



**Convention on the Rights  
of the Child**

Distr.  
GENERAL

CRC/C/FRA/4  
21 February 2008

ENGLISH  
Original: FRENCH

---

**COMMITTEE ON THE RIGHTS OF THE CHILD**  
**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES**  
**UNDER ARTICLE 44 OF THE CONVENTION**

**Third and fourth periodic reports of States Parties due in 2007**

**FRANCE<sup>\*,\*\*</sup>**

[11 September 2007]

---

\* In accordance with the information given to States Parties on the preparation of their reports, this document has not been reviewed by the Editing Section before transmission to the translation services of the United Nations.

\*\* For the initial report submitted by the French Government, see document CRC/C/3/Add.15 and Corr.1; for the Committee's consideration of the report, see documents CRC/C/SR.139 to 141; and for its final observations, see document CRC/C/15/Add.20; for the second periodic report, see document CRC/C/65/Add.2; for the Committee's consideration of the report, see documents CRC/C/SR.967 and 968; and for its final observations, see document CRC/C/15/Add.240.

## CONTENTS

	<i>Paragraphs</i>	<i>Page</i>
INTRODUCTION.....	1 - 4	4
I. GENERAL MEASURES OF IMPLEMENTATION .....	5 - 123	5
A. Implementation of the Convention .....	5 - 13	5
B. The mechanisms in place to supervise the implementation of the convention and to coordinate action in support of children .....	14 - 49	6
C. The French context .....	50 - 80	13
D. New measures to strengthen the implementation of the Convention.. .....	81 - 112	18
E. Measures taken by France to make the rights of the child better known .....	113 - 123	23
II. DEFINITION OF THE CHILD AND PROCEDURAL RIGHTS	124 - 143	25
A. Minimum legal age of marriage .....	124 - 127	25
B. Minimum age of criminal responsibility .....	128 - 130	25
C. Legal aid .....	131 - 136	26
D. Access to rights .....	137 - 143	27
III. GENERAL PRINCIPLES .....	144 - 197	28
A. Non-discrimination (art. 2) .....	144 - 168	28
B. The best interests of the child (art. 40) .....	169 - 177	32
C. Respect for the opinions of the child (art. 12) .....	178 - 197	33
IV. FREEDOMS AND CIVIL RIGHTS .....	198 - 271	36
A. Name, nationality and the right to know one's parents (art. 7) .....	198 - 231	36
B. Access to the media and the protection of children (art. 17 and 18) .....	232 - 255	41
C. Freedom of thought, conscience and religion (art. 14) .....	256 - 264	46
D. Freedom of association and peaceful assembly (art. 15) .....	265 - 271	47
V. FAMILY ENVIRONMENT AND ALTERNATIVE CARE .....	272 - 374	48
A. Parental guidance and responsibilities (arts. 5 and 18 para. 1) .....	272 - 276	48
B. Children separated from or deprived of their family environment (arts. 9 and 20) .....	277 - 311	49
C. Family reunification (art. 10) .....	312 - 318	54
D. Recovery of maintenance (art. 27 para. 4) .....	319 - 323	55
E. Adoption (art. 21) .....	324 - 345	56
F. Illicit transfer and non-return (art. 11) .....	346 - 355	59
G. Abuse and Neglect (art.19) .....	356 - 364	60
H. Periodic review of "placement" (art. 25) .....	365 - 374	62

	<i>Paragraphs</i>	<i>Page</i>
VI. HEALTH AND WELFARE .....	375 - 509	63
A. Development and standard of living (art. 6 para. 2 and art. 27) .....	375 - 418	63
B. Disabled children (art. 23) .....	419 - 428	70
C. Health and health services (art. 24) .....	429 - 485	72
D. The right to social security (art. 26) .....	486 -509	81
VII. EDUCATION, LEISURE AND CULTURAL ACTIVITIES .....	510 - 538	85
A. Education, including vocational training and guidance (art. 28) .....	511 - 522	85
B. Aims of education (art. 29) .....	523 - 525	87
C. Leisure, recreation and cultural activities (art. 31) .....	526 - 538	88
VIII. SPECIFIC MEASURES FOR THE CARE OF MINORS .....	539 - 664	90
A. Unaccompanied foreign minors (art. 22) .....	539 - 572	90
B. Children in conflict with the law (art. 40 and art. 3 paras. a-d) .....	573 - 615	96
C. Children in situations of exploitation (art. 39) .....	616 - 663	104
D. Children belonging to a minority or an indigenous group (art. 30) .....	664	111

#### ANNEXES

I. The rights of the child in overseas France .....	112
II. The French approach to the issue of minorities .....	189
III. Applicability of the Convention on the rights of the child .....	196
IV. Integrating young people into society and working life .....	201
V. Inter-country adoption .....	204
VI. Combating forced marriages .....	206
VII. Female sexual mutilation .....	208
VIII. The enforceable right to housing .....	211
IX. The function of adolescent centres .....	214
X. Minors who offend .....	217

## INTRODUCTION

1. France signed the Convention on the Rights of the Child (the Convention), adopted by the General Assembly of the United Nations on 20 November 1989, on 26 January 1990 and ratified it without delay on 7 August 1990. In 1993, it submitted a very detailed initial report on follow-up to the Convention, which was considered by the Committee on the Rights of the Child (the Committee) a year later, on 25 April 1994. A second periodic report, prepared in 2002, was considered on 2 June 2004. On conclusion of this consideration, the Committee invited France, exceptionally, to present its third and fourth periodic reports jointly in a single document not exceeding 120 pages by 5 September 2007.

2. In accordance with the general instructions on periodic reports, the object of this new report is not to reiterate in its entirety information already given, but to set out developments in domestic law and practice since the second periodic report and to bring up to date the data previously submitted. This report also contains information about action taken in respect of the Committee's final observations of 30 June 2004.

3. In this connection, the French Government draws the Committee's attention to the section of this report devoted, for the first time, exclusively to measures relating to the implementation of the Convention in the Overseas *Départements* and Territories.<sup>1</sup> In order to respond to the Committee's expectations as well as possible, and in the interests of precision and coherence, it seemed preferable to include this information in a separate section, rather than to disperse it throughout the body of the report. Presenting it in this way has made it possible to adapt the form of the report to cover the particular issues that arise in relation to the overseas populations and the information that it has been relevant and practical to provide about them.

4. This report brings together contributions from the ministries concerned with the application of the Convention. The Government has also taken account of observations from the Children's Ombudsman, from the National Consultative Commission for Human Rights (*CNCDH*), which includes representatives of non-governmental organizations and organizations and associations concerned with general medical practice and the defence of the rights of the child, and from the High Authority to Combat Discrimination and Promote Equality (*HALDE*).

---

<sup>1</sup> Annex I

## I. GENERAL MEASURES OF IMPLEMENTATION

### A. IMPLEMENTATION OF THE CONVENTION

5. When it considered the second periodic report, the Committee repeated its invitation to France to withdraw its reservation and its two declarations (paragraph 5).
6. On this point, the French Government can do no more than reiterate the explanations given in its earlier reports. The lifting of the reservation relating to article 30 (on minorities) and of the two declarations relating to articles 6 (right to life) and 40 (right to review in penal matters) is still not on the agenda, as the legal reasons for them continue to apply.
7. Turning to the reservation relating to article 30, it should be remembered that the French legal framework does not permit recognition of collective rights attaching to any group, defined by common origin, culture, language or belief. The first article of the Constitution (formerly art. 2) provides that the French Republic shall be indivisible and that it shall guarantee the equality before the law of all its citizens without distinction of origin, race or religion.
8. The French Government also reminds the Committee that, at the time of its consideration of France's second periodic report, the Children's Ombudsman had indicated that the maintenance of this reservation appeared logical to her in the absence of recognition of the concept of minorities by the French Constitution, adding that "*the risk of distractions driven by the interests of particular communities that, in the present context, official recognition of minorities would create, justifies the maintenance of the French authorities' position*"<sup>2</sup>.
9. This legal framework does not by any means lead to denial of the cultural diversity of France. In practice, everyone, whether or not they recognize themselves as belonging to a particular group or groups, is able to exercise their rights and liberties free of discrimination relating to his or her identity, relying on the principle of equality before the law. The Committee will find annexed a note illustrating the French approach to the question of minorities<sup>3</sup> and will find it useful to be able to refer back to relevant developments which figured in France's last report on follow-up to the International Covenant on Civil and Political Rights. Another annex illustrates the willingness of public authorities to take account of specific cultural and social factors linked to residence in an overseas collectivity<sup>4</sup>.
10. The two declarations on interpretation do not call into question the application of the Convention in France. One is intended to deal with an ambiguity in the drafting of article 6: the declaration of an inherent right to life cannot be interpreted as forbidding recourse to voluntary interruption of pregnancy in the circumstances provided for by the law. The other, relating to article 40, is very narrow in scope and no longer concerns anything more than a number of minor offences within the competence of the Police Court which can still not be subject to appeal, and which are not subject, whatever the circumstances of the case, to a penalty involving loss of liberty.

---

<sup>2</sup> Report of the Children's Ombudsman to the Committee's Geneva meeting (February 2004), online on her Internet site.

<sup>3</sup> Annex II.

<sup>4</sup> Annex I referred to above.

11. The Committee asked the French Government to provide in its next report information on the direct applicability of the Convention (para. 7).

12. For a defendant to be able to claim to rely on a provision of a treaty, the rule concerned must be recognized by national courts as being directly applicable. The Court of Cassation, which traditionally refused to recognize that the Convention on the Rights of the Child was directly applicable in domestic law, has recently clearly altered its position. In two preliminary judgements of 18 May 2005, the interpretation of which has since been confirmed, (see, among others, judgements of the First Civil Chamber of 14 June 2005, 13 July 2005 and 22 November 2005), the Court recognized the direct applicability of articles 3, paragraph 1, and 12, paragraph 2, of the Convention, thus marking a significant advance. For its part, the *Conseil d'État* had already declared certain articles directly applicable, according to whether the provisions of the Convention are or are not self-implementing. Abundant case-law exists on this point. To date, the *Conseil d'État* has accepted the direct effect in relation to individuals of articles 3, paragraph 1, 10, paragraph 2, 16 and 37(b) and (c) of the Convention. The Committee will find it useful to refer to the Table attached as an Annex giving particulars of the body of case-law handed down by the *Conseil d'État* and the Court of Cassation on the direct applicability of the Convention<sup>5</sup>.

13. Finally, the French Government reminds the Committee that the two optional protocols to the Convention, one on the Sale of Children, Child Prostitution and Child Pornography, and the other the Involvement of Children in Armed Conflict, came into force in France on 5 March 2003. At the time of its ratification of this second protocol, France made a binding declaration making it clear that recruitment was confined to volunteers aged at least 17, with knowledge of the rights and duties attaching to membership of the armed forces, and that the enlistment of candidates aged under 18 years was not valid except with the consent of parents or legal guardians. Initial monitoring reports on the application of these protocols were put to the Committee in August 2006.

## **B. THE MECHANISMS IN PLACE TO SUPERVISE THE IMPLEMENTATION OF THE CONVENTION AND TO COORDINATE ACTION IN SUPPORT OF CHILDREN**

### **1. Monitoring the implementation of the Convention**

#### **1.1 Monitoring by the Government**

14. Monitoring the coordination of ministerial measures for the implementation of the Convention is still entrusted to the ministers responsible for the family and for the overseas territories as regards domestic measures, and to the minister responsible for foreign affairs as regards international aspects<sup>6</sup>. These ministers act in concert in order to give the necessary consistency, under the authority of the Prime Minister, to the Government's actions.

---

<sup>5</sup> Annex III.

<sup>6</sup> At present, respectively the Minister for Work, Social Relations and Solidarity, the Minister for the Interior, the Overseas Territories and Territorial Collectivities, and the Minister for Foreign and European Affairs.

## 1.2 Monitoring by Parliament

15. Parliament regularly intervenes on questions concerning the rights of the child, via information reports or reports of inquiries, and in this way helps to nurture a wide national debate. Examples are:

- the report of the working group responsible for drawing lessons from the judicial handling of the “d’Outreau affair” (chaired by Mr Viout), National Assembly, February 2005;
- the report of the working group on the Improvement of Procedures for the Identification of Children in Danger (chaired by Mr Nogrix), Senate, April 2005;
- the report of the working group on the Improvement of Provision for Minors in Care (chaired by Mr de Broissia), Senate, July 2005;
- a report on behalf of the steering committee on the Family and the Rights of the Child (chaired by Mr Bloche), National Assembly, 25 January 2006;
- a report on behalf of the Legal Affairs Committee on new forms of parenthood and the law (chaired by Mr Hyst), Senate, 14 June 2006; and
- a report on behalf of the committee of inquiry into the Influence of Movements Having the Character of a Sect and the Consequences of their Practices for the Physical and Mental Health of Minors (Mr Fenech and Mr Vuilque), National Assembly, 12 December 2006.

16. The legislature further enhanced Parliament’s arrangements for monitoring the implementation of the Convention by including in Law No. 2007-293 of 5 March 2007 for the reform of child protection an obligation on the Government to present the report provided for in article 44(b) of the Convention<sup>7</sup> to Parliament at three-yearly intervals.

## 1.3 Monitoring by the Children’s Ombudsman

17. The Government reminds the Committee that this independent authority was created by Law No. 2000-196 of 6 March 2000. It is responsible for protecting and promoting the rights of the child established by law or by an “international commitment duly ratified or approved by France”, such as the Convention<sup>8</sup>.

18. In 2006, Mrs Dominique Versini, a member of the *Conseil d’État* and former Minister of State for Combating Instability and Exclusion, succeeded Mrs Claire Brisset, who had come to the end of the non-renewable appointment for six years as Children’s Ombudsman provided for by the Law (Decree of 29 June 2006). Her nomination provided an opportunity to issue a reminder of the Ombudsman’s role (circular of 30 November 2006 on relations between the Children’s Ombudsman and the judiciary).

19. Applications to the Children’s Ombudsman concerned 2,400 minors in 2005. The reasons for these references are very varied: 26% have to do with the consequences of separations

---

<sup>7</sup> Article 26 of the Law supplementing article L. 112(1) of the Social Welfare Code.

<sup>8</sup> See France’s last periodic report (para. 13 *et seq.*).

between parents and children, 15% with difficulties encountered by foreign minors, while 12% relate to minors in dispute with an educational establishment.

20. In addition to an annual report on her activities, the Children's Ombudsman publishes thematic reports and opinions, which can be accessed on her Internet site ([www.defenseurdesenfants.fr](http://www.defenseurdesenfants.fr)), proposing improvements in domestic legislation and promoting the better application of the Convention, for example:

- her report on the child in new forms of parenting (2006);
- the assessment made by Mrs Claire Brisset on conclusion of her term of office (Six Years of Service to Children and Adolescents, April 2006);
- opinions on draft laws for the prevention of delinquency (September 2006) and for the reform of child protection (October 2006);
- her opinion on the treatment of re-offenders: the adaptation to children's circumstances of the arrangements proposed (October 2005);
- her opinion on the response of the criminal justice system to sexual acts committed on children (June 2005); and
- the Ombudsman's report to the Committee's Geneva meeting (February 2004) and her views on the meeting's recommendations to France (June 2004).

21. It should be mentioned here that the Law for the reform of child protection referred to above has significantly widened the circumstances in which cases can be put to the Children's Ombudsman. For the future, the Ombudsman can be invoked equally by the family of the minor, by the medical and social services and by members of the Parliament<sup>9</sup>.

#### **1.4 Role of the National Consultative Commission for Human Rights (CNCDH)**

22. The position of the *CNCDH* has been strengthened. Since the passing of Law No. 2007-292 of 5 March 2007, it enjoys a statutory status which allows it to follow the Paris Principles, adopted on 20 December 1993 by a resolution of the General Assembly of the United Nations, and to consolidate its independence as a national consultative body on human rights.

23. This Law specifies the composition of the *CNCDH*, and confirms the complete independence of the Commission and of its members, whose appointment is irrevocable. Among its members are representatives of non-governmental organizations active in the field of human rights, and suitably qualified individuals, as well as a member of the National Assembly, a

---

<sup>9</sup> Article 7 of the Law for the reform of child protection amending the last paragraph of the first article of the Law of 6 March 2000 referred to above: "*Complaints may be made to (the Ombudsman) by members of the families of minors, by the medical and social services, and by approved associations (associations reconnues d'intérêt publique) which defend children's rights. In addition, the Children's Ombudsman may take up cases which appear to him to call into question the interests of the child when referred to him by persons or associations not included in the categories already mentioned.*

*Members of the Parliament may refer to the Ombudsman a question within his competence which appears to them to merit his intervention. On a request by one of the six permanent committees of their assembly, the President of the Senate and the President of the National Assembly may also transmit to the Ombudsman any request which has been submitted to their assembly.*"

Senator, the Ombudsman of the Republic and a member of the Social and Economic Council. All members have voting rights.

24. The Commission frequently proposes reforms or gives its opinion on questions concerning the rights of the child, either of its own initiative or on matters referred to it.

25. For example, it has pronounced on:

- the draft Law on the prevention of delinquency (opinion of 21 September 2006);
- conditions for the exercise of the right to asylum in France (opinion of 29 June 2006);
- the draft Law for the reform of child protection (opinion of 29 June 2006);
- health protection, access to treatment and human rights (study dated 19 January 2006);
- the draft law on equality of opportunity (note dated 4 January 2006);
- arrangements for taking evidence from child victims of abuse and/or sexual violence (opinion of 22 September 2005);
- child protection on the Internet (opinion of 21 April 2005);
- minors in custody (study dated 16 December 2004);
- violence to children from the mass media and images (opinion of 30 April 2004);
- the draft decree on arrangements for selecting and remunerating ad-hoc representatives of unaccompanied foreign minors (opinion of 24 April 2003); and
- the draft of the present report (note of 30 July 2007).

26. The Commission's opinions and studies, and its annual report, can be accessed on its Internet site ([www.cncdh.fr](http://www.cncdh.fr)).

## **2. Co-ordination of action in support of the child**

27. The cross-cutting nature of activities in support of the child calls for a large number of players to take part in their implementation. Within France's national territory as a whole, around 6,000 activities can be identified affecting 200,000 children and young people.

28. Since legislation in 1982 providing for decentralisation, the *départements* have become more and more involved in family issues; they have responsibility for childcare. Because of their proximity to the children they serve, their engagement has allowed the development of improved arrangements for child welfare which are the first call on their annual budget – something in excess of €5 billion. The State, as the guarantor both of consistency in provision and of the fulfilment of France's international commitments, also makes a contribution to child welfare, notably through its activities in the fields of justice, health and national education.

29. The French child welfare system is based on tried and tested principles, but must face up to new difficulties. These are partly linked to changing family behaviour and to developments in society, including social instability, but they are linked also to the increased responsibilities that the *départements* have taken on and to the large number of players involved. In this connection, when considering France's second periodic report, the Committee showed particular concern

about a lack of overall co-ordination between the various players in the implementation of the Convention.

30. Reinforcing the co-ordination of public activities, operating at different levels, remains a strong Government priority.

## **2.1 Interministerial co-ordination**

31. While policies for promoting the interests of children revolve around the General Councils of the *départements*, the Interministerial Taskforce on the Family<sup>10</sup> remains the most important point of contact at national level for players with a role in relation to the family and children.

32. This interministerial body is responsible for preparing and monitoring policies on the family, for leadership towards the ministries responsible for implementation, and for co-ordinating their activities. In this connection, it makes the preparations each year for the work of the Conference on the Family, a forum for exchange between the Government and the whole range of other players, allowing major topical themes to be debated and the objects of family policy to be determined. In addition, it plays a part in the preparation of papers, organizes the collection of information, and carries out, or arranges for others to carry out, all of the studies necessary for the achievement of the tasks entrusted to it.

33. The Conference on the Family is an annual opportunity for listening, for analysis, and for seeking consensus and overall consistency in policy on the family, and particularly in children's policy. The Conference has given rise to many specific measures, including the foundation of an investment fund for the under-sixes and of centres for adolescents, the provision of paternity leave and of entitlement to leave if a child is seriously ill, and for introducing parent's attendance allowance and a payment for childcare for the under-sixes.

34. The theme chosen for 2007 is the time spent by children, adolescents and their families before and after school and outside school (Wednesday, the weekend and holidays). It has become evident that there is a need to strengthen the effectiveness of the services on offer in these areas. The two working groups responsible for studying the needs and aspirations of families, identifying the best initiatives to take and drawing up proposals for achieving the right interconnections between the worlds of school and leisure submitted their reports to the Minister for Health and Solidarity on 10 April 2007. These proposals, which have been the subject of extensive consultation, will form the basis for the measures which will be presented at the next Conference.

35. One of the working groups has worked especially on the time that children and young people spend "around school". It has concluded, among other things, that the response of the public authorities to this question has been insufficient in both quantitative and qualitative terms in relation to needs, and that better co-ordination is called for. Various proposals have been drawn up to respond to administrative difficulties, to show solidarity with associations and provide them with better support, and to improve monitoring of the quality of service provided in the private sector.

---

<sup>10</sup> Created by Decree No. 98-646 of 28 July 1998, the Taskforce consists of policy officers who for the most part are made available to it by their ministry of origin (Justice, National Education, Health, Social Affairs etc.). The Taskforce now comes under the Ministry for Work, Social Relations and Solidarity (see Decree No. 2007-1000 of 31 May 2007 concerning the functions of this Ministry).

36. The Interministerial Taskforce on the Family maintains many contacts with similar groups from overseas, especially from Europe and Asia. For example, Japan and Korea, which are both very concerned with falling birth rates, have sought exchanges on the themes of the desire to have children and childcare for the under-sixes, as well as on demographic questions. France had the opportunity to present its policies on these matters at the “International Symposium on New Policies to Combat Declining Birth Rates” which took place in March 2007 in Tokyo. The representatives of the Bulgarian, Congolese and Uruguayan Governments showed particular interest in the organization of the annual Conferences on the Family and in their themes. The Interministerial Taskforce on the Family also maintains a close collaboration with Quebec which has resulted in the tabling of a joint project within the framework of the 61st Permanent Commission for Cooperation between France and Quebec on the reconciliation of work and the family, and a visit by representatives of the Delegation to Montréal and Québec at the end of January 2007 for meetings and exchanges with their partners. Another visit on this theme is in immediate prospect for the spring of 2008.

## 2.2 Co-ordination at the level of the *département*

37. Several arrangements have been put in place for co-ordinating the actions of public authorities at the level of the *département*. This has become all the more important as, with decentralization, the General Councils of the *départements* have taken on an extensive role in the area of children and the family.

38. One example is the networks put in place from March 1999 for gathering parents’ views and providing them with support and assistance. These allow, when the need arises, the networking of activities designed to strengthen parents’ competences and to restore their confidence in their capacity to fulfil their role in bringing up their children. These networks rely on a partnership between the various local institutions (public service administrations, social security bodies, local authorities etc) and associations active in the field of parenting. In addition, activities aimed at maintaining parent-child links in the event of the imprisonment of a parent or parents are co-financed with the Ministry of Justice<sup>11</sup>.

39. Local contracts for support with schooling supplement these arrangements by offering families the option of having others ensure that their children’s progress in schoolwork is being individually monitored.

40. The contracts are a joint ministerial responsibility<sup>12</sup> and are supported by major partners which are public sector bodies or which are responsible for delivering public services,<sup>13</sup> as well as by local authorities. These contracts comprise a co-financing arrangement for activities which are principally carried out by associations. These activities allow assistance (support, help with homework and learning methods, cultural facilities and information for families) to be given to children (from the age of six) and to young people (including *lycée* students) with their schooling, either free of charge or in return for a token payment.

---

<sup>11</sup> Circular DIF/DGAS/2B/DESCO/DIV/DPM/2006/65 of 13 February 2006 on networks for hearing, supporting and assisting parents (REAAP).

<sup>12</sup> Bringing together in particular the social ministries and the ministry responsible for education.

<sup>13</sup> Family Allowances Funds, the National Agency for Social Cohesion and Equality of Opportunity, MSA etc.

41. To guarantee a degree of consistency in these activities at the national level, these associations are underpinned by a National Charter for Educational Support and by related guidance, both produced in 2001. Since 2006, those delivering the arrangements also have family dossiers available to support them in their activities with families. The local contracts for support with schooling have a national steering committee, with input from the Interministerial Taskforce on the Family, as well as committees for each *département*. An annual circular sets out funding arrangements and themes for priority action.

42. But above all, it is the Law of 5 March 2007 for the reform of child protection, referred to above, which has responded to the deep-seated expectations of all those involved in child protection by addressing difficulties in aligning the work of the judicial authorities and the General Councils and the quantitative and qualitative differences that have been identified between *départements*.

43. For the future, the Law clearly designates the President of the General Council, acting with the representative of the State and the judicial authorities, as the central point for the implementation of child protection procedures. The Law reorganizes relations between the General Council and the judicial authorities. In particular, the President of the General Council is to ensure the co-ordination of all the measures taken in the interests of a minor, including those decided on by the Children's Judge, and the criteria for reference to the State Prosecutor are redefined.

44. Law No. 2002-2 of 2 January 2002 for the renewal of social and socio-medical action has allowed the creation of Departmental Childcare Committees for the Under-Sixes<sup>14</sup>. To date, two thirds of *départements* have such Committees. Chaired by the President of the General Council, the Committees include, in particular, representatives of the local authorities, of central government services, of the Family Allowances Funds, of associations, and of managers and professionals concerned with modes of childcare for young children, as well as representatives of users and of specialist employers. The Committee considers each year:

- a report on needs for childcare for children under six and the state of supply, prepared by the services of the General Council and the Family Allowances Fund;
- a report by the Prefect on the multi-annual schemes adopted by the municipalities of the *département* for the development of childcare for children under six; and
- experimental programmes, on which the Committee receives information from the President of the General Council and which it ensures are monitored.

45. In addition, the Law of 5 March 2007 puts in place central arrangements for collecting, handling and evaluating information giving rise to concern for minors in order both to ensure that data collection is effective and operates identically over French territory as a whole, and to reduce disparities between *départements*. Also, each *département* is required to put in place an Alerts and References Unit, providing a central point for handling all information giving rise to concern in relation to minors in danger or at risk, and a Departmental Monitoring Service for Child Protection. This service is responsible for following children through, from the receipt of information giving rise to concern and its evaluation, to the implementation of measures for the support of parents or the protection of their children; and for keeping statistics on a consistent basis. The work of the Departmental Monitoring Services is aligned with that of the National

---

<sup>14</sup> In the sense of children under the age of six.

Monitoring Service for Children in Danger already created by Law No. 2004-1 of 2 January 2004 on childcare and child protection and which, with the national telephone hotline, forms part of the public interest grouping for “Children in Danger” (previously called “Abused Children”).

46. Supporting guidance and technical documentation have been distributed to the General Councils to support and accelerate the implementation of the Law, and to ensure that it is harmonized across the country as a whole. Five practice guides are online at [www.famille.gouv.fr](http://www.famille.gouv.fr) dealing with:

- preventive action in the interests of children and adolescents;
- departmental units for receiving, handling and evaluating information;
- taking action in the home for the protection of the child;
- care for minors and young adults; and
- the Departmental Monitoring Service for Child Protection.

47. The guides set out and explain the main provisions of the Law, the innovations it introduces and their legal context, and set a number of principles for action. They are intended for those involved in the delivery of policies for children, who contribute to the practical, day-to-day implementation of arrangements for child protection. In the first rank of these are professionals in social, medico-social and educational disciplines from the *départements*' services and establishments, professionals from associations and those concerned with child protection within the legal system. They are addressed also to the services of the State, the municipalities, the Family Allowances Funds, members of the liberal professions, and, more widely, to anyone making a contribution to child protection, whether on an individual or collective basis, or in a professional or philanthropic context.

48. In her opinion of 16 October 2006, the Children's Ombudsman had commented that this Law “*has a place in the effective implementation of the International Convention on the Rights of the Child and provides a satisfactory response to several of the recommendations already made to France in June 2004 by the United Nations Committee on the Rights of the Child*”.

49. The *CNCDH* had commented, in its opinion of 29 June 2006, that this draft Law “*contains significant improvements and to a large extent provides the hoped-for response to the need for clarification*”, while at the same time expressing its concerns, in particular, about the existence of disparities in resources between different *départements* and proposing the creation of a structure for the representation and defence of children that would be independent of the General Council (an ad hoc administrator).

## C. THE FRENCH CONTEXT

### 1. Changes in family models

#### 1.1 Population growth

50. Since the last periodic report, the French population (in metropolitan France and the Overseas *Départements*) has continued to grow. It grew from 59.6 million in 1995 to 63.4 million on 1 January 2007, an average rate of growth of 5.3% per year. It represents 13.6%

of the population of the 25 countries of the European Union. Migration<sup>15</sup> contributed no more than a quarter to this demographic growth, whereas it accounts for more than 80% of the growth in the European Union as a whole. Thus France is still one of those rare European countries where natural change accounts for the bulk of the increase in population.

51. In 2006, France was the European country with the highest fecundity index<sup>16</sup> : it is estimated at 2 (compared with 1.943 in 2005), while average fecundity in Europe was 1.52 children per woman in 2005. The age of maternity has grown later over recent decades, from 26.5 years in 1977 to 29.8 years in 2006. About one woman in ten is childless. The estimated proportion of women with four or more children is similar.

52. From a sociological point of view, childless women are the category of women with the highest number of professional and educational qualifications, whether or not they live in a couple. By contrast, men working in management and the professions are, most usually, parents. In addition, the later the first union was formed, the greater the likelihood of childlessness, especially for women. This likelihood is also increased by the break-up of unions; with the scale of the increase varying according to the length of time spent living separately and to gender: men who have entered quickly into another union are fathers as often as those who have not experienced break-up, which is not the case for women. Finally, the likelihood of remaining childless varies according to number of siblings: women from large families more often have children of their own.

53. The French population is continuing to age: on 1 January 2007, 10.3 million people, or 16.2% of the population, were aged 65 or over. They represented less than 15% in 1994. Conversely, 15.8 million inhabitants, or 25% of the population, were under 20. In spite of six consecutive years of high numbers of births, the proportion of people in the youngest age groups continues to fall: in 1994, 26.7% of the population was aged under 20.

54. Children are being born more and more often to parents who are not married: this was the case with 48.4% of births in 2005, compared with 42.7% in 1999.

## **1.2 The Number of working women**

55. In 2005, women represented almost half of the working population in the 15-64 age group (46.4%). Of women of working age, 63.8% are working, compared with 74.5% of men. In the opinion of many experts, the fact that two parents are in employment is not contrary to the interests of children :

- working by both parents, and mothers in particular, satisfies an economic need and adds to the security of family income, especially in cases where couples have separated: it therefore contributes to the material well-being of the children;
- in addition, professional activity satisfies a personal need on the part of the parents for involvement and for social relations: it therefore indirectly favours the interests of children in terms of relationships, as they stand to gain more from being raised by parents who feel that they are living a full life than by those who are confined, regardless of their own wishes, to the role of parent alone; and

---

<sup>15</sup> Net migration in 2006: 93,600.

<sup>16</sup> The sum of the rates of fecundity according to age observed in a given year.

- the recourse to a mode of childcare outside the nuclear family that is necessary when both parents work satisfies the family's need for opening-out or broadening its circle: it therefore promotes aptitudes in children for socialization on a model which is chosen and steered by their parents, and which, within the constraints of what is practical, is adapted to the needs of the individual.

56. Today, the majority of women do not stop work when they have children. It is between the ages of 25 and 49, when they are assuming the heaviest family responsibilities, that the proportion of women who work has increased the most: 81.1% of women in this group work, an increase of 22.5 percentage points since 1975.

### 1.3 The formation of unions

57. Three forms of family union exist alongside one another: marriage, cohabitation and civil partnership (*pacte civil de solidarité – PACS*).

58. 274,400 marriages were celebrated in 2006. This was the lowest number since 1995. The drop occurs exclusively in marriages of men and/or women who were previously unmarried, whilst, since 2002, marriages of divorced men and women have started to increase. Average age at first marriage has gone up by 2.2 years over a period of ten years. At present it is 31.1 years for men and 29.1 years for women.

59. In 2006, 18% of marriages involved at least one partner with foreign nationality.

60. The rate of marriage among the previously unmarried is progressively declining in direct proportion to the drop in the number of marriages since 2000. It can be estimated that 30% of men and 25% of women born in 1965 will still be unmarried at age 50 and that numbers remaining unmarried is likely to increase still further in subsequent generations.

61. 152,020 divorces were granted in 2005. The marked growth noted in 2003 (+8%) and 2004 (+5%), with 131,300 divorces granted that year, is confirmed. The divorce rate is now very nearly 45 divorces per 100 marriages, whereas, in 2000, it was still 40 divorces per 100 marriages.

62. In the summer of 2005, 263,000 civil partnerships have been entered into since their creation by Law No. 99-944 of 15 November 1999, while 33,600 have been dissolved. During 2005, 60,500 new partnerships have been entered into. At present no statistics are available on the sex or age of partners and on the year in which partnerships were entered into (as the competent authorities have only recently been authorized to collect this information).

63. The number of unmarried couples has increased from 1.5 million in 1990 to 2.4 million on 1 January 2006. Today they represent one couple in six.

64. Three-quarters of single-parent homes – defined as households where a sole parent lives without a partner but with his or her child or children aged 25 or less – have been formed as the result of a separation after a marriage or an informal union. The parents concerned are most often women (86%) with a slightly older age profile than that of mothers living in a couple.

65. The number of so-called “re-constituted” families has continued to grow, with large families disproportionately represented: twice as many have four children or more, compared with the norm, and 88% of them bring together the children of more than one union.

66. In the re-constituted family, the additional elements include not only children, but also the step-parent or “co-parent”. Step-parents and “co-parents” do not have a distinct legal status under current French law, and they attract a priori the status of a third party.

67. On average, taking together all ages and all procedural backgrounds – divorce, post-divorce and children born outside marriage – the residence of the children is established with the mother in 78% of cases. This average proportion varies according to age, diminishing at a constant rate as the age of the child increases. The proportion ranges from 95.1% of children aged less than one year to 72% for adolescents of 15 or more.

68. In 2005, the proportion of children alternating their place of residence is about 11%: it was about 10% at the end of 2003.

69. The Government draws the attention of the Committee to the parliamentary reports of 2006 referred to above, which explore these questions at length. A day of public hearings for the evaluation of Law No. 2002-305 of 4 March 2002 on parental authority, concentrating especially on alternating residence, took place in the Senate on 23 May 2003. A report was drawn up by the Legal Affairs Committee and the Social Affairs Committee.

## 2. The consequences of progress in the life sciences

70. France reminds the Committee that it has had legislation in the field of bioethics since 1994, which has allowed it to play a path-finding role at the international level. In accordance with the amending clause adopted by the legislature in 1994, France has maintained its efforts to adapt the legislation to the major scientific and technical development which have taken place since then, **thus responding to the recommendations of the Committee (para. 7).**

71. The law was definitively adopted in July 2004 after long debate, resulting, after constitutional validation, in Law No. 2004-800 of 6 August 2004 on bioethics. This Law contains major alterations to the Civil Code, sometimes in combination with alterations to the Criminal Code.

