of mediation outside any judicial proceeding, the Mission recommends that a system of assistance for paying for those sessions be established.

*Proposals:*

- in the event of disagreement between the parents regarding the exercise of parental authority, require that the judge propose that they engage in a mediation process and require them to meet with a family mediator who will inform them about the purpose and conduct of that process*
- establish a system of assistance for mediation comparable to legal aid, prior to the judicial proceeding stage*

***c) Ensuring better compliance with parental obligations***

When the amount of support is determined by a judicial decision it is often seen as arbitrary and disconnected from reality, and it will in fact vary significantly from one court to another. It would therefore be useful to make decision-making tools available to parents and judges by

providing data about the cost of the child, based on the child's age and the family's situation and sample tables for calculating support.

At present, actual payment of support can be difficult to obtain, and the effect of the legal methods available to the creditor is often to exacerbate conflicts without recovering the money owing. The Mission places great weight on both parents contributing to the upbringing and upkeep of their children, in accordance with the decisions made by the courts. For that reason, the Mission wants to avoid any measure that might result in the debtor feeling not accountable. The Mission would like the public prosecutor to take more effective action against debtors who are the subject of complaints. An adjournment before judgment is often a good way of putting pressure on, to have support paid regularly. The ministry of justice should strengthen the action taken by prosecutors' offices in this regard.

The difficulties encountered in enforcing decisions of the courts do not relate only to payment of the pecuniary contribution to the upbringing and upkeep of the child; they relate also to compliance with the terms of custody. In order for the non-custodial parent to grasp the fact that a parent does not "divorce" his or her child, the Mission is proposing that judges be authorized to order withdrawal of parental authority, in whole or in part, against a parent who has repeatedly failed to exercise his or her right of access and residence.

*Proposals:*

- make a scale available to judges to assist them in determining the amount of support*
- use a circular to strengthen the action taken by prosecutors against parents who do not comply with their support obligations*
- authorize judges to order withdrawal of parental authority, in whole or in part, against a parent who fails to exercise his or her right of access and residence*

## **2. Giving Legal Parents the Opportunity to Appoint a Delegate for Matters Affecting Children’s Everyday Lives**

The rising frequency of separated couples with children has led to growing numbers of blended families, in which children live with a step-parent. As well, in “single-parent” families, the non-custodial parent is often absent and the custodial parent, generally the mother, may need assistance from third parties (grandparents, uncles, aunts, friends) in the upbringing and care of the child.

To take into account the situation of the three million minor children who do not live with both of their parents, the Mission would like to propose pragmatic solutions, in the best interests of the child, that are adapted to meet the difficulties encountered, while scrupulously respecting filiation and without making the way that people’s lives are organized, which may change over time, into a general rule.

The law allows for parental authority to be shared among parents and a third party, but this requires a decision by a family court judge, and results in assigning a third party the same level of responsibility as a legal parent. In fact, these provisions are used only rarely. In a large majority of blended family cases, neither the parents nor the children want to have a third party designated to exercise parental authority in competition with the non-custodial parent. The same is true when a single legal parent is rearing a child: while the parent may need help in day-to-day life, he or she still does not necessarily want to delegate parental authority, because this would amount to tacit recognition that the parent is unable to fully carry out his or her responsibilities to the child.

It is in the best interests of the child, however, for the role played by the adults around the child in the child’s upbringing be fully recognized by society and by the child, specifically so that the child cannot challenge the legitimacy of the person rearing him or her. This would, in addition, allow for families’ day-to-day lives to be simplified.

A majority of the Mission would therefore like a different solution to be offered, one that is more consistent with the aspirations and needs of parents and children than shared parental authority. “Step-parent status”, imposed by law, seems to the Mission to be too rigid a solution and to be inappropriate for preserving the parents’ primary responsibility. It would like to affirm that parents are free to organize the child’s day-to-day life and to choose the trusted adults whom they will bring in to help them in carrying out their responsibility for the child’s upbringing. For that reason, the Mission proposes that legal parents who want the opportunity to give a third party, a step-parent, grandparent or even another person who is ordinarily involved in looking after the child, a “delegation of parental responsibility”, by agreement, for the ordinary things done in the child’s life; that agreement might take the form of an authentic deed signed before a notary, or a deed under private seal that is then approved by a judge. The agreement of both legal parents would be required. If a disagreement arose, the delegation would immediately terminate. The role of the delegate would thus be



recognized in a general way – when, today, there must be personal authorization for each thing done in the child’s life (field trips, hospital admissions, vacations, etc.) – but without being placed at the same level as, or in competition with, the parent, in the eyes of either society or the child.