72. Among the major innovations that this reform makes, the first to mention is the introduction into French law of an express ban, backed by criminal sanctions, on the cloning of human beings. The basic prohibition, which bears on cloning for reproductive purposes, is located in the Civil Code<sup>17</sup>. The effectiveness of this prohibition is ensured by the introduction in the Criminal Code of a new category of serious crime which brings together crimes of reproductive cloning and of eugenics (“*crimes against the human species*”<sup>18</sup>), punishable by thirty years’ imprisonment and a fine of €7.5 million. What is known as therapeutic cloning is similarly prohibited. This prohibition does not, however, have the same basis or carry the same

---

<sup>17</sup> Article 16(4) of the Civil Code: “*No-one shall damage the integrity of the human species. Any eugenic practice directed towards organizing the selection of human beings shall be prohibited. Any activity, the aim of which is to bring about the birth of a child who is genetically identical to any other person, living or dead, shall be prohibited.*”

*Without prejudice to research directed towards the prevention and treatment of genetic illness, no change may be brought about to the characters of the genetic code with the aim of changing the descentance of any person”.*

<sup>18</sup> Articles 214(1) to 215(4) of the Criminal Code

penalties, as it is punishable as a major offence (*délit*) and not as a serious crime (*crime*). It is punishable by seven years' imprisonment and a fine of €100,000<sup>19</sup>.

73. Secondly, research on the embryo and embryonic stem cells, conducted using surplus embryos, has been made possible, but subject to a strictly defined framework. In fact, it is not envisaged that such research will be authorized unless it is capable of allowing “*major therapeutic advances*” which could not be achieved through alternative methods of comparable effectiveness. An Agency for Biomedicine<sup>20</sup> has been created, the role of which is, in particular, to consider proposals for embryo research from the point of view both of their scientific relevance and of their acceptability at the ethical level, and to decide whether or not to authorize them.

74. Thirdly, the new Law has extended the scope for diagnosis prior to the implantation of the embryo in order to make possible, under certain rigorously defined conditions, the birth of babies who are not only free of the genetic illness which justified pre-implantation diagnosis, but also have an HLA (human histopathology) status which allows stem-cells to be collected from the umbilical cord at the time of birth for the treatment of a brother or sister who suffers from the genetic disorder concerned.

75. Fourthly, significant changes have been made in the regime applying to the removal of material from the bodies of living persons with a view to organ donation. New categories of donors related to the recipient are permitted<sup>21</sup>. In the absence of any alternative therapy, this means that minors have the possibility of donating their bone marrow, with authorization from those exercising parental authority, to certain close relations other than their brothers and sisters.

76. Finally, it should be mentioned that the carrying out of a paternity test, in the context of legal proceedings, using material taken from the body of a deceased person, is subject to the express consent of the person concerned, given during his lifetime.

77. A further revision of this legislation is planned for 2009.

### **3. Difficulties relating to the social integration and employment of young people**

78. The integration of young people<sup>22</sup> into working life, and in urban life more generally, has for several years been one of the most important strands of employment policy in France, pursued by putting in place the 2004 Plan for Social Cohesion, reinforced in June 2005 by the Emergency Plan for Employment. France has also involved itself at the European level, as it figures among the countries which took the initiative for the European Youth Pact, signed in 2005.

79. The presence in the labour market of young people aged between 15 and 29 has been increasing slightly over the past ten years, following a sharp drop in connection with an

---

<sup>19</sup> Article L. 511(18)(1) of the Criminal Code, repeated at article L. 2163(5) of the Public Health Code.

<sup>20</sup> A State public administrative establishment, under the authority of the Minister of Health.

<sup>21</sup> Grandparents, uncles or aunts, first cousins, partners of the mother or father of the recipient and any person who can show proof that they have lived with the recipient for at least two years.

<sup>22</sup> The statistics available do not allow the number of minors affected by these measures to be identified.

extension of compulsory education. In 2005, half of 15 to 29 year-olds were in the labour market, 42% of them in employment and 9% unemployed. The other half were engaged in study and not in work. Nearly a third of wage-earners aged 15 to 29 are in temporary employment, in fixed-term contracts or in subsidized contracts. About 150,000 young people leave the educational system each year without qualifications or with the occupational diploma only, 60,000 of them without education beyond secondary school level, or the first year of the Certificate of Professional Aptitude (*CAP*) or of the Diploma of Occupational Studies (*BEP*).

80. Action by the public authorities is aimed principally at strengthening arrangements for getting young people into business employment, improving the alignment between training and employment and taking special action for young people in difficulty. Details of these measures are in Annex 4.

#### **D. NEW MEASURES TO STRENGTHEN THE APPLICATION OF THE CONVENTION**

##### **1. Domestic measures**

###### **1.1 Family law**

81. Family law has undergone a profound change during the last five years. This vast project of renewal, which has changed virtually the whole of the first volume of the Civil Code dealing with individuals, has allowed legal rules to be aligned with developments in the family unit. The principal aspects of family law have been reformed in successive stages.

82. The object of Law No. 2004-439 of 26 May 2004 on divorce reform is to simplify and accelerate procedures while adapting them to the reality of the circumstances of married people, reducing the length and intensity of the child's exposure to procedures for the separation of his or her parents and reinforcing the incentives, already provided for and given definitive form by the Law of 4 March 2002 on parental authority, for parents to have recourse to an Instrument of Family Mediation. This Law gives the Judge a variety of tool to help the couple to resolve conflicts, notably by allowing him or her, with the agreement of the parents, to make an order for family mediation measures. In addition, in the event of violence which places the partner or the children in danger, the partner who is the victim may refer the issue to the Judge before beginning divorce proceedings. In the interests of better protection for the partner and children, the expulsion of the perpetrator of the violence may then be ordered.

83. Order No. 2005-759 of 4 July 2005 on the reform of filiation creates complete equality of birth status by abolishing the concepts of legitimate and natural birth. It also simplifies arrangements for establishing filiation and harmonizes legal procedures for making it secure.

84. Law No. 2006-728 of 23 June 2006 on the reform of gifts and inheritance, which came into force on 1 January 2007, allows estates to be settled more quickly and simply. In particular, it extends the scope for inter-vivos donations to descendants of different degrees (for example, making it possible to skip a generation by making such donations for the benefit of grandchildren).

85. Law No. 2007-308 of 5 March 2007 on Legal Protection for Adults undertakes a vast renewal of protection for the vulnerable. It also makes a number of modifications in arrangements for the guardianship of minors, notably by abolishing the automatic devolution of guardianship on the minor's antecedent relatives when there is no testamentary provision for

guardianship, thus allowing the Family Council to give its opinion on the choice of guardian, taking account of the interests of the child.

86. The Law of 5 March 2007 for the reform of child protection strengthens the right of children to be heard in court proceedings.

87. Law No. 2007-297 of 5 March 2007 on the prevention of delinquency consolidates the role of mayors in this area by introducing a new institution<sup>23</sup>, the Council for the Rights and Duties of Families. Chaired by the mayor, its principal task is to enter into dialogue with families, to make recommendations to them and to propose measures of assistance or support for parents in order to prevent behaviour likely to place the child in danger or to be disruptive to third parties. The first Council for the Rights and Duties of Families was created at Castres (Tarn) on 22 May 2007.

## 1.2 The reform of arrangements for child protection

88. The Law of 5 March 2007 for the reform of child protection makes major improvements to arrangements for the protection of children, in part responding to the recommendations of the Committee.

89. The adoption of the Law was prompted by the conclusions of a number of reports since 2000 about the limitations of the French system, as well as by the “*Appeal of the 100 for the Renewal of Child Protection*”, launched on 8 September 2005 by a number of well-known personalities with the aim of provoking a great national debate on child protection.

90. The preparation of the Law by central government officials led to a wide consultation involving, at national level, the organization of 12 thematic one-day events bringing together professionals, the General Councils of the *départements* and experts; and, at the local level, the organization, by the Presidents of the General Councils, of debates on local arrangements, on proposals for improvement and on good practice.

91. The Law puts the concept of child protection onto a legal footing<sup>24</sup>.

92. The Law contains a fundamental component on prevention. In this connection, it places services for the protection of mothers and children at the heart of arrangements for child protection, provides for action to make it easier to detect distress on the part of parents-to-be in order to provide them with support as quickly as possible, and strengthens the monitoring of children’s health.

---

<sup>23</sup> Article 9 of the Law introduces new provisions into the Code for Social Action and the Family (articles L. 141(1) and L. 141(2)).

<sup>24</sup> Article L. 112(13) provides that: “*Child protection shall have as its aim the prevention of difficulties with which parents may be confronted in the exercise of their responsibilities for their child’s upbringing, to provide support to families and to make arrangements, by methods which are adapted to the needs of minors, for taking them partly or wholly into care where circumstances so require. It shall comprise a set of interventions for this purpose, working in the interests of minors and their parents. These measures may also be deployed in the case of adults aged under 21 who are experiencing difficulties likely gravely to compromise their equilibrium. Child protection shall also have as its aim the prevention of difficulties that may be encountered by minors temporarily or permanently deprived of the protection of their families and the securing of care for them.*”

93. The Law includes a second component, the details of which are given above at paragraph 42 *et seq*, which aims to clarify the roles and responsibilities of the various parties involved and to improve pathways for the circulation of information, the visibility of child protection policy and the quality of arrangements for its implementation.

94. Arrangements for children in care are also improved by the Law. In the case of children in the care of the Children's Social Services, this is achieved especially through help for the managers of child allowances, diversification of modes of care, support for care arrangements for children suffering from grave behavioural disturbances and better care arrangements for children separated from their parents. In addition, a number of measures aim to improve the response of the judicial system to these situations, for example by introducing new types of care for minors ("day care" and "periodic care") which offer intermediate facilities between open and custodial arrangements.

95. The implementation of the Law is underpinned by practical texts dealing with the fund for financing the reform, the content of medical examinations, the nature of the information to be exchanged between the Departmental Monitoring Services and the National Monitoring Service for Children at Risk, along with the practical arrangements for these exchanges, training and the annual evaluation report on the child's circumstances.

### **1.3 The reform of inter-country adoption**

96. In accordance with its international undertakings, France has set a strict framework for activity by intermediaries in the adoption of children under the age of fifteen. Law No. 2002-93 of 22 January 2002 on access to personal origins has ended the ability of individuals to act as intermediaries in adoption and strengthened the regulation of organizations involved in this activity. Any organization wishing to act in relation to inter-country adoption must previously have obtained permission to take part in such activity from the President of the General Council of the *département* in which it envisages placing the minors concerned, as well as an authorisation issued by the Minister for Foreign and European Affairs on advice from the central authority on inter-country adoption. Their task is to provide support for the adoptive parents throughout the adoption process and after the arrival of the child. In this connection, these organizations are compulsorily required to train persons involved in providing support to families.

97. The reforms of 2005 were intended to strengthen further the framework for inter-country adoption and for the intermediaries which may be involved in the process, by creating the French Adoption Agency<sup>25</sup> ([www.agence-adoption.fr](http://www.agence-adoption.fr)) and by clarifying the respective roles of public sector authorities and participants in this field. In this connection the government refers the Committee to its initial report on follow-up to the optional protocol to the Convention on the Sale of Children, Child Prostitution and Child Pornography (paragraph 42 *et seq*).

98. Law No. 2005-744 of 4 July 2005 has also strengthened provisions for support after the arrival of the child in his or her new family.

99. More generally, the child and family can benefit from all the measures available for support and assistance relating to child protection -- and, since the Law of 5 March 2007, these expressly include a component on the prevention of difficulties for parents in the exercise of

---

<sup>25</sup> Annex V.

their responsibilities for their children's upbringing -- and from the measures put in place by voluntary sector associations.

## 2. French action beyond France

100. The application of the Convention remains one of the major thrusts of French policy in the fields of maternal and infant health, risk-free maternity, nutrition and social development.

101. In keeping with this, France has increased its share of contributions to the budget of UNICEF: it has gone from 14<sup>th</sup> to 12<sup>th</sup> place among donors between 2003 and 2005/2006. In two years, its contribution has increased by almost 35%, to €14 million in 2006. These sums allow in particular the funding of a bi-multilateral [sic] programme costing €700,000 for AIDS orphans in Africa, action to combat forced marriages of young girls (€2 million), and programmes on contraception and reproductive health, as well as measures directed at child soldiers (€200,000).

102. France supports several development co-operation projects directed to child protection.

103. Project 2000-149, "*Child Protection*" (2003-2006), already mentioned in the initial reports on follow-up to the two additional protocols to the Convention, amounts to €2.3 million and has allowed awareness-raising activities in four areas in partnership with UNICEF: urban health, the sexual exploitation of children, children in armed conflicts and female genital mutilation.

104. With UNESCO and the French National Committee for UNESCO, France organized in Paris on 23 November 2006 a "*Roundtable to discuss Violence against Girls in School*". More than two hundred participants, experts, teachers' organizations, representatives of non-governmental organizations and delegations attended this event. Mr Paulo Sérgio Pinheiro, the independent expert responsible for the United Nations study on violence to children, introduced the Roundtable by presenting his report.

105. The growth of the AIDS pandemic is also a cause for concern, because it is increasing the number of children who are orphans, or affected by the virus, or both. To address this, France and UNICEF decided, in the context of a bi-multilateral Convention signed in 2004 involving a total of €2.1 million, on a three-year project supporting the strengthening of community care arrangements for AIDS orphans and other vulnerable children in the Republic of South Africa, Cameroon and the Democratic Republic of the Congo. The French National Committee of UNICEF provides complementary finance of €420,000. This bi-multilateral project reflects the thrust of the new action plan "*A World Fit for Children*", adopted at New York in 2002 at the last world summit for children. The project is structured around four components:

- support for combating discrimination and promoting recognition of the rights of orphans;
- strengthening the capacity of those variously involved to take on the protection of orphans and vulnerable children;
- improving access for orphans and vulnerable children to basic social services; and
- the monitoring, evaluation, documentation and making best use of the results.

106. The French Government also supported the organization by the French committee of UNICEF and the French Development Agency of a colloquy on children and AIDS on 15 and 16 June 2006 in Paris. The programme particularly concerned children aged under five, who are

often neglected in the implementation of programmes to combat AIDS. At the colloquy, the Minister for Foreign Affairs referred to France's innovatory action on this question. France is the second largest contributor to the Global Fund to Fight AIDS, tuberculosis and malaria (€300 million in 2006), and was the first country, in July 2006 to put in place a solidarity tax on airline tickets for the benefit of the international drug purchase facility – UNITAID. More than forty countries have joined France in this initiative, which allows permanent programmes to be financed for treatment of the pandemics of poverty, of which children are often the first victims.

107. In October 2006, UNITAID entered into partnership with the Clinton Foundation's Initiative against HIV/AIDS with the aim of placing more than 100,000 new children under anti-retroviral treatment before the end of 2007 in 34 African and Asian countries. This partnership envisages that UNITAID will provide \$34.8 million in 2006-2007 for treatments and diagnosis, in addition to \$12.8 million for paediatric anti-retroviral treatments through the Global Fund's sixth project bidding round. This determined policy made it possible for substantial reductions in the prices of drugs to be announced on 30 November 2006.

108. The major finance devoted by UNITAID since 2007 to paediatric treatments for tuberculosis (in 20 countries to begin with) will contribute to incentives for manufacturers to develop anti-tubercular drugs suitable for children, especially the under-fives. The Global Drug Facility of the Stop TB Partnership, hosted by the World Health Organization, will provide these treatments on UNITAID's account: the objective is to finance the purchase of at least 600,000 treatments between now and 2010.

109. France also maintains a strong presence in the field of humanitarian emergencies, through both its bilateral activities and its participation in international organizations. Following the earthquake in Pakistan in October 2005, it provided assistance of €2.5 million to UNICEF for its emergency vaccination campaign for Pakistani children, sending 1.5 million doses of measles and anti-tetanus vaccine. A French enterprise came forward to supplement this contribution by a gift of two million doses of vaccine. Similarly, €17.6 million were allocated to various international organizations to help the South Asian countries ravaged by the tsunami of December 2004. Bilateral aid and aid for reconstruction, each amounting to €24 million, were also allocated, as well as loans at preferential rates amounting to €300 million.

110. Finally, France engages in extremely active diplomacy on the question of child soldiers at the United Nations Security Council, chairing the UNSC working group responsible for the monitoring of relevant resolutions. At the end of the meeting held on 24 July 2006, France decided to organize a conference in Paris on 5 and 6 February 2007 in collaboration with UNICEF entitled "*Free Children from War*". On this occasion, the 58 States attending adopted the "*Paris Commitments*". This declaration of policy sets out the measures and the means that member states commit themselves to putting in place to give effective protection to children involved in armed conflicts and to help them to reintegrate with their families and communities. The States, non-governmental organizations and international organizations present also adopted a technical document, "*The Paris Commitments*", which brings up to date the "*Cape Town Principles*" produced in 1997. This text updates best practice for preventing new recruitment, and for preventing minors, and girls in particular, from joining armed groups and forces, and aims to get the States concerned to put an end to the impunity often enjoyed by the perpetrators of violence against children.

111. In addition, a young French expert has been attached since 1 June 2007 to work with Mr s Coomaraswamy, the Special Representative of the Secretary-General of the United Nations

for children in armed conflict. A second young French expert will shortly be attached to UNICEF's Uganda office. Two posts of Regional Attachés for Cooperation have also been created. The first post will be located at the French Embassy in Kinshasa and will cover the Great Lakes area (the DRC, Burundi, Rwanda and Uganda). The second is under discussion. These two Attachés for Cooperation will be responsible for preparing and implementing a project for the beginning of 2008 for cooperation with a budget of the order of two million Euros on the question of children in armed conflict.

112. Within the European Union, France adopted in December 2003, alongside other Member States, an agreed position on children in armed conflicts and an Action Plan finalized in 2004.

#### **E. MEASURES BY FRANCE TO IMPROVE AWARENESS OF THE RIGHTS OF THE CHILD**

113. **Several measures taken by France address recommendations by the Committee (including paragraphs 7, 15 and 62).** Thanks to major work on information, education and awareness-raising, the principles and provisions of the Convention are increasingly better known in France. The Government also regards it as important to give a wide distribution to the Committee's recommendations.

114. This report and France's previous report, along with the Committee's recommendations, are available online on the website of the Ministry for the Family ([www.famille.gouv.fr](http://www.famille.gouv.fr)), so that they are accessible to any citizen wishing to know about them. As mentioned above, the Children's Ombudsman's website also gives access to similar information (the Committee's recommendations and the report of the Children's Ombudsman on the application of the Convention by France).

115. Various Government activities also contribute to disseminating the text of the Convention to the public at large. In 2003, the Ministry for the Family published a poster presenting, in language that can be understood by the very young, extracts from the rights of the child that bear on situations encountered in daily life in France. This poster was very successful, and a second poster, entitled "Our Children Have Rights" was designed in the same spirit. It has been issued since 2006 to partner institutions and associations who have requested it and is on the Ministry's website, with each caption<sup>26</sup> accompanied by an illustration. It explains that the complete text of the Convention can be accessed on the websites of the Ministry for the Family, the Ministry of Justice and the Children's Ombudsman.

116. Finally, and generally, the French Government is seeking to strengthen the training on the rights of the child available to professionals working with and for children.

117. For example, the training and professional development of investigators dealing with sexual offences involving minors have been further developed and improved. Since 1989, 60 investigators a year in the National Police have been receiving training on "*Interviewing Children*". Since 2001, the National Gendarmerie has also put specific training in place: a course on "*Interviewing Minors*" has provided training for about 800 investigators to date.

---

<sup>26</sup> For example: "all children see that their rights are recognized...", "children have the right to family life", "children have the right to access to information, to education, to care", "children have a right to be protected from violence"...

118. Similarly, whilst there is no training on the rights of the child as such, these rights are an integral part of the initial training of students at the National College of the Judiciary<sup>27</sup>. The main articles of the Convention which have implications for procedure and professional practice are covered in the teaching material on professional practice which is prepared by the law officers on the teaching staff and passed to the trainees. The intranet includes a piece on how the child protection system and the Convention relate to one another.

119. Each year's course also concentrates on a particular theme. In 2005, the course members prepared a guide on professional practice for dealing with sects and child protection. During 2007, a conference on the emergence of a distinctive legal status for children will allow the Convention's beneficial effects to be explored as part of the College's module on "*The Family*". The creation, within the College, of a Department of Languages and Cultural Traditions will help to raise the 2008 course's awareness of comparative professional practice, and will help to bring out overarching themes for which the Convention will be an essential support, including arrangements for the giving of evidence by children.

120. The National College of the Judiciary also offers judges an extensive prospectus of in-service courses and continued training. Although as yet there is no course devoted exclusively to the theme of children's rights, the subject is addressed in a significant number of the sessions and courses that the College organizes. It is also thoroughly embedded in the training delivered by external partners which is available to judges.

121. Over a number of years, these training activities have raised awareness and refined skills relating to the giving of evidence by children and to children's rights on the part, not only of large numbers of judges, but of others also.

122. Other initiatives have given an opportunity to reconsider the training of staff involved with the judicial protection of the young in which not only State and Departmental services, but also associations and researchers have been involved. A seminar was held on 4 and 5 April 2006 at the National Centre for Training and Study on the Judicial Protection of the Young on issues regarding educational care for unaccompanied foreign minors. The seminar gave the opportunity for in-depth work with an international dimension with professionals on all aspects of care arrangements for this group.<sup>28</sup> It should lead to initial and in-service training modules for educators and future Directors of Service for the Judicial Protection of the Young.

123. Finally, the Law of 5 March 2007 for the reform of child protection envisages the development of training, both initial and in-service, on the protection of children at risk for all professionals working with and for children (doctors, medical and paramedical personnel, social workers, judges, teachers, members of the National Police, Municipal Police Forces and the National Gendarmerie and youth welfare service<sup>29</sup> managers).

---

<sup>27</sup> The Convention is dealt with in particular in the following subjects: "Children's Judge" – on criminal law questions and in the course of training on tutelary measures that may be ordered by the court; "District Judge": in the context of guardianship for minors (with the application of international conventions as a theme); "Family Judge" – with a component on various international conventions; "Criminal Courts – Penalties" – when dealing with the hearing by the Family Judge of evidence from minors and the implications of foreign nationality for family conflicts.

<sup>28</sup> Presentations on theoretical and judicial subjects, exchanges of information and working practices, the importance of cooperation between receiving States and States of origin etc.

<sup>29</sup> Article 25 of the Law (article L.542(1) of the Code of Education).

## II. DEFINITION OF THE CHILD AND PROCEDURAL RIGHTS

### A. MINIMUM LEGAL AGE OF MARRIAGE

124. **The Government draws the Committee's attention to the reform introduced by Law No. 2006-239 of 4 April 2006 on acts of violence within the couple or against minors, which gives effect to one of its recommendations (paragraph 17).**

125. The minimum legal age for marriage for women is now aligned with that for men, rising from 15 to 18 years and ending a difference that has existed since 1804<sup>30</sup>. Dispensations for serious reasons may, however, be granted by the Public Prosecutor.

126. This Law contributes to strengthening the struggle against forced marriages. In addition, it extends the time limit for applications for the annulment of a marriage on grounds of a defect in consent, bringing it into line with the general law on actions for annulment (five years). However, application for annulment of a marriage is no longer possible if more than six months have elapsed since one or both spouses reached the age of majority, or if the wife is a minor and has conceived before six months have elapsed<sup>ii</sup>. It is also possible for the Prosecutor to bring an action for an annulment in the absence of free consent by one or both spouses<sup>31</sup>.

127. In addition, France has just ratified the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (Law No. 2007-1163 of 1 August 2007).

### B. MINIMUM AGE OF CRIMINAL RESPONSIBILITY

128. **In 2004, the Committee recommended to France the establishment of a minimum age of criminal responsibility which was at the internationally acceptable level and below which the child was considered not to have the capacity to infringe the criminal law (para. 17).**

129. The French Government reminds the Committee that, whilst no age threshold is explicitly fixed by French law for the criminal responsibility of a minor, as the judge assesses the minor's capacity for understanding case by case, minors under the age of 13 are liable only to protective or cautionary measures.

130. French law imposes a strict framework of control on the nature of judicial responses that courts for minors may apply. These responses are adapted to the ages of the minors concerned: tutelary measures for all ages, tutelary sanctions from the age of ten and criminal penalties from the age of 13. The aim set by the legislature is to make, as a priority, a response of a tutelary nature<sup>32</sup>.

---

<sup>30</sup> New article 144 of the Civil Code: "*Men and women may not contract marriage under 18 years of age*".

<sup>31</sup> See Annex 6.

<sup>32</sup> Article 122-8 of the Criminal Code provides that: "Minors capable of understanding shall be criminally responsible for serious crimes (*crimes*), major offences (*délits*) and minor offences (*contraventions*) of which they have been found guilty, subject to conditions set by a specific Law which shall determine the measures of protection, assistance, oversight and education to which they may be subject.

### C. LEGAL AID

131. The present arrangements for legal aid, which follow from Law No. 91-647 of 10 July 1991 on legal aid, provide complete assurance that minors will be defended in civil or criminal proceedings. Since France's last periodic report, several improvements have been made to these arrangements to allow minors wide access to legal aid. Details of most of these were given in the initial report sent to the Committee in 2006<sup>33</sup> on monitoring of the additional protocol to the Convention dealing with the sale of children, child prostitution and child pornography.

132. When legal aid is sought to secure assistance for a minor, article 5 of Law 91-647 provides that no account shall be taken of the resources of the child's parents or of persons living in the home, once a divergence of interest exists between them, having regard to the subject of the legal proceedings. This is very particularly relevant in the case of minors who are the victims of a criminal offence committed by one of the members of the family unit. In these circumstances, the Legal Aid Bureau may not take account of parents' resources which would exceed the upper limits provided by the Law.

133. A circular from the Ministry of Justice of 6 June 2003 invited Legal Aid Bureaux to make an assessment of "*conflict of interest*" and "*divergence of interest*" when dealing with the defence of minors in criminal cases. In fact, in such instances, it is obligatory that the minor must have the assistance of a lawyer, in accordance with the provisions of the Order of 2 February 1945 on young offenders. To give a legal basis to the solution envisaged in the circular and ensure its uniform application across the whole of French territory, Order No. 2005-1526 of 8 December 2005 amended article 5 of the Law of 10 July 1991 providing that, when a request is made for legal aid concerning assistance for a minor who is being prosecuted for a criminal offence, no further account shall be taken of the resources of the parents or persons living in the minor's home, if they demonstrate lack of interest in him or her.

134. In addition, the Law now guarantees better access to legal aid for asylum-seekers who have entered French territory unlawfully<sup>34</sup>.

135. Finally, Decree No. 2007-1151 of 30 July 2007 on various legal aid provisions extends the scope of legal aid to the appointment of lawyers to assist minors prosecuted before the Police Court or the Justice of the Peace<sup>iii</sup> for an offence within the four lowest categories of summary offences. This reform, which is due to enter into force in the second half of 2007, will allow offenders who are minors to be assured of the assistance of a lawyer, paid for by legal aid, whatever the gravity of the offence for which they are being prosecuted (minor offence, major offence or serious crime).

**136. These reforms constitute a response to recommendations by the Committee in 2004 (paragraph 59).**

---

This law shall also specify the tutelary sanctions, the application of which may be ordered in the case of minors from the ages of ten to 18, along with the penalties to which minors aged from 13 to 18 may be sentenced, taking account of the diminution of responsibility which applies in proportion to their age."

<sup>33</sup> Paras.110 *et seq.*

<sup>34</sup> See Chapter VIII, section A below.

#### D. ACCESS TO RIGHTS

137. A new national helpline for victims was put in place in April 2005 to improve information and give victims, including minors, better access to their rights. Simple to contact and easy to remember, “08VICTIMES” (08 842 846 37) can be dialled at the cost of a local call and has extended its opening hours (7 days, 0900 to 2100). It allows all victims to receive a hearing while having their anonymity respected, to be given information about their rights, to be directed to sources of psychological assistance on the basis of a personal assessment, and to be offered support with further steps that they need to take. Like the national victim’s assistance number from which it has taken over, this telephone service is managed by the National Institute for Victim Support and Mediation, along with two other services, “Abduction Alert” and “SOS Missing Children<sup>35</sup>”.

138. “119”, the national telephone hotline for abused children<sup>36</sup>, remains by far the most extensively used. This free and anonymous public service, which operates 365 days a year and 24 hours a day, takes on average 5,000 calls a day. Its basic mission is to take calls from children who are victims of abuse and from anyone faced with situations of risk or danger concerning minors and to pass information received to the appropriate services of the General Councils of the *départements* or, if necessary, directly to the Public Prosecutor.

139. A number of measures have additionally been taken to give young people, and especially young people in difficulty, the ability to gain a better understanding of their rights and to put them into effect.

140. The Ministry of Justice has devised an exhibition entitled “13-18: *Questions of Justice*” aimed primarily at young secondary school students and, more widely, at all minors aged over 13. Led by educators, the exhibition is held, not only in educational establishments, but also in Town Halls and social centres. Various professionals (police, gendarmes, lawyers, judges, local authority youth services, family planning and mediators) can also get involved, in the context of class projects or when problems are encountered by establishments and/or the public.

141. By bringing basic texts dealing with the rights of minors within the reach of adolescents, the exhibition forms a part of a practical policy for providing information and preventing and combating violence. Its objectives, using a variety of very realistic situations from daily life, are to allow its target audience to register that the law gives them rights and obligations, to understand how judicial institutions work, in the civil as well as the criminal arena, and to be capable of taking advantage of legal means for gaining access to justice.

142. The Departmental councils for access to rights for young people have doubled their level of activity. It has been possible to network the Councils’ operations, thanks to detailed research by local working groups to identify partner organizations. The 85 Departmental councils for access to rights that currently exist have been provided with a methodology for action to promote young people’s access to their rights. The momentum has also been kept up by the support, especially of a financial kind, that the State has provided to the National Network for Children’s

---

<sup>35</sup> See Chapter VIII section C 3 below

<sup>36</sup> Created by Law No. 89-487 of 10 July 1989 on prevention of the abuse of minors and child protection.

and Young People's Access to Rights, which brings together associations and public arrangements which promote effective access by young people to their rights.

143. The actions undertaken may be either general in their scope or more targeted (combating discrimination and violence, and the promotion of equality between boys and girls). They employ a variety of means: debates, forums, exhibitions, conferences, screenings of documentaries etc. Provision is also made for action for the benefit of the individual (free, anonymous and confidential legal consultations provided by lawyers, psychologists or representatives of associations). Finally, training sessions are organized for professionals in contact with young people.

### III. GENERAL PRINCIPLES

#### A. NON-DISCRIMINATION (ARTICLE 2)

144. **In accordance with the recommendations of the Committee (paragraphs 19 and 20), the French Government has taken new measures to combat all forms of discrimination more effectively and to bring its legislation more closely into line with the Convention.**

##### 1. The High Authority to Combat Discrimination and Promote Equality (*HALDE*)

145. *HALDE*, created by Law No. 2004-1486 of 30 December 2004, was officially inaugurated by the President of the Republic on 23 June 2005.

146. In 2007, its budget is €1.6 million, of which €6.2 million are for staff costs and €5.4 million for operations. It has 73 staff, mainly lawyers. Four regional taskforces (Nord-Pas de Calais, Provence-Alpes-Côte-d'Azur, Martinique and Réunion) have been put in place. Its decision-making structure consists of a college of 11 members appointed for an irrevocable<sup>37</sup> and non-renewable term of five years by the President of the Republic, the Prime Minister, the Presidents of the Assemblies and the Social and Economic Council, as well as by the Vice-President of the *Conseil d'État* and the President of the Court of Cassation. This college is assisted by a consultative committee of 18, which allows it to involve suitably qualified individuals in its work.

147. Apart from its public information role (it has a Freephone information line, 08 1000 5000), the main tasks of this independent administrative authority are dealing with cases of discrimination, and promoting equality. It accounts for its activities in an annual report, addressed to the President of the Republic, the Prime Minister and the Parliament. Its annual reports for 2005 and 2006 are available on its website ([www.halde.fr](http://www.halde.fr)).

148. It has competence in relation to discrimination of any kind, direct or indirect, which is forbidden by the law or by an international undertaking ratified by France. It can be invoked directly by the victim, through a member of the Parliament or a member of the European Parliament or jointly by the victim and an association. The authority may also take up a case of its own initiative, if a victim has been identified and does not object. Its ability to do this is particularly important in relation to indirect discrimination.

---

<sup>37</sup> Decree of 8 March 2005, published in *Journal Officiel* No. 57 of 9 March 2005, p. 3929.

149. Without encroaching on the prerogatives of the courts, *HALDE* can spotlight discriminatory practices by helping victims to assemble material for their cases, thanks to an extensive power of investigation (to call for explanations, to take evidence from individuals, to have access to documents, in certain cases to carry out on-the-spot verification and make requests to public authorities to investigate, powers of mediation etc).

150. Law No. 2006-396 of 31 March 2006 on equality of opportunity broadened the powers of *HALDE*, which is now able to call for the person responsible for the actions concerned – provided that no prosecution has been instituted – to make a payment in settlement of a dispute involving a fine which may not exceed €3,000 for an individual and €15,000 for a legal entity, over and above compensation for the victim. It also has the discretion to decide to publish its adjudication in the press.

151. Alongside this function, *HALDE* identifies and disseminates good practice and lessons from experience in combating discrimination in all sectors and issues opinions and recommendations addressed to the Government, to the Parliament and to the public authorities in order to combat discrimination, to improve the drafting of the law and to progress the principle of equality and the state of French law in this area.

152. *HALDE* received 4,058 complaints in 2006 compared with 1,410 in 2005. Of these, 35% concern origin, 19% health and disability and 5% gender. The main areas of discrimination in which it has been invoked are employment (43%), the regulation and operation of public services (22%) and access to private goods and services (9%).

153. The general scope of its work protects minors from these various forms of discrimination, on the same basis as adults. It has had to address discrimination of kinds that deprive minors of certain rights, such as the right to protection and to the care necessary for the minor's well-being, dealt with in Article 3(2) of the Convention, or the right to education, dealt with in Article 28(1) of the Convention.

154. When a case concerning the refusal by a Family Allowances Fund to make family allowance payments to a foreign national whose children had entered French territory otherwise than in accordance with the procedure for the entry of family members was referred to it, *HALDE* concluded that “*the requirement that foreign children must be legally resident in order for there to be an entitlement to family benefits can be described as discriminatory*” and asked the Minister for Social Security to bring forward amendments to French legislation on this point (Decision No. 2006-288 of 11 December 2006<sup>38</sup>). In addition, it intervened in the case between the person concerned and the Family Allowances Fund. In a judgement of 15 February 2007, the Social Security Tribunal of Bobigny ruled that this intervention was valid, and fully endorsed the arguments put forward by *HALDE*, setting aside the application of the statutory provisions concerned. The Family Allowances Fund gave effect to this judgement and made the appropriate payments to the person concerned.

155. *HALDE* has also had occasion to issue findings in the field of education, on matters regarding differences of treatment in school canteens, refusals to enrol children in schools for reasons connected with the personal circumstances of parents or refusals to enrol disabled children.

---

<sup>38</sup> Articles L. 512(2) and D. 512(2) of the Social Security Code (see Part VI D).

156. More generally, *HALDE* has recently recommended to the Government that “in conformity with Article 2(2) of the Convention on the Rights of the Child, it should introduce, as an integral part of the domestic legal system, the provisions necessary for the child, in the sense of Article 2(2) of the Convention, to be effectively protected against all forms of discrimination or sanction prompted by the legal circumstances, activities, beliefs or declared opinions of his or her parents, legal representatives or family members”. (Decision No. 2007-157 of 11 June 2007).