*Proposal:*

*– offer parents the opportunity to give a third party a “delegation of parental responsibility” for the ordinary things done in the child’s life, either by authentic deed before a notary, to be immediately enforceable, or by deed under private seal approved by a judge*

### **3. Strengthening the Role of Third Parties After the Death of the Parents**

When the parent who was the connection between the child and the third party who is rearing the child disappears, there is a risk, under the law as it now stands, of separation that could be harmful to the child.

To avert that risk, the Mission proposes that a third party who is rearing the child be authorized to apply to a judge himself or herself, to have the child placed with him or her rather than with the surviving parent.

The Mission also recommends that the principle of automatically awarding tutorship to grandparents where no tutor has been designated by the last surviving parent be made more flexible. It is appropriate to allow the family council, presided over by the tutorship judge, to deviate from that principle, in the best interests of the child, in favour of a third party who is involved in the upbringing of the child. This would mean, for example, that responsibility for a very young child would not have to be assigned to relations who are too old to look after the child for long, when there is a step-parent with whom the child has lived for several years and who is continuing to rear the child’s half-brothers and half-sisters.

*Proposals:*

*– authorize a third party who is rearing the child to apply to a judge to have the child placed with that party in the event of the death of a parent*  
*– where the parents have not designated a tutor, provide for tutorship to be awarded to older relations unless the family council is of the view that designating the third party who is rearing the child is justified in the best interests of the child*

### **4. Improving the Manner in which Grandparents’ Rights are Exercised by Making them Subordinate to the Best Interests of the Child**

The law provides that a child is entitled to maintain personal relationships with his or her older relations, and that exercise of that right may be denied only where there are serious reasons.

The Mission considered the advisability of amending those provisions. The Commission is of the view that the best interests of the child must be considered first. Finding that there are serious reasons to deny access rights may be traumatizing for the child. When grandparents have applied to the courts, it is because they cannot reach agreement with the parents. The parents may also be tempted to assert serious reasons why the opposing party’s application should not be allowed, and this will further exacerbate the tension in the family, through the accumulation of grievances (gathering testimony against the grandparents, etc.) that we experienced in the case of divorce for misconduct, before the 2004 reform. The Mission

believes that reducing the severity of intra-family disputes must continue to be a priority in family law, in the best interests of the child.

To avoid fanning the flames of family conflicts, the Mission therefore proposes that the exercise of a minor's right to maintain personal relationships with his or her older relations be subject to its being consistent with the best interests of the child.

*Proposal:*

*– provide that only the best interests of the child may be used to deny exercise of the right to maintain relationships with the child's older relations.*

\*       \*

\*

## **ii. guaranteeing that the child is protected**

In the absence of guidelines and coherence, child protection efforts are met with incomprehension and sometimes tragedy. In France, nearly two children still die every week of abuse, and while the number of abused children seems to be levelling off, cases of children at risk are rising. Families and other actors in the area of child protection are in urgent need of a strong signal.

The Mission's report sets out the plan for reforming child protection measures that it adopted and released on June 28, 2005, focusing on three priorities: strengthening risk prevention and detection; improving methods of taking children at risk into care; and clarifying the organization of the scheme.

### **a. Strengthening Risk Prevention and Detection**

#### **1. Moving Detection Efforts up to Include Pregnancy**

The Mission is persuaded that we need to implement earlier detection methods.

First, it would appear to be essential to strengthen oversight of pregnancies. The Mission therefore recommends regular, mandatory interviews with midwives so that women are better prepared for childbirth and risk situations can be detected in cases which will require oversight in the home after the birth. The interview in the fourth month provides an opportunity to discuss bringing the child home, at present, but it is still too cursory and focused solely on the medical aspects.

Abuse prevention begins at the very instant when the child comes into the world. It is therefore important to promote the establishment of "birth houses" and maternity services to help mothers who are unsuccessful in bonding with their newborns. A harmonious birth is essential security for the future, and allows children to develop a genuine capacity for resiliency.

With young women who have given birth leaving maternity wards after shorter and shorter times, the Mission believes it is important to provide them with individualized support mechanisms, by developing home visits by midwives and childcare specialists.

*Proposals:*

- *strengthen the prenatal oversight conducted at the interview in the 4th month of pregnancy, by developing a guide for detecting problems in mother-child bonding*
- *promote “birth houses” which monitor mother and child after delivery, and maternology services in hospital, to prevent attachment disorders*
- *arrange for home visits by midwives and childcare specialists after delivery, as prescribed by the physician attending the birth, the midwife, the paediatrician or the family practitioner, or at the request of the parents*

## **2. Improving Detection Procedures**

The Mission has assessed the limitations that existing detection procedures run up against. In the Drancy case, general opinion was that the scheme did not work: while each actor had information, the information was not enough to set off an alarm bell loud enough for the children to be taken into care. The procedures for detecting risk situations are plainly not effective enough.

### ***a) Responsibility for detecting children at risk must rest with a clearly identified person in authority***

The Mission is displeased that by focusing on situations of abuse, the law of 10 July 1989 has abandoned the broader concept of children at risk. The prevention mission that the law assigns to the general councils focuses solely on the abuse of minors, when all children who may be at risk must be protected.

There is continued uncertainty as to who is responsible for managing and centralizing information about simple risk situations. In fact, children’s social assistance services (ASE) do not receive a copy of reports of minors at risk when they are submitted directly to the prosecutor’s office, and therefore cannot bring the valuable information in their possession to the attention of magistrates.

The Mission would like to see this uncertainty removed, and see the general council be expressly assigned the task of centralizing all information about risk situations. The general council must be the mandatory conduit for information of concern, even in cases where the prosecutor’s office is instructed directly, by creating a single, readily identifiable unit. In Departments that have created such units on their own initiative, there has been a marked improvement in the effectiveness of the reports given.

#### *Proposal:*

- *extend the detection role of the general council to include all risk situations and identify a reporting unit in each department*

### ***b) Teachers and Doctors Must be More Involved***

The Mission is of the view that it is essential to involve schools and doctors more in detecting risks.

Monitoring tools for detecting children at risk should be reintroduced into educational institutions and medical offices. It would seem to be essential to go back to having social aides in the primary schools, and to have networking with general practitioners. As well, the conduit for relaying information between mother and child protection (PMI) and national education, to ensure the continuity of monitoring activities, must be better defined.

The Mission recommends that medical examinations be mandatory for children of kindergarten entrance age. This examination, for children three years old, would be the basis for a health certificate, on the same terms as those that apply to the examinations on the 8th day and at the 9th and 24th months.

Given the reduced resources available to national education today for implementing genuine medical monitoring of students,<sup>3</sup> the Mission proposes experimenting with extending the powers of the PMI to cover all children in primary school. School medical offices would then handle only adolescents.

The Mission's attention was drawn to the fact that teachers have little awareness training when it comes to the problem of abuse, including in the teacher-training courses they take at university (IUFM). The medical profession and psychologists seem to have very poor knowledge of the details of social assistance for children, while in Quebec, for example, this is a recognized specialty. It is essential that training for detecting children at risk be expanded.

---

<sup>3</sup> At present there are only one school physician for every 5,510 students and one nurse for every 1,835 students.

*Proposals:*

- *make training in detecting abuse mandatory in IUFM programs*
- *experiment in pilot Departments with extending the authority of the PMI to include all children in primary school*
- *institute a mandatory medical examination for children at the age of three, which would be the basis for a health certificate*
- *provide for physicians, midwives and paramedical professions to have a module in their training programs on children at risk*

***c) Professionals must be able to better assess the risk a child is at***

The Mission notes that there is no methodology for assessing risks, in the absence of a guide to identifying abused or at risk children. There have been no advances in the reference tools in 15 years, while the situations faced by social workers have become increasingly complex. Professionals must have new tools that reflect the theoretical work done in relation to early childhood psychology and changes in the characteristics of children who are monitored by the ASE.

A reference guide should therefore be created that includes risk indicators, to assist professionals in identifying risk situations. Use of the guides that have been tested in some Departments could be expanded, in order to establish a common methodology on which professionals have reached consensus.

In addition, actors in the area of child protection must receive training that incorporates a common module relating to abuse. Such common training appears particularly essential in view of the high turnover of professionals, so that creating a shared culture is not possible.

*Proposals:*

- *create a reference guide identifying indications that a child is at risk, to be developed after a process of transverse and multidisciplinary consultation*
- *create a training module on the risks children are at that will be common to all training for social workers*

### **3. Sharing Information**

The Mission notes that child protection suffers, first, from the walls erected between the various organizations with authority in the area, which are reinforced by the rules of professional privilege, which rules, as the law now stands, do not authorize information-sharing.