## **2. Ending discrimination in the law of filiation**

157. As it committed itself to doing, the Government has eliminated the last elements of discrimination from the French law of filiation.

158. The Law of 4 March 2002 on Parental Authority marked a new milestone in equality between children, by writing the principle of the equality of birth status into the heading of Part VII of the first volume of the Civil Code (*“Filiation”*): *“All children whose filiation is legally established shall have the same rights and the same duties in their relations with their father and mother. They shall be members of the family of both parents.”* (Article 310(1).)

159. The Order of 4 July 2005, referred to above, on reform of filiation, which was adopted on the basis of Law No. 2004-21343 of 9 December 2004 for the simplification of the law and came into force on 1 July 2006, put the finishing touches to these developments by making changes consequential on the establishment by the legislature of complete equality between children, whatever the circumstances of their birth. The Order reorganizes Part VII of the first Volume of the Civil Code, which ceases to be built around the distinction between legitimate and natural filiation. Abandonment of these concepts gives rise to a new conception of the law of filiation which now distinguishes between the non-contentious establishment of filiation and its establishment through legal proceedings. This Order has also harmonized methods for establishing filiation, simplified the regime for legal proceedings and made filiation more secure by reducing the time limit set under the general law for challenge, previously fixed at 30 years, to ten years.

## **3. Combating racism, anti-Semitism and xenophobia**

160. Combating racism, anti-Semitism and xenophobia has been an integral part of all areas of French policy for many years. At the institutional level, the public authorities have supported the creation and development of organizations such as *HALDE* and *CNCDH*, mentioned above, and the Interministerial Committee for Combating Racism and Anti-Semitism<sup>39</sup>. In addition, French law protects liberty of expression and opinion (Law of 29 July 1881) and punishes offences more severely if they have a racist or xenophobic character. Specific measures have also been taken to promote equality of opportunity in the labour market and to combat violence at sporting events. Work to counter racism, anti-Semitism and xenophobia is also being taken forward with the support of associations who are active in the field and by the promotion of cultural events providing a vehicle for messages promoting tolerance and respect for difference.

161. Since action through education is the first defence against discriminatory practices, the French Government gives particular attention to activities in schools. This is done through the distribution of teaching materials, publications and events to promote prevention, and through assistance in responding to acts of violence at school.

---

<sup>39</sup> Decree No. 2003-1164 of 8 December 2003.

162. Decree No. 2006-830 of 11 July 2006 sets out the knowledge and competences that all pupils should have acquired by the end of compulsory education. This “common base” is structured around seven pillars, each defining knowledge, capabilities and attitudes linked with a particular subject area. Combating racism and discrimination is specifically taught within two different pillars.

163. The sixth pillar, devoted to social and civic competences, is organized around two poles: “Living in Society” and “Preparing for Life as a Citizen”. This involves a programme on civic issues, comprising values, knowledge, practices and behaviours. The fifth pillar, entitled “Humanist Culture”, has as its objective the acquisition by pupils of “the sense of continuity and rupture, of identity and otherness”. It includes an approach, from a non-religious viewpoint, to human rights, to the diversity of civilizations, to societies and to religious practice in France, Europe and the world.

164. Beyond the curriculum itself, there is a great deal of activity on prevention: participation in classes by associations for combating racism, publications and the distribution of information on paper or via the Internet. For example, the National Week for Education against Racism in 2005 prompted 354,000 hits on the website “Civic Programmes” ([www.cidem.org](http://www.cidem.org)) run by the association Civics and Democracy. Demand for teaching materials has been particularly intensive and is constantly growing: posters, leaflets, booklets, magazines on particular themes etc.

165. Action is also taken to raise the awareness of teaching staff and head teachers. A suite of documents, among them the booklet “*Acting against Racism and Anti-Semitism*” was sent in January 2006 to all general, technical and professional *lycées*. This mailing was accompanied by a letter to Principals from the Minister for Education reminding them of the need to combat racism, anti-Semitism and xenophobia and of the importance of educational work in this area.

166. Help is also provided to enable those working on the ground to react rapidly to racist incidents. In September 2006 an interministerial circular, drafted jointly with the Ministries of Justice and the Interior, was sent to schools, accompanied by a note on “*action to be taken in the event of breaches at school*”, and a practical guide. The note, which is addressed particularly to Heads and management teams, carries a reminder that racism is as much an aggravating circumstance in the case of verbal as of physical acts of violence.

167. A national unit, in place at the Ministry of Education since 2003, is responsible for co-ordinating these actions. It collects information on incidents, particularly of a racist or anti-Semitic character, and provides assistance to its network of contacts in the teaching world. Its tasks also include training and information for these contacts, especially through publications such as “*Taking Action against Racism and Anti-Semitism*”, “*Citizenship through Education*” and “*Teaching Sensitive Issues*”. In addition, it remains the primary contact for associations: in particular, it evaluates the teaching projects submitted by associations wishing to become involved in schools on questions of racism and discrimination

**168. The thrust of these measures, taken as a whole, responds to the recommendations of the Committee (paragraphs 19 and 20).**

## **B. THE BEST INTERESTS OF THE CHILD (ARTICLE 40)**

169. Although the concept of the best interests of the child has long been integral to French family law, it has also been at the heart of reforms in recent years modernizing it, particularly in respect of parental authority, divorce and filiation. The French legislature has taken inspiration from both the letter and the spirit of the Convention. Its legislation is also consistent with the case-law of the European Court of Human Rights on this point.

170. Building the concept into the Civil Code, the Law of 4 March 2002, quoted above, defined parental authority as “*a set of rights and duties having as its objective the interests of the child*” (article 371(1)). The Law places the child clearly at the centre of decisions which affect his or her conditions of life, whether they concern the exercise of parental authority, place of residence or relations with third parties. It gives the Family Judge the task of ruling on issues submitted to the court “*paying special attention to safeguarding the interests of children who are minors*” (article 373(2)(6)).

171. Law No. 2004-1 of 2 January 2004 on childcare and child protection added this concept to the criteria which guide the Judge’s decision when considering measures of tutelary support. Article 375(1) of the Civil Code provides that from now on, for minors in danger, the Judge must “*rule strictly on consideration of the interests of the child*”. Since Law No. 2004-439 of 26 May 2004 on divorce, the same applies when an issue arises about who should have possession of the family home (article 285(1) of the Civil Code<sup>40</sup>).

172. The Order of 4 July 2005 on the reform of filiation, quoted above, is guided by the interests of the child, since it reaffirms the principle of the equality of birth status by abolishing the distinction between natural and legitimate birth, and strengthens filiation by simplifying and harmonizing the law on the subject.

173. The reform of child protection has provided a further opportunity to reaffirm that the interests of the child constitute a fundamental principle. In conformity with the Convention, the above-mentioned Law of 5 March 2007 places the interests of the child and respect for his or her rights at the centre of French arrangements.

174. It follows that the public authorities are justified in intervening only when the interests of the child demand it. Article 112(4) of the Code for Social Action and the Family expressly provides that from now on not only “*the interests of the child*” but also “*account taken of his or her fundamental, physical, intellectual and emotional needs, as well as respect for his or her rights, must guide all decisions concerning him or her.*”

175. A number of provisions of the Civil Code have been amended in the same direction. For example, “*only the interests of the child*”, and no longer “*serious considerations*”, can from now on constitute an obstacle to his or her right to personal relations with his or her antecedent relatives (art. 371(4) of the Civil Code). Similarly, the criterion under Article 388(1) on the

---

<sup>40</sup> “*If the place in which the family is housed belongs to one of the spouses personally, the judge may award it on a lease to the partner who solely or jointly exercises parental authority over one or more of their children while those children habitually reside in the dwelling and while their interests require it...*”.

giving of evidence by children is now to be the child's interest in being heard in any proceedings that affect him or her<sup>41</sup>.

176. Similarly, the concept of the interests of the child is left to the absolute discretion of judges deciding cases on their merits and is central to judicial decisions, for example concerning ways in which parental authority is exercised, when the question arises of the place of residence of a child whose parents are separated<sup>42</sup> or in cases where parental authority is delegated<sup>43</sup>.

177. Finally, as mentioned above, the Court of Cassation, like the *Conseil d'Etat*, now acknowledges the direct applicability of article 3(1) of the Convention dealing with the primacy of the best interests of the child.

### C. RESPECT FOR THE OPINIONS OF THE CHILD (ARTICLE 12)

178. In principle, as the Government explained in its second periodic report, minors lack legal capacity and may not exercise their rights themselves before their eighteenth birthday, when they acquire full civil capacity. The law does, however, allow minors to act on their own account for the purposes of daily life and provides exceptions in particular circumstances, especially in health matters, when no communication is possible between minors and their parents.

**179. On this point, there are two measures that respond to the Committee's concern that the confidentiality of healthcare should be ensured when the best interests of young people require it (paragraph 45).**

180. Law No. 2002-303 of 4 March 2002 on patients' rights and the quality of the health system allows recourse to a medical procedure or treatment without the consent of the person or persons who hold parental authority when the minor expressly and persistently opposes the consultation of his or her parents in order to maintain confidentiality in relation to his or her state of health. In these circumstances, the minor must nevertheless arrange to be assisted by an adult of his or her choice.

181. Similarly, if a minor persistently opposes any consultation of her parents over a request for voluntary termination of pregnancy, the procedure can be carried out by the doctor purely on the basis of the consent of the minor concerned, again provided that she arranges to be assisted when making her request by an adult of her choice.

---

<sup>41</sup> "In all proceedings that concern him or her, a minor capable of discernment may, without prejudice to the provisions governing his or her intervention or consent, be heard by the judge or, when his or her interests require it, the person designated by the judge for this purpose.

This hearing shall be a right when the minor requests it. When the minor refuses to be heard, the Judge shall assess whether this refusal is well founded. The minor may be heard alone or with a lawyer or a person of his or her choosing. If this choice does not appear to be in keeping with the interests of the minor, the Judge may designate another person.

Hearing the minor shall not confer on him or her the status of a party to the proceedings.

The Judge shall satisfy himself that the minor has been informed of his or her right to be heard and to be assisted by a lawyer".

<sup>42</sup> Court of Cassation, First Civil Chamber, 25 April 2007

<sup>43</sup> Court of Cassation, First Civil Chamber, 24 February 2006

**182. More generally, the Committee invited France to re-examine its legislation, promote respect for the opinions of the child, and to facilitate his or her participation in all matters affecting his or her interests (paragraph 22).**

183. Several measures tend in the direction of better account being taken of the views of children in legal proceedings.

184. Taking account of the views of the child is naturally at the centre of procedures for dealing with measures of tutelary assistance. In fact, the child is considered to be a party to the proceedings, which means that they fall to be heard by the Children's Judge. This legitimate concern for the child's views has underpinned the whole of the reform of child protection by the Law of 5 March 2007 (see above).

185. The Law of 2 January 2002 for the renewal of social and socio-medical action created seven tools whose essential purpose is to ensure respect for the fundamental rights, contained in the Charter of Rights and Liberties, that users of medical and socio-medical establishments are recognized as having. This Law expressly requires stronger participation by calling for the views of children and parents to be heard when measures for tutelary care are being taken.

186. France has developed a body of rights for children that ensures that their opinion is taken into consideration in contacts with non-judicial bodies (Departmental child protection services and establishments or families in which they are placed).

187. Various provisions of the Code for Social Action and the Family are evidence of this, especially those in Chapter III of Part 2 ("*Children*") of Volume II ("*Different Forms of Social Action and Assistance*"), which define the rights of families in their dealings with the children's social services.

188. Article L. 223(1) provides that anyone who benefits from a children's social welfare payment (including the child) shall be informed by the family and child protection services of the conditions on which the payment is made and of the consequences of the payment for the rights and obligations of the child and his or her legal representative. It specifies that the child may be assisted by the person of his or her choice, whether or not they are a representative of an association, in his or her dealings with the service. The service may nevertheless propose a one-to-one meeting in the interests of the applicant.

189. The Article further provides that the Departmental services and those in parental authority are to draw up a "Project Plan for the Child", which is to specify the measures to be taken in relation to the child and his or her parents and environment, along with the role of the parents, targets and time-limits for their achievement, and which is to designate the institution and the individual responsible for ensuring the coherence and continuity of actions taken. This document, signed jointly by the President of the General Council of the *département*, the legal representatives of the minor and a representative from each of the organizations responsible for actions under the Plan, is brought to the minor's attention.

190. The content and conclusions of the annual report made, after a multidisciplinary assessment, on each child in care or subject to tutelary measures, are also brought to the attention of the minor, in a manner proportionate to his or her age and maturity (art. L. 223(5)).

191. The children's social services are to examine with the minor all decisions concerning him or her without restriction and obtain his or her views (art. L. 223(4)). If the minor has been

“declared to be of full age” (formally declared to enjoy adult legal standing), no decisions may be made either in principle as to whether he or she should be taken into care by the children’s social services, or on practical arrangements for this, without his or her agreement (art. L. 223(2)).

192. Finally, article L. 226(2)(2), which sets a framework for information-sharing by professionals, subject to a confidentiality requirement, explicitly states an obligation to give the child prior notice of information to be exchanged, depending on his or her age and maturity and except where the information is contrary to his or her interests.

193. In criminal cases, arrangements for hearing children have been improved. It has been established, notably in one case which was the subject of widespread media attention, that the possibility that children may be manipulated calls for arrangements for hearing them that are more carefully designed than ever, and for great care in the use of their evidence.

194. In this connection, *CNCDH* has reported positive results from units or services in hospitals for interviewing minors who are victims of crime<sup>44</sup>. A circular from the Ministry of Justice dated 2 May 2005 recommended the development and the general adoption of such facilities for accommodating and interviewing minors. The Taskforce for Victims<sup>45</sup> also recognizes the usefulness of these arrangements.

195. More recently, Law No. 2007-291 of 5 March 2007 for strengthening the balance of criminal procedure (which came into force on 1 July 2007) has strengthened the arrangements under which interviews with minors who have been victims of sexual offences<sup>46</sup> take place. Subject to overriding practical difficulties which render recording impossible, this Law removes the exceptions to the principle of obligatory audiovisual recording of interviews of such victims: this recording is compulsory for the Public Prosecutor and the Investigating Judge. Recording may be sound-only, if the Public Prosecutor and the Investigating Judge so decide and the interests of the minor justify this<sup>47</sup>. The Law also provides that any minor who is the victim of an offence of this kind must be assisted by a lawyer when he or she is heard by the Investigating Judge<sup>48</sup>.

196. In civil proceedings, minors’ right to expression before the courts has been strengthened by the Law of 5 March 2007 on Child Protection (see above). Inspired by the terms of Article 12 of the Convention, it amends Article 388(1) (see above) of the Civil Code on the hearing of children, under the terms of which a minor capable of discernment may be heard in any proceedings which concern him or her, by the Judge or, where his or her interests require it, by

---

<sup>44</sup> *CNCDH, Study on arrangements for interviewing child victims of abuse and/or of sexual violence and the response of the Government*, 22 September 2005.

<sup>45</sup> Inaugurated on 11 October 2005, the Taskforce for Victims is a permanent national body, responsible to the Ministry of the Interior, consisting of three police officers and three gendarmes. Its main tasks are to ensure that complaints are followed up, to share in leadership of the network of Departmental representatives for assistance to victims maintained by the Police and Gendarmerie and to maintain close links with victims’ associations and associations for aid to victims.

<sup>46</sup> Laid down in article 706(47) of the Code of Criminal Procedure.

<sup>47</sup> Article 706(5)2 inserted in the Code of Criminal Procedure by article 27 of the Law.

<sup>48</sup> Article 706(51)(1) inserted in the Code of Criminal Procedure by article 26 of the Law.

the person whom the Judge designates for this purpose. This hearing is from now on a right when the minor requests it, with no discretion on the part of the Judge to set aside the request<sup>49</sup>.

197. This provision is aimed in particular at proceedings between parents over the manner in which parental authority is exercised, proceedings for the withdrawal of parental authority in which a third party is involved, filiation actions, proceedings concerning the guardianship of minors and proceedings for adoption and change of first name when the minor concerned is under 13 years of age (his or her consent being required beyond this age threshold).

#### **IV. FREEDOMS AND CIVIL RIGHTS**

##### **A. NAME, NATIONALITY AND THE RIGHT TO KNOW ONE'S PARENTS (ARTICLE 7)**

198. On this subject, the French Government wishes to make the points below, following the same sequence as in its second periodic report.

##### **1. The establishment of filiation**

199. As stated above, the Order of 4 July 2005 completes the reform of filiation begun by the Law of 3 January 1972. The Law abolishes the distinction between legitimate and natural filiation, introducing a new conception of the law of filiation based on the distinction between maternal and paternal filiation, simplifies the ways in which filiation may be established and harmonizes the regime for legal proceedings.

200. Pursuant to article 20, the Order of 4 July 2005 applies to children born before, as well as after, its entry into force. Certain exceptions are provided for, however, modifying the principle of immediate application to accommodate situations where cases are already in progress<sup>50</sup>.

201. Article 310(1) of the Civil Code is an introductory provision giving a generic list of ways in which filiation can be established, no longer distinguishing between children born within and outside marriage: filiation can be established by the authoritative effect of the law, by voluntary recognition of maternity or paternity, by a legal judgement or by the de facto possession of filiated status confirmed in an affidavit.

##### **1.1 The non-contentious establishment of filiation**

202. Filiation is legally established by the effect of the law, voluntary recognition or de facto possession of filiated status confirmed by an affidavit.

203. Filiation is said to be established by the effect of the law when information in the birth certificate is sufficient to prove the connection without the need for further steps by the parent or parents. Filiation is fully established legally in two cases.

204. For the mother, it is established, applying new Article 311(25) of the Civil Code, by her designation in the birth certificate. Thus an unmarried mother no longer needs to recognize the

---

<sup>49</sup> See note 37.

<sup>50</sup> The second paragraph of article 20-II of the Order forbids the reopening of estates which have already been settled by 1 July 2006: "Children born before the entry into force of this Order may not rely on it in relation to estates which have already been settled."

child to which she has given birth in order for its filiation to be established. This provision applies equally to children born before the order came into force, subject to rulings by the court in decided cases. They may not, however, rely on it in relation to estates which have already been settled, nor as regards nationality if they were adults on the date when the Order came into force. The application of this provision to children born before 1 July 2006 has no effect on their names.

205. As before, giving the mother's name remains optional, and mothers and fathers may ask not to be named in the child's birth certificate.

206. Filiation is established in relation to the mother's husband by applying the presumption of paternity of the husband, which is preserved at article 312 of the Civil Code: a child conceived or born during marriage has the husband for its father. The extent of this presumption and the legal exceptions to it are unchanged (arts. 313 para. 1 and 314 of the Civil Code).

207. When filiation is not established by the effect of the law, it may be established by an act of recognition of paternity or maternity, before or after birth, before a registrar or notary (Article 316 of the Civil Code). This is the principal means of establishing paternity outside marriage.

208. Finally, if an act of recognition is impossible (particularly in the event of the death of a supposed parent), filiation can be established on the basis of de facto possession. The Order stipulates, by analogy with the law on rights of established use, that filiation on this basis must be certified in an affidavit for its consequences to be relied on (this results from article 310(1), first paragraph and from article 310(3), first paragraph and article 317, first paragraph). In future, the parents or the child must request a District Court Judge to certify de facto possession of filiated status. The affidavit that he or she delivers is sufficient evidence of filiation in the absence of proof to the contrary (article 317 of the Civil Code).

209. This affidavit can also certify the prenatal possession of filiated status, in the event of the death of the father during the pregnancy, by proving the existence of a sufficient body of facts showing that the deceased had behaved as the child's father-to-be.

210. The main innovation that the Order makes on this point is to set a time-limit for requests for an affidavit. In order to avoid difficulties associated with the late establishment of de facto possession of filiated status (in relation to evidence, or rights of inheritance), an affidavit must from now on be applied for within five years from the time when it is alleged that possession of filiated status ceased or from the death of the supposed father.

211. In addition, it is open to any interested party to take proceedings to establish the de facto possession of filiated status within the time limits set by new article 321 of the Civil Code, namely ten years from the birth of the child, although this time limit is suspended for the benefit of the child during his or her minority.

## **1.2 The judicial establishment of filiation**

212. When filiation is not established in one of the ways already explained, it may be established by a judgement given in proceedings of one of the types provided for in the third Chapter of the Civil Code.

213. A maternity suit (article 325 of the Civil Code) allows for a judicial declaration of maternity when the child has neither the established right to filiation nor de facto possession of filiated status in relation to the mother, provided that she did not request at the time that the fact that she had given birth should remain confidential. Where that is the case, the action must be brought by the child, who is required to prove that he or she is the child to whom the alleged mother gave birth (article 326 of the Civil Code). In future, this action is the same for children born in or outside marriage. It replaces actions for the establishment of filiated status (former article 323) and natural maternity actions (former article 341), while remaining faithful to their spirit.

214. Proceedings of two kinds are available for establishing paternal filiation: paternity suits, and suits to re-instate the effect of the presumption of paternity.

215. New Article 327 of the Civil Code preserves the paternity suit, which was provided for by former Article 340: this suit must be brought by the child, who must prove the paternity of the supposed father. Acceptance of proof is however no longer subject to the existence of grave presumptions and evidence (former Article 310(1) paragraph 2).

216. Maternity and paternity suits must be brought by the child, represented during his or her minority by his or her other parent or by his or her guardian, as the case may be. The suit is subject to the ten-year time limit under the ordinary law (article 321 of the Civil Code). The time limit is, however, suspended during the minority of the child and permits him or her to bring proceedings up to the age of 28.

217. The scope for paternity suits has thus been widened considerably, as the time limit has increased from two to ten years and evidential requirements have been liberalized.

218. Suits to re-instate the effect of the presumption of paternity (article 329 of the Civil Code) provide for the paternity of the husband to be re-instated by a court judgement when it has been set aside by virtue of article 313, para. 1, or of article 314. This suit may be brought by the spouses, separately or jointly, during the minority of the child. After majority, the child alone may bring a suit, within ten years.

219. Finally, the Order preserves actions for legitimation (article 330), but for the future reduces the time limit under ordinary law (provided for in article 321) to ten years, starting from the alleged loss of status (this time limit being suspended for the child during his or her minority). The circumstances in which this action may be brought include: when the time limit of five years for applying for an affidavit has expired, if the judge refuses to make such an affidavit or if the applicant is not legally capable of applying for an affidavit.

## **2. Change of name**

220. Law No. 2002-304 of 4 March 2002 on surnames, applicable since 1 January 2005 to children born since that date, provides that in future: *“when the filiation of a child is established in relation to both parents[...], the latter shall choose the surname which applies to him: either the father’s name, or the mother’s name, or their two names together in the order chosen by them within the limit of one surname for each of them. In the absence of a joint declaration, the child shall take the name of the father if filiation has been established jointly in relation to his parents (the case of parents who are married or who have jointly recognized the child before birth) or the name of the parent in relation to whom filiation has first been established.”*

221. In addition, the child may, as a matter of custom and practice, be known by the double name of his or her parents, if they so decide. Customary names are used only in administrative and private documents, and not in the civil register. They are not transmissible.

222. After receiving a surname at the time of birth, a child may change it in certain restricted circumstances:

- when the filiation of a child born after 1 January 2005 has been established in relation to the father after the birth has been registered, the parents may by joint declaration give to him or her either the name of the other parent, or a name composed of the names of each parent in an order of their choosing;
- in case of a change in his or her filiation (adoption or a judicial decision establishing or modifying filiation); and
- by an administrative decision, at the request of the parents and if justified by a legitimate reason (to put a name into a French form, for example).

### **3. The right to know one's parents**

**223. In 2004 the Committee, taking note of the above-mentioned Law of 22 January 2002 on access for adoptees and wards of the State to their origins, recommended that the French State take all necessary measures to ensure that the provisions of Article 7 be fully enforced, especially the right to know, as far as possible, one's parents (paragraph 24).**

224. French law appears to be consistent with article 7 of the Convention on this point. Without introducing an absolute right to know the identity of birth parents (and the mother in particular), the Law of 22 January 2002 provides a structure within which confidentiality over their identity can be reversed. Women who wish to give birth anonymously are invited to leave their identity under seal along with information for the child about their health and that of the father, the child's origins and the circumstances of his or her birth. These items are collected by the Departmental representatives of the National Council for Access to Personal Origins (*CNAOP*), who are specially trained and inform the woman concerned about the importance for every person of knowing his or her origins and history. They also inform her that she is able at any time to declare her identity or add to the information she has left.

225. Many women have taken these opportunities, thanks to this process of information and support. In 2005 and 2006, more than half of the 500 women who gave birth anonymously agreed to leave their identity, either openly in the dossier of the child – who will thus have direct access to it – or under seal – in which case, in the event of a request by the child for access, the mediation of the National Council for Access to Personal Origins will be necessary to obtain the mother's consent to the lifting of confidentiality.

226. The National Council for Access to Personal Origins is composed of representatives of the public services concerned, and of associations of wards of the State, women and adoptive parents, as well as qualified individuals. It has extensive powers of investigation, when formally requested, to seek birth parents who have asked for their identity to be kept confidential. It must then, while respecting their privacy, contact them to ask their agreement to disclose their identity to the child. If the parent or parents refuse to reveal their identity, only items of information which do not identify them are passed to the child, and their refusal is binding on the child, after, as well as before, their decease.

227. The National Council also receives declarations by birth parents lifting confidentiality. Since its creation in September 2002, it has received 198 requests for the lifting of confidentiality, 195 of them from mothers and only 4 from fathers. In one case, confidentiality was lifted jointly by the biological parents. It has also received 70 declarations of identity made by an antecedent relative, a descendant or a privileged collateral relative (brother or sister or descendant of a brother or sister) of one of the birth parents.

228. At 31 March 2007, the National Council had opened 3,092 cases since its inauguration. 1,900 cases had been closed for the following reasons:

- 685 after communicating the identity of the parent, 241 of them where confidentiality did not apply, 223 after consent to the lifting of confidentiality and 221 where the birth parent had died;
- 274 after a refusal to lift confidentiality; in these situations, exchanges of correspondence, and even meetings, may still take place with the National Council acting as intermediary;
- 860 where it was impossible to identify or find the parent; and
- 81 withdrawals.

229. Thus French legislation does not appear to be in contravention of article 7 of the Convention, which recognizes, as far as possible, the right of the child to know his or her parents. The European Court of Human Rights has ruled on this point, in a judgement in *Odièvre v France* dated 13 February 2003 that French law is consistent with article 8 of the European Convention on Human Rights, which guarantees the right to private and family life, in that it achieves sufficient balance and proportionality between the interests at stake, namely the protection of the private life of the mother and the right of the child to know his or her origins. It noted in particular that the Law of January 22 2002 arranged for confidentiality to be reversible and facilitated research into biological origins by setting up a National Council for Access to Personal Origins, an independent body composed of law officers, representatives of associations and professionals. It took account also of the concern of the French legislature to protect the health of the mother and child during pregnancy and birth and to avoid clandestine abortions and infant “dumping”.

230. One change has been made to this legislation, by the Law referred to above of 5 March 2007 for the reform of child protection, in order to confine the right to refer a case to the National Council to the child itself. The original text provided that, during the minority of the child, a request for access to origins could be made to the National Council by the child’s legal representative or representatives, as well as by the child with their agreement. The adoptive parents of the child were thus able to contact the National Council in their own right, without the child being informed of the approach, still less having given consent to it. From now on, only the child may act during his or her minority, with the proviso that he or she has reached the age of discretion and that his or her legal representatives have expressed their agreement.

231. At 31 March 2007, only 3% of the 3,092 requests that have been registered concern minors.

**B. ACCESS TO THE MEDIA AND THE PROTECTION OF CHILDREN  
(ARTICLES 17 AND 18)**

232. In accordance with the principles stated in the Convention, and in particular articles 13, 17 and 18, and with recommendations made by the Committee (paragraph 28), France is developing policies which seek the right balance in this area. On the one hand, policies aim to encourage greater freedom for children through wide access to the media and information. On the other hand, they aim to provide a proper framework for children's access to the tools of communication, and to hold the various participants – and parents – duly responsible in relation to the information disseminated via the media.

233. First, the Government wishes to state that the commission responsible for the supervision and control of publications for the young<sup>51</sup>, mentioned in its previous periodic report, is doing important work through dialogue with publishers that allows certain practices which could have an impact on the sensitivities of minors to be regulated. In 2006, it received 3,310 French periodicals and 3,362 other French works, 364 foreign works and 383 publications of all kinds. It recommended that 75 publications should be banned, entered into consensual procedures with 10 publishers and requested criminal prosecutions in five cases.

234. Further, in applying article 9 of the Code for the Cinematic Industry<sup>52</sup>, the Minister of Culture issues a certificate after receiving the advice of the Commission for Film Classification. The plenary assembly has 28 members divided into four colleges: public authorities, cinema professionals, young members of the public and experts. The Commission seeks to protect children and adolescents from undesirable impacts that certain films or trailers could have on their personality or development. It gives an opinion recommending authorization for “*all audiences*” or prohibition in respect of an age category (under 12, under 16 or under 18.) It may add a warning to the viewer on the content or on particular characteristics of the work.

235. 1,087 films and trailers were classified during 2006-2007. Of these, 87.3% were classified “*all audiences*”, 5.3% “*all audiences*” with a warning, 43% “*under 12*”, 1% “*under 12*” with a warning 1.8% “*under 16*”, 0.2% “*under 16*” with a warning and 0.1% “*under 18*”.

236. In recent years the rapid development of information and communication technologies has led to marked progress in the applications available in daily and professional life. They have progressively established themselves as an indispensable tool for giving families access to information and improving the quality, effectiveness and accessibility of the public services on offer to them. This burgeoning has called, in parallel, for active policies to educate the public, raise their awareness and alert them to their responsibilities, in order to prevent the abuses that could result for children and allow them to use the Internet more safely. These measures are set out below.

**1. Information for families by Internet**

237. In 2006, the Interministerial Taskforce on the Family, in partnership with the *Caisse des Dépôts et Consignations* and *Documentation Française*, which is the provider of the French public administration portal ([www.service-public.fr](http://www.service-public.fr)), created an Internet portal ([---

<sup>51</sup> Law of 16 July 1949 on publications for young people.](http://www.point-</a></p></div><div data-bbox=)

<sup>52</sup> “The screening of films shall be subject to obtaining certificates issued by the minister responsible for the cinema.”

infofamille.fr) designed to support and guide families in their dealings with the public services and with associations. The site also has a wider information function for sector professionals and the general public through giving information about national and local arrangements and through links to other Internet sites (to the sites of the main partners, to each home page for families designated “*Family Info Point*”, and to networks for supporting, assisting and giving a say to parents). Nearly three hundred local sites existed in 2006.

238. The portal and the local sites appear together on the “*Local Public Service*” platform (www.servicepubliclocal.net), run by the *Caisse des Dépôts et Consignations* [a State institution with functions including the financing of certain public services], which allows the various local participants to make all their information mutually available and to provide for automatic linkage between local and national information in order to improve service to users. This allows families and professionals access to common information, which has been validated and is up-to-date, wherever on French territory they may live. This platform also gives access to the documentation resources of *Documentation Française*.

## **2. Raising awareness and educating the general public about the media**

239. Faced with the rapid development and increasingly common use of information and communication technologies, the Government has embarked on a special effort to help people to access them and to use them competently. This complements the arrangements already in place for other media, as set out in the Government’s second periodic report on follow-up to the Convention.

### *Training for pupils and teachers*

240. The Ministry of Education plays the foremost part in this effort, aiming to provide pupils with training which, when completed, will equip them to make sensible use of information and communication technologies. This policy has meant, not only more equipment in schools and educational establishments, but also the introduction of specific training courses.

241. Applying the principle of equality of opportunity, an occupational diploma in information technology and the Internet has been created for primary and secondary schoolchildren and trainees. Its aims are to introduce them to the technical environment of multimedia, show them the opportunities offered by computerized data processing and its limitations, develop their critical faculties as young Internet users and identify the social and legal constraints which apply to the use of these technologies. Students’ competences are evaluated in the following areas: understanding of information technology in the workplace, ability to take a responsible attitude, the ability to create, produce, process and use data and the ability to research and document issues, as well as to engage in exchange and communication. This diploma, which is validated in phases throughout school life, provides evidence that pupils have mastered multimedia tools and the Internet. It is currently being introduced more widely.

242. In parallel, various measures have been taken requiring teachers to integrate information and communication technologies into the teaching of other subjects and into teaching practices. For example, the Information Technology and Internet Certificate is designed for teachers at all levels, from infants to university, whatever their discipline. Taught by university teacher training institutes as part of their responsibility both for initial and continuing training, it accredits teachers’ grasp of information technology tools and networks. They should be able to use these

technologies as part of their training techniques and, while respecting ethical constraints, to teach them and to validate the competences in them that pupils have gained.

*Awareness-raising on risks from the Internet and the use of mobile telephones*

243. For several years, France has sought to make the protection of minors on the Internet a major plank of its family policy.

244. As explained in France's initial report submitted to the Committee last year on follow-up to the optional Protocol to the Convention dealing with the sale of children, child prostitution and child pornography, three sets of measures were taken following the 2005 Conference on the Family. These were: introducing free, effective and systematized parental control software for families connected to the Internet, the creation of a "Family" kitemark and a campaign to raise the general public's awareness of child protection on the Internet broadcast on TF1 and M6 in May and June 2006. This campaign received an approval rating of 96% among parents in homes with an Internet connection<sup>53</sup>.

245. Various working groups, with representation from the Interministerial Taskforce on the Family, are also working on problems in this area. "Child of the Net 3" (Forum on Internet Rights) is analysing questions connected with the framework of article 227(24) of the Criminal Code<sup>54</sup>, the establishment of whitelists and blacklists and quality standards for parental control software. The purpose of "Online Video Games and Child Protection" (Forum on Internet Rights) is to propose pathways for improving the practice of these leisure activities by minors. At the request of the Minister responsible for the family, "Whitelisting" (taskforce on Internet use) is a group which has the task of defining a statement of detailed criteria for the production of the whitelists used within the parental control software offered to families by the Internet service providers. France is also a supporter of projects at the European level for child safety on the Internet, in response to proposals by the European Commission in 2007 in the context of the "Safer Internet" programme.

246. Many guides and awareness-raising publications have also been issued by those concerned – associations, the industry and the public authorities (the Ministries for the Family, Education and Youth, Sport and the Voluntary Sector).

247. The need to be aware of risks on the Internet is one of the commonest themes. In 2007, two advisory guides to good practice were published: "What to do about your child and the Internet" (produced by the Federation of Parents of Pupils in State Education in partnership with Microsoft), and *The Internet and Me*, a quiz with ten questions for adolescents produced by the forum on rights on the Internet, the magazine Okapi and the Interministerial Taskforce on the Family). The new, free guide for parents, "Your Child and the Mobile Telephone", was fully updated at the beginning of 2007 by the French Association of Mobile Phone Operators (AFOM)

---

<sup>53</sup> BVA Opinion, impact survey of 10 July 2006.

<sup>54</sup> "The manufacture, transport, distribution, by whatever means and however supported, of a message bearing a pornographic or violent character, or a character seriously violating human dignity, or the trafficking in such a message, is punished by three years' imprisonment and a fine of €75,000 where the message may be seen or perceived by a minor.