In practice, child protection professionals share their information by working in informal networks. Some workers informed the Mission of the fears they feel as a result of the uncertainties that surround the legality of this practice. They called for the documents to be clarified, and recommended that there be a “shared social privilege” defined.

The Mission therefore proposes that a clear statutory framework be defined, with coherent, identifiable levels of responsibility:

- *there must be stringent oversight to avert the risk of creating a “social record”: information-sharing should relate only to “contextualized” information, that is, information that responds to a particular problem, and that involves only professionals caring for the child;*

– if the shared information is to be retained on a single medium that allows for keeping track of indications identified, there must be a guarantee of compliance with the rules imposed by the national commission on computers and liberties (CNIL).

The Mission suggests that the rules established for medical privilege by the law of 4 March 2002 relating to patients’ rights and the quality of the health care system be used as a model. Defending children, however, goes farther than the issues involved in access to medical records: while the law relating to health care must attempt to ensure continuity of care – the reason that shared medical privilege has been authorized – the issue in child protection is to protect the minor from acts that may be committed against him or her by third parties, sometimes parents. To the Mission’s mind, this unique aspect justifies deviating from the rules that apply to medical privilege in respect of two points:

– sharing information should not be a mere option; the professionals responsible for the child must have an obligation to share information that may assist in protecting the child;

– information must be capable of being shared without the parents’ agreement, provided that parents are given prior notice that information relating to their children will be shared between professionals to determine the level of care needed as best possible.

*Proposal:*

*– define a “shared social privilege” by law, in order to:*

- *institute an obligation to share information between child protection professionals, where there is an indication that the child is at risk, and specify the nature of the information that may be disclosed and the professions concerned*
- *authorize the sharing of information without the parents’ agreement, provided that parents are given prior notice that information relating to their children will be shared*
- *make the disclosure and processing of shared information subject to very stringent confidentiality rules overseen by the CNIL*

#### **4. Ensuring Oversight of Identified Families**

The Mission stresses the need to ensure oversight of detection measures. It is not sufficient to identify risks; the family must then be monitored to prevent materialization of the risk or repetition of the act.

The Mission’s attention was drawn to the phenomenon of frequent moves and evasion strategies developed by some families. Given the number of actors involved and the geographic basis on which the scheme is organized, household moves are one of the main flaws in the monitoring system. The Mission proposes that a number of remedial measures be taken:

– agreements between Departments and family allowance funds (CAF) might enable the funds to use their index of recipients to provide information to an ASE service that had lost track of a family, to inform it of the family’s new address. The ASE service in the Department from which the family had moved would then contact the service in the Department to which it had moved, to report the contact information for a family that had to continue being monitored;

- CAFs could also have an obligation to report children to the PMI for whom the mandatory health certificates had not been submitted;
- the fact that there is no penalty for failing to file the mandatory health certificates interferes with medical oversight of children, which is in fact carried out for only 50% of children aged 9 months and 30% of children aged 24 months. The Mission therefore proposes that this obligation be strengthened by providing that after a reminder letter is sent reiterating that the medical examination is mandatory there be a home visit by a social worker working for the CAF with families that do not submit health certificates;
- in the interests of reducing distances, the responsibility that currently rests with school district inspectors to report cases of school absenteeism might be assigned to school principles and heads of educational institutions.

The lack of information about follow-up on reports has the effect of reducing accountability. Except in abuse cases, the people who report the risk situations are not systematically kept informed about follow-up action taken on their reports. The Mission therefore proposes that the obligation to forward information that now rests on the judicial authority (prosecutor's office and judge) or the president of the general council be extended.

*Proposals:*

- *use information from the CAFs relating to changes in affiliation to monitor families that move and to provide for continuity in that monitoring, from one Department to another, under agreements entered into by general council and funds*
- *require that CAFs report children to the PMI for whom the mandatory health certificates have not been submitted*
- *institute home visits by a social worker working for the CAF in response to non-compliance by people who fail to submit the mandatory health certificates, after a reminder is sent (for the 8th day, 9th and 24th month and 3 year medical examinations)*
- *assign responsibility to school principles and heads of educational institutions for reporting school absenteeism to the CAF and the general council*
- *extend the obligation that now rests on the judicial authority ( prosecutor's office and judge) or the president of the general council to inform people who submit information relating to a child at risk about what follow-up has been given to that information communication*

b. improve the care provided to children and their families

## **1. Clarifying the Criteria for Taking into Care**

### ***a) The concept of the best interests of the child must be clarified***

Measures ordered by a judge to assist in a child's upbringing are based on the judge's assessment of the risk to the child's health, safety, morality or upbringing. The judge also has an obligation to make orders based strictly on the best interests of the child.

The Mission considered the operational nature of the concept of risk and whether it is advisable to define the concept of the best interests of the child more precisely, to take into account progress in our knowledge of child development. The Mission believes that the concept of risk has the advantage of leaving room for interpretation, and that the rules that apply should not be made more rigid, although this does not mean that a reference guide to indicators of abuse could not be created. The changing nature of the risks to which a child is subject make it difficult to assign a statutory definition to the concept.

The Mission decided that it was preferable to retain the reference to risk and to specify the best interests of the child by way of a guide to best practices, rather than by incorporating a definition in the law. This tool could draw on experiments carried out abroad, and would provide professionals with access to an ethical guide that examines a number of concrete situations along with assessment criteria for determining the best interests of the child, which must be established on a case by case basis.

*Proposal:*

*– clarify the concept of the best interests of the child by way of a guide to best practices, to define, among other things, flaws that may be present in a minor’s upbringing*

***b) Interventions by judges must be more carefully targeted***

The Mission is concerned about the trend toward increasing the involvement of the courts in the process of taking children at risk into care.

That trend operates to reduce accountability: there is a great temptation to relieve one’s self of all responsibility by issuing a report to the courts, instead of trying to determine whether child protection services can find a solution. In fact, judges are seeing situations brought before them that could plainly have been resolved through administrative action. This practice has harmful consequences for children at risk, in that it exacerbates the situation and clogs the courts, which there is then blowback in terms of the overall effectiveness of the scheme.

The legislation does not draw a clear dividing line between administrative and judicial measures. While the rules applied by judges are relatively precise, the criteria for intervention by the ASE are defined by the social action and family code in very general terms: article L. 221-1 deals with social difficulties that could seriously jeopardize the child’s equilibrium. In addition, the principle of graduated intervention set out in the law is only partially applied. The president of the general council has an obligation to bring a case before a judge where it is impossible to assess the situation or the family refuses to accept ASE intervention (article L. 226-4 of the social action and family code). However, that obligation comes into play only if the child is a victim of abuse. For risk situations where there is no sign of abuse, there are no provisions setting out criteria for the matter to be brought before a judge.

The lack of precision in the legislation has led to a culture of “judicial mandate” developing, the risk being that continuity between administrative oversight and judicial oversight will be lost, when a judge can assign a measure directly to a service that is under the authority of the ministry of justice, without involving the ASE.

The Mission would like to see the criteria for ASE intervention clarified and harmonized with the criteria applied by judges. For instance, ASE would become involved where a situation put a child’s health, safety, morality or upbringing at risk. In addition, the last-resort nature of bringing a case before a judge would be extended: regardless of the risk a child might be at, a judge would have jurisdiction only where it was impossible to assess the situation or the family had refused to cooperate. The corollary in those two cases would be that the president of the general council would have an obligation to take the matter to a court.

*Proposals:*

*– clarify the missions of the ASE by reference to the four essential components of child development as laid down by the law (health, safety, morality and upbringing)*  
*– give the general councils general jurisdiction over children at risk and reserve judicial intervention for situations in which it is impossible to assess the situation or the*



*family has refused to cooperate; experiment with this new division of authority in interested Departments*

*– place an obligation on the president of the general council to take a matter before a judge where it is impossible to assess the situation or the family refuses to cooperate, and in particular to obtain access to the family's residence*

## **2. Reviewing the Procedure for Taking into Care**

### ***a) Providing better services for children and their families***

The Mission considered the priority placed by the legislation on keeping the child in his or her family.

Some people who made submissions rejected an ideology based on the family bond: social workers and judges identify much more with parents than with children, and the child protection scheme is based on the debatable premise that the biological family is always preferable to a foster family. This justifies moving a child back and forth from foster family to biological family, a process that is sometimes destructive for young children whose greatest need is for a stable emotional reference point. Whether a child is kept in his or her family home should therefore depend on the ability of the child's parents to provide the child with a proper upbringing.

The Civil Code provides that the child must be kept in the family home wherever possible. The Mission is of the view that if keeping the child in the family is to continue to be the objective of the child protection scheme, the criterion applied at present is too vague. The Mission therefore proposes that the decision be made by the judge having regard to the best interests of the child. For instance, a minor could remain with or return to his or her family only if that measure were not likely to be harmful to the child's interests.