Where the offences under the present article are committed through the press or by broadcasting, the specific legal provisions governing those matters shall apply in determining the persons who are responsible."

in partnership with the Ministry for the Family. It is mailed free to anyone who requests it on the Association's Internet site ([www.afom.fr](http://www.afom.fr)). More than 160,000 copies of the previous edition published in 2005 were distributed.

248. Finally, the Interministerial Taskforce on the Family and *AFOM* have carried out a radio campaign to raise awareness of the dangers involved in Internet surfing by children using mobile phones. This national campaign, launched on RTL and France Info, will have been broadcast from June to November 2007.

### **3. Holding those involved responsible**

#### *Radio*

249. In 2003, the *Médiamétrie* institute assessed the number of adolescents between the ages of 13 and 17 listening at 9pm to so-called "Youth Radio" (NRJ, Fun Radio, Skyrock or Europe 2). The audience for these four stations remains very high until 11pm (500,000 young listeners). To promote more responsible behaviour by radio broadcasters, the Higher Council for the Audiovisual Sector adopted a discussion document on 10 February 2004 on the obligations, regulatory and otherwise, of radio programmes. The document was intended, among other things, to encourage broadcasters not to transmit before 10:30pm statements that could jar the sensitivities of listeners aged under 16. The intention is not to call interactive and open-access broadcasting into question in any general sense, but rather to avoid verbal asides of a pornographic character and intrusion into listeners' private lives. Pornographic and extremely violent programmes are banned altogether, given the absence of any technical means for sound radio broadcasting services to be sure that only adults can access them.

#### *Internet*

250. Measures concerning the Internet are as follows.

251. On 16 November 200, as mentioned above, the Ministry responsible for the family and the Internet service providers signed an agreement to produce and distribute a parental control software which was effective, free and offered by providers who were signatories as part of their systems<sup>55</sup> to all subscribers. This software is currently being distributed. Three profiles for surfing are offered to parents: "*adult*", "*adolescent*" and "*child*". Each profile is accompanied by an appropriate code. The "*child*" profile allows navigation to a whitelist of sites (free of content which is unsuitable for a young audience). The "*adolescent*" profile allows access to the whole of the net, with the exception of adults-only and illegal sites, listed on a blacklist. The "*adult*" profile has no restrictions on navigation.

252. Parental control softwares are evaluated every three months by "*e-enfance*" (an association) in accordance with an independent protocol. The evaluation covers, not only filtering performance, but also how easy the software is to activate and use. Results are published in the press and on [www.famille.gouv.fr](http://www.famille.gouv.fr) and [www.e-enfance.org](http://www.e-enfance.org). A monitoring committee for this arrangement meets every three months, chaired by the minister with responsibility for the

---

<sup>55</sup> France Telecom/Wanadoo/Orange, AOL, Alice/Telecom Italia, 9 Cégétel, Club Internet, Noos-Numéricable, Télé 2, Darty Box. Whilst it has not ratified the agreement, Free has undertaken to abide by its terms.

family. It brings the signatories to the agreement together with representatives of associations for child protection.

253. In addition, the development of a “*family*” kitemark or “seal of approval” is in train. The statement of criteria prepared by the Forum on Internet rights at the request of the minister responsible for the family contains 78 criteria defining ethicality and responsible practice by professionals. A commission on standards for good practice and regulation on the Internet should shortly be created which will be capable of administering this seal of approval.

254. So that all those involved, and especially parents, can be better informed, and to increase the pressure on professionals to behave responsibly, the Law of 5 March 2007 on the prevention of delinquency, mentioned above, reinforces labelling requirements for the packaging of electronic products, whether analog or digital, identifying content of a pornographic character by labelling it “*supply to minors prohibited*”<sup>56</sup>

### *Mobile Telephones*

255. In 2006, 80% of 12 to 17 year-olds used a mobile phone, of whom 23% used their mobile to consult Internet sites, compared with 3% of 40 to 59 year-olds<sup>57</sup>. Faced with the growth of mobile telephony, arrangements have been put in place analogous to those for the Internet in order to provide better protection for minors by increasing pressures on the players concerned to behave responsibly. On 10 January 2007, the Ministry for the Family and the mobile phone operators, under the aegis of the French Association of Mobile Phone Operators,<sup>58</sup> signed a charter of commitments on mobile multimedia content. An assessment of the application of this charter one year on from its signature is positive. The operators have lived up to their undertakings and three new operators have signed the charter (Auchan Telecom, Carrefour Mobile and Ten). In addition, a very large increase in the number of parental controls activated was recorded in December 2006 (a more than twenty-sixfold increase in two months).

---

<sup>56</sup> In particular, article 35(I) of the Law amends article 32 paragraph 1 of Law No. 98-468 of 17 June 1998 dealing with the prevention and punishment of sexual offences and with the protection of minors, which now reads as follows : “*When a document which is the product of a process which can be decoded by electronic means in either analog or digital mode presents a danger to youth because of its pornographic character, the item that contains it and each element of its packaging must bear visibly, legibly and indelibly the wording “ supply to minors prohibited” (article 227(4) of the Criminal Code). This wording imposes a prohibition on offering, giving, renting or selling the product concerned to minors.*”

<sup>57</sup> According to “*l’Observatoire sociétal du téléphone mobile*” published by AFOM and TNS Sofres [a market research institution] in August 2006.

<sup>58</sup> Bouygues Telecom, Orange, SFR, Debitel, M6 Mobile, Omer Telecom and Universal Mobile.

**C. FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION (ARTICLE 14)**

**256. When it examined France's last report, the Committee expressed concern about the entry into force of Law No. 2004-228 of 15 March 2004 setting a framework, applying the principle of secularism, for the wearing in State primary, secondary schools and *lycées* of symbols or dress indicating a religious affiliation (paras. 25 et 26).**

257. The Government recalls that this Law<sup>59</sup> was adopted to guarantee observance of the constitutional principle of secularism, ensure the neutrality of teaching in public institutions and, whilst respecting pluralism and the liberty of others, and without prejudicing teaching activities and programmes and the obligation for regular school attendance, to address risks of disorder in school establishments.

258. It does not stigmatize any particular religion, as that would be a source of discrimination, and does not lay down a list of prohibited religious signs. The prohibition under the law is not a systematic prohibition. The circular applying it merely gives examples of signs and garments that are banned, such as "*the Islamic veil, however it is designated, the kippa or a cross that is clearly excessive in size*". "*Discreet religious signs*", such as "*accessories and garments habitually worn by pupils without religious significance*" are, however, permitted.

259. By that law, the legislature was seeking to prioritize dialogue and education. It takes a largely pragmatic approach and assigns those working in the field responsibility for securing observance of the law and penalizing any infringement of it. For example, it sets in place a preliminary stage of dialogue with a pupil in breach of the law, which must be arranged and held by the head of the establishment in conjunction with the management team and the education teams, followed, if need be, by a disciplinary procedure. If the decision of the Disciplinary Council is to exclude, the educational authorities are to examine with the pupil and his or her parents the conditions in which he or she will pursue his or her schooling.

260. In accordance with the provisions of the Law, an evaluation of its implementation was undertaken a year after entry into force, in July 2005. The assessment is wholly positive and allegations suggesting an increase in discrimination, especially based on religion, have been refuted by the facts.

261. In fact, in the course of the school year 2004-2005, only 639 pupils displayed visible indications of a religious affiliation compared with about 1,500 cases recorded in 2003-2004. Only 39 pupils, three of them boys, were definitively excluded, with a solution being found in other cases by dialogue. At the beginning of the school year 2005-2006, the cases – fewer than ten – which could have led to litigation have been settled through consultation with those concerned and their families. Out of four cases in which Sikh *lycée* students were refusing to remove their turbans, it has not proved possible to settle only one: the pupil, who is aged 17, has ceased to attend the *lycée*, and so put an end to all discussion.

262. When appeals have been made, national judges have confirmed the interpretation placed by the Government on the concept of a symbol which has been conspicuously displayed. The rare cases of annulment did not turn on the interpretation placed on the Law of 1 March 2004,

---

<sup>59</sup> It is applicable in the Wallis and Futuna Islands, the Departmental Collectivity of Mayotte and in New Caledonia (in State secondary teaching establishments for which the State has responsibility).

but concerned decisions to exclude which had misinterpreted provisions on penalties in the internal rules of the school establishment concerned.

263. Since the entry into force of the Law on 1 September 2004, 28 pupils out of the 39 who have been the subject of a definitive decision to exclude have taken cases to the administrative courts. The administrative courts of first instance have given judgement in 27 cases, of which 13 have been the subject of an appeal. One appeal to the Court of Cassation has been made, and is currently the subject of preliminary procedure to determine admissibility.

264. Finally, it should be pointed out that the pupils excluded in the application of this Law are not, as a result, deprived of access to education and training. Under article 5 of Decree No. 85-1348 of 18 December 1985 relating to disciplinary procedures in secondary schools, *lycées* and establishments for special education, excluded pupils who are subject to compulsory school attendance must be referred to the director of education or the education authority inspector so that they can take the action necessary to provide for their enrolment in another establishment or a public centre for instruction by correspondence (article L. 131(2) of the Education Code). Those who are not subject to compulsory school attendance can also enrol at the National Centre for Distance Learning to pursue their school education. In any case, pupils always have the ability to pursue a private education, which may be religiously denominational, and local authorities contribute to the cost of this from public funds.

#### **D. FREEDOM OF ASSOCIATION AND PEACEFUL ASSEMBLY (ARTICLE 15)**

265. From the viewpoint of the rules which govern the law of associations, the act of a minor in joining an association is accepted as an act of everyday life for which he or she benefits from his or her parents' authorization, whether express or tacit and presumed. A minor who is an active member of an association may vote in general meetings and be elected to the board which ensures that decisions by general meetings and the officers of the association are carried out. If the statutes so permit, he or she may also exercise as agent the functions of chairman, board member or officer of the association.

266. To mitigate these difficulties [sic] and allow young people to succeed in creating the conditions necessary to give their experience of the associative sector a positive start, the Government has, as indicated in its previous report, acted to foster the creation of "*youth associations*" following the first national congress on the voluntary sector, organized in Paris in February 1999.

267. A "*youth association*" is an arrangement which allows young people aged under 18, who are undertaking a project, to get together to put that project into practice in a setting which offers a measure of security and with the support of a contact person in each *département*. It may also admit adults, but must be composed of a majority of minors. Procedure for setting one up is deliberately simple, but clearly defined: having settled on their project, the young people involved must obtain from the departmental contact person for "*youth associations*" a case file which functions as an application for authorization, and must deposit this case file with the national "*youth association*" network.

268. Despite the title, a "*youth association*" is not an association in the strict sense, subject to the Law of 1901: what is involved is a kitemark, which is recognized for one year, renewable, and gives a number of advantages. Obtaining the kitemark gives access to free insurance designed to cover the minors' activities and their civil liability and allows them to open a bank

account and have the use of a cheque book, and to have access to a number of tools designed to help with designing the organization and with training activities. Routes to finance are available via “*Youth Challenge*”<sup>60</sup>, foundations and local authorities. Arrangements are made for support, calling on the experience and *savoir-faire* of “resource persons” who give the young people guidance on the steps they need to take.

269. This national network, which brings together the *ligue d’enseignement*<sup>v</sup>, the association *J. Presse*, the public interest grouping “*Youth Challenge*”, the National Federation of Social Centres and the French *confédération des maisons de jeunes et de la culture*<sup>r</sup>, is an association subject to the Law of 1901.

270. With 670 “*youth associations*” on French territory as a whole, including in overseas France, for the school year 2006-2007, this arrangement makes an active contribution to getting young people strongly involved. A great deal of information is available on the Internet site [www.juniorassociation.org/ja.php](http://www.juniorassociation.org/ja.php), including the list of the contact persons in the *départements*, the list of “*youth associations*” that have been set up and links to the some 190 web pages posted by “*youth associations*”.

271. In addition, virtually all school establishments, in particular at secondary level, have clubs for cultural, sporting and awareness activities in which pupils gain initial experience of the voluntary sector within a framework provided by adults.

## V. FAMILY ENVIRONMENT AND ALTERNATIVE CARE

### A. PARENTAL GUIDANCE AND RESPONSIBILITIES (ARTICLES 5 AND 18, PARAGRAPH 1)

272. The Law of 4 March 2002 referred to above has given general effect to the principle of joint exercise of parental authority by the father and mother, whatever their matrimonial circumstances, once the child’s filiation to them is established in the year following birth. This provision applies equally to children born before this Law’s entry into force.

273. Where parental authority is being exercised unilaterally, the parents are able to make a joint declaration before the Chief Registrar of the Regional Court with a view to exercising parental authority over their child jointly. Where there is disagreement, the parent who is the main provider of care may apply to the Family Judge to rule on arrangements for the exercise of parental authority.

274. In all cases, the father, the mother or the ministry with general responsibility for the protection of those lacking legal capacity, including children, may ask the Judge to rule on arrangements for the exercise of parental authority.

275. In particular, the Law of 4 March 2002 provided flexibility in the conditions for the voluntary delegation of parental authority. When circumstances so require, the parents, either separately or jointly, may delegate the exercise of their authority in whole or in part to a third party who is either a family member or a trustworthy close connection (art. 377 of the Civil

---

<sup>60</sup> *Youth Challenge (défi jeunes)* is a public interest grouping created in 1987 by the Ministry for Youth and Sport. It is the leading organ at a national level for giving general support to youth initiatives. Its task is to prompt, assist, support, develop and publicize opportunities for young people aged between 15 and 28 to take initiatives in all areas of life through individual or collective projects.

Code). The Family Judge authorizes this sharing of parental authority and sets a framework for its exercise (art. 377(1)). It does not entail recognition of any legal relationship of filiation.

276. The Court of Cassation agreed for the first time in a judgement of 24 February 2006 to apply these provisions in the case of a same-sex couple living in a stable and continuous union (a mother linked with her female partner by a civil partnership), as the delegation requested was in the best interests of the child. In this particular case, judges in the lower courts had remarked that *“the lack of paternal filiation created the risk that, in the event of unforeseen events making it impossible for the mother, who is required on a daily basis to travel long distances for professional purposes, to express her wishes, Mme Y might find herself faced with the legal impossibility of discharging the role that she had always had in the eyes of Camille and Lou in their upbringing”*.

## **B. CHILDREN SEPARATED FROM OR DEPRIVED OF THEIR FAMILY ENVIRONMENT (ARTICLES 9 AND 20)**

### **1. Separation of the parents**

277. The French Government would like to provide information to supplement the developments covered in its second periodic report.

278. The Law of 4 March 2002 on parental authority provided for various measures favouring the maintenance of the child’s links with both parents by making arrangements for effective co-parenting.

279. This means that the separation of the parents has no implications for the devolution of the exercise of parental authority, which continues to be exercised jointly except where the interests of the child call for a different arrangement. In such cases, the parent deprived of parental authority nevertheless retains the right and the duty of oversight over the child’s maintenance and upbringing, and to be informed of major choices affecting him or her. A right to visit and to receive visits from the child cannot be refused except for very serious reasons and the parent plays a part in the support of the child by making a maintenance payment.

280. In all cases, both mother and father must maintain personal relations with the child and respect his or her tie to the other parent. For example, where one of the parents is planning to move home, and the move could prejudice the arrangements in place for the exercise of parental authority, he or she is under an obligation to inform the other parent in advance and in good time. In the event of disagreement, a submission can be made to the Family Judge to make a ruling based on the interests of the child.

281. Although in principle separation does not call the exercise of parental authority into question, it does involve break-up of the family unit and new arrangements for housing the child, who may live:

- at the place of residence of one of the parents, with the other having a right to make and receive visits (78%);
- alternately at the place of residence of each of the parents (11%); or
- exceptionally, and especially when one of the parents is deprived of the exercise of parental authority, with a third party, preferably chosen from among the child’s relations.

282. These housing arrangements and the contribution to be made to the upkeep and upbringing of the child may be the subject of an agreement submitted by the parents for the approval of the Family Judge and, in the event of disagreement, the issue may be referred to the Judge by one of the parents.

283. The Family Judge must take special care to safeguard the interests of children and minors. In the event of disagreement, the judge must make every effort to conciliate between the parties. In this connection, in order to make the search for a consensual solution easier, he or she may propose family mediation measures to the parents and, when he has the parents' consent, designate a mediator to carry them out. In the absence of agreement, he or she may require the parents to meet a family mediator<sup>61</sup> who will brief them on the aims of the process and how it works.

284. The fact that the human dimension of family conflicts is particularly sensitive requires that in practice priority is given to finding a solution which does not operate exclusively in a legal setting, but rather in one which is likely to defuse parental or conjugal disputes, especially where the maintenance of relations between the child and his or her two parents is concerned.

285. In ruling, the Judge takes into account the parents' previous practice, the opinions expressed by the child, the preparedness of each parent to accept his or her responsibilities and to respect the other parent's rights, and expert opinion given and information received in the course of any inquiries that may have been made by the social services.

286. In 2004 the French Government created a State Diploma for family mediators in order to raise levels of specialist skills among practitioners<sup>62</sup>.

287. Decree No. 2004-1158 of 29 October 2004 on family procedure allowed Family Judges recourse to this measure in all contentious proceedings coming before them. Thus, family mediation can be ordered in contexts ranging from post-divorce litigation to cases about grandparents' visiting rights or about setting maintenance payments.

288. In 2005, the Ministry of Justice financed 153 associations carrying out family mediation to the extent of €55,765 (out of total financing of about €4 million, the greater part of it coming from local authorities). To guarantee permanent financing arrangements, the National Family Allowances Fund has put in place payments designed to cover 66% of the costs of family mediation services. Committees for mediation have been created in each *département*, based on partnership, with the intention of making family mediation services more widely known and guaranteeing their operational and quality standards. The particular purpose of the service payment contributed by the Family Allowances Funds is, among other things, to work for the well-being of the child, and to promote respect for the child and the child's interest during the legal dispute in which the parents are involved, while keeping the child outside the process and ensuring that he or she cannot be used to further the interests of either side.

289. Other accommodation is provided where meetings between parents and children can be arranged, in a secure setting and suitable surroundings, to allow the parent with whom the child

---

<sup>61</sup> This arrangement established by Law No. 95-125 of 8 February 1995 and its implementing decree of 22 July 1996 was set out in France's second periodic report (paras. 188 *et seq*).

<sup>62</sup> Decree No. 2003-1166 of 2 December 2003, supplemented by an Order of 12 February 2004 and by circular DGAS/4 A No. 2004-376 of 30 July 2004.

is not living to exercise the right to make and receive visits. Since the Law of 5 March 2007, referred to above, the Family Judge may provide for the right to visit to be exercised in a meeting place designated for this purpose<sup>63</sup> when necessary for the continuity and effectiveness of the links between child and parent or when required by the interests of the child.

## 2. Placement of children

290. As the French Government indicated in its previous periodic report, the placement of a child in difficulty or danger may not be ordered by the authorities without the agreement of the parents. Only a court decision may overturn the parent's wishes if they withhold their consent. The legal provisions relating to tutelary assistance remind the Judge that the child must be kept in the family environment wherever possible. In the event of a placement, exercise of parental authority by the parents is preserved.

291. Since France's last periodic report, the Law of 5 March 2007 referred to above reforming child protection has made several amendments to procedures for tutelary assistance in order to increase the quality of the responses made by the legal system. In particular, the Law improves the coherence of the arrangements for placement and allows them to deal with a number of circumstances in which the exercise of parental authority puts a child in placement in grave difficulty.

292. Cases in which the Children's Judge can take measures of tutelary assistance are extended to circumstances in which the conditions for his or her physical, emotional, intellectual and social development are seriously compromised<sup>64</sup>. It is explicitly stated that, when ruling, the Children's Judge must do so having strict regard to the interests of the child<sup>65</sup>.

293. When it is necessary to take the child out of his or her normal environment, the Judge may provide that the tutelary service which is monitoring the minor should place him or her in residential accommodation periodically or exceptionally in the interests of his or her protection while at the same time maintaining the child's links with his or her family<sup>66</sup>.

294. Further, the Judge may partially and selectively delegate parental authority to the person, service or establishment entrusted with the child. This exceptional measure may be taken only if the interests of the child justify it. It is also subject to proof by the person applying for it of its necessity, in other words of an abusive or unjustified refusal by those who hold parental authority, or of negligence on their part<sup>67</sup>.

295. In the event of placement, the place where the child is to be kept must be chosen in his or her interests, so as to facilitate the practical exercise by the parents of their visiting rights and the

---

<sup>63</sup> Articles 373(2)(1) and 373-2-9 of the Civil Code amended by article 22II of the Law.

<sup>64</sup> Article 14 of the Law amending article 375(7) of the Civil Code. Such measures were and still are possible when the health, safety or morals of a child are in danger and when the conditions for his or her education are gravely compromised.

<sup>65</sup> Article 22 II of the Law amending article 375(7) of the Civil Code. On the interests of the child: see above, Part IIIB.

<sup>66</sup> Article 22 II of the Law amending article 375(2) of the Civil Code.

<sup>67</sup> Article 22 II of the Law amending article 375(7) of the Civil Code.

maintenance of relations with brothers and sisters. In addition, if the interests of the child require it, the Judge may decide that the location where the child is kept should remain confidential<sup>68</sup>.

296. The same Law also introduces a measure providing for legal aid for the management of the family budget<sup>69</sup>.

297. During 2005, 111,706 cases of minors at risk were referred to Children's Judges. They were dealing with 209,930 minors at 31 December 2005. They ordered 323,394 individual measures.

298. Since Council Regulation No 2201/2003 (EC) of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgements in matrimonial matters and the matters of parental responsibility, known as "*Brussels 2a*" came into force, it is possible in addition to envisage cross-frontier civil placements within the territory of the Member states of the European Union. This means that the European dimension of the family, in which free flow between members plays an integral part, is taken into account.

### **3. The detention of parents**

299. First, the French Government reminds the Committee that, when a person has declared that he or she is exercising sole parental authority over a minor aged sixteen or less who resides with him or her, the liberty and custody judge may not order that person's detention on remand without first having secured acceptable living conditions for the minor<sup>70</sup>.

300. More than half (54%) of those detained have one or more living children, the average being a little more than two (2.1).

301. The Prison Service continues to deal actively with maintaining family ties and with the right of families to meet their close relations in the most decent possible conditions, as this question makes an important contribution to policies for social inclusion.

302. As specified in France's last periodic report, the relevant passages of which remain up-to-date, French legislation allows women in custody to keep their children with them until the age of 18 months<sup>71</sup>. This time limit may be extended by decision of the Regional Director on the advice of a consultative committee. Women concerned are held in appropriate conditions. Twenty-five prison establishments are equipped for this purpose. However, only a small number of children aged less than 18 months – some 50 – live in custody with their detained mothers.

---

<sup>68</sup> Article 22 II of the Law amending Article 375(7) of the Civil Code.

<sup>69</sup> Article 20 of the Law inserting article 375(9)(1) into the Civil Code.

<sup>70</sup> Article 145(5) of the Code of Criminal Procedure: "*Where, during his questioning by the investigating judge prior to the transfer of the case to the liberty and custody judge, a person makes it known that he has exclusive parental authority over a minor of under sixteen years, who lives with him, his placement in pre-trial detention may not be ordered unless one of the services or people described in article 8, paragraph 7, has first been mandated to research and propose all measures necessary to prevent the endangering of the minor's health, safety or morals or the serious compromising of his education.*

*The provisions of the present Article shall not apply in cases of felony, misdemeanours committed against a minor, or in cases where the obligations of judicial supervision are not respected.*"

<sup>71</sup> Article D. 401 of the Code of Criminal Procedure.

The average length of residence of these children varies between four and five months. For the Committee's information, 2,326 women were in imprisonment on 1 July 2007 (some 3.8%), 918 of them on remand and 1,408 following conviction<sup>72</sup>, and more than 70% of women in custody are mothers.

303. As the exercise of the functions of the Prison Service applies only to the mother, the Service counts on its partners in other services and in associations to help the mother in taking care of her children. The mother retains parental authority and remains the only person in a position to decide what is best for her child. During the day, the child can be taken care of outside the prison in a nearby collective facility (a crèche or *halte-garderie*<sup>vi</sup>) or on an individual basis (by a child-minder).

304. In view of very positive results from an experiment with family visiting units in three penal establishments, the decision has been taken to put this arrangement into practice from September 2006 in four other penal establishments<sup>73</sup> and to extend it to future penal establishments for prisoners serving long sentences. Moreover, family visiting rooms are being installed in existing main prisons whose configuration does not allow the creation of family visit units. Located in smaller spaces, they will nevertheless be similar in conception and will allow prisoners visits of three hours' duration free of direct surveillance by the Prison Service.

305. The Prison Service is also following a systematic policy for installing and equipping children's areas within the visiting rooms. These areas allow better care for children and provide space for shared play with their parents.

306. The voluntary sector acts as a major partner for the Prison Service in helping children to keep up their relations with a parent in prison.

307. For example, the Federation of Child-Parent Link Associations (*FREP*), officially created in March 1994, "*has as its object the federation and coordination of the various link associations, securing the training of volunteers, ensuring that the charter agreed between the associations is observed and, through research and information, inculcating within each link association a strong motivation towards the pursuit of its core mission*"<sup>74</sup>.

308. At present, 20 regional associations and 2 foreign associations are members of this federation. They bring together about 600 volunteers within a framework provided by about 50 professionals in infants' issues, and work in 42 prisons (about 20% of penal establishments). More than a quarter of metropolitan France benefits from the work of these associations.

309. Among the local activities that *FREP* supports is the provision of care for children in family visiting rooms when the visits are not run by the other parent (more than 3,000 cases of support each year) and the running of children's areas by professional educators, allowing children's visits to a detained parent to take place in a less disquieting environment than traditional visiting facilities. Local activities also include providing support for imprisoned parents through workshops and discussion groups on parenting.

---

<sup>72</sup> Monthly population statistics for the imprisoned and detained in France published by the Ministry of Justice.

<sup>73</sup> Meaux, Avignon-le-Pontet, Toulon-la-Farlède and Liancourt.

<sup>74</sup> Article 2 of the association's constitution.

310. Since 2001, biennial national meetings have been held: the theme of those held in November 2007 was “looking into relationships”. *FREP* also works through the European Committee for Children of Imprisoned Parents (EUROCHIPS), which seeks to harmonize legislation, starting from comparative studies based on projects and national experience. These meetings are major occasions for exchange between children’s professionals, judges and the staff of the Prison Service.

311. Extending the federation’s network calls for strong support from the public authorities, particularly through promoting and organizing training sessions and events to raise awareness, share information and address differences in working practices. A multi-year agreement with the Ministry of Justice was signed in December 2004 and renewed in February 2007 for the period 2007-2009. The federation is to receive for this period, as it did for 2004-2006, a grant of about €30,000.

### **C. FAMILY REUNIFICATION (ARTICLE 10)**

312. The Government reminds the Committee that, in French legislation, family reunification is a right for foreigners lawfully resident on French territory.

313. Since France’s last report was submitted, provisions relating to family reunification have been codified. From now on they appear in Volume IV of the Code on the Entry and Residence of Foreigners and the Right of Asylum (articles L. 411(1) ff and R. 411(1) ff with wording derived from Law No. 2006-911 of 24 July 2006 and Decree No. 2006-1561 of 8 December 2006).

314. The conditions placed on family reunification have been slightly amended. The minimum length of residence of a foreigner around whom family reunification takes place has been extended and is now 18 months. In addition, a ground for refusal has been added, when the applicant does not conform to the fundamental principles recognized by the laws of the Republic (third paragraph of article 411(5)). Finally, there is a requirement that the partner who benefits from the application for family reunification must have reached majority at the date of the application (art. L. 411(1)).

315. As the Government indicated in its last report, children who are authorized as minors to live in France can, as of right, obtain a residence and work permit on coming of age of the same kind as their parents. They apply for a residence permit when they come of age, or at 16 if they wish to work. Under article 314(9) the Prefect may issue a residence permit provided that the person concerned can demonstrate uninterrupted residence, in accordance with the laws and regulations in force, of at least three years since his or her entry into French territory by virtue of family reunification, that he or she meets the condition of integration into French society in accordance with its republican principles<sup>vii</sup>, and that the parent who originated the procedure for family reunification holds a residence permit. Failing this, a temporary residence permit for “Private and Family Life” will be issued (art. L. 313(1)1). These residence permits give the right to engage in any working activity, subject to legislation currently in force.

316. Family members of groups to whom special regimes apply by virtue of origin (Algerians, Moroccans, Tunisians and sub-Saharan Africans) receive a residence permit valid for the same period as that of the person they are rejoining.

**317. In 2004, the Committee showed particular concern over the slowness of the procedures for family reunification in the case of recognized refugees and recommended that France should take steps to accelerate the handling of cases (paragraphs 31 and 32).**

318. It should be stressed that the time taken to examine these applications is closely linked to the difficulties that families face in establishing full and acceptable documentation for their civil status. What is more, the service responsible for dealing with these applications must verify claims by applicants about their matrimonial situation and the real composition of their family in order to prevent the illicit movement of children. To simplify the process and reduce delays in examining applications, documents other than those usually required are sometimes accepted in corroboration of births (for example: certificates that the mother has given birth, certificates of baptism, evidence of money transfers to families, family photographs, school reports, reports related to care during pregnancies etc.). In spite of these arrangements, the French Government has not been able to reduce significantly the average time taken by the procedures. It remains alert to the situation, however, and shares the Committee's concern.

#### **D. RECOVERY OF MAINTENANCE (ARTICLE 27, PARAGRAPH 4)**

319. Two French ministerial departments are responsible for the recovery of maintenance due to be paid in or from another country.

320. The Ministry of Foreign and European Affairs, as the intermediary institution designated by France, is responsible for the implementation of the Convention of New York of 20 June 1956 on the Recovery Abroad of Maintenance. The Government would like to add to its previous report by noting that applications for the recovery abroad of maintenance have increased markedly. In 2006, 300 applications to open new cases were recorded, compared with 219 in 2005. Results continue to be modest in this area owing to insufficient cooperation on the part of the central authorities responsible for giving effect to such applications in each country and to difficulties of a practical nature. Thus, payments are currently being made by those liable, either voluntarily or consequent on legal judgements, in about 150 cases.

321. This fact has led the European Commission and the Hague Conference on Private International Law to start work towards the adoption of new legal provisions designed to strengthen international cooperation and simplify procedures for the recognition and enforcement of judgements on liability to pay maintenance.

322. The Ministry of Justice is responsible for the implementation of thirteen bilateral conventions containing provisions in this area (Benin, Quebec, Congo, Djibouti, Egypt, the United States, Niger, Senegal, Chad, Congo, Togo etc.). Depending on which particular convention applies, the Ministry's task may be to facilitate the amicable settlement of cases or to take proceedings before the competent national court for the recognition of a foreign judgement on the payment of maintenance. About 50 applications are made each year, about half of them concerned with payments abroad.

323. Two new instruments are currently being negotiated: an EU regulation on jurisdiction, applicable law and the recognition and enforcement of judgements, and a Hague convention on the international recovery of maintenance for children and other family members (which is in the final stages of negotiation).

## E. ADOPTION (ARTICLE 21)

324. French legal and administrative arrangements for adoption are based on the principles recognized by the Convention on the Rights of the Child and by the Hague Convention on Protection of Children and Cooperation in respect of Inter-country Adoption of 29 May 1993. The aim of the arrangements is to offer to children who have been deprived of their family environment a family which suits their interests, and, in the case of inter-country adoption, while respecting the principle of subsidiarity. With this end in view, the French State seeks to ensure that adoptive parents-to-be are suitable to take charge of a child that has already been born and to ensure the safety of the adoption process.

325. The legal and administrative arrangements applying in France have been amended since France's last periodic report by the Law of 4 July 2006, referred to above, on the reform of adoption, and its implementing Decrees.

### 1. Improvements in procedures for the approval of adoptive parents and the monitoring of adopted children

326. Obtaining approval is an essential prior requirement for any application for adoption in France or overseas. There is no "*right to a child*". The sole purpose of the procedure for approval for adoption is to assess whether a proposal for adoption is sensible and viable and to determine whether, among a large number of possible candidates, one person offers the most favourable conditions for taking in a child who, in the nature of things, has been made vulnerable by his or her situation. This approval is an administrative decision by the President of the General Council of the *département* as part of his child protection functions, having assessed arrangements for the reception of the child from the family, educational and psychological points of view.

327. The reform of adoption in 2005 harmonized procedures at the national level for the assessment of applications for adoption<sup>75</sup> and strengthened arrangements for preparing and supporting prospective adopters.

328. Each of the professionals (social worker and psychologist) responsible for assessing applications must have at least two meetings with those seeking approval. After approval, prospective adopters are invited to meetings at which they are given information aimed at building up their awareness of the realities of adoption and of adoptive filiation. In the course of the five years for which their approval is valid, the prospective adopters have a compulsory meeting, at the latest at the end of the second year following approval, with a professional to assess the progress achieved in the adoption. At the request of the adopter, follow-up may also continue after the adoption order in France or the registration of a foreign judgement.

### 2. The adoption of children born in France

329. First, the French Government notes that statistical knowledge of adoption is still insufficient in France: the statistical data available are sparse and often incomplete.

---

<sup>75</sup> The Law of 4 July 2005 referred to above has been supplemented on this point by Decree No. 2006-981 of 1 August 2006 on the approval of persons wishing to adopt a ward of the State or a foreign child, amending the Code for Social Action and the Family.

330. Children who may be adopted in France are those to whose adoption the father and mother or the Family Council of the *département* have validly consented, and wards of the State.

331. At 31 December 2005, there were 2,504 children with the status of wards of the State, of whom 841 had been entrusted to families with a view to adoption. The lack of adoption procedures in the case of some wards of the State is principally the result of disability or state of health (29%), the degree of success obtained in the integration with their receiving family (18%), their age or the fact that they were part of a group of brothers and sisters.

332. At the same date, 27,404 approvals were in process of validation in French *départements*. 13,563 new applications were made in the course of 2005. In this period, 8,797 approvals were given, 802 were refused and 327 withdrawn. In total, barely 8% of applications were unsuccessful (6% refused and 2% withdrawn). The number of prospective adoptions abandoned in the same period is much more significant: 3,204, or about 23%<sup>76</sup>.

333. In addition, in 2005 the French judicial authorities ordered 7,720 simple<sup>77</sup> and 3,579 full adoptions<sup>78</sup>. The effect of simple adoption is to create a new relationship of filiation between the adopted child and the adoptive family, while maintaining the child's relationship of filiation with the original family. In contrast, full adoption breaks all ties with the original family. The child becomes a member of the adopter's family, which becomes his sole family.

334. Some *départements* in Lorraine and Normandy have joined forces, with help from the State, to facilitate the identification of adoptive parents for children who are waiting for a proposal for adoption, especially because of their age or a disability or health problem, to ensure that the child is thoroughly prepared and to provide tailor-made support for the future family.

335. At the national level, the State has put in place an information system the purpose of which is to make it easier to bring together children with special needs and families with approvals for adoption that qualify them to take a child of this kind. All approved persons whose adoption status would allow them to take a child with special needs may ask their *département* to place their details on this information system.

336. The Law of 4 July 2005 reorganized procedures for legally establishing abandonment where manifest lack of interest has been shown by parents towards a child, in the interests of allowing such children to be adopted. A child who is legally abandoned comes within the category of wards of the State and may thus be adopted without the prior consent of the Family Council for the *département*, in accordance with the provisions of article 347 of the Civil Code.