In addition, the Mission notes the need to diversify measures taken to assist in children's upbringing and strengthen the support provided to parents. The social action and family code has a notable flaw: by creating a simple binary choice between support in the home and placement, it does not offer the ASE a sufficiently broad range of interventions to respond to the unique features of each family. The Mission proposes that we abandon the "all or nothing" paradigm by giving statutory recognition to intermediate experiments developed by some Departments: week-long placements, week-end and holiday placements, day care, and even, paradoxically but apparently positively, "placement without removal", which has been in practice in Gard Department for several years. This recommendation would lead to incorporation of the possibility of day placement into the social action and family code – an intermediate form of intervention, halfway between placement and assistance in the home.

In addition, it is essential that when placement is decided on there be an opportunity to continue social or medical/psychological oversight of the parents. It is crucial that support be provided for parents to avoid repetition of the abuse and to prepare for the children to be returned to their family home. As the law now stands, once the child is placed, the protection services are not authorized to take measures to organize assistance for the parents in relation to the upbringing of their children. This gap needs to be filled.

To prepare for returning the child to the family, family mediation, which at present depends on initiatives taken by voluntary associations, should be used more widely. Mediation is still regarded as a procedure to be used for preparing for a separation or divorce process, when it may be undertaken preventatively, well before the problem of the couple's separation arises.

The Mission, like all of the people who made submissions, is concerned about the difficulties encountered by child psychiatrists and the terms for taking children into care. It is not unusual for a child who is considered to be at risk to wait several months to get a consultation. In order to expand the services available, the Mission recommends that consultations with psychologists be funded under health insurance when they are prescribed by a physician.

*Proposals:*

- reserve the choice of keeping the child in his or her family for situations in which doing so is not likely to harm the child's interests*
- introduce a provision for day placement into the social action and family code, which would be an intermediate measure between assistance in the home and taking into care*
- give the ASE the opportunity to supplement the action of taking a child into care with social or medical/psychological oversight of the parents*
- use family mediation to prevent abuse and prepare for the child to be returned to the family*
- have consultations by minors and their families with psychologists, on a physician's prescription, covered by health insurance*

***b) Guaranteeing continuity in placements of children***

Continuity of placement is essential to the emotional stability of children placed in care. Changes in foster homes or families must be kept to a minimum, to enable minors to establish emotional bonds with a caregiver of reference, who could provide a substitute for the parental image. The theory of attachment shows the risks of permanent disorganization of minors' personalities, particularly in very young children, when they are shunted from one person to another.

The Mission would like the law to state the principle of a single placement. However, that principle should not impose an obligation; rather, it should have regard to the child's situation. The strict application of an obligation to arrange a single placement would run up against the problems in recruiting foster families and the common difficulty some children, even children who have been abused, experience in detaching from their parental reference figures, despite their inadequacies. As well, a child may encounter difficulties in the relationship with the foster family.

The Mission considered the wisdom of keeping children's homes. Those homes would be used for placing children born anonymously, and as emergency shelters where a diagnosis could be made to allow for the most suitable kind of placement to be determined. Nonetheless, and despite the presence of "reference" adults, they do not allow a child taken into care to find the new stable attachment situation that is necessary for the child's emotional development, whereas placement in a foster family does provide this. For that reason, the Mission believes that placement in a children's home should be a temporary solution only, which it would like to see limited to three months.

On the issue of the length of placements in institutions or foster families, the only criterion worth adopting seems to be the needs of the child. Reducing the length of placement is not an objective in itself: if the child has to be separated from the parents permanently, the time will have to be extended, to enable the child to establish new bonds, instead of subjecting him or her to being shunted back and forth willy-nilly.

Nonetheless, it seems to the Mission to be crucial that measures to assist in the child's upbringing be reassessed periodically. For that reason, the Mission recommends that the situation of each child be examined once a year. Article L. 223-5 of the social action and family code could provide for an annual report on each child placed in the care of the ASE, reporting on the child's physical and emotional health, academic progress and family relationships. The report would be submitted to the parents and, where applicable, the judge, and should provide an opportunity to assess the child's physical, emotional and intellectual

development, and to determine whether the child feels that he or she is in a sufficiently emotionally secure situation.

*Proposals:*

- place an obligation on the ASE and the judge to ensure continuity in placements of children, by stating the principle of a single placement, except in specific cases as justified by the child's situation*
- limit time spent in children's homes to a maximum of three months*
- place an obligation on ASE services to produce an annual report on each child taken into care, which would be submitted to the parents and, where applicable, the judge*

**c) Respecting the rights of isolated foreign minors**

Foreign children who arrive in France illegally and alone are deprived of certain of their rights: first, the right to live with their family, or at least in their community of origin; and second, when it is impossible to return them, their right to an education, and in particular to vocational training.

Isolated foreign minors are having more and more difficulty gaining admission to vocational training and obtaining residency cards. The number of foreign nationals entering France who are under the age of 18 and have no family ties here has risen significantly, from about 200 in 1997 to a little over 3,600 as at September 30, 2004, according to figures provided by the general inspectorate of social affairs. Although they were taken into care by the ASE until they reached the age of majority, at significant expense,<sup>4</sup> these minors live under the threat of being returned to their country of origin when they reach the age of majority if they have not achieved sufficient vocational integration.

Two recent provisions have improved the situation of isolated foreign minors taken into care by the ASE at the age of 16:

- article 28 of the law of 18 January 2005 respecting programming for social cohesion, which provides that employment status may not be applied against a foreign minor who applies for a work permit in order to participate in paid vocational training (apprenticeship or work experience contract), where he or she has been in the care of the ASE since the age of 16;

- the circular of the minister of the interior dated May 2, 2005, which accordingly provides that foreign minors or young adults taken into care by the ASE before the age of 16 are entitled to a temporary residence card stating “employee” or “temporary worker”, depending on the length of the employment contract entered into.

On the other hand, there are no plans for legislation to benefit children taken into care by the ASE after the age of 16, although a majority of minors arrive in France after that age.

The Mission recommends that cooperative action to organize the return of isolated foreign minors to their countries of origin be undertaken. Where return is impossible, it would like isolated foreign nationals arriving in France after the age of 16 to be given an opportunity, once they have demonstrated that they have integrated, and on the decision of the prefect, to take paid training courses, after which, on reaching the age of majority, the general

---

<sup>4</sup> The cost of taking isolated foreign minors into care is estimated by the inspectorate general of social affairs to be between 71 and 115 Euros.

council has decided that the ASE will keep them in care in the form of a “young adult” contract.

*Proposals:*

- strengthen cooperative action to organize the return of isolated foreign minors to their countries of origin*
- on the decision of the prefect, give isolated foreign minors who arrive in France after the age of 16, who continue to be in the care of the ASE under a “young adult” contract, access to paid vocational training*

***d) Clarifying the procedure for exercising parental authority***

Children placed in an institution or a foster family continue to be under the authority of their parents. Legally, all important decisions relating to their upbringing are still to be made by the parents, even when they are not involved in the child’s day-to-day life. Article 375-7 of the Civil Code says only that parents [TRANSLATION] “exercise all the powers [of parental authority] that are not inconsistent with the provision of measures to assist in the child’s upbringing”.

Those provisions are not suited to situations in which parents are unable to make the decisions that are needed in the child’s day-to-day life. The Mission therefore recommends that, in certain circumstances, the children’s judge be given the power to interfere with parental authority on an *ad hoc* basis, where the issue is the usual rights exercised in relation to the child’s ordinary daily life, such as authorizations for surgery, leaving the country, engaging in a cultural or sports activity or any decision relating to the child’s academic situation.

The Mission’s attention was drawn to problems that arise in the case of accidents in which children are victims and are then placed in care, because the parents are not always capable of doing what is needed to protect their children’s rights. The accident report is sometimes prepared by the placement institution, but practices seem to vary from one Department to another. A circular should therefore be issued to clarify the practical terms on which parental authority is to be exercised when a child is placed.

*Proposals:*

- *issue a circular to specify the terms on which parental authority is to be exercised when a child is placed*
- *give children’s judges the power to make ad hoc decisions delegating parental authority so that rights relating to day-to-day life may be exercised*

c. clarifying the organization of the child protection scheme

The decision-making circuits in the child protection scheme are overly complex, not very coherent and difficult for users to understand. This is not for lack of resources: overall, more than 5 billion Euros are spent on child protection every year, and in some Departments this is the largest line in the social action budget.

The dual tutorship (by the general council and also by the children’s judge) under which decentralization has replaced child protection has led to responsibility being diluted. When a judge decides to place a child directly with an individual or in an institution, the Department is not notified and thus has no information about that child. The Department has no authority to oversee any judicial measures taken, even though it funds those measures, and the service responsible for carrying out the measures reports only to the magistrate. There is no single reference point that could be used to ensure continuity of care, and thus evaluation of that care.