337. Child welfare services, establishments and individuals exercising care of a minor must make an application for a legal declaration of abandonment once the parents have shown manifest lack of interest for the period of one whole year. A legal declaration of abandonment is made when the judge confirms manifest lack of interest on the part of the parents, this concept being strictly defined by the Law of 4 July 2005. The Law has also repealed the notion in article

---

<sup>76</sup> According to a statistical inquiry into wards of State who have been the object of full adoption (published by the Directorate General for Social Action).

<sup>77</sup> 7,634 by *tribunaux de grande instance* [regional courts with jurisdiction over a range of civil and criminal matters] and 86 by the courts of appeal.

<sup>78</sup> 3,545 by *tribunaux de grande instance* and 34 by the courts of appeal.

350 of the Civil Code of “*severe distress to parents*”, which could previously constitute grounds for rejection of an application for a legal declaration of abandonment<sup>79</sup>.

**338. In 2004, the Committee was concerned in particular about adoption practices in French Polynesia (paragraphs 34 and 35).** Arrangements here are very distinctive in that they include a procedure for offering children for adoption, under which prospective adopters enjoy delegated parental authority for a period of two years before any judgement of adoption can be given. A Decree relating to wards of the State and Family Councils in the overseas territories, and in French Polynesia in particular, is to be prepared from the second half of 2007 to put the procedures for adoption which apply in metropolitan France into effect there. The Committee will find fuller information in the section of this report dealing with the overseas territories<sup>80</sup>.

### **3. Inter-country adoption: statistics**

339. There has been a very major increase in inter-country adoption: from 935 adoptions concentrated in 10 countries in 1980 to 3,977 visas issued in 2006 relating to 69 countries. It accounts for more than two-thirds of adoptions by French families. This increase has nevertheless remained much lower than the growth in approvals given by the General Councils of French *départements* to French applicants for approval as adoptive parents.

340. The international context has also changed. More and more countries of origin either require or favour the making of applications via intermediary agencies for adoption authorized and accredited by the receiving country, whether because they have acceded to the Hague Convention of 29 May 1993 or because of developments in domestic law. This is what has, in part, motivated the reform described above of French legislation on inter-country adoption.

341. For 2006, the total number of children adopted abroad by French families reduced slightly (-3.8%) compared with 2005 (3,977 adoptions compared with 4,136), while for these same two years the number of countries of origin of adopted children has remained virtually the same (69 in 2006 compared with 67 in 2005). This reduction is relative, however, as the tendency seems to be general: minus 10% for the United States and minus 20% for Sweden; Germany and Canada had already registered a reduction in 2005; only Italy achieved more adoptions in 2006 than in 2005, but fewer nevertheless than the maximum achieved in 2004.

342. As in 2005, a characteristic of adoptions in 2006 is the continuing predominance of children from Vietnam. This is explained by the high number of completed individual adoptions which were filed in advance of 1 January 2006, the date from which the Vietnamese authorities required adopters to proceed through authorized agencies for adoption. Vietnam is thus the leading country of origin with 742 adoptions, about 19% of total adoptions, followed by Haiti, Ethiopia, Russia and Colombia, then China, which has gone from third place in 2005 to sixth in 2006. The top four countries alone represent 53% of adoptions (51% in 2005). Adoption is showing major growth from Haiti (from 475 to 571), is increasing perceptibly from Russia (from

---

<sup>79</sup> New article 350 of the Civil Code: “*Parents who have not entertained with their child relations necessary to maintain bonds of affection shall be deemed to have obviously taken no interest to their child. A mere withdrawal of consent to adoption, a request for news or a wish expressed but not carried out to take the child back may not constitute a token of interest sufficient to constitute the ground for automatic dismissal of a petition for declaration of abandonment.*”

<sup>80</sup> Annex I.

357 to 397) and continues to increase slightly from Ethiopia (from 397 to 408) and from Colombia (from 293 to 321), while it is falling from China (from 485 to 314).

343. The marked increase in adoptions from countries which are parties to the Hague Convention (1,164 in 2006 compared with 1,067 in 2005) is linked with the entry of the Convention into force in China on 1 January 2006. In 2006, as in 2005, the top ten countries account for almost 80% of adoptions completed.

344. Inter-country adoptions in 2006 also have a geographical distribution virtually identical to that for 2005: Asia remains the leading continent with 32% of adoptions (36% in 2005); Africa is next with 25% of adoptions (26% in 2005). The proportion of children originating from the American continent and Europe has levelled off, accounting respectively for 26% and 17% of adoptions (22% and 16% in 2005).

345. French agencies authorized in relation to adoption under private law, of which there are 40, have been able to handle 36.6% of adoptions by French families, or virtually the same proportion as in 2005 (38%).

#### **F. ILLICIT TRANSFER AND NON-RETURN (ARTICLE 11)**

346. On this subject, the French Government refers to its previous report. Its clear belief is that the complex nature of litigation of this kind, and the real difficulty of obtaining and securing the execution in foreign jurisdictions of judgements ordering the return of minors abducted in France, have highlighted the importance of developing preventive measures. In this connection, almost all services and consular posts located in countries with which France has ties through the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction have publicized, either locally through posters, or through their Internet sites, or both, to a note giving information about the illicit transfer of children.

347. In the absence of global statistics, it is difficult to quantify this phenomenon. In 2005, the Ministry of Justice received applications in 302 new cases of illicit transfer and non-return of children, and in 282 in 2006. Circumstances vary widely between one country or geographical zone and another. Means of combating the phenomenon vary according to the international instrument which applies, which may be multilateral, bilateral or Council Regulation (EU) No. 2201/2003 concerning jurisdiction and the recognition and enforcement of judgements in matrimonial matters and the matters of parental responsibility, known as "*Brussels 2a*".

348. The multilateral instrument most widely applied in this area is the Hague Convention dated 25 October 1980 on the Civil Aspects of International Child Abduction. This Convention links France with 61 other States, essentially in Europe and America. The central authority which oversees the implementation of this Convention in France is the Ministry of Justice<sup>81</sup>.

349. Within the European judicial system (except for Denmark), the regulation, referred to above, known as "*Brussels 2a*" has applied since 1 March 2005. This regulation supplements and is consistent with the Hague Convention in the field of transfers of minors, notably in that it considerably restricts discretion to refuse to order the return of the child to his or her habitual place of residence.

---

<sup>81</sup> Directorate of Justice and Civil Affairs, international division for mutual aid in civil and commercial affairs.

350. In particular, subject to certain conditions, this Regulation puts in place the principle that the child should be heard. It provides that the jurisdictions seized of these cases are to deal with them as a matter of urgency, and may not refuse to return the child to his or her State of origin on the grounds that this would expose him or her to serious danger, if it is shown that the authorities where the child normally lives have taken adequate steps to assure his or her protection, immediately on return. Similarly, return of the child may not be refused unless the parent applying for it has been heard.

351. If return is refused, the judgement and the dossier of evidence are passed to the appropriate judge where the child normally lives, who will invite the parties to submit their observations, and then give judgement on the merits of the case: in other words, the judge will rule on how parental responsibility is to be exercised, in a judgement which will be binding over that given in the State to which the child has been removed.

352. France also has bilateral links through a number of conventions, principally with the countries of the Maghreb, the Middle East and Sub-Saharan Africa. The results obtained by implementing these conventions are largely linked to regular meetings of joint committees, during which case files are examined.

353. France has opted for specialisation and centralization of the judges responsible for handling these cases, as part of the Law of 4 March 2002 referred to above. This measure was implemented in 2004<sup>82</sup>. Since then, a single tribunal for each appeal court has been competent to hear these cases, and, within each of the courts, one law officer is designated to prosecute such cases and one is designated to hear them.

354. To allow for the widest possible distribution of useful information and to facilitate the handling and resolution of cases on the illicit international transfers of children, the Minister of Justice launched an Internet site at the beginning of 2005 at the following address:  
[www.enlevement-parental.justice.gouv.fr](http://www.enlevement-parental.justice.gouv.fr)

355. In practice, the Ministry of Foreign and European Affairs can be called upon to get involved alongside the Ministry of Justice, for purposes including providing help to those concerned in their contacts with the local authorities and with families.

#### **G. ABUSE AND NEGLECT (ARTICLE 19)**

356. As already indicated in previous reports on follow-up to the Convention and its protocols, France is a party to many international instruments that seek to combat ill-treatment of children, such as Convention 182 of the International Labour Organization and the additional Protocol to the United Nations Convention against Transnational Organized Crime.

357. The protection of children at risk remains a public health priority. The number benefiting from child protection arrangements grew from 268,000 in 2004 to 272,000 in 2005.

---

<sup>82</sup> Implementing Decree of 12 March 2004, fixing the location and jurisdiction of *tribunaux de grande instance* and courts of first instance competent to hear cases brought on the basis of provisions in international and EU instruments dealing with the illicit international transfer of children, and amending the Code of Judicial Organization.

358. **Measures recently taken respond to several of the recommendations made by the Committee in 2004, such as that France should pursue its efforts to prevent and combat child abuse and neglect, and to sensitize the population, including professionals working with and for children, on the magnitude of the problem (paras. 36 et 37), and should establish a confidential mechanism to receive the complaints of all children, including those aged from 15 to 18 (para. 55e).**

359. Some of these measures have already been set out in France's periodic report submitted in August 2006 on follow-up to the optional Protocol to the Convention on the sale of children, child prostitution and child pornography (see paras. 207-220 in particular). The French Government offers as examples the creation of a national telephone hotline for abused children ("119"), which takes on average 4,500 calls a day, the establishment of a National Monitoring Centre for Children in Danger, and the implementation of the National Plan to Limit the Impact on Health of Violence and High-Risk and Addictive Behaviour and of the Perinatal Healthcare Plan for 2005-2007.

360. New measures have since been taken to strengthen the protection of minors against abuse and neglect such as the Law of 5 March 2007, referred to above, reforming child protection. In addition to the measures already described (a wider range of arrangements for intervention and improved and better-coordinated arrangements throughout French national territory for spotting and assessing risks of danger for children), this Law includes a revised conception of child protection: it substitutes the concept of the child in danger for that of the abused child<sup>83</sup> so as to cover all situations that put children in danger or at risk of danger. Within two years from the enactment of the Law, the Government is to provide Parliament with an evaluation of the implementation of the new arrangements, their impact, effectiveness and their cost to the *départements*, along with the financial support provided by the State.

361. In parallel with these wide-ranging reforms, the Government is taking targeted action on specific problems.

362. "Shaken Baby Syndrome" was addressed at a colloquy organized on 3 March 2006 in Paris by the Île de France Resource Centre for Cranial Trauma (*Centre Ressources Francilien du Traumatisme Crânien*), and a preventive information booklet aimed at the general public was prepared.

363. The French Government remains concerned to strengthen arrangements for detecting, preventing and dealing with female sexual mutilation. Although the incidence of this practice on French territory has dropped considerably, because of the combined effects of its prohibition by the law and of associations' sustained efforts to provide training and information, the risk to young girls has not disappeared completely and calls for a strong effort from the public authorities. This has resulted, first, in more effective enforcement of the ban, thanks in particular to the passing of the Law of 4 April 2006 to prevent and suppress violence within the couple or against minors. Next, it has resulted in stronger preventive measures, at national and local levels, through information and awareness-raising for the population groups who are or may be concerned and the active involvement of health professionals and all players who work and are involved with these groups<sup>84</sup>.

---

<sup>83</sup> In consequence of the Law of 19 July 1989 on the prevention of the abuse of minors and on child protection.

<sup>84</sup> Annex VII.

364. **Dealing finally with the recommendation of the Committee for the explicit prohibition of corporal punishment (para. 39)**, the French Government recalls that these practices, whether carried out on a minor by a parent, a teacher, a schoolmaster or an educator, are against the current law. The Criminal Code<sup>85</sup> in fact provides severe penalties for “*violence committed on a minor under the age of fifteen by a legitimate, natural or adoptive ascendant relative, or by a person with authority over the victim*”. Such violence, when it leads to temporary incapacity for work for a period of eight days or less, is punishable by five years’ imprisonment and a fine of €75,000, and, when it leads to temporary incapacity for work for longer than eight days, by ten years’ imprisonment and a fine of €150,000.

#### H. PERIODIC REVIEW OF “PLACEMENT” (ARTICLE 25)

365. The above-mentioned Law of 5 March 2007 reforming child protection allows, in exceptional cases, for the judicial placement of a minor who is at risk to be indefinite. When the parents have serious difficulties with relationships and with bringing up their children, of a kind that have a long-term effect on their competence to fulfil their parental responsibilities, an order for care in an institution or service may be made for a period of more than two years, in order to allow the child’s particular needs for continuity in relationships, geographical location and emotional circumstances to be met. A report on the child’s circumstances must be submitted annually to the Children’s Judge<sup>86</sup>.

366. The French Government wishes to bring up to date the statistics submitted in its last report on beneficiaries of the child welfare services<sup>87</sup>.

367. There are on average 17 beneficiaries of child social welfare services per 1000 young people aged from 0 to 20. Among them, the proportion of children in care, in other words who are subject to placement outside their family environment, is very slightly higher than that of children subject to tutelary measures: 51% compared with 49%.

368. In total, the number of beneficiaries of child social welfare services is estimated at 272,637.

	2003	2004	2005
Children in care	134,858	137,085	138,735
Tutelary measures	127,839	131,727	133,902

369. At the end of 2006, 138,735 children were in the care of child social welfare services, a roughly stable position relative to the preceding year (an increase of 1.2%).

370. The total number of children in the care of the child social welfare services includes both children specifically entrusted to them (117,046), whether the decision to which they are subject is administrative – at the parents’ request or with their agreement, or where the child is a ward of the State – or judicial, and children who are placed directly by the judge in an establishment (21,689).

<sup>85</sup> Articles 222(12) and 222(13).

<sup>86</sup> Article 14 of the Law amending article 375 of the Civil Code.

<sup>87</sup> Source: DREES, working document “Beneficiaries of social welfare services of the *départements* in 2005”, No. 107 of March 2007 in the series “STATISTIQUES”.

371. The proportion of children entrusted to the child social welfare services under a judicial measure remains much larger (84%) than the proportion under an administrative measure. The number of children subject to a judicial measure in 2005 was 87,436, plus 21,689 direct placements.

372. The total number of home tutelary measures includes both home tutelary measures as such – administrative decisions by the President of the General Council of the *département* at the request of parents or in agreement with them – and non-custodial tutelary measures applied by virtue of a judicial order.

373. The rate of growth in beneficiaries in 2005 was, however, a little lower in 2005 than in 2004. This development is explained by the growth in non-custodial tutelary measures (99,567 in 2005, an increase of about 3.5%), which account for 74% of tutelary measures, while the number of home tutelary measures (34,335) is down slightly (by 3.3%) after a rise of 12% between 2001 and 2004.

374. Children entrusted to the child social welfare services are mainly placed in foster families (55%, some 64,252 children in 2005 compared with 63,100 in 2004). This growth needs to be seen as part of a longer-standing upward trend (+5% between 2001 and 2005). Establishments have care of 38% of children entrusted to the child social welfare services (or 44,010 children), while other forms of accommodation (housing adolescents independently in flats, for example) are in the minority.

## VI. HEALTH AND WELFARE

### A. DEVELOPMENT AND STANDARD OF LIVING (ARTICLE 6, PARA 2, AND ARTICLE 27)

375. **In accordance with its obligations under the Convention and with the recommendations of the Committee in 2004 (para. 47),** the French Government has continued its efforts to help parents and others responsible for children, and hence to improve the standard of living of the children who live within its territory. The following information supplements and brings up to date that given in the second periodic report.

#### 1. Fiscal aids

376. The availability of financial assistance has been increased by recent measures.

377. The tax rebate for care costs for infants has been replaced from the tax year 2005 by a tax credit which benefits families which do not pay tax on income and which have the lowest incomes<sup>88</sup>.

378. A new financial instrument, the *chèque emploi service universel* [*a cheque which can be used to pay for personal services of various kinds including childcare*], has also been created by Law No. 2005-841 of 6 July 2005 for the extension of personal services. Its operation has been set out in Decree No. 2005-1360 of 3 November 2005<sup>89</sup>.

---

<sup>88</sup> Article 88 of Law No. 2004-1484 on finances for 2005 dated 30 December 2004 – Article 200B of the General Tax Code.

<sup>89</sup> Articles L. 129(5) and D. 129(1) of the Code of Employment.

379. By means of tax incentives and tax exemptions, businesses have also been encouraged since 2004 to give financial assistance to their employees in paying the costs of all kinds of childcare and home-based service (*family tax credit*)<sup>90</sup>.

380. Finally, it should be noted that only various aids provided to families by Family Allowances Funds and grants given by the Ministry of Education remain exempt from tax on income.

## **2. Housing assistance**

381. Law No. 2007-290 of 5 March 2007 establishing the enforceable right to housing<sup>viii</sup> and containing various measures to foster social cohesion represents a very major development in housing policy in France. It sets up, for certain categories of people in difficulty, a legal right to housing which is guaranteed by the State; failure to observe that right may result in attempts to reach a friendly settlement, followed by recourse to the courts<sup>91</sup>.

## **3. Reconciling family and working life**

382. New measures have been taken to promote better reconciliation of family and personal with working life.

383. Paid parental leave arrangements have been reformed as a result of the 2005 Conference on the Family, introducing markedly greater flexibility than previously into previous French policy on this subject.

384. While pursuing a policy of free choice allowing parents who so wish to interrupt their working life to look after a child during his or her first three years, the French Government has decided to offer parents the ability, on the birth of a third child, to opt for a period of parental leave limited to one year, paid at a level of €750, that is 50% more than parental leave for three years.

385. A parent who opts for this arrangement reduces significantly the financial losses due to cessation of work, while at the same time increasing his or her prospects of returning to work under favourable conditions, without being compromised by too long an absence from the labour market.

386. During parental leave, an employee may benefit either from “free choice” supplement for income forgone from employment [*complément de libre choix d’activité*] or from optional<sup>ix</sup> “free choice” supplement for income forgone from employment [*complément optionnel de libre choix*] provided by the Family Allowances Fund<sup>92</sup>.

387. Financial measures have in addition been taken to encourage and help return to work by the poorest sections of the population, and thus remove a major brake on inclusion in the labour

---

<sup>90</sup> Article 98 of the Law on finances for 2004 – Article 244 G of the General Tax Code; Decree No. 2004-844 of 20 August 2004.

<sup>91</sup> Annex VIII.

<sup>92</sup> See section D below.

market and emergence from insecurity<sup>93</sup>. Since 1 February 2006, establishments providing care for infants are required to take a number of children of those in receipt of minimum social benefits while they return to employment, undertake training or look for work.

388. Other measures are intended to help those who wish to suspend their employment for therapeutic reasons. Parental attendance leave is designed for parents of children aged under 20 who are seriously ill, or suffering from disability or accident, when the condition of the child requires a carer to be present. They can then benefit from a daily parental attendance allowance<sup>94</sup> paid by the Family Allowances Fund. Family solidarity leave, which replaced the carer's leave introduced in 1999, meanwhile, allows people who have a close relative suffering from a potentially terminal illness to take leave of absence to look after him or her for a maximum of three months, renewable once.

389. In 2005, 11% of families with a first child benefited from "free choice" supplement for income forgone from employment and from child's arrival allowance, which, in contrast to the parental upbringing allowance which existed previously, applies to a first child as well as to subsequent births. "Free choice" supplement for income forgone from employment at the lower rate for the first infant applied only in the case of 7% of families. Conversely, a third of families with two or more children opted for "free choice" supplement for income forgone from employment at the lower rate. The replacement of parental upbringing allowance by this supplement increased the attractiveness of part-time employment. The proportion of women with two children, of whom one was under three, working part-time has risen from 38% in 2003 to 41% in 2005. Nevertheless, an eye needs to be kept on the possible effects of the eviction from the labour market of women who belong to certain employment and social categories (in particular those with few qualifications) on the duration of part-time employment.

390. Finally, the Government draws attention to the fact that provisions relating to part-time working in the event of the illness of a child, to leave where a child has a long-term illness and to parental upbringing allowance have lapsed.

#### **4. Policy on infant care**

391. France is relatively well provided with aids and services for infant childcare, thanks to an active policy in this field. Infants account for 1% of its gross domestic product [sic].

##### **4.1 Major resources serving ambitious aims**

392. The main aims of policy for infant childcare can be summarized under four headings:

- favouring free choice for families, by allowing parents to maintain, suspend or reduce their work activity and by providing a wider range of care arrangements for their child or children;
- guaranteeing the safety, health and well-being of children within care arrangements of different kinds and within their family, valuing parental roles and supporting

---

<sup>93</sup> Law No. 2006-339 of 23 March 2006 for return to work and on the rights and duties of beneficiaries of minimum social benefits and Decree No. 2006-1753 of 23 December 2006.

<sup>94</sup> See below section D.

- parents, where necessary, out of concern that arrangements should complement one another and that children's upbringing should be "a joint effort";
- promoting equality between men and women and active participation by the latter in the world of work; and
  - promoting equality of opportunity and contributing to early prevention of the processes of exclusion.

393. The French State has mobilized major resources in the service of these aims.

394. First of all, it has undertaken a wholesale reform of the regulations involved in order, in particular, to increase the capacity and quality of care arrangements, to make it easier for all families to access them and to improve the public authorities' monitoring of the various care arrangements.

395. Decree No. 2007-230 of 20 February 2007 for the reform of care establishments and services (local authority and family-run crèches, *haltes-garderies*<sup>x</sup>, kindergartens)<sup>95</sup> should allow the supply of care to expand while improving its quality (enhanced qualification requirements, compulsory plans for social upbringing, more flexibility in the organization and management of services, the ability to create micro-crèches of 9 places within an appropriate framework, especially in rural areas etc.).

396. The regulation of holiday and leisure centres was amended by Law No. 2001-624 of 17 July 2001 and Decrees No. 202-883 and -884 of 3 May 2002<sup>96</sup>, then by Order No. 2005-1092 of 1 September 2005.

397. The status of child-minders and *assistants familiaux* [see below] has been revised by Law No. 2005-706 of 27 June 2005 so as to expand capacity for care within an improved framework<sup>97</sup>.

398. From now on, these two occupations will be more clearly distinguished. An *assistant familial* is defined as a person who habitually and permanently accommodates minors and young adults aged less than 21 in his or her home, as part of a child protection arrangement, a socio-medical arrangement or an arrangement for family therapeutic care. With other members living in the home, he or she constitutes a provider of family care.

399. The principle that prior approval is needed to engage in these professions is confirmed and arrangements for this are defined: approval is given by the President of the General Council of the *département* who considers new criteria in giving it (such as: skills in the upbringing of children, command of spoken French and absence of certain types of criminal conviction on the part of the adult or adults resident at the applicant's home).

400. Working conditions, pay and training for *assistants familiaux* have been improved in order to make the profession more attractive, increase its professionalism and meet the needs of

---

<sup>95</sup> Amending arts. R. 2324(16) to 47 of the Public Health Code.

<sup>96</sup> Codified in Articles L. 227(4) ff and R. 227(1) *et seq* of the Code for Social Action and the Family.

<sup>97</sup> Articles L. 421(1) *et seq* of the Code for Social Action and the Family and L. 773(1) *et seq* of the Employment Code.

children who cannot be kept in their families. In particular, the duration of training has been significantly increased, from 120 to 300 hours, and a State Diploma for *assistants familiaux* has been created, offering career development and greater professional recognition. This Diploma is not compulsory, but obtaining it removes the need for approval to be renewed. A 60-hour course has also been introduced to prepare the *assistant familial* to receive the first child entrusted to him or her<sup>98</sup>.

401. Similarly, Law No. 2005-841 of 26 July 2005 has provided a fuller framework for child-minding services for the under-threes delivered in a parental home setting by establishing a mark of approval (the “Quality” mark), which is awarded by the Prefect after advice from the President of the General Council of the *département*<sup>99</sup>. It will be linked to the observance of rules to be specified in a ministerial order which is under preparation.

402. The State has also simplified financial assistance arrangements for the operation of these services. There is an ambitious, multi-year programme for this assistance within a framework provided by agreements on objectives and management which have been signed between the State and the National Family Allowances Fund. For the period 2001-2004, three successive plans have been put in place to provide help with investment in the development of local authority childcare facilities, amounting to €28 million in 2001 and 2002, then €200 million in 2004. The new agreement for 2005-2008 signed in August 2005 for the period from 2005-2008 envisages the establishment of a fourth fund of €165 million, intended to create 15,000 places in addition to the 42,000 places that have been, or are being, created under the three previous funds.

403. The fifth “Plan for Infants”, launched on 7 November 2006, also contributes to increasing and diversifying the supply of childcare in French territory as a whole. In particular, it envisages the creation of 40,000 childcare places in six years, the development of training for infants’ professionals (by creating specialist platforms in each region and providing training free of charge to 20,000 people), an increase in the number of child-minders (+60,000, or +5% per year), placing management functions on a cooperative basis in establishments or services providing care for fewer than 20 children, the development of micro-crèches and commercial crèches and the creation of new ones in municipalities with 3,000 to 5,000 inhabitants.

404. Finally, and more generally, the Government is continuing with its efforts to provide information and advice and to raise the awareness of the various participants in childcare, especially as part of the preparations for the Conference on the Family and through the publication of practical guides (the Guide to Infant Childcare, published on 15 May 2007, is available online at: [http://www.famille.gouv.fr/dossiers/accueil\\_petite\\_enfance/guide.pdf](http://www.famille.gouv.fr/dossiers/accueil_petite_enfance/guide.pdf)).

## 4.2 The different modes of childcare

### *Care by the parents*

405. Thanks in particular to parental leave, and/or to child allowance, replaced by the “Free choice” supplement to the child’s arrival allowance for income forgone from employment

---

<sup>98</sup> Decree No. 2005-1772 of 30 December 2005 extended the provisions of the Law by reorganizing training.

<sup>99</sup> Articles L. 129(1) *et seq* of the Employment Code.

(*complément libre choix d'activité de la prestation d'accueil du jeune enfant*)<sup>100</sup>, about a million children under the age of three are cared for by their parents (almost half of the 2.2 million children in this age bracket).

#### *Care by child-minders*

406. About 560,000 under-threes are looked after in the homes of approved child-minders. Nine-tenths of them are employed directly by families, who receive a financial allowance to cover part of what they pay<sup>101</sup>. Only a minority of child-minders are employed by family crèches (*crèches familiales*<sup>102</sup>), which are generally run by the municipalities and financed on the same system as local authority crèches.

#### *Local authority childcare*

407. Local authority childcare offers about 326,565 places in local authority crèches and 62,000 places in family crèches. The number of childcare establishments or services, currently almost 9,000, has been growing consistently since 2001. The majority are run by the municipalities and by some *départements* (two thirds) and, less frequently, by associations (including parental crèches (*crèches parentales*)<sup>103</sup>).

408. Finance is provided for about a third of the costs each by the Family Allowances Funds, the *communes* and families. Families pay a charge which is proportional to their income, which guarantees fairness and access to the service for less well-off families.

409. As local authorities have no duty to establish crèches, the regular expansion achieved over twenty years has been due to a policy of providing financial support and developing contractual relationships between the Family Allowances Funds and those running crèches, and to voluntary efforts on the part of municipalities and associations.

410. The Circular of 30 June 1983 on Participation by Parents in the Daily Life of Crèches created a push for the creation of councils for the establishment of infant childcare, left principally to the initiative of the local authorities. The participation of parents in such initiatives can only improve mutual confidence and cooperation between parents and those professionally involved in infant childcare establishments as a whole, with benefit for all children receiving care and, beyond this, even for children as a whole in the neighbourhood in which they live. It makes parents prepared to get similarly involved in schools and gives children an early example of the importance and value of civil involvement and participation on the part of the citizen.

411. Thinking has begun towards the establishment of a public service for infants which could take the form of an enforceable right for families.

---

<sup>100</sup> See section D below.

<sup>101</sup> See section D below.

<sup>102</sup> A service delivered at his or her home by a childcare assistant employed and monitored by a local authority.

<sup>103</sup> Small crèches with a maximum of 20 places in which parents take part in the care of the children and in the running of the association, alongside professionals.

*Childcare in kindergartens*

412. The number of children cared for in kindergartens is residual (10,000) owing to the marked growth in access for children to infant school from the age of two to two-and-a-half years.

*Childcare in infant school*

413. The 2.6 million children aged between 3 and 6 all receive education in infant school, although enrolment is optional. Some schools also enrol children as soon as they have reached the age of two, especially in disadvantaged areas or where little infant childcare is on offer. At the beginning of the school year 2005-2006, in metropolitan France and the Overseas Territories and Departments, taking the public and private sectors together, the rate of school enrolment at the age of two was 24.5%, after peaking in 2000 at a rate of about 35%<sup>104</sup>. There are, however, geographical disparities, especially linked to demographic changes. The studies which have been carried out tend to show that enrolment at the age of two produces, on average, better results at school for children in all social categories, with the improvement increasing in proportion to the length of nursery education.

*Childcare at home by persons employed by parents*

414. 32,000 children are looked after at their parents' home by a nanny, whose pay is partly covered by a financial allowance.

415. The facts show that parents often resort to more than one childcare solution for the same child. In addition, children mainly looked after by their parents may be cared for occasionally or on a part-time basis in *haltes-garderies* [see para 303] (66,000 care places).

## **5. Children's and young people's contracts**

416. To support the strong growth in care arrangements for children and for free time, significant financial resources have been allocated to "*the Family Branch*"<sup>xi</sup>. Expenditure by this branch on social action grew by 15% in 2004 and 17% in 2005. In 2004, €820 million were spent on "Children's and Leisure Contracts" (*contrats enfance et temps libre*), some 26% of the spending of the Family Allowances Funds on social action.

417. The Family Branch, faced with a phenomenon in society which has led to more and more families leaving the large conurbations for areas on the urban fringe or in the countryside, which often lack childcare infrastructure, has decided to change the composition of its financing activities so as to respond better to needs. Accordingly, Childhood and Leisure Contracts have been replaced from 1 July 2006 by Children's and Young People's Contracts, which also apply to children from 0 to 17 years of age, and which have the same objectives as the two previous contracts, but which make matters fairer by giving preferential treatment to the most deprived areas.

418. The system involves contracts which set objectives and which provide for joint finance by a Family Allowances Fund and a local authority or a grouping of *communes*. The Children's Contract was intended to develop a balanced supply of services across French territory in the

---

<sup>104</sup> Ministry of National and Higher Education and Research, "Statistical References and Elements for Teaching, Training and Research", first year pupils, August 2006.

interests of children aged under 6 and Leisure Contracts were designed to favour collective leisure arrangements and holidays for children and adolescents, in cooperation with existing local provision.

#### **B. DISABLED CHILDREN (ARTICLE 23)**

**419. While welcoming the programmes for integrating children with disabilities into mainstream education, the Committee invited France, in 2004, to actively pursue its efforts in this area (paras. 40, 41 and 49).**

420. Mainstream education for children and adolescents with disabilities is one of the main issues in the new policy on disablement, defined by the Law of 11 February 2005, referred to above, on equal rights and equality of opportunity and the inclusion and citizenship of disabled persons. Indeed, this new Law goes further than that of 30 June 1975: it establishes as a principle that all children with a disability have the right to enrol in mainstream education, in other words in education which is the responsibility of the national education service.

421. Only where the necessity becomes apparent for provision which is specially adapted to the pupil's disability is full-time or part-time care for him or her provided in a different school establishment which has classes available for primary-level integration or special teaching units for secondary-level integration, or otherwise in a socio-medical or healthcare establishment.

422. To decide on a course of instruction which is suited to the child's particular needs and potential, the law provides for an evaluation to be carried out by the multidisciplinary team of the Departmental Centre for Disabled Persons<sup>xii</sup>, established under the new legislative arrangements. This evaluation is given formal status in a personal educational project plan developed with the pupil's parents (or legal representatives) and all the professionals involved in the pupil's school career (teachers, establishment heads, psychologist, doctor, educationalist etc). A specialist teacher nominated as a central point of contact is at the core of this arrangement. He or she is the principal contact for the teams involved and the child's parents, ensures that his or her schooling proceeds according to plan and ensures consistency and continuity in his or her school career.

423. Instruction is organized as close as possible to where the child lives<sup>105</sup>. These new arrangements mean that it is no longer necessary to think in terms of a mainstream education as opposed to a special education (a concept which has now been abandoned), but in terms of making educational activities complementary to one another in the interests of the disabled child or adolescent. Thus, if the child's personal learning plan provides for part of his or her schooling to take place in a healthcare or socio-medical establishment, the pupil retains the benefit of enrolment in mainstream education, but alongside enrolment in the other establishment concerned. In this case, an agreement is reached between the two establishments and the teacher nominated as the central point of contact ensures that the child's enrolment is maintained in his or her principal school, which is explicitly referred to as such in his or her personal learning plan.

424. In 2005-2006, 151,500 children and adolescents with a disability were enrolled in school education in France within the national education service, or 67% of the total school population

---

<sup>105</sup> Article L. 112(1) of the Education Code, as amended by the Law of 11 February 2005 referred to above, provides that "*any child or adolescent with a disability or incapacitating health problem shall be enrolled in the school or in one of the establishments mentioned in article L. 351(1) which is closest to his or her home, and this shall be his or her principal establishment*".

of pupils with a disability<sup>106</sup> (compared with 52% at the beginning of the school year 1999-2000). This significant increase is evidence of the determination that France has shown in the policy that it has been following in this area. Between 1999 and 2005, the number of children or adolescents with a disability enrolled in “individual” school education— that is, in “ordinary” classes, or in classes especially for pupils having social difficulties or difficulty with schoolwork – doubled. It increased to 104,000 pupils in 2005-2006 (or 69% of children with a disability enrolled in school education within the national education service). The others (31%) were enrolled in classes especially intended for children with a disability (or “collective” schooling), that is, in classes for primary-level integration (39,800 children) and in teaching units for secondary-level integration (7,800 children).

425. These children can also benefit, depending on their disability, from various forms of assistance in mainstream education. These range from support from specialist teachers with subjects in which they are having difficulties to help, provided in concert with their teacher, from classroom auxiliaries. Since 2001, specially adapted teaching materials have also been made available.

426. It is only when the situation of the child is not compatible with schooling on these lines that he or she is guided towards a medical/educational setting (70,100 children in 2005-2006) or a hospital setting (6,200 children in 2005-2006) under the supervision of the Minister of Health, which offers comprehensive care<sup>107</sup>.

427. The judiciary makes sure that the right to education of children with a disability is respected by the State. Accordingly, in a judgement of 11 July 2007 that attracted particularly wide attention, the Administrative Appeal Court of Paris<sup>108</sup> confirmed a judgement against the State for the non-enrolment in school of a child with a disability, considering that “*the State has a responsibility to offer children with a disability educational arrangements which are at least equivalent, taking their particular needs into account, to those made available to children in mainstream education; that failure to fulfil this legal obligation, the effect of which is to deprive a child of education appropriate to his or her needs, constitutes negligence of a kind which engages the responsibility of the State, which the latter may not avoid by relying on the insufficiency of budgetary provision, on failures by other persons, whether public or private, to offer suitable establishments or on the fact that allowances are paid to the parents of children with a disability to help them to secure their education.* The child concerned was one who had been receiving a special education since the age of eight: the healthcare establishment which was looking after him had reduced the level of care that it provided following deterioration in his state of health.

428. At the international level, France has taken an active part in the negotiation of the Convention on the Rights of Persons with Disabilities. In part, the adopted text follows the advances made by Law No. 2005-102 of 11 February 2005 on equal rights and equality of opportunity and the inclusion and citizenship of disabled people, which in some cases are the subject of specific provisions. It recognizes the developing nature of the concept of disability,

---

<sup>106</sup> Enrolled in an establishment forming part of the national education service or in a medical/educational or hospital establishment, but not in higher education.

<sup>107</sup> Statistics from the study published by DREES [*Direction de la recherche, des études, de l'évaluation et des statistiques*] in March 2007 (No. 264).

<sup>108</sup> Judgement of 11 July 2007, *M. et Mme Haemmerlin*, No. 06-1579 and 06-2793.

which is not reducible to deficiencies and incapacities, and takes account of the social disadvantage that results from the social, material, human and technological environment in which persons with a disability live. France signed this convention immediately on 30 March 2007 and launched the procedure for ratification. France supported the adherence of the European Commission to the Convention and is actively encouraging its other partners to sign and ratify the text quickly.

### C. HEALTH AND HEALTH SERVICES (ARTICLE 24)

#### 1. Mother and childcare

429. Following on from a number of reports<sup>109</sup>, the Law of 5 March 2007, referred to above, on the reform of child protection renews and strengthens the organization and role of the Departmental mother and child healthcare services.

430. In the first place, the mandates of the Departmental mother and child healthcare services are refocused on social action, strengthening the legitimacy of their role in the field of social action and not just in public health. From now on, these services feature explicitly among the services of the *départements* which work together for child protection<sup>110</sup>.

431. Secondly, the role of the Departmental mother and child healthcare services is reinforced in the fields of early prevention and assistance with parenting. From now on, these services have a duty to act both in the pre-natal and the post-natal period, thus playing a part in a major thrust of policy for the reform of child protection. They may also put in place such measures of support as appear necessary in the light of the outcome of the psychological and social interview which is now compulsory during the fourth month of pregnancy. Finally, these provisions reinforce the role of these services in the monitoring of the health of children below the age of six and their ability to intervene in schools on these grounds alongside the school medical services, especially in assessing the state of health of children aged three and four<sup>111</sup>.

432. Thirdly, an annual report, which also takes account of their state of health, must be made on children entrusted to the Children's Welfare Services. The Departmental mother and child healthcare services will be asked to make these assessments. They will also have a part to play in arrangements for collecting information giving grounds for concern and in passing it to the operational unit of the *département*, and will be represented within the Departmental Monitoring Centre for Children at Risk.

433. Finally, the roles and responsibilities of the President of the General Council of the *département* and of the local representative of each of the Departmental mother and child

---

<sup>109</sup> Opinion No. 2003-24 of the Social and Economic Council, "Prevention and Health", 26 November 2003. Study by *CNCDH* on health preservation, access to treatment and human rights of 19 January 2006. Report of the Inspectorate General of Social Action on mother and child protection, presented to the ministers responsible for health and the family in November 2006.

<sup>110</sup> Article L. 123(1) of the Code for Social Action and the Family, amended by II in the first article of the Law of 5 March 2007 referred to above.

<sup>111</sup> Article L. 2112(2) of the Public Health Code, amended by IV in the first article of the Law of 5 March 2007 referred to above.

healthcare services have been clarified. The Public Health Code<sup>112</sup> now provides that the Departmental mother and child healthcare services shall be headed by a doctor, but that he or she shall be under the authority of, and responsible to, the President of the General Council of the *département*.

## 2. The promotion of pupils' health

434. As explained in France's second periodic report, children over the age of six are monitored by the Schools Health Promotion Service. Since, 2004, France has strengthened its programme for health education in schools.

435. The five-year plan for prevention and education relating to health in schools (2003-2008) sets out the main priorities for France's policy in this area.

436. Health education in primary and secondary schools and *lycées* forms a part of the common base of knowledge and competences to be mastered by the end of the third level. A new guide on methodology, entitled "*Health Education at School: How to Choose, Prepare and Carry Out a Project*" has been prepared in partnership with the National Institute for Health Protection and Education to help with the delivery of health education in schools and educational establishments. Of the 100,000 copies printed, 75,000 were distributed at the beginning of 2007 to the various participants involved in school life.

437. Sex education is also given in secondary schools and *lycées*. There is a requirement for AIDS prevention to be systematically dealt with in this context. Following the distribution of a "*Guide for Colleges and Lycées*" to those involved at the beginning of the school year in 2005, of a booklet dealing with "*Teaching Responsible Behaviour at College and Lycée*" and of a teaching pack on "*Love and Happiness*", more especially aimed at pupils in classes at the fourth and third levels, recommendations are in preparation for primary schools.

438. Action against tobacco use and to prevent addictive behaviours is also being strengthened by the general implementation, as part of the follow-up to a programme of preventive work in these areas, of arrangements which have been piloted for the fourth and third level age-groups, and by piloting the programme for the first and *terminal* level age-groups. Decree No. 2006-1386 of 15 November 2006 applies a ban on smoking in all places of common resort, including primary and secondary schools and *lycées* and universities in their entirety. To ensure that national policy for this prevention of addictive behaviours in schools is applied consistently, an action guide for practitioners in schools, prepared with the Interministerial Taskforce on Drugs and Drug Addiction, was distributed to all primary and secondary schools and *lycées* during the first quarter of 2006.

439. This guide, designed to provide a reference tool in school settings, is an enormously valuable document which must become an integral part of the educational dynamic of teaching establishments through steps taken to promote health on a dramatically increased scale. Drawing on expert opinion and validated scientific information, it is designed to provide everyone involved in delivering preventive action to pupils, whether they work in schools or whether they are involved from the outside, with materials and with advice on the approach to take.

---

<sup>112</sup> First two paragraphs of article L. 2112(1) first paragraph of article L. 2112(2) amended by article 1, III and IV, of the Law of 5 March 2007 referred to above.

440. Emphasis is also being placed on nutritional education. This is a part of the new focuses defined in the second National Plan for Nutrition and Health and will be supported by an interministerial circular containing recommendations on the food that should be made available at school and on how to combat obesity.

441. Finally, the intention is to extend training on first aid, which has already begun in schools, to secondary schools and *lycées*.

442. Because health problems, inadequate healthcare and social difficulties can hinder or block learning processes, it is indispensable that the school environment should safeguard the well-being of all pupils and should be able to meet the challenge of achieving early identification of health problems that could have consequences for their schooling. To make this possible, the above-mentioned Law of 5 March 2007 makes it compulsory for all children in the sixth, ninth, twelfth and fifteenth years to have a medical examination intended to take stock of their state of physical and psychological health<sup>113</sup>.

443. On similar principles, a thorough interview on social issues will be carried out with pupils identified by the school community, outside partners or both, in order to identify as early as possible children at risk or whose circumstances place them in danger.

444. Needs identified on that basis will then be addressed effectively, by making arrangements for the advice given to families to be followed up, linked with care networks and with support from the national educational welfare services (for the judicial district or secondary school) or another welfare service, and by establishing care arrangements for pupils with a disability or long-term illness.

445. Law No. 2005-380 of 23 April 2005 on the orientation and programming of the future of schools takes account of the magnitude of the tasks that this entrusts to nursing staff within the educational community and sets time limits by when each secondary school or *lycée* will benefit from the services of a nurse, so that, among other things, a programme of health education and prevention can be put in place in collaboration with the teaching staff.

446. **In this respect, the Committee concluded in 2004 that the means allocated to school medicine were insufficient (para. 45).** It is worth noting here that, since 1998, the complement of nursing staff has been strengthened by 1,404 employees and 190 full-time equivalent posts, which has allowed an increase in average ratio of nursing staff to pupils to be increased from one to 2,370 pupils in 1997 to one for 1,840 pupils for the school year 2006-2007.

447. A similar effort has been made in relation to school doctors: when the Ministry of Education assumed responsibility for the schools health service in 1991, it had one doctor for 8,300 pupils. Since then, increasing the doctor: pupil ratio has been a priority aim. Hence, for 2006-2007 the ratio for the school year 2006-2007 is one doctor per 7,481 pupils.

448. The growth of financial allocations for health in schools illustrates this progression. In the implementation of the institutional Law on finance legislation, allocations for health in schools have been grouped together within a specific action heading (action 2) in the programme on "*Life as a Pupil*". An appropriation of €32.35 million was included under this head in the budget for 2006:

---

<sup>113</sup> This obligation appears in Article L. 541(1) of the Education Code.

- €27.34 million for staff costs (doctors and nurses);
- €3.806 million for working expenses (temporary staff costs); and
- €1.173 for investment costs (subsidy to local authorities).

449. Allocations for the implementation of the programme of schools and pupils' health, included in action heading 2 in the programme on "*Life as a Pupil*" reached €344.96 for the 2007 budget:

- €34.82 million for staff costs (doctors and nurses). At the beginning of the school year in 2007, 300 full-time equivalent posts for nurses were created, pursuant to the provisions of the Law of 23 April 2005 on the orientation and programming of the future of schools, referred to above;
- €2.45 million in travel costs for mobile school health staff; and
- €7.69 million as a contribution to spending on school health by local authorities.

450. Finally, in each secondary-level teaching establishment, a committee for education on health and civics is proposing an educational action plan to encourage pupils to be aware and think in a way that is likely to promote responsible choices of behaviour at both individual and collective levels<sup>114</sup>.

### 3. Adolescent health policies

451. **In 2004, the Committee recommended that France should intensify its efforts to promote adolescent health policies and, in particular, to develop a mental health programme and services for adolescents which include specialized psychiatric services (paras. 43 and 45).**

452. The plan "*Psychiatry and Mental Health*" responds to this concern: it defines focuses for action on psychiatry and mental health for the period 2005-2008 and establishes an ambitious and diverse programme of action aimed at strengthening psychiatric care arrangements for children and adolescents. A national committee which is responsible for the implementation of the plan is ensuring that these actions are carried out effectively. Over the five years of the plan, a total of €25.65 million will be allocated to child psychiatry.

453. The first priority is to develop hospital capacity for full child and juvenile psychiatric in-patient care, especially in *départements* where it is lacking at present, in keeping with the levels of need that have been identified in each region. In parallel, specialized hospital units for the in-patient care of adolescents are being progressively set up at the level of the *département* and/or region to allow for care arrangements tailored to the types of disturbance typically encountered in this age group.

454. The plan also presses for the strengthening of geographical coverage provided through mobile care networks so as to offer young people suffering from psychiatric disturbances solutions delivered close to where they live and an alternative to hospitalisation. This strengthening aims to help adolescents gain access to preventive care and to treatment.

---

<sup>114</sup> See Decree No. 2005-1145 of 9 September 2005 and its implementing circular.

455. These provisions must also mesh with the programme for the creation of adolescents' centres<sup>115</sup>, launched at the conclusion of the Conference on the Family of 29 June 2004. This programme is for the establishment of single locations for the accommodation and care of adolescents and their families and the professionals working alongside them, based on a partnership between the different players involved from the various medical, social, educational and judicial services involved with adolescents. The aims of these new structures and financial and operational arrangements for them were established in January 2005 and a partnership agreement has been signed between the State and the Foundation *Hôpitaux de Paris – Hôpitaux de France*<sup>xiii</sup>. The State has made arrangements to make substantial amounts of finance available to secure support for the development of about 75 adolescents' centres by the time the programme has been in operation five years. The evaluation of the projects and monitoring of their implementation are carried out by a steering committee which brings together the different partners in the administration and financing of the programme.

456. In 2006, €1.4 million has been allocated to six regions, allowing medical and paramedical teams for ten new bodies to be set up. Twenty-three new projects have been selected for 2007 and almost €3 million has been distributed to 12 regions to support the development of new teams capable of offering adolescents and their families a service which is tailored as closely as possible to their needs and expectations.

#### **4. Other policies for the health of minors**

##### *Drugs*

**457. In 2004, the Committee encouraged France to continue and expand its activities in the area of prevention of substance abuse and to support rehabilitation programmes dealing with child victims of drug abuse (para. 57).**

458. The Government's Plan for 2004-2008 against illegal drugs, tobacco and alcohol, which gives a major role to prevention, responds to this concern. It pursues the aim of creating favourable conditions for prevention of a kind which is effective and well adapted to school education at all levels, by mobilizing all the forces in society who are involved (teachers, police officers, care providers etc.) and by drawing support from permanent professional arrangements.

459. As part of this effort, a comprehensive programme has been put in place to prevent cannabis consumption: a campaign of information and communication, a programme for action in schools and socio-medical consultations tailored to young users and their associates. From 2007 onwards, these consultations will be made permanent as part of the arrangements for the establishment of centres for treatment, support and prevention of addiction, a legal merger of specialist arrangements to deal with alcoholism and drug addiction. Those opened in hospitals will be integrated with the services for the treatment of addiction established under the plan for 2007-2011 for preventing and dealing with addiction.

460. In addition, police anti-drug training officers are training their colleagues in specialized techniques for combating dealing and drug addiction, and are delivering such training to a wide variety of recipients.

---

<sup>115</sup> Annex IX.

461. In general, medical and socio-medical care for minors is provided through healthcare arrangements. The plan, "Addiction" envisages the allocation of €77 million per year to strengthen and co-ordinate existing arrangements and to extend resources to all stages of care arrangements for people with addictions.

### *Alcohol*

462. France has a range of legislative and regulatory weapons designed to combat the consumption of alcohol by minors and prevent risks of dependence.

463. It is forbidden to sell alcohol or to provide it free to minors under 16. This prohibition is absolute for minors under<sup>116</sup> and limited to the most alcoholic drinks<sup>117</sup> for minors aged between 16 and 18<sup>118</sup>. The act of making a minor drunk is also an offence<sup>119</sup>. In addition, drinks outlets are not allowed to admit unaccompanied minors under the age of 16<sup>120</sup>, or to employ a minor or take a minor as a trainee<sup>121</sup>. Finally, advertising of alcoholic drinks is forbidden on television, in young people's publications and on radio at peak listening hours (after 7am on Wednesdays and after 5pm on other days)<sup>122</sup>.

464. All these prohibitions are backed by criminal penalties: they are punishable by a fine, or by imprisonment in the case of a second or subsequent offence, or even, in the case of drinks outlets, by closure. The Law referred to above of 5 March 2007 on the prevention of delinquency has also introduced two supplementary penalties for persons who commit the offences dealt with in Articles L.3342(1) and L.3353(4) of the Public Health Code referred to above: withdrawal of parental authority and compulsory completion of a training course on parental responsibility.

465. Information campaigns which are required to include preventive and educational messages are also carried out as a part of measures against risks from alcohol (article L. 3311-3 of the Public Health Code).

466. Nevertheless, the French Government remains concerned to achieve better observance of the prohibition on the sale of alcohol to minors and to harmonize its legislation with its principal European partners. For example, higher taxation of the sale of alcopops<sup>123</sup>, implemented in 2005<sup>124</sup>, has brought about a considerable reduction in the market for these products, and,

---

<sup>116</sup> Article L.3342 (1) of the Public Health Code.

<sup>117</sup> his ban affects alcoholic drinks in the third to the fifth groups. Consequently, selling or giving wines, beers, perry, hydromel, unfortified sweet wines, blackcurrant liqueur and fermented juices up to 3 degrees of alcohol is permitted.

<sup>118</sup> Article L.3342(2) of the Public Health Code.

<sup>119</sup> Article L.3353(4) of the Public Health Code.

<sup>120</sup> Article L.3342(3) of the Public Health Code. From the age of 13, minors may be admitted to drinks outlets in the first category, i.e. those that do not serve alcoholic drinks.

<sup>121</sup> Article L.3336(4) of the Public Health Code. Except for minors aged from 16 to 18 under a *contrat en alternance* ["sandwich course" alternating a training course or courses with learning on the job], subject to certain conditions.

<sup>122</sup> Articles L.3323(2) and R.3323(2) of the Public Health Code.

<sup>123</sup> Drinks flavoured and sweetened to mask the bitter taste of alcohol and appeal to the young.

<sup>124</sup> By the application of Law No. 2004-806 of 9 August 2004 on public health policy.

through a knock-on effect, in that for wine-based or cider-based drinks although they were not subject to the measure.

467. Widespread public consultations on alcohol were held in the French regions in the autumn of 2006. Citizens who were consulted recommended the strengthening of regulation aimed at protecting young people against risk from alcohol (prohibition of sale to under-18s, banning of “open bars” and aggressive sales promotions). Still more recently, the National Road Safety Council has proposed that priority should be given to measures against drink-driving. It is proposed in particular that medical consultations on binge drinking at celebrations should be made available to young people in centres for the treatment, assistance and prevention of addiction, that more should be done to detect at-risk levels of consumption among young people, especially at school, and also that more effective action should be taken to put an end to aggressive commercial practices which target young people.

#### *Tobacco*

468. France has a number of legislative and regulatory weapons aimed at combating the consumption of tobacco as effectively as possible, particularly among young people<sup>125</sup>.

469. “Self-service” sales, sales from machines or remote sales of tobacco are prohibited in France, as, in the metropolitan territories, French Customs have a monopoly over retail sales of tobacco. Customs exercise the monopoly through outlets designated as agents, who are liable for the payment of duty, as authorized buyers and sellers or as authorized sellers<sup>126</sup>. It is compulsory for tobacco products to be kept behind the counter by the retailer, who is the only person authorized to pass them to his customers.

470. The sale of tobacco to those aged under 16 is prohibited since the enactment of Law No. 2003-715 of 31 July 2003 aimed at restricting the consumption of tobacco by young people<sup>127</sup>. Decree No. 2004-949 of 6 September 2004 sets out arrangements for its implementation. Licensees in breach of them are subject to the fines provided for in relation to offences in the second category (up to €150)<sup>128</sup>.

471. Tobacconists must put up a poster in their establishment reminding readers of this prohibition and may ask purchasers for documentary proof of identity or for any other document constituting proof that they are at least 16 years of age.

472. Since 2004, the resale of tobacco has also been prohibited at cultural and sporting events (Decree and Order of 16 January 2004, restated in Decree No. 2007-906 of 15 May 2007).

473. Other provisions are intended to prohibit advertising or promotion, whether direct or indirect, of tobacco<sup>129</sup>, along with free distribution or sale at a promotional price of any tobacco

---

<sup>125</sup> First section of Volume V of the first part of the Public Health code.

<sup>126</sup> Article 5 of Law No. 76-448 of 24 May 1976 and Article 568 of the General Tax Code.

<sup>127</sup> Article 3(1) of the Law, codified in Article L.3511(2)(1) of the Public Health Code.

<sup>128</sup> Article L. 3512(2) of the Public Health Code.

<sup>129</sup> The Law applies equally to tobacco products and tobacco ingredients as defined in article L. 3511(1) of the Public Health Code.

product, contrary to the aims of public health<sup>130</sup>. The packaging of tobacco, tobacco products and cigarette papers must also include both a general and specific health message (details of which were set by the Order of 27 May 2004)<sup>131</sup>.

474. Breaches of these arrangements are punishable by a fine of €100,000. In the event of prohibited promotion or advertising, the maximum fine may be increased to 50% of expenditure on the illegal activity. In the case of a second or subsequent offence, the court may prohibit the sale of products which were the subject of the illegal promotion or advertising for a period of from one to five years<sup>132</sup>.

475. In parallel, Law No. 2004-806 of 9 August 2004 on public health policy put in place fiscal arrangements to combat the promotion of tobacco products. Under this provision, a reference price has been established below which cigarettes may not be sold. This provision contributes to preventing the spread of addiction to tobacco through very low prices, to which young people are particularly susceptible.

476. In addition, regulation of the sale of packets of cigarettes has been reinforced by Law No. 2005-842 of 26 July 2005 for confidence and the modernization of the economy<sup>133</sup>. Thus, the sale, distribution or giving of packets of less than 20 cigarettes and of packets of more than 20 cigarettes that are not composed of a number of cigarettes divisible by 5, as well as of containers of less than 30 grammes of fine cut tobacco for rolling cigarettes, whatever their packaging, are prohibited.

477. Finally, awareness-raising in relation to risks from tobacco use is provided for, in a compulsory form, as part of health education in classes in primary and secondary schools<sup>134</sup>. The National Institute for Health Protection and Education, which is responsible to the Ministry of Health, supports two programmes under which many local activities for the prevention of tobacco use are carried out in each region:

- invitations for the submission of applications for finance for tobacco or alcohol projects, the aim of which is to contribute to promotional and education activities on health and tobacco use, particularly in schools;
- “Tobacco and Young People at Work”, an initiative whose aims are:
  - to reinforce health education in France, and especially to prevent tobacco use;
  - to increase and diversify action on tobacco use, with support from networks of Health Insurance Funds and Health Education Committees; and
  - to achieve stronger alignment between action at national and local levels and to form networks of local participants, pursuing aims that are consistent with those of national health programmes.

---

<sup>130</sup> Article L. 3511(3) of the Public Health Code.

<sup>131</sup> Article L.3511(6) of the Public Health Code, amended by article 7 of the above-mentioned Law of 31 July 2003.

<sup>132</sup> Article L. 3512(2) of the Public Health Code.

<sup>133</sup> Article L.3511(2) of the Public Health Code.

<sup>134</sup> Article L.3511(9) of the Public Health Code.

478. At the national level, three kinds of action, financed by the public authorities among others, are being taken by associations, based on involving children and adolescents:

- “Pataclope” clubs run for children by the National Anti-Cancer League;
- a “Non-Smoking Classes” competition intended for adolescents aged 12-13; and
- a campaign and national scenario competition “My first cigarette? Never!”, organized by the Cardiology Federation for children aged between 8 and 15.

#### *Adolescent pregnancies*

479. To reduce the incidence of unwanted pregnancies, especially among adolescents - which remains, as the Committee noted in 2004 (paragraph 44), a major concern for the Government - it has been decided to permit the distribution of emergency contraception in pharmacies and school establishments<sup>135</sup>. There are two products for emergency contraception, one on prescription, the cost of which is eligible for reimbursement, and the other unprescribed and not eligible for reimbursement. Used in emergencies, they will allow a number of unwanted pregnancies and voluntary terminations of pregnancy to be avoided. Girls have free and anonymous access to them. Health professionals have been made aware of the special factors that arise when delivering care to adolescent girls requesting prescription of contraceptives.

480. National campaigns of information and awareness-raising on questions of contraception are also organized regularly. In 2000, adolescent girls were the priority audience, with help from the media. In 2002, the general public – men as well as women - was the target audience, along with professionals.

481. A new campaign will be launched in September 2007, lasting three years. Once again, it will target adolescents, including those who are no longer at school, young women, and health professionals. The national objective is to get women and couples to choose the mode of contraception that suits them best.

#### *Suicide*

482. The prevention of suicide has been a public health priority since 1998. In 1999, 10,268 deaths by suicide were recorded in France, a minority of which involved young people: 30 deaths in the age-group 5-14 and 604 among 15-24 year-olds. Despite a slight reduction, about 10,000 suicides a year are still being recorded.

483. Suicide by young people has fallen slightly since 1993: it is down by 5.5% for 15-24 year-olds compared with 2% for all ages<sup>136</sup>. It is nevertheless the second largest cause of death among 15-24 year-olds and 7% of suicides occur among those aged under 25. It affects mostly boys (78% of deaths by suicide) and increases progressively with age (more markedly for men than for women).

---

<sup>135</sup> Article L. 5134(1) of the Public Health Code, consequential on Law No. 2000-1209 of 13 December 2000 on emergency contraception, amended by Law No. 2001-588 of 4 July 2001 and Law No. 2004-806 of 9 August 2004, Article D. 5134(1) *et seq* originating from the implementing Decrees.

<sup>136</sup> Study published by DREES, prepared in May 2006, on suicides and attempted suicides in France (on the basis of data for 2003).

484. Out of about 160,000 attempted suicides recorded each year, about 7% are by adolescents aged between 11 and 19, most of them girls. Hospital emergency services, however, especially in paediatrics, have for several years observed an increase in the number of young children (from the age of 11) hospitalized as a result of attempted suicides.

485. The second Strategy for Action against Suicide, which is due to be set in 2007, must strengthen arrangements for preventive action in this area.

#### **D. THE RIGHT TO SOCIAL SECURITY (ARTICLE 26)**

##### **1. Health insurance**

486. Universal health cover, introduced in 2000, replaced the earlier system of personal insurance. It forms part of arrangements to combat exclusion and seeks to eliminate the obstacles and difficulties encountered by many people in gaining access to treatment. Accordingly, it provides a right of access to treatment and to reimbursement for every person resident in France who is not already covered by a compulsory regime and, consequently, does not have the right to benefits from the health insurance system. At 1 July 2006, 1.7 million people were benefiting from universal health cover.

487. People on low incomes can also benefit from supplementary universal health cover, which provides for them to be covered for 100% of a large part of their spending on healthcare with no requirement for payment in advance.

488. Persons whose status is unlawful who have been resident in France for more than three months are able to benefit from State medical aid.

##### **2. Family Allowances**

489. Several of the family allowances mentioned in France's second report have been abolished, replaced or changed in order to rationalize them and improve their effectiveness.

**490. The Committee regretted in particular in 2004 that the payment of allowances to families should be linked to the modalities of the child's entry into French territory (para. 47).**

491. The French Government confirms that the allocation of family allowances to parents is still subject to the legality of the residence in France of the children for whom they are responsible and on whose behalf the allowances are applied<sup>137</sup>. It points out that regularity of residence is most often, but not automatically, linked to the regularity of entry to French territory.

492. Children must be born in France or have entered in regular fashion through a process of family reunification or be the child of a holder of the residence permit for "*Private and Family Life*" dealt with at paragraph 7 of article L. 313(11) of the Code on the Entry and Residence of Foreigners and the Right of Asylum, unless they come within special circumstances as a family member of a refugee, a child of a stateless person, a child of a person benefiting from subsidiary

---

<sup>137</sup> See Article L. 512(2) of the Social Security Code amended by Article 89 of Law No. 2005-1579 on finance for social security in 2006 dated 19 December. The documents to be produced are listed in Article D. 512(2) of the Code.

protection for applicants for asylum or as a child of the holder of a residence permit issued to them in their capacity as a scientist.

493. Article L. 512(2) thus amends and clarifies the law and makes it more explicit without substantially changing its content. It nevertheless extends the benefit of family allowances to situations which were not explicitly taken into account previously by the Social Security Code. This is the case in particular with the children of refugees, stateless persons and those benefiting from subsidiary protection, children of holders of special residence permits issued to them in their capacity as scientists and the children of persons whose situation has been regularized on the basis of the right to respect for family life.

494. The benefit of family allowances is guaranteed to five categories of children against whom the rules on family reunification cannot be invoked: apart from children born in France, this concerns mainly children of refugees and those with subsidiary protection. These categories provide for situations in which, when account is taken of the circumstances in which those concerned left their countries, it is impossible, or not reasonably practicable, to apply the conditions provided in the general law for family reunification without disproportionately prejudicing the right to family life.

## **2.1 “Maintenance allowances”**

### *Family allowances*

495. These are provided starting with the second dependent child and vary in amount in relation to the number of children and their age.

### *Flat-rate allowance*

496. This new allowance has been established to mitigate the financial loss suffered by families with three or more dependent children, who lose the benefit of part of their family allowances because one or more children reach the age limit (20) for payment of family allowances. It consists of a flat-rate benefit paid for one year.

### *Supplementary family allowance*

497. Since 1 January 1985, supplementary family allowance has been awarded, on a means-tested basis, to families with at least three children, all aged 3 or over. The age limit for the payment of supplementary family allowance is now fixed at 21.

## **2.2 Allowances linked to childbirth and infancy: the “child’s arrival allowance”**

498. Child’s arrival allowance has since 1 January 2004 progressively been replacing the existing allowances linked to infancy and the care of young children presented in the second periodic report of France. Its object is to simplify and strengthen direct assistance to families for the employment of a childminder or nanny. In effect it allows parents to benefit from an overall allowance providing financial support for the education and care that their children may need, whether they opt for a mode of paid individual care or whether they prefer to reduce or cease their working activity to look after their children themselves. It reflects and reinforces the

principle of varying the level of assistance in proportion to income levels<sup>138</sup>. This allowance is composed of four elements as follows.

*Birth or adoption grant*

499. This new grant is paid on a means-tested basis in the seventh month of pregnancy for each child expected or at the time of the adoption of a child aged under 20.

*Basic allocation*

500. The basic allocation of child's arrival allowance, which comes after the birth or adoption grant, is paid on a means-tested basis from the first day of the calendar month following the birth of the child until three years from that date. Payment is conditional on compulsory medical examinations being passed.

*“Free choice” supplement for income forgone from employment and optional “free choice” supplement for income forgone from employment*

501. “Free choice” supplement for income forgone from employment, which has replaced the parental upbringing allowance mentioned in France's second periodic report, is not subject to means-testing. It allows the parent to suspend his or her working activity or to reduce it in order to care for a child. This allowance of €13 per month is paid starting with the first child and is conditional on the parent having previously worked for two years within a reference period which varies according to whether there are older children and, if so, how many.

502. Families with at least three children, of whom the most recent was born or adopted on or after 1 July 2006 and one of whose parents is no longer working or has completely interrupted his or her work to look after the child, may opt for the optional “free choice” supplement for income forgone from employment. Its payment is conditional on the parent having previously worked. Where work ceases entirely, it is paid at a level which is higher than the “free choice” supplement for income forgone from employment, but is paid for a shorter period. The aim of this allowance is to avoid too substantial an estrangement from economic life by encouraging planning for return to work.

*“Free choice” childcare supplement*

503. “Free choice” childcare supplement [*complément de libre choix du mode de garde*] is paid to households or persons who directly employ an approved child-minder or a nanny to look after a child under the age of six. This new allowance, which covers the contribution of a part of the remuneration of the person employed, is paid at full rates until the child is three, and then at reduced rates between the ages of three and six.

504. “Free choice” childcare supplement may also be paid when the family uses a private organization to provide childcare. In these circumstances, the family pays the organization an overall price, without distinction as to contributions and net salary. The amount of assistance paid is thus set on an overall, flat-rate basis.

---

<sup>138</sup> Article L. 531(1) et seq of the Social Security Code.

### **2.3 Specific allowances**

#### *Back-to-school allowances*

505. Since the beginning of the school year in 1999, entitlement to this allowance has been extended to families with only one dependent child. If household income exceeds the ceiling provided by a small margin, a reduced back-to-school allowance, calculated in proportion to income, is paid.

#### *Adoption allowance*

506. Adoption allowance has been abolished.

#### *Allowance for the upbringing of children with a disability*

507. Allowance for the upbringing of children with a disability has replaced special upbringing allowance since 1 January 2006. Its basic level in 2007 amounts to €19.72 a month, to which a supplement may be added<sup>139</sup> owing to the seriousness of the disability and the expenses falling on the family being such as to cause the partial or total cessation of work by one of the two parents and call for recourse to the engagement of a paid third person. An increase may also be paid to a sole parent who benefits from this supplement.

508. Law No. 2005-102 of 11 February 2005 on equality of rights and opportunity and the inclusion and citizenship of disabled persons also allows access to the new compensation payment for the families of children with a disability in respect of arrangements in the home and the adaptation of vehicles. With the aim of suiting the applicable legislation to adults and children, this allowance is to cover other aspects of child disability in 2008.

#### *Daily parental attendance allowance*

509. Daily parental attendance allowance has replaced parental attendance allowance since 1 July 2006. It allows a parent who benefits from parental attendance leave for a child who suffers from a serious illness to interrupt his or her work from time to time. The person concerned benefits from an allowance of 310 days' leave, paid for on a daily basis, to be taken over three years.

### **2.4 Single-parent and related allowances**

510. Single parent's allowance and family support allowance continue unchanged.

---

<sup>139</sup> Six categories are provided for on a range extending from €89.79 to €99.83.

## VII. EDUCATION, LEISURE AND CULTURAL ACTIVITIES

### A. EDUCATION, INCLUDING VOCATIONAL TRAINING AND GUIDANCE (ARTICLE 28)

511. Law No. 2005-380 of 23 April 2005 on the orientation and programming of the future of schools reaffirmed the principles on which the French system of education is founded.

- a) Education is the top national priority and the State education service must contribute to equality of opportunity.
- b) In addition to imparting knowledge, the first task of schools is to make pupils share in the values of the Republic.
- c) The right to education is guaranteed to all in order to permit them to develop their personalities, to raise their levels of initial and continuing training, to achieve inclusion in society and working life and to exercise their civic rights and obligations.
- d) To guarantee this right in a way which respects equality of opportunity, assistance must be provided to pupils and students according to their resources and merits. The way in which the means of the public education service are shared takes account of differences in circumstances, especially in economic and social matters.
- e) All young people are entitled to acquire a general education and a recognized qualification, whatever their social, cultural or geographical origins.
- f) Compulsory school education applies to pupils from the age of 6 to 16.
- g) It must be possible for each child to be cared for from the age of three in an infants' school or infants' class which is as close as possible to home, if his or her family request it.
- h) Children in secondary schools and *lycées* can benefit from financial assistance to meet the expenses of schooling and school life.
- i) The right to educational and vocational information and guidance forms an integral part of the right to education. Law No. 2005-380 of 23 April 2005 on the orientation and programming of the future of schools provides that *"the guidance and training provided to pupils shall take account of their aspirations, aptitudes and prospects for working life in connection with the likely needs of society, the economy and the management and use of the national territory. Within this framework, pupils shall make plans for the direction that their school and working life should take with the help of parents, teachers, advisory staff and other appropriate professionals. The public services involved, local authorities, professional organizations, businesses and associations shall contribute to this process"*.
- j) Openness towards the international and European dimensions of education is being further emphasized, with the aim of strengthening the teaching of relevant subjects.

512. Within this framework, the Government has developed further the policies it had previously applied for school establishments which provide for pupils presenting social and educational difficulties, as set out in its previous periodic report.

513. A plan for the relaunch of primary education has been implemented in 2006 with action at various levels. It calls in particular for the setting-up of a network to support educational success based on bringing particular schools together in a federal relationship with partners (including the local authorities) centring on a project plan. This project plan is given formal status by a contract concluded with the academic authorities. Partnerships that fit the local context can then be freely chosen to allow schools within the “*Network for Ambition and Success*” to make themselves a part of their local scene and to bring into play the complementary potential of partners from the cultural, sports, scientific and local authority sectors. It also allows pupils access to resources that are available close to where they live.

514. To ensure that this policy is implemented successfully, the Government has made extra resources in the form of posts and of finance for teaching programmes available to primary schools and secondary establishments which have signed up to “*Networks for Ambition and Success*” through a “*Contract for Ambition and Success*” and to “*Networks for Successful Learning*” through a “*Contract for Learning Objectives*”.

515. In addition, the support given to pupils in difficulty requires that schools should make themselves more capable of tailoring their courses more closely to individuals’ needs and of encouraging their talents.

516. The Law of 23 April 2005 provides the headmaster or the head of an establishment with the ability to establish a personalized programme for educational success when a pupil is at risk of not acquiring in time the indispensable knowledge and competences that must be mastered by the end of an academic phase. He or she may propose a programme to the child’s parents at any point during compulsory education. The aim of this arrangement is to induce the whole of an age group to master the knowledge and competences which make up the Common Base before the end of compulsory education. It operates equally as a preventive measure against learning difficulties with the aim of avoiding the need for a year to be repeated, and as a means of support during a repeated year when it has not been possible to avoid this.

517. Educational establishments are also encouraged to create many more opportunities for pupils to find out about the training and vocational courses available to them and make them aware of the prospects offered by higher education. For example, optional courses on discovering the world of work may be bought forward to classes at level four. Fourth and third level pupils at establishments for priority education have the benefit of an individual careers advice interview, organized each year. In “*Networks for Ambition and Success*”, partnership with a cultural institution, an élite sports centre, a university laboratory or research unit, or with a particular personality, can contribute to opening schools up to the life of society, give a concrete dimension to teaching and foster broad careers choices (general and technical *lycées*, professional *lycées*, apprenticeship training centres etc).

518. In parallel, the number of competitive scholarship awards has been increased since the beginning of the school year in 2006 to provide encouragement to pupils of colleges in “*Networks for Ambition and Success*” who have gained a distinction in the occupational diploma and to scholarship pupils in priority education who have made outstanding efforts in their school work during level three.

519. Measures designed to make access easier to compulsory courses of professional training have been established for pupils at level three, in professional *lycées* or in post-*baccalauréat* training: businesses in the same travel-to-work area which have signed up to operation

“Objective: Work Experience” commit themselves, on the basis of a relationship of trust with schools, to take on young people who have not been able to find a work experience placement themselves.

520. The Charter for Equality of Opportunity in Access to Elite Training completes these support arrangements: 100,000 students from the *grandes écoles* and universities commit themselves to provide support to 100,000 pupils in priority education in their studies. The Ministry of Education gives wider support to all mentoring projects which allow a *lycée* student to give support to a pupil at a secondary or primary school in the course of the school year.

521. So that this policy can be fully effective, the Government is anxious to increase the involvement of parents in activities for providing information and for education in school and to bring arrangements for out-of-hours school activities into better alignment with the Networks project (help with homework, invigilated study, local contracts for learning support etc.).

522. Other arrangements have been introduced to combat exclusion from school, (for example relief classes<sup>xiv</sup>), calling on the combined capabilities of the national education service, the judicial system and other public services, and to prevent children from leaving school without qualifications, in particular by strengthening the measures taken by the Taskforce for Inclusion<sup>xv</sup>.

## **B. AIMS OF EDUCATION (ARTICLE 29)**

523. In keeping with the principles and aims set by the Convention, the Law of 23 April 2005 on the orientation and programming of the future of schools asserts that the fundamental tasks of the French educational system are to ensure the success of all pupils, to provide better guarantees of equality of opportunity and to promote the inclusion of young people in work. In particular, in the framework of compulsory school education, the Law allows for the acquisition of a common base of knowledge and competences which are indispensable for every pupil “*to complete schooling successfully, to continue with training, to build a personal and working future and to live successfully in society*”.

524. In addition, the importance of education for citizenship has been reaffirmed and defined. It is provided, in the new programmes at the primary level, as much as in secondary schools or *lycées*, within the framework of courses on civic education or in legal and social disciplines. The common base of knowledge and competences provides among other things for a humanistic and scientific culture which allows the free exercise of citizenship.

525. Education in citizenship takes the form of passing on, not only knowledge and values, but also practices and modes of behaviour. The Committees for Health and Civic Education mentioned above have been set up in establishments to give practical expression to this learning experience, centred on a defined educational project. Progress with them should allow these themes to be taken into account in a wide variety of ways at the heart of the school system. Similarly, national programmes for raising awareness, spread throughout the school year, are an ideal opportunity to increase levels of responsibility among pupils through concrete action as citizens. These “courses in civic life” place value on investment for the long term and aim to secure coherence between the various modes of education for citizenship and the commemoration of events throughout the year, to provide a structure for the coordination of existing initiatives in order to make them easier to understand, and to bring together the various parties involved (institutions, foundations, associations and local authorities) around a focus of joint action.

### C. LEISURE, RECREATION AND CULTURAL ACTIVITIES (ARTICLE 31)

526. The right of a child to rest and leisure recognized in Article 31 of the Convention also appears in the French Constitution of 4 October 1958, the preamble to which refers to the preamble to the Constitution of 1946, the 11<sup>th</sup> paragraph of which states that the Nation “guarantees to all, including children, mothers and elderly workers, the protection of health, physical security, rest and leisure”.

527. It is this right which, subject to a proviso relating to the effective exercise of citizenship, and more generally to the need, which is seen as a national imperative, to combat exclusion, is guaranteed by article 140 of Framework Law No. 98-657 of 29 July 1998 for combating exclusion, under the terms of which “*equality of access for everyone, throughout life, to culture, to participation in sport, to holidays and to leisure constitute a national objective*”. The same article specifies that “*this objective shall be achieved especially by the development, with priority given to deprived areas, of artistic, sporting and cultural activities, the promotion of training in the area of group leadership and pre-and-post-school activities and of action to raise the awareness of young people attending collective holiday and leisure arrangements. It shall be achieved also through the development of structures for tourism of a social and family nature and through arrangements making provision for people facing situations of exclusion to go on holiday.*”

528. As the “Great Debate” launched in preparation for the 2007 Conference on the Family on the question of how children can blossom outside school hours attests, the issue of the right to leisure remains a current preoccupation of the French Government.

529. Each year, during the school holidays and outside school hours in term-time, more than 4 million children and young people are received in almost 30,000 places of holiday accommodation and 33,000 leisure centres<sup>140</sup>. The special quality of these collective arrangements is that they are organized around an educational project that is specific to each organizer and to each team involved. Each of these arrangements must be registered with the public administrative services.

530. Almost 1.1 million children go each year on organized trips, arranged in particular by large federations for the care of children. Social centres also play a part in the care of children during their leisure time.

531. After gathering views from many experts, the working group tasked with studying the theme: “*Time for families, time for children: spaces for leisure*” submitted its report to the Minister for the Family on 10 April 2007.

532. The analysis in the report confirmed how acute this question is: whilst 95% of parents questioned<sup>141</sup> regard education as having an important place in their children’s leisure, in the general sense of the term, they also expressed a certain disquiet and real expectations, relating among other things to the difficulty of reconciling the timeframes of work with those of transport and school<sup>142</sup>.

533. In this connection, six proposals have been drawn up to improve access for all children to leisure, to make the socialisation of older adolescents easier by integration in the field of group

---

<sup>140</sup> Figures provided by the Ministry of Youth, Sport and the Voluntary Sector.

<sup>141</sup> Study by the Centre d’Analyses Stratégiques in 2000

<sup>142</sup> While children have fifteen weeks’ holiday, parents on average have only seven.

leadership and by improving the information available to families. They can be summarized as follows.

- Making it easier for children to go on holiday (27% per year do not go at present), and supporting the supply of leisure provision. A study should be launched on the harmonization of financial assistance to families for children and holidays, among other things to examine the creation of a “Free-Choice Holiday Allowance” (“allocation de libre choix vacances”) to permit families to allow their children to go on holiday for at least one week a year in the school holidays
- Guaranteeing, on every possible occasion, access for young people with a disability to leisure activities, in liaison with the Departmental Centre for Disabled Persons as regards setting conditions for admission and seeking finance.
- Making the Diploma in Group Leadership (brevet d’aptitude à la fonction d’animateur) easier to acquire by reviewing the criteria for the allocation of financial assistance for this training, and to make it a lever for achieving success, inclusion and integration for young people in the city.
- Rationalizing regulatory arrangements and making them more accessible by bringing together in one publication all the regulations and requirements which deal with the accommodation of young people and adolescents.
- Making access easier for families to information on the leisure and holiday services available, by pulling together information which is currently dispersed and making educational project plans more readable.
- Launching a national communication campaign on group holiday accommodation, in order to remove certain (mainly psychological) obstacles to holiday trips by children.

534. Some of these proposals are inspired by innovative practices highlighted by work on the report, such as educational projects which place particular value on participation across the generations or which involve modifying the timing of school life to encourage extracurricular activity or helping to improve the integration of young people in a situation of exclusion by means of sporting or cultural activities<sup>143</sup>, and even through the acquisition of the Diploma in Group Leadership.

535. As examples, the programme “*Eager to Act* (“*Envie d’agir*”) encourages young people to take the initiative and get involved by providing them with help with working methods and finance: nearly 500 projects by minors have been supported in 2006 under this arrangement. Since 2004, operation “*Summer Solidarity*” (*Solidar’été*) has contributed to 10,000 young people going on holiday, starting from the basis of an organized supply of facilities: 10,000 young people are benefiting from this programme.

536. Local authorities have themselves also developed a large number of arrangements to provide support for free time activity. This diversity, together with the degree of flexibility that the arrangement provides and the authorities’ closeness to the people they serve, allows arrangements to be better tailored to the reality of the varying situations across the country.

---

<sup>143</sup> Following the demonstrations by young people which occurred in outer urban areas in November 2005, a debate was instituted by the Town of Dunkirk from February 2006 onwards on means of achieving the integration of young people.

537. As referred to by the French Government in its previous report, arrangements for the regulation of care provided for minors outside the parental home, including short-term stays, are being remodelled. Apart from taking better account of changes which have occurred in needs, in the activities on offer and in types of accommodation, this reform, which is being carried out by the ministry responsible for young people, aims to provide the representative of the State in each *département* with better means of control in both administrative terms and in relation to the criminal justice system in order to provide improved protection for minors.

538. Present regulatory arrangements are intensive and can be summarized under four principal themes: the protection of minors; the framework for the organization and promotion of activities, including physical activities; security in places where minors are accommodated; and food safety.

## VIII. SPECIFIC MEASURES FOR THE CARE OF MINORS

### A. UNACCOMPANIED FOREIGN MINORS (ARTICLE 22)

**539. For several years, the arrival of unaccompanied foreign minors or their presence in French territory has prompted many questions. In response to recommendations made by the Committee in 2004 (paragraphs 50 and 51), France has pursued its efforts in particular to make better arrangements for the care of these children, to guarantee them better access to basic services and to allow them, where circumstances so require, to return to their country of origin under the best conditions.**

**540. In relation to measures of protection, it is helpful to distinguish between unaccompanied foreign minors at the frontier and unaccompanied foreign minors within French territory.**

#### **1. Unaccompanied foreign minors at the frontier**

541. Examination of the circumstances of unaccompanied minors below the age of eighteen who have no legal representative and who request admission at the frontier must be carried out within a framework which provides for every guarantee, as vulnerable persons are involved. At the same time, the authorities must be vigilant and exercise careful oversight as these children must not be exposed to the risk of becoming victims of rings for forced labour or prostitution.

542. A foreign minor at the frontier benefits from the presumption of his or her minority. However, in the event of significant doubt as to minority, investigations may ensue in order to determine his or her age with the greatest possible degree of accuracy. **In this respect, and in response to recommendation 51b**, the indications are that, in the current state of scientific knowledge, clinical observations as to puberty and bone tests are the only evidence on which the administrative and judicial authorities can rely to establish age. The French authorities nevertheless remain attentive to all scientific developments in this area and are prepared to adopt other methods if judged more workable by the scientific community.

543. Whilst the law, as regards entry to French territory and asylum at the frontier, applies to foreign minors on the same terms as to foreign adults, account is nevertheless taken of their specific circumstances.

544. Article L. 221(1) of the Code on the Entry and Residence of Foreigners and the Right of Asylum provides that a foreigner who has arrived in France, and who either is not authorized to

enter French territory, or applies for admission on the basis of asylum, may be kept in a holding area for the time necessary for his or her departure or for his or her application for asylum to be examined. Keeping the person in the holding area is an administrative decision taken by the police services and its duration may not exceed four days (forty-eight hours, renewable once). Beyond this limit, keeping the person in the holding area must be authorized by a liberty and custody judge for a maximum duration of eight days, renewable once.

545. Since the entry into force of the Law of 4 March 2002 referred to above, the rights of foreign minors without a legal representative are secured by an ad-hoc administrator, designated without delay by the public prosecutor, when an unaccompanied minor is not authorized to enter France or when he or she applies for asylum. The administrator is responsible for assisting the minor and securing his or her representation in all judicial and administrative procedures relating to his or her stay in the holding area and to entry to French territory (article L. 221(5) of the Code on the Entry and Residence of Foreigners and the Right of Asylum). So that the administrator can be appointed as soon as possible after the minor arrives in the holding area and can take action as effectively as possible, Law No. 2006-911 of 24 July 2006 on immigration and integration (art. 48) has specified at article L. 221(5) that the public prosecutor<sup>xvi</sup> must be informed “*immediately*” by the administrative authorities.

546. The ad-hoc administrator is chosen from a list in which associations for child protection feature extensively. Before they exercise their functions, ad hoc administrators undergo training including a theoretical and a practical component, based in particular on case studies and on meetings with professionals with a part to play in this area. In addition, a full-time helpline for ad- hoc administrators is organized at the premises of the French Red Cross to deal with any requests they may make for help.

547. The available data on minors placed in the holding area are as follows.

	2005	2006	2007 <sup>(1)</sup>
Total : Metropolitan France	15802	15594	
<b>Of which: unaccompanied minors</b>	<b>709</b>	<b>600</b>	<b>374</b>
Female accompanied minors		282	188
Female unaccompanied minors		267	166
Male accompanied minors		253	182
Male unaccompanied minors		333	208
Total : Overseas Départements and Collectivities	502	379	
<b>Of which: unaccompanied minors</b>	<b>10</b>	<b>7</b>	<b>3</b>
Female accompanied minors		3	66
Female unaccompanied minors		6	1
Male accompanied minors		2	66
Male unaccompanied minors		1	2
<sup>(1)</sup> : at 31 July 2007			

548. Specially tailored arrangements have been made for the treatment of unaccompanied minors who do not satisfy the conditions for entry into France and are refused entry. Indeed, several approaches are made in advance by the frontier police in an effort to find members of their family in their country of origin and to satisfy themselves that the child will be expected on return. For example, a contact is made with the representative of the Technical International Police Cooperation Department with local responsibility so that a member of the child's family can take charge of him or her on arrival.

549. When an unaccompanied foreign minor is authorized to enter French national territory, he or she is cared for immediately on arrival in the holding area by specific organizations that ensure that he or she is monitored and protected (care facilities or reception and guidance centres) under the oversight of the judicial authorities (the public prosecutor's office and the Children's Judge).

550. In September 2002, the State opened an institution in Ile-de-France specifically to deal with unaccompanied foreign minors. Run by the Red Cross, the Taverny Care and Advice Centre accommodates around 30 minors when they leave the airport at Roissy, looking after them for a period of two months on average in order to assess their situation and prepare appropriate guidance on next steps: passing the child to a family member in France or a neighbouring country, a longer placement in the framework of the children's social services or repatriation to their country of origin.

## **2. Unaccompanied foreign minors inside French territory**

551. It is important to offer legal guarantees to unaccompanied minors located inside French territory, and to provide them with the most satisfactory material conditions possible for their care.

### **2.1 Legal guarantees**

552. Article L.313(11) 2a of the Code on the Residence and Entry of Foreigners and the Right to Asylum<sup>144</sup> provides for a temporary residence permit for "*Private and Family Life*" to be issued to a foreign minor entrusted to the care of the children's social services from the age of 16 and who can show justification for enrolment in a course which he or she wishes to pursue for integration into the labour market, conditional on the nature of his or her links with the family which remains in the country of origin and on the views of the care service which is looking after the foreigner on his or her integration into French society.

553. A temporary "*Student*" residence permit also may be issued to a foreign minor who has followed a school career in France since at least the age of sixteen and who is pursuing higher education (or a course of training) there, provided that he or she can demonstrate its real and serious nature (art. L. 313(7) of the same Code<sup>145</sup>).

### **2.2 Improving conditions for care and custody**

554. Various measures work in combination to improve care arrangements for unaccompanied foreign minors.

---

<sup>144</sup> Introduced by article 31 of the Law of 24 July 2006 on immigration and integration.

<sup>145</sup> Introduced by article 9 of the Law of 24 July 2006 on immigration and integration.

555. In Paris, experimental arrangements for the emergency reception and care of unaccompanied minors were set up in 2002 as part of policies for combating instability and exclusion. These arrangements were modified in 2003 and now rely on five participating associations (Hors la rue (“*Off the Streets*”), Enfants du monde droits de l’homme (“*Children of the World, Human Rights*”), Arc 75, Aux captifs la libération (“*Freedom for the Captives*”) and la Fondation des apprentis d’Auteuil (*the Apprentices’ Foundation of Auteuil*). The arrangements have responsibility for three essential functions: finding the minors and establishing contact, providing them with shelter, and support towards the establishment of their position under the general law. In 2004, about 1,000 young people were contacted and 400 received care and guidance.

556. In the Bouches du Rhône, the State has provided financial support for some ten years to an association, “*Jeunes errants*” (“*Young Wanderers*”) for the care and guidance of 300 unaccompanied foreign minors.

557. To address the persistent difficulties in this area, the Inspectorate General of Social Affairs proposed a number of measures in its report of January 2005 on conditions for the care of unaccompanied minors in France. These included the establishment of evaluation and guidance “*platforms*” or “*co-ordinated networks*” for the care of unaccompanied foreign minors at the regional or Departmental level. In 2006, the French Government gave the Prefect of the Ile-de-France region the task of examining this recommendation. With the aim of harmonizing procedures and improving coordination between the various participants (the State, local authorities and particularly *départements* and associations), proposals need to be prepared for focusing existing arrangements on a common mission of care, evaluation and guidance for unaccompanied foreign minors and for defining the content of a framework agreement for the establishment, as an experiment, of a regional platform.

558. As an example, the Directorate for Social Action, Children and Health of the office of the Mayor of Paris arranges for the care of about 10,000 minors<sup>146</sup> (half of whom are in placement and the other half in non-custodial arrangements). Of the 5,000 minors in placements, 800 are unaccompanied foreign minors, of whom half have a “*young adult’s contract*”<sup>147</sup> in place.

559. Changes in the numbers of unaccompanied foreign minors gravitating towards Paris in the past five years are summarized in the following Table.

Year	Number of requests for care as unaccompanied foreign minors	Number of unaccompanied foreign minors actually given access to children’s social services	
			Number of these who signed a young adult’s contract on coming of age
2002	760	272	235
2003	736	316	222
2004	462	279	147
2005	383	258	77
2006	315	200	16
January to April 2007	129	61	1

<sup>146</sup> These figures include both minors being supervised by the children’s judge and those supervised under administrative detention arrangements.

<sup>147</sup> This involves educational monitoring and/or financial support for young adults under the age of 21.

### **3. Foreign minors seeking asylum**

560. The main nationalities of unaccompanied minors seeking asylum have changed little since 2005: 58% come from continental Africa (168 from the Democratic Republic of the Congo and 76 from Angola). The others come from Turkey, Sri Lanka, Guinea, Moldova and Russia.

561. In 2005, the French Office for the Protection of Refugees and Stateless Persons (*OFPRO*) introduced systematic arrangements for hearing each unaccompanied minor during the handling of his or her request for asylum. The proportion of unaccompanied foreign minors admitted to refugee status is much higher by a large margin than that for asylum applications generally, as it is 20.3% at *OFPRO* and 45.2% when the decisions of the Refugee Appeals Board are taken into account. It should be remembered that every unaccompanied minor has the assistance of an ad-hoc administrator when appearing before *OFPRO* <sup>148</sup>.

562. In addition, the Law referred to above of 24 July 2006 on immigration and integration amended Article 3 of the Law, also referred to above, of 10 July 1991 on legal aid, abolishing the condition that until then had had to be met that a person's entry into France must have been lawful in order for them to benefit from legal aid before the Refugee Appeals Board. As from 1 December 2008, this reform allows legal aid to be provided to unaccompanied minors exercising a right of appeal before the Refugee Appeals Board against a decision of *OFPRO* rejecting a request for asylum, even if their entry into French territory was irregular. As refugee status, in fact, makes no difference to the conditions for entry into France, it was necessary to allow asylum-seekers to make the best possible arrangements for their defence.

563. Foreign minors with asylum-seeker status are housed in a residential unit or host family, and hotel accommodation is no longer used except as an interim arrangement. A number of establishments exist, such as the Centre for the Care and Guidance of Unaccompanied Minor Asylum-Seekers (*CAOMIDA* of Boissy-Saint-Léger), set up in 1999 with "France, Land of Asylum". This arrangement is an important one, because it allows care for the minors to be provided via an agreement with General Councils (principally those of the *départements* of Paris and the Val-de-Marne and a number of *départements* outside the Ile-de-France). Most of the minors cared for in this centre come from "Unaccompanied Minors", the platform run in Paris by "France, Land of Asylum" (where they are initially assessed and advised) and by the Parisian service for finding young people and providing shelter for them created in 2003. At present, *CAOMIDA*'s 33 places are State funded. This finance is continuing on the same basis in 2007 pending the recommendations of the study by the Prefect of Ile-de-France referred to above. Another establishment has also been created, the Noisy-le-Sec Residential and Integrated Vocational Training Centre, which has places for 12 boys. The French Government has also financed a contingency supply of reserved extra places for these minors in several other residential units.

### **4. The return of unaccompanied foreign minors to their countries of origin**

564. When the return of a minor to his or her country of origin has to be envisaged, the French State makes it its business to ensure that the process contains every guarantee.

---

<sup>148</sup> See para. 526 above.

565. It is still essential, however, to strengthen cooperation with states of origin and to establish robust relationships of confidence so that life plans can be put into effect for those concerned. The minor ought in particular to have arrangements in place for his or her social and educational circumstances to be monitored when plans for his or her reintegration are put into effect.

566. A special arrangement for providing assistance with the voluntary repatriation of foreign unaccompanied minors has been in place with Romania since 2003<sup>149</sup>. It provides for a plan setting out the arrangements to be made for the care of the minor, as well as how his or her repatriation to Romania and reception there are to be organized. A new agreement was signed in February 2007, ratification of which is in progress. The arrangement also provides for bilateral preventive action, both by training social workers in the specialist Romanian services, and by building up the provision in Romania of information and education for the Romanian population. So far, this arrangement has been little used (ten cases or so a year), but the National Agency for the Reception of Foreigners and for Migration (ANAEM)<sup>xvii</sup> has powers to organize the voluntary repatriation of foreign minors whatever their country of origin, on the basis of a judicial reference. In 2005, 18 Romanian minors were repatriated with the assistance of ANAEM. In the first half-year of 2006, there were 5. In addition, two repatriations took place to Laos in 2004; two to Bulgaria, one to Angola and to Cameroon in 2005; and one each to Albania, Guinea and Ecuador in 2006.

567. The local authorities directly involved in the care of minors have also set up cooperative arrangements. The Euro-Mediterranean Network for the Protection of Unaccompanied Minors, which brings together those involved from countries of origin, receiving countries and countries of transit, has the objective of improving understanding of the phenomenon, developing the training provided for professionals and putting concerted operational solutions in place.

568. Local initiatives have also been taken, for example in the *Département du Rhône*, where a project to assist voluntary repatriation of unaccompanied minors from the Democratic Republic of the Congo is being developed by the Information Centre for Solidarity with Africa<sup>xviii</sup> with support from the General Council. The objective of this project, which could in time be extended to neighbouring *Départements*, is to support the repatriation of some forty young Congolese by providing project plans for reintegration in their country of origin, along with monitoring arrangements.

## 5. The creation of an Internet resource centre

569. The Government decided in 2006 to subsidize the creation of an Internet resource centre ([www.infomie.net](http://www.infomie.net)) devoted to the care of unaccompanied foreign minors. **This measure could be seen as a response to the Committee's recommendation on the collection of information and statistics in this area (paragraph 51a).**

570. The aim of the resource centre, hosted by the association "*comité PECO*", is:

- to gather and distribute information in order to improve the quality of care provided for unaccompanied foreign minors on French soil;

---

<sup>149</sup> Decree No. 2003-220 of 7 March 2003 on the publication of the agreement, Official Journal of the French Republic for 14 March 2003.

- to draw benefit from existing practice in the form of practical research, both in Paris and the provinces, into good practice in the care of minors from the countries of the South and East;
- to operate pre-emptively and preventively in relation to minors who would like to come to France and to Europe and to be a tool for use by non-governmental organizations in countries of origin;
- to create a forum for debate, allow exchanges and provide for networking by those responsible in France, in Europe and in countries of origin; and
- to provide a starting-point for training on the issue.

## **6. Developments at the European level**

571. At the end of the Malaga Conference of 26 to 28 October 2005 on Migration of Unaccompanied Minors, the Council of Europe set up an ad-hoc consultative group for the development of policies and practices towards unaccompanied migrant minors whose status has been, or is being determined by the competent authorities. This group prepared a set of recommendations giving guidance to the competent authorities for:

- helping unaccompanied migrant minors to develop life plans, taking account, as far as possible, of their aspirations;
- developing individual plans designed to help unaccompanied migrant minors to put their life plans into practice;
- helping the integration of unaccompanied migrant minors into society in their new countries of residence or their reintegration into their countries of origin; and
- overcoming the difficulties with which unaccompanied migrant minors are confronted, for example over family reunification and access to education and healthcare, and preparing for their introduction into the labour market.

572. Chaired by France and composed of ten national experts<sup>150</sup> and one consultant (Morocco), this group has presented a set of recommendations which should be submitted very shortly to the Committee of Ministers of the Council of Europe.

### **B. CHILDREN IN CONFLICT WITH THE LAW (ARTICLE 40 AND ARTICLE 37, PARAS. A, B, C AND D)**

**573. Several of the developments mentioned in the second periodic report of France call for updating or further information. The reforms which have been put in train respond in part in response to the concerns expressed by the Committee about justice for minors (para. 59) and conditions for the detention and treatment of minors (para. 30).**

574. The French Government recalls that, besides being dealt with in a specialized category of courts, young offenders enjoy diminished criminal responsibility by reason of their age under which tutelary measures take priority over penalties in the strict sense. The sanctions provided

---

<sup>150</sup> Belgium, Bulgaria, Spain, France, Hungary, Norway, the Netherlands, Romania, the United Kingdom and Switzerland.

are themselves exceptions to the ordinary law, with statute law also providing for tutelary sanctions.

575. In 2005, about 44% of prosecutable offences were dealt with by means of alternatives to prosecution which have been developed in the course of the recent reforms<sup>151</sup>. In addition, about 7% of the 82,333 measures and sanctions ordered by children's judges involved a penalty of immediate imprisonment, a fall of 6.4% compared with the preceding year, while almost 40% of measures involved a warning, referring the issue to parents or an absolute discharge<sup>152</sup>. There has been a marked increase in the pre-sentencing measures (+10.2%) and tutelary sanctions (74%) ordered.

## **1. The main developments in justice for minors**

576. While respecting constitutional and international imperatives, the measures adopted have made substantial changes to current arrangements in order to make the treatment of minors under the criminal justice system more effective while preserving the integrity of the applicable criminal law. In particular, they have allowed the criminal justice system to respond more quickly by strengthening the role of the public prosecutor and the effectiveness of the criminal investigation process, by increasing the sophistication of judicial responses and by providing a greater diversity of care arrangements, both at the prosecution stage and the pre-sentencing or sentencing stage.

577. Some of the provisions of Law No. 2000-516 of 15 June 2000 to strengthen the presumption of innocence and the rights of victims have been amended.

578. While Law No. 2002-1138 of 9 September 2002 for the orientation and programming of the justice system amended the provisions dealing with the detention of minors from ten to thirteen years old, it retained the special guarantees attaching to the procedure. It is only in exceptional cases that a minor between the ages of ten and thirteen against whom there is strong or corroborated evidence giving grounds to believe that that individual has committed or attempted a serious crime or other major offence punishable by at least five years' imprisonment may, where necessary for the investigation, be held at the disposal of a police officer with the prior agreement of a specialist judge and under his or her supervision. The duration of the detention is short (12 hours maximum)<sup>153</sup>. Appointing a lawyer, informing the parents and a medical examination are all compulsory as soon as the measure is taken.

579. In addition, Law No. 2004-204 of 9 March 2004 on adapting justice to developments in crime has provided for an exceptional regime of custody for a maximum of 96 hours, the use of which is subject to a strict framework of control: this regime concerns only sixteen-to-eighteen-year-olds and only offences of the most serious kind arising from organized crime or terrorism. The regime of custody for thirteen-to-sixteen-year-olds has not been amended.

---

<sup>151</sup> Article 41(1) of the Code of Criminal Procedure: the alternatives recently introduced are an awareness-raising course on road safety (the Law of 12 June 2003), a course on citizenship (the Law of 9 March 2004), an order for medical treatment (Law of 5 March 2005) and a course for awareness-raising on the dangers of the use of drugs (Law of 5 March 2007).

<sup>152</sup> Annex X.

<sup>153</sup> It may, in exceptional cases, be extended by the same amount.

580. More recently, the Law referred to above of 5 March 2007 for strengthening the balance of criminal procedure has amended certain specific provisions in the arrangements for the interviewing of minors in custody<sup>154</sup>. Audiovisual recordings are still made of these interviews, however.

581. In parallel, there have been additions to the procedures which apply to minors suspected of having committed an offence.

582. Since the Law of 9 September 2002 referred to above, the Justice of the Peace<sup>xix</sup> has jurisdiction over certain offences committed by minors. The Law has also introduced a new procedure involving immediate appearance before the youth courts, the flexibility of which has been increased by the Law of 5 March 2007 referred to above for the prevention of delinquency<sup>155</sup>. Its scope is strictly limited. It can be used only when the penalty is equal to or greater than one year in cases where the person has been caught in or immediately after the act and equal to or greater than three years in other cases. It applies only to minors aged between sixteen and eighteen. They can be judged immediately only if three conditions are met: that they give their express agreement, that their lawyer does the same, and that there is no opposition from their legal representatives. The minor's case can be dealt with at the earliest and nearest session of the youth court.

583. Taken together, these reforms, which always give priority to a tutelary approach, have enhanced the range of measures which can be taken with delinquent minors. For example, the Law of 5 March 2007 referred to above has added to the tutelary options available to judges by giving them the opportunity to make orders for day activities<sup>156</sup>, which are designed to help with integrating minors who have dropped out of school or are on the way to doing so into society and into professional or school life. Day activities offer an alternative measure in between non-custodial tutelary measures and placement. With the aim of getting the minor involved in a process leading logically towards that person's integration, it is based on the development of a personalized project plan.

584. Supplementing the provision made by the Law for the orientation and programming of justice of 9 September 2002, the Law of 5 March referred to above creates four new tutelary sanctions designed to add to the diversity of the responses available to acts of delinquency by the youngest minors<sup>157</sup>:

- placement in an institution or an approved public or private educational establishment for a maximum period of three months, renewable once, for minors over thirteen years of age and of one month for minors from ten to thirteen years of age;
- requiring school work to be done;
- a solemn warning: this new sanction corresponds to a reprimand delivered by a children's judge in chambers; and

---

<sup>154</sup> See section III C above.

<sup>155</sup> Article 55 of the Law.

<sup>156</sup> Chapter VII of the Law amending Order No. 45-174 of 2 February 1945 on young offenders.

<sup>157</sup> Article 59 of the Law.

- placement in a school establishment with boarding facilities for a period equivalent to a school year, with authorization for the minor to return to his or her family for weekends and school holidays.

585. There is a continuing programme for the creation of secure supervision centres, giving effect to the legislature's intention, as expressed in the Law of 9 September referred to above. So far, there are 29 secure supervision centres. The aim of the programme is to have 47 in 2008 with capacity for about 500 places.

586. Minors are "placed" in these establishments, public or private, by execution of a judicial order for supervision, on probation (linked to an obligation to comply with the conditions attached to their placement), on conditional release, and, since the Law of 5 March 2007 on the prevention of delinquency referred to above, on external placement (giving effect to the modification of a penalty)<sup>xx158</sup>.

587. Care provided to minors in secure supervision centres relies on strong and highly-motivated multidisciplinary teams. In the centres, minors are subject to continuous surveillance and monitoring, inside the centre and outside where allowed, and benefit from intensified behavioural and educational monitoring which is tailored to their personality. Designed to strengthen arrangements to combat the problem of minors with records of reoffending or persistent problem behaviour, secure supervision centres provide a new alternative to imprisonment.

588. The centres can take minors from the age of thirteen. Failure to observe the conditions attached to placement in a secure supervision centre is, for minors aged between thirteen and sixteen, the only ground on which they can be remanded in pre-trial custody in cases involving "*délits*" (serious offences not classified as major crimes).

589. A national evaluation of the experimental programme of secure supervision centres, carried out in 2004, showed among other things that minors taken by the centres were, on arrival, all young people with a history of persistent offending or problem behaviour for whom existing arrangements had not provided an adequate response, whether on the judicial or social level.

590. Before they were taken by the centres:

- 30% had already been imprisoned, this figure rising to 45% of those aged sixteen to eighteen;
- 90% had already been convicted or prosecuted;
- 70% had been subject to an administrative measure for protection before their placement;
- 76% had already been subject to placement under a judicial order and 33% had already been subject to placement more than three times.

591. The Law of 9 March 2004 referred to above has also undertaken a huge reform in the field of sentencing by transferring the powers of the sentencing judge to the children's judge, strengthening the specialized function of the children's judge and allowing a better-tailored and prompter judicial response.

---

<sup>158</sup> Article 62 of the Law.

592. The Law states as a general principle that, in order to ensure that the services responsible for the care of delinquent minors have the necessary specialized capabilities, the competent authority for carrying out sentences, including in those cases where sentences involve the loss of liberty, should be the public section of the Judicial Protection Service for Young People. The Circular of 5 July from the management of the Judicial Protection Service for Young People underlines that it is necessary for the service to adapt its operations to the kinds of problems encountered by young people in difficulty, and that it is indispensable to co-ordinate with the staff of the prison service in pursuing these new tasks. For the future, this new field of competence will call for the youth court to think carefully about the purpose that the penalty is seeking to achieve. This will allow not only for the sentence to be individually tailored at the moment when it is pronounced, but also for a long-term educational plan for the convicted young person, which cannot be interrupted during imprisonment<sup>159</sup>, to be defined.

593. Law No. 2007-1198 of 10 August 2007 to laying down more rigorous measures to prevent reoffending by adults and minors maintains the principle of the reduction in penalties from which minors benefit and which applies to the minimum penalties that are fixed by this Law. This reduction in penalties is disappplied only for minors aged between sixteen and eighteen who become reoffenders, as legally defined, for a second or subsequent time through commission of a major crime (*crime*) or serious offence (*délit*) of violence or of a sexual nature. The judge may nevertheless decide to reinstate the reduction for particular reasons. The Law also notes that tutelary measures and sanctions cannot be taken into account in defining reoffending, as only penalties constitute a first term.

594. The Constitutional Council considered that this Law does not infringe the constitutional requirements relating to justice for minors. This was because it derogates from the principle of reduced penalties for minors only by exception, when certain serious offences have been committed for a third time, and because the courts which have jurisdiction retain the discretion not to disapply the reduction. The Council recalled also that it was absolutely clear in the Government's intentions and in Parliamentary debate that the court with jurisdiction would still be able to order a tutelary measure, even for a minor who was a reoffended<sup>160</sup>, by applying the Order of 2 February 1945 on young offenders.

## 2. Specialized police services

595. Some services within the National Police specialize in the protection of minors. They carry out judicial enquiries when children or adolescents are the victims of particular types of abuse (ill-treatment or sexual abuse) and become involved in a protective capacity in enquiries by the social services, the search for runaway minors or cases of truanting from school.

596. In 2005, the central directorate for public safety had 120 minors' protection squads (7 of them services with responsibilities for *départements* in Ile-de-France), consisting of 642 officers. In areas without a structure of this kind, the tasks concerned are carried out by one or more specialist police officers within the minors' police.

---

<sup>159</sup> The youth court may therefore decide from the outset, as soon as judgement is given, on the following modifications: conditional release, external placement, semi-custodial treatment, electronic tagging and the suspension of the sentence or arrangements for it to be served in tranches.

<sup>160</sup> Decision No. 2007-554 DC – 9 August 2007.

597. As soon as a minor is implicated in association with an adult, the local public security service is able to call in the minors' squad, which may on these occasions bring to light disturbances in the family environment, difficulties of integration and behaviour indicative of habitual violent conduct.

598. In addition, the management of the service for public safety in each *département* has a young person's referral officer (*réfèrent-jeunes*) whose activities are networked with "local police-young people's contact points" (*correspondants locaux police-jeunes*) at the centre of each local service. By communicating information more comprehensively, this arrangement allows judicial, behavioural and social monitoring of delinquent minors to be carried out on a more individual and more rigorous basis.

599. These referral officers take an active part in the preparation and monitoring of plans to combat and prevent violence in schools, applying the interministerial circular of 1 August 2006. Their work has been complemented by the appointment of 995 contacts in schools, fulfilling the protocol of agreement signed on 4 October 2004.

600. Finally, a circular of 22 February 2006 from the Minister of the Interior has set out how minors are to be treated in the course of police work and when they come under the responsibility of the police and gendarmerie, whether they are victims, witnesses, accused or simply being monitored.

### **3. Conditions of detention and treatment of minors**

601. On 1 July 2007, 825 minors were under arrest in France, or 1.3% of those arrested and detained. Of these, 34.3% were convicted. In contrast to the substantial increase in the number of adults detained, the number of minors detained is stable with an average length of detention of two and a half months.

602. Minors are detained in one of two types of institution: in a special area of a prison establishment (known as "*minors' wings*") or, since June 2007, in a prison establishment for minors.

603. For several years, the prison service has mobilized its services, so as not only to help with the reintegration of minors into society, but also to make time spent in prison a real period of educational endeavour. This ambition has called both for the structures for the reception of minors to be adapted, and for changes in the ways in which care is provided in order to guarantee that educational action is sustained.

604. First, the Law of 9 September 2002 for the orientation and programming of the justice system<sup>161</sup> provided for the building of prison establishments devoted to minors. There is a programme for the building of seven establishments, each with 60 places, near to the largest conurbations. A budget of €90 million has been earmarked for this purpose. Two establishments are already<sup>162</sup> open. When the first of these establishments was opened, the Minister of Justice reaffirmed his determination to make it a place of education: it has been conceived "*around classroom, sport and culture*" and providing the framework for the minors in the prison will be the task of no fewer than 43 educators as well as of teachers and warders. The other

---

<sup>161</sup> Article 21 of the Law.

<sup>162</sup> At Meyzieu in the Rhône-Alpes region and Lavour in the Midi-Pyrénées region.

establishments will open between now and 2008. The completion of the programme for prison establishments for minors will entail the closure of 20 minors' areas, while 39 will remain in order to provide complete geographical coverage.

605. In keeping with international and European requirements<sup>163</sup>, the creation of these self-contained establishments is intended to prevent contacts between minors and adult prisoners, although, in exceptional cases and in his or her interests, a prisoner who comes of age while in custody may be retained for some time in one of these establishments. The Law of 9 September 2002 referred to above is aimed at putting in place individually tailored arrangements for the care of minors, allowing them to make progress towards a release plan put together through the continued involvement of the Judicial Protection Service for Young People in Custody. This means that the regime is closer to the rhythm of life that adolescents are used to and the activities on offer are more diverse and more suitable (schoolwork at different levels, educational and social activities, and sporting activities involving an increased amount of specialized equipment including sports halls, indoor and outdoor sports pitches and gyms).

606. The use of the minors' time is centred around learning, the aim being that each minor should have the benefit each day of an average of four hours' general or technical education, with a more diverse provision of training available than in a "*minors' wing*".

607. In the framework provided by this Law, the Government has, secondly, undertaken to renovate the "*minors' wings*" in order, among other things, to provide for accommodation in individual cells and for the separation of minors and adults (500 new custody places by the extension of certain existing minors' areas and the creation of areas with 10 to 20 places in establishments which do not currently have them). In 2003, there were 887 places for minors. An allocation of €25 million has been agreed by Parliament for this programme, the total cost of which will be €27.8 million. This means that minors are cared for in purpose-designed structures, by staff who are dedicated and specially trained. They have the benefit of access to a range of activities adapted to their age. At present, educational staff of the Judicial Protection Service for Young People are continuously involved in young people's areas as a whole.

608. In parallel, the Government has undertaken a remodelling<sup>164</sup> of the regime for the imprisonment of minors which fits their profile and needs and makes time spent in imprisonment a part of the minor's educational career.

609. The custody regime that is determined in this way is common to the two types of establishment which receive minors ("*minors' wings*" and prison establishments for minors)<sup>165</sup>. The principle of isolation at night is reaffirmed, except where there are medical or personality reasons to the contrary. Essentially, this new regime relies on an approach to the care of minors which is multidisciplinary and educational in nature. The right to education and training, extending beyond compulsory school age, is reaffirmed and for the future a central point of

---

<sup>163</sup> Recommendation of the Committee of Ministers of the Council of Europe of 11 January 2006 (rec 2006 (2)).

<sup>164</sup> Decrees No. 2007-48 and 2007-749 and of 9 May 2007 (which came into force on 1 June 2007) on the detention of minors and Decree No. 2007-814 of 11 May 2007 on the disciplinary regime for detained minors.

<sup>165</sup> Young adults, however, have a separate status.

authority has responsibility for monitoring the minor: it is consulted on all major decisions affecting the minor's detention.

610. Family ties are also preserved: holders of parental authority are consulted about major decisions taken in the course of detention and are kept regularly informed about how detention is proceeding and any measure which affects this. Access to the telephone is now permitted.

611. The disciplinary regime has also been adapted and disciplinary sanctions changed to take account of factors specific to the life of minors. Thus, the graduated nature of sanctions and their proportionality to the offence are reaffirmed and educational and behavioural action plays a large part in the responses used<sup>166</sup>. Five main points should be underlined:

- the stress laid on the principle that the sanction chosen should fit the age and degree of understanding of the minor;
- the ability of the minor to be represented by a lawyer before the disciplinary committee;
- the ability of the Judicial Protection Service for Young People to be present during the disciplinary process to allow a better understanding of the minor;
- the exceptional nature of the use of the punishment cell, which is confined to those over the age of sixteen and to behaviour involving violence or threats, and changes which have been made to the periods for which this sanction is used; and
- the adaptation of the range of sanctions available to the detainee's status as a minor, including the broadening of the sanctions available to include tutelary sanctions.

612. Finally, the French Government has paid particular attention to caring for the health of minors in detention. This requires a holistic approach to health and an approach which recognizes the continuity which should exist between preventive and curative measures. Effectiveness depends largely on the comprehensiveness of the partnerships involved, on cooperation between the partners and on arrangements being made for monitoring how well the arrangements work in practice.

613. Since Law No. 94-43 of 18 January 1994 on public health and social protection, healthcare for those in custody is entrusted to the public hospital service, both for physical treatment delivered in a mobile unit for consultations and treatment, and for specialist consultations. In-patient treatment is also delivered in public establishments.

614. The Law of 18 January 1994 applies to the seven prison establishments for minors. Care plans are drawn up at the regional level and connections are made with partner services (the prison service, the Judicial Protection Service for Young People and the National Education Service). An interministerial circular will set the aims for:

- delivering a response to health needs which meshes with the operations of partners; and
- guaranteeing the continuity and consistency of arrangements for healthcare, at the point of release as well as during detention.

---

<sup>166</sup> The mobile unit for consultations and treatment, the regional service for psychological medicine, the prison service the Judicial Protection Service for Young People and the National Education Service.

615. Part of the job of the medical practitioner responsible for the mobile unit for consultations and care is to organize the monitoring of minors in custody and to coordinate preventive and educational health measures for them. A scrupulous coordination with the regional team for psychological medicine, with the prison service and with the Judicial Protection Service for Young People is one of the conditions necessary for the success of a health plan which is capable of meeting the needs of imprisoned adolescents in severe difficulty.

### C. CHILDREN IN SITUATIONS OF EXPLOITATION (ARTICLE 39)

#### 1. Combating economic exploitation

616. Where children, including foreign children, are the victims of organized rings, the exploitation usually takes the form of incitement to steal, beg or engage in prostitution. Combating these criminal activities is the job of the police and gendarmerie and, in particular, of specialized offices such as the Central Office for Combating Human Trafficking or the Central Office for Combating Delinquency by Vagrants, created in 2004<sup>167</sup>.

**617. These services are conducting very large-scale operations for dismantling the rings which are active in France, in keeping with the recommendations of the Committee (paras. 52 and 53).**

618. Rings using children from Romania and other Eastern European countries have practically disappeared over recent years. The interministerial unit for combating delinquency by vagrants had stopped and questioned 1,179 persons, of whom 661 were arrested and 75 accompanied to the frontier. From 2004 to 2006, the work of 68 inquiry units within the gendarmerie and 42 inquiry teams within the police led to 708 and 152 people respectively being questioned.

619. There is increased surveillance of illegal working by minors and a determined mobilization of State monitoring services to provide them with better protection. In this respect, the Law of 2 January 2004 on child care and child protection, referred to above, and Law No. 2003-239 of 18 March 2003 on national security have strengthened the powers for work inspection and the relevant criminal sanctions.

620. For example, 227-15 paragraph 2 of the Criminal Code includes in the offence of lack of care, subject to seven years' imprisonment and a fine of €100,000, "*keeping a child under the age of six on the public highway or in a place provided for the purpose of public transport, with the purpose of appealing to the generosity of passers-by*".

621. The Employment Code applies a rigorous framework to the employment of minors. Persons who exploit children by causing them to work in an illegal manner or by taking abusive advantage of their vulnerability are liable to severe penalties.

622. Thus, the Law of 5 March 2007 for the reform of child protection referred to above establishes an improved framework for home education in order to reduce the risks of exclusion from school education and to strengthen efforts to combat illegal working by minors.

---

<sup>167</sup> Created by Decree No. 2004-612 of 24 June 2004, it is the successor of the interministerial unit for combating delinquency by vagrants, created on 9 May 1997.

623. In addition, when young people aged over 14 take on work suitable to their age during the school holidays, notice must be given beforehand to the Employment Inspector, who has eight days to object.

624. Individual prior authorizations are required for the employment of minors in live performances. These are issued by the administrative authorities, if positive advice is received from a special committee, chaired by a law officer (children's judge) and composed of representatives of the Ministries of Education, Employment and Health and Social Action, as well as a medically qualified health inspector. This procedure includes a medical examination, to be carried out at the expense of the prospective employer.

625. It is still the Prefect who, if he or she receives positive advice from a committee with the same composition, issues authorizations for the employment of children to model agencies. These authorizations, which are valid for a renewable period of one year, may legally be granted only if the guarantees offered to children for their physical and psychological safety are sufficient. This procedure includes an obligation on the modelling agency to carry out periodic medical monitoring of their child employees. It can be withdrawn at any time and suspended in an emergency.

626. A draft decree to increase the effectiveness of the medical monitoring of these children is currently under consideration by the *Conseil d'État*. Its publication will be followed by a circular on modelling agencies and work as a model, further work on which will be devoted to the specific protective measures to which child models should be subject.

## **2. Sexual exploitation and violence**

627. The French Government addressed this question very widely in its initial monitoring report on the additional protocol to the Convention dealing with the Sale of Children, Child Prostitution and Child Pornography, sent to the Committee in August 2006.

628. The action set out there, aimed, among other things, at strengthen arrangements for countering actions and activities targeted by the Protocol (para. 11 *et seq*), to combat sex tourism (para. 189 *et seq*) and to develop international aid and cooperation (paras. 240 *et seq*), retains all of its relevance.

**629. In this report, the French Government would like to give details of some recent measures which provide a more specific response to some of the recommendations made by the Committee (including paras. 28 and 55).**

630. It is a tendency of French criminal law to adapt itself to technological change. Offences are specifically created for the criminal uses to which technological innovations can be put. Measures are also taken to improve the detection and monitoring of these offences.

631. The Law of 5 March 2007 for the reform of child protection referred to above amended Article 227(3) of the Criminal Code: the act of habitually consulting a public online communication service which makes available a pornographic image or representation of a

minor is now prohibited in itself on the same basis as possessing such an image or representation<sup>168</sup>.

632. The Law of 5 March 2007 on the prevention of delinquency also contains several provisions intended to strengthen arrangements to prevent and combat certain offences relating to human trafficking, procuring and the prostitution of minors<sup>169</sup>.

633. For example, offences of sexually propositioning a minor aged under fifteen<sup>170</sup> and of making and distributing images relating to offences against the integrity of the person<sup>171</sup> are created and made subject to severe penalties. Similarly, the act of exploiting a minor or inciting him or her to commit an offence becomes an offence in itself<sup>172</sup>.

634. This Law also makes it easier to assemble evidence and search for perpetrators, when offences are committed by means of electronic communication (new arts. 706(35)(1) and 706(47)(3) of the Code of Criminal Procedure). It makes it possible for “agents or officers of the police acting in the course of an inquiry or on judicial instructions” to take part under a pseudonym in electronic exchanges, to be in contact by such means with persons who may be the perpetrators of these crimes, and to extract illicit material, transmit it in response to an express request, acquire or hold it. These acts must not constitute an incitement to commit offences or their evidential value is voided.

635. A national platform for handling Internet traffic was also established in 2005, within the Central Office for Combating Information and Communication Technology Crime, for gathering and processing traffic between Internet users and access providers about illicit material

---

<sup>168</sup> Para. 5 of article 227(2)3 of the Criminal Code is now worded: “*the act of habitually consulting an online service for communication to the public making available such an image or representation or the possession of such an image or representation by any means whatever shall be punishable by two years’ imprisonment and a fine of €30,000*”. (Article 29 of the Law).

<sup>169</sup> Offences provided for in articles 225(4)(1) to 225(4)(9), 225(5) to 225(12) and 225(12)(1) to 225(12)(4) of the Criminal Code.

<sup>170</sup> Article 35 II inserts an Article 227(22)(1), under the terms of which: “*the act by an adult of sexually propositioning a minor aged less than fifteen or a person representing himself or herself as such using a means of electronic communication shall be punishable by two years’ imprisonment and a fine of €30,000*”. These penalties increase to five years’ imprisonment and a fine of €75,000 when the proposition is followed by a meeting.

<sup>171</sup> Article 44 inserts an article 222(33)(3), under the terms of which: “*The act of knowingly recording, by any means whatever, and on any medium whatever, images relating to the commission of these offences shall constitute an act of complicity in the offences of voluntarily impugning the integrity of the person provided for by articles 222(1) to 222(14)(1) and 222(2)3 to 222(31) and shall be punishable by the penalties provided for by those articles.*

*The act of distributing such images shall be punishable by five years’ imprisonment and a fine of €75,000.*

*The present article shall not apply when the recording or distribution results from the normal conduct of a profession the aim of which is to inform the public or is carried out for the purposes of providing evidence in legal proceedings”.*

<sup>172</sup> Offences provided for at articles 227(18) to 227(21) of the Criminal Code introduced by article 48 II of the Law.

distributed via the net. This platform has made it possible to analyse this type of criminality in France.

636. To date, from the millions of images in circulation, 23 French underage girls have been identified as victims. In all cases, their abusers came from their close environment.

637. In addition, an interministerial working group, with the participation of the Central Office for Combating Violence against the Person, has prepared a programme for the prevention of dangers on the Internet, aimed at children aged 7 to 11 years, in the form of about fifteen animated cartoons. The Central Office is negotiating with French access providers for the installation of free Norwegian software for filtering access to identified child pornography sites.

638. Finally, the Gendarmerie Nationale has established an Internet surveillance unit to track exchanges of pornographic files involving children with the aim of identifying offending Internet users and bringing proceedings against them.

639. As part of action to combat gambling, and particularly online gaming, the Law of 5 March 2007 on the prevention of delinquency, referred to above, allows the authorities to freeze the proceeds of these services for a period of six months<sup>173</sup> and introduces an obligation on access providers and site hosts to signpost those sites of which the competent public authorities disapprove and to inform subscribers of the risks that they incur by indulging in gambling which is against the law<sup>174</sup>.

640. Certain provisions of the Law of 5 March 2007 for the reform of child protection, referred to above, similarly tend towards a better application of the Convention in domestic law. As part of action to combat child pornography, measures are being taken to improve the training of those working with and for children. Organizations for providing support in schools are monitored so as to exclude from their management persons who have been convicted of major crimes or offences of dishonesty or immorality. To combat the risk of the sale of children and illegal adoption, the penalty for failing to register a birth with the authorities is being increased (it becomes a major offence [“*délit*”] punishable by six months’ imprisonment and a fine of €3,750<sup>175</sup>).

641. As far as is known to the Central Office to Combat Human Trafficking, no rings for trafficking in children for purposes of sexual exploitation exist in France. The Central Office has identified only 12 minors, very close to the age of majority, who were victims of aggravated offences of procuring during 2006. Judicial proceedings taken against minors account for barely 1% of cases in which a person was stopped and questioned for soliciting during 2006, but it could not be demonstrated (except in 12 cases) that those concerned had been the victims of trafficking.

642. At the international level, France is pursuing its collaboration with UNICEF through specific programmes, such as the preparation of a code of conduct for the protection of children against sexual exploitation in the travel and tourism sector, and through project No. 2000-149, “*Child Protection*”, mentioned above.

---

<sup>173</sup> Article 36 of the Law.

<sup>174</sup> Article 40 of the Law.

<sup>175</sup> Article 36 of the Law adding a new article 433-18-1 to the Criminal Code.

643. France is continuing to take action to combat human trafficking more generally, developing police and judicial cooperation with countries from the priority zone for solidarity in international cooperation and development, but also in Asia, Latin America and in Europe, and promoting assistance and reintegration for victims.

644. Further seminars were held at Dakar from 9 to 11 May 2007 on the question of trafficking in West Africa, and on particular on trafficking of children, and in Latin America in November 2006 on human trafficking and combating sexual tourism involving children.

645. In parallel, training activities for police and members of the judiciary have been put in place in Asia. In November 2006 a regional course of operational training on combating trafficking in human beings was held in Vietnam, Laos and Cambodia, allowing participants to acquire common technical capabilities and to develop new arrangements for cooperation. Another course was organized during the same year in Indonesia, Malaysia, Singapore and East Timor. In 2007, these activities targeted zones involved in sexual tourism, Thailand and Indonesia. Prompted by the growth prostitution, the sexual exploitation of minors and procuring between Indonesia, Malaysia and Singapore, a regional seminar is planned to take place during 2008.

### **3. Abduction and missing children**

#### *“Abduction Alert”*

646. An arrangement known as *“Abduction Alert”*, inspired by *“Amber Alert”* systems created in the United States in 1996 and Quebec in 2003, was established on 128 February 2006

647. The *“Abduction Alert”* agreement is the fruit of an initiative for joint working taken by the Ministry of Justice with a large number of partners: the Ministry of the Interior, the Ministry of Defence, the Ministry of Transport, Infrastructure, Tourism and the Sea, the Higher Council for the Audiovisual Sector, the main French television networks and radio stations, Agence France Presse, SNCF<sup>xxi</sup>, la RATP<sup>xxii</sup>, the motorway companies and victims’ associations such as *“The Voice of the Child”*, *“the Seagull”*, the Association for Protection against Sexual Abuse and Crime and the Federation for Assistance and Support for Victims of Violence.

648. *“Abduction Alert”* is an arrangement for use in exceptional circumstances and is specifically reactive in nature. It provides a useful addition to the usual means of inquiry. The State Prosecutor triggers the alert when four conditions are met:

- what is involved is a confirmed abduction, and not simply a missing person;
- the victim is in danger;
- precise information is needed to locate the child or the abductor; and
- the victim is a minor.

649. Three prior conditions for triggering the alert must also be satisfied:

- the parents, with the assistance of the local association for victim support, must have given their agreement<sup>176</sup>;
- an emergency unit must have been set up; and
- a report that been sent by the Public Prosecutor to the head of the State Prosecution Service and by the latter to the Ministry of Justice.

650. Even when all these conditions are met, the alert is not triggered if there is a risk that it would create additional danger for the child or that it would compromise investigations that are in progress.

651. When the alert is triggered, it is distributed throughout metropolitan France and repeated until the child is found<sup>177</sup>. The alert message is accompanied by a photograph of the victim and a Freephone number, with the alternative of an email address, for witnesses to contact the police or gendarmerie.

652. This arrangement is very largely based on the experience that victims' associations and associations for victim support have been able to deploy as part of "*SOS Missing Children*". When triggered, "*SOS Missing Children*" receives the alert message via the National Institute for Victim Support and Mediation (*INAVEM*) at the same time as it is released to the press. This means that the associations are in a position, not only to relay the message to their own partners, but also to refer witnesses to the special "*Abduction Alert*" telephone number. Meanwhile, the parents of the missing child can receive help and psychological support from a local association for victim support, at the request of the State Prosecutor in charge of the inquiry. The main partners in "*Abduction Alert*" are the National Institute for Victim Support and Mediation<sup>178</sup> and the Children's Foundation<sup>179</sup>. Since it was established in February 2006, the "*Abduction Alert*" plan has been successfully put into operation four times. On one recent occasion on 15 August 2007, the fact that the system was in place made it possible to find a five-year-old boy, abducted at Roubaix, on the same day.

#### "*SOS Missing Children*"

653. On 25 May 2004, a framework agreement on the circumstances in which "*SOS Missing Children*" should be put into action was signed by the Ministry of Justice, the Ministry responsibly for the family, *INAVEM* and the Children's Foundation. The purpose is to listen to the families of runaway children or children abducted by a parent or who have gone missing in

---

<sup>176</sup> The State Prosecutor may dispense with the need for this agreement if it is impossible to obtain and if the "*Abduction Alert*" could be a decisive factor in providing help for the victim.

<sup>177</sup> The means of distribution are the television networks the radio stations, message displays on motorways and certain other trunk routes, *SNCF*, *RATP*, *INAVEM* (which relays the alert message to almost 160 victims' and victim support associations, and Agence France Presse.

<sup>178</sup> The objective of the *INAVEM* network is to promote both help and assistance for victims and mediation techniques. It provides training for paid and volunteer staff of associations and to the professionals (lawyers, doctors, social workers etc) working within them.

<sup>179</sup> A participant in the improvement of arrangements for child protection, this foundation directs its operations at professionals, among others, by offering specialized programmes to allow them to complete their training and to identify abusive situations. The Foundation provides protection for the most vulnerable children by supporting their parents and families when in difficulty; it takes part also in the strengthening of the activities of professionals on the ground.

worrying circumstances, and to offer them guidance and support in all the steps they need to take right through to the closure of the case.

654. This arrangement, two-thirds financed by the State<sup>180</sup>, relies on a network of associations. It is composed of two units: *INAVEM*'s telephone helpline, responsible for taking calls, and the monitoring unit of the Children's Foundation, responsible for the coordination of activities under the arrangement as a whole and for the running of the monitoring unit itself. Several protocols to the framework agreement specify the circumstances in which each of the partners is to become involved (*INAVEM*, the Children's Foundation, the national child abuse hotline ("*119 Allo Enfance Maltraitée*") and partner associations).

655. In phase with the "08VICTIMES" service, the guaranteed service is now provided from 6pm to 9pm from Monday to Friday and from 9am to 9pm on Saturday.

656. In 2005, 1,732 calls were dealt with by the service. These calls resulted in the official opening of 804 cases, in 146 of which corresponding cases were opened by the association for victim support.

#### **4. The special problem of involvement with cults**

657. The absence of a legal definition of sects results from the French concept of secularism. Since the Law of 9 December 1905, France's experience has been of a regime of separation between Churches and the State which has led the State to guarantee freedom of worship, while not recognizing any particular religion. The principle of the neutrality of the State therefore means that religious beliefs are not a material factor in public life, apart from restrictions connected with securing respect for public order, and that religious matters are the exclusive concern of individuals, arising solely in each citizen's private sphere.

658. This means that matters concerned with sects cannot in themselves be the subject of legislative intervention which has a limiting intention. Only the consequences, where they constitute a danger for the individual or for public order, can be taken into consideration by the law.

659. Thus, Law No. 2001-504 of 12 June 2001, enacted following a number of Parliamentary reports, has as its object to strengthen the prevention and suppression of sects which are inimical to human rights and fundamental liberties.

660. By the same logic, the creation of the Interministerial Taskforce for Vigilance towards and Combating Diversion into Involvement with Sects (*MIVILUDES*), in December 2002<sup>181</sup>, was a response to concern for vigilance and prevention. Its tasks are:

- to observe and analyse movements having the character of a sect which work for ends which are inimical to human rights and fundamental liberties or constitute a threat to public order or which are contrary to law and regulation;

---

<sup>180</sup> In 2005, "*SOS Missing Children*" received funding of €175,025 from the State and €72,000 from the Children's Foundation's own resources (including a European grant).

<sup>181</sup> The Taskforce replaced the Interministerial Taskforce for Combating Sects.

- while observing public liberties, to co-ordinate the preventive and suppressive activities of the public authorities in relation to the activities of sects in pursuit of such ends;
- to broaden exchanges of information between the public services on administrative practice in the field of combating the diversion of persons into involvement with sects;
- to contribute to informing and training members of the public services in this area;
- to inform the public about the risks, and where appropriate the dangers, to which diversion into involvement with sects exposes them and to facilitate assistance to the victims of such diversion; and
- to take part in work led by the Ministry for Foreign Affairs in this field arising from its international responsibilities.

661. Relying on the findings of the report of the Parliamentary Committee of Inquiry on the influence of movements having the character of a sect and the consequences of their practices for the physical and mental health of minors (December 2006), the Law of 5 March 2007 for the Reform of Child Protection, referred to above, contains provisions which aim to protect minors against diversion into involvement with sects<sup>182</sup>: penalties for not registering births and not complying with requirements for compulsory vaccination are strengthened. In addition, criminal prosecution to penalize publicity or promotional activity directed towards minors by sects is made easier. More generally, provisions for receiving and passing on information giving rise to concern about minors should allow limits to be set to the secrecy that surrounds children when their parents' adherence to a sect places them in danger in the sense of Article 375 of the Civil Code.

662. The different ministries continue to raise the awareness of their staff in relation to vigilance in this area (by the publication of circulars, the establishment of an interministerial working group, the development of training aimed at health and children's professionals and at law officers etc).

663. In March 2007, the Minister of Health decided to establish a new plan for the protection and treatment of those diverted into involvement with sects and with certain therapies<sup>183</sup>.

#### **D. CHILDREN BELONGING TO A MINORITY OR AN INDIGENOUS GROUP (ARTICLE 30)**

664. In response to the recommendation by the Committee at its paragraph 60, the Government points out that its reserve in relation to Article 30 of the Convention is not an obstacle to recognising the particular local features of indigenous, original or non-indigenous populations (see Annex 1), and to recognizing cultural diversity in metropolitan France, by, among other means, valuing regional languages and, conversely, through intensive and specific tuition in the French language in order to guarantee the complete integration of pupils in these groups into the normal curriculum (see Annex 2).

---

<sup>182</sup> Section V of the Law.

<sup>183</sup> Various work programmes and documents on diversion into involvement with sects in the field of health establish the availability in France of around two hundred non-conventional therapies.

## Annex I

### THE RIGHTS OF THE CHILD IN OVERSEAS FRANCE

#### INTRODUCTION

##### The institutional framework overseas

1. Under the French Constitution of 4 October 1958, the indivisibility of the Republic is sacrosanct. It recognizes one single French nationality, to which rights are attached. There is no longer any legal discrimination between people from metropolitan France and those from overseas France. The latter vote at all elections, are represented in the Parliament and have freedom of movement and of establishment across the whole of French territory. They also have European citizenship.
2. The Constitution distinguishes between:
  - **overseas *départements* and regions** under article 73 (Guadeloupe, French Guiana, Martinique and Réunion) whose defining characteristic is a regime treating them as identical in legislative terms with France as a whole. National laws and regulations apply fully, and as of right. Adaptations are nevertheless possible to take account of special characteristics. The initiative for such adaptations may be taken by the Parliament or the Government, or by the locally elected authorities if statute law allows. *Départements* and Regions are also able to make regulations about some questions in the legal domain, with sovereign matters (justice, civil liberties etc) excepted;
  - **overseas collectivities** under article 74 (Mayotte, Saint-Pierre and Miquelon, French Polynesia and the Wallis and Futuna Islands), whose status takes account of their particular interests within the Republic and gives them a varying degree of autonomy (which may or may not distinguish them from the metropolitan regime). An institutional Law sets out how competences are divided between the French State and the collectivity. Within their competence, the institutions of the collectivity may set standards, in the legal domain and elsewhere. Some of these collectivities are governed by the legislative speciality rule: national laws and regulations do not apply there unless this is expressly provided; and
  - New Caledonia (Part XIII of the Constitution), which is in a category of its own, and is also governed by the legislative speciality rule.
3. The Constitution also permits, with the consent of the electorate, transition from the status of an overseas *département* or region to that of an overseas collectivity. On 7 December 2003, for example, the electorate of the communes of Saint-Barthélemy and Saint-Martin voted in favour of separation from Guadeloupe. Institutional and ordinary<sup>xxiii</sup> laws nos. 2007-223 and 2007-224 on status and institutional matters in overseas France of 21 February 2007 established them as an overseas collectivity as from 15 July 2007.

##### The demographic context: a young population

4. On Mayotte, the population has increased fivefold in 35 years, reaching 160,265 in 2002. Those under the age of 20 represent 56% of the total, a higher percentage than for any other

French collectivity (in metropolitan France, as at 1 January 2007, there are 61,538,322 inhabitants, of whom 15,203,831, or 24.7%, are aged under 20).

5. High birth-rate and immigration from neighbouring islands are at the root of this demographic growth. Even though we are seeing a reduction in the birth-rate, it remains very high, with a fecundity index of 5 children per woman (compared with 1.7 children per woman in metropolitan France).

6. This population is concentrated around a main urban area, Mamoudzou, which contains more than 45,000 inhabitants, or 28% of the total population.

7. The population is the product of a blending between populations of Bantu origin and various waves of immigration, principally from Madagascar. The Indian community forms one of the largest of the minorities on the island.

8. The 2002 census showed large population movements: the number of immigrants from Comoros is growing. The French population is steady at a little under 100,000, while the number of foreigners is over 55,000, or a third of the total population. Foreigners have settled mainly around the economic centre, the Commune of Mamoudzou.

9. Two-thirds of births involve foreign mothers. The explanation for this lies in their numbers (there are as many Comoran as French women aged between 20 and 39 years) and in their birth-rate, which is higher: women born on Mayotte have on average 3.5 children, while Comoran women have 5.

10. In 2002, the Directorate of Health and Social Affairs registered more than 7,000 births, almost 4,000 of them at the Mamoudzou maternity centre, making it the busiest maternity centre in France. The number of births can be expected to continue to rise in coming years owing to the youth of the population and cultural behaviours which favour having children.

11. On Réunion, at the last census in 1999, the population was 706,300 inhabitants (a demographic growth of 1.72% a year since 1990). This growth is due partly to migration, but mostly to natural growth (the excess of births over deaths): the birth-rate is as high as 20% (it is about 13% in metropolitan France), while the death rate is 5%. Net migration is also positive. If this rate of growth continues, Réunion could have between 900,000 and a million inhabitants in 2025. The figures show a definite ageing of the population (51,400 were over 60 in 1990, compared with 70,700 in 1999). In parallel, the number of those aged under 20 has reduced to 36% of the population, compared with 40% in 1990.

12. The number of young adults (20 to 29 year-olds) has reduced since 1990 to 15% of the population, with the 30-39 year-old age group becoming the most numerous (17%). One of the predominant factors in this ageing is a marked increase in longevity. Life expectancy has risen to 70.4 years for men and 78.6 for women, an increase of 10 months since 1990.

13. In French Guiana, almost 157,213 inhabitants appeared in the 1999 census, or an increase of 42,600 in nine years. This very high rate of growth, which is hard to explain with certainty, is being sustained by the combination of a birth-rate which is the highest both in France and in South America (31.3% in 1999) and a very markedly positive rate of net migration. This produces a growth rate of 3.6% a year, which is nevertheless lower than that in the last period between censuses (5.8%).

14. In consequence, more than half of the inhabitants are aged below 25 and 52% of the population is male owing to high immigration. The death rate is very low and fecundity is very high.
15. A demographic readjustment is taking place, with reductions in Cayenne being balanced by increases elsewhere in French Guiana, including the towns of Saint-Laurent du Maroni and Kourou, the populations of which have doubled in ten years, and in some residential *communes* around Cayenne. Most of the interior of the country remains unpopulated, however, and population density is only 2 inhabitants per square kilometre.
16. At the census of 1999, the population of Martinique was 381,427 (compared with 359,600 in 1990 and 328,600 in 1982). Spread over 1,128 km<sup>2</sup>, this population is very dense (338 inhabitants/ km<sup>2</sup>, compared with 106 in France as a whole). The population of Martinique is relatively young and dynamic, with 25.9% aged under 20 and 53.8% aged between 20 and 59 years. Life expectancy is high, with the number of centenarians higher than the national average.
17. In Guadeloupe, the population is estimated at 453,000 as at 1 January 2006. The population is young: those aged between 0 and 19 account for 31.7% of the population. It should be noted, however, that the age profile of the population has been increasing for several years, as this age group represented 35.9% in 1990.
18. In New Caledonia, according to the last census in 1996, the population was 196,836, compared with 164,173 at the preceding census in 1989. As at 31 December 2001, the population is estimated at 216,132, as a result of very dynamic demographic change. Almost half the population is aged under 25.
19. The population is distributed as follows:
  - Southern Province: 134,546;
  - Northern Province: 41,413;
  - Islands Province: 20,877.
20. There are elements of concentration in the spatial distribution of the population. For example, 38.8% of the population of the territory live at Nouméa and Grand Nouméa, which consists of the municipalities of Dumbéa, Païta, Mont-Dore and the town of Nouméa, which on its own accounts for about 60% of the population.
21. French Polynesia now has 245,405 habitants (2002 census), an increase of 11.81% in six years. The population, taken as a whole, is young, with 43.1% under the age of twenty.
22. The distribution by island group is as follows (census of 1996):
  - Windward Islands: 184,224;
  - Leeward Islands: 30,221;
  - Tuamotu/Gambier: 15,862;
  - Marquesas Islands: 8,712;
  - Iles Australes: 6,386.

23. The population of the Wallis and Futuna Islands was 14,944 at the census of 2003. 34% of the population lives on Futuna and 66% on Wallis. The population is very young (64% are aged under 20).

24. The massive immigration of this population to New Caledonia should be noted: 17,563 persons had moved to the Nouméa region at the time of the 1996 census, corresponding to 9% of the total population of New Caledonia today.

25. In Saint-Pierre et Miquelon, the population is now 6,316: 5,618 on Saint-Pierre and 698 on Miquelon.

#### I. APPLICABILITY OF THE CONVENTION IN OVERSEAS FRANCE

26. In general, international conventions apply fully as a matter of law to overseas *départements* and regions, and to overseas collectivities subject to any express provisions of non-applicability which appear in the instrument concerned. The *Conseil