The Mission is of the view that decentralization must not lead to violations of the principle of equality, and that efforts must be made to harmonize practices involved in social assistance for children. The State must be where responsibility for child protection ultimately lies, and must provide the impetus for an ambitious policy by stating objectives and ensuring the quality of the service provided.

**1. Strengthening Coherency in Actions Taken by Departments**

The complexity of the organization makes it necessary for a leader to be clearly designated who is capable of coordinating the structures that all report to different authorities. The role of the Departments should be supported, while taking advantage of the proximity enjoyed by the communes.

The Mission proposes that each general council president be identified as the child protection officer for that Department. The president would appoint a single reference person for all actions relating to child protection. By doing that, the actions taken by the general council would be comparable, in terms of ease of comprehension, to what is done by a children’s judge: anyone who is dealing with a child at risk, whether that person is a professional or a member of the public, must know whom to go to.

To take into consideration the role played by the mayors, the Mission considers it to be essential that the communes be more involved. We should therefore consider the possibility of encouraging the creation of local child protection councils, which would be under the joint authority of the mayor and the president of the general council, along the lines of local safety and delinquency prevention councils.

*Proposals:*

- *affirm the central role of the president of the general council, as child protection officer for the Department, in the eyes of the general public*

*– encourage the creation of a local child protection council at the commune level, which would be under the joint authority of the mayor and the president of the general council, and would be responsible for sharing information about families at risk.*

## **2. Modernizing the Operation of Children's Courts**

The Mission considered the wisdom of creating a family court, which would combine the powers of children's judges and family law judges. The Mission is afraid that this reform would not adequately reflect the unique needs of the justice system for minors. A children's judge's work is in essence fundamentally different from the work done by a family law judge: the latter applies the law to the family without providing any "after-sale service", while the former works with social services to regularly review the child's situation and vary his or her decisions based on changes in that situation. Eliminating the specialty of children's judge would run the risk of making the provision of the support needed by minors a secondary matter, once the judicial decision was delivered.

The Mission believes that improvement in the justice system for minors will be achieved by recognizing the specific supervisory function performed by the vice-president of the lower court responsible for the children's court, and by greater specialization and more training for children's judges.

Modernizing the children's courts also calls for a reduction in the times between hearing and judgment. On that point, the monitoring tool available to the Chancellery needs to be improved. The Mission recommends that annual statistics be published regarding waiting times for judgment in the children's courts, with the aim of reducing that time to three months.

### *Proposals:*

*– provide for specific training for children's judges before they take up office*  
*– recognize the supervisory functions performed by the vice-president of the lower court responsible for presiding over the children's court*  
*– provide for each court with jurisdiction over children to publish its waiting times for judgment in cases of children at risk, and to adopt the objective of reducing that time to three months*

## **3. Strengthening Oversight and Harmonizing Practices in the Departments**

The Mission notes that there is no real oversight of child protection policies. The general councils do not have tools that are up to the job of assessing the results of their actions and the quality of the services delivered by the authorized associations to which the general councils delegate a number of tasks.

To strengthen and target oversight measures, the Mission recommends that the Defender of Children be given the power to bring a matter before the minister responsible for social affairs in order to have the inspectorate general of social affairs undertake an investigation, and releasing the findings of the investigation publicly. The possibility of targeted evaluation will undoubtedly prove more effective than a broad but much less thorough oversight mechanism.

The financial effort allocated by the general councils is unequal from one Department to another, and different norms apply. The Mission wishes to take care to respect

the principle of territorial equal treatment, and would like to harmonize the practices of actors in the child protection area. Common training for the various professions involved in social action will facilitate the acquisition of shared reference points and make it possible to compare experiences. Nonetheless, it would seem to be important to have national minimum standards that define professional practices and procedures for taking children into care (rate of supervision, qualifications required for professionals, equipment for offices, etc.). Other decentralized services with responsibility for placing children, and specifically the services of the PMI and early childhood or services that fall under youth and sports, are already subject to such standards. The process of defining those standards will provide an excellent opportunity for examining the practices on which there is consensus and experimental activities that should be expanded to other services.

*Proposals:*

- *give the Defender of Children the power to bring a request for an investigation directly before the minister responsible for social affairs, and to release the findings of the investigation publicly*
- *harmonize the actions taken by the different Departments by defining national minimum standards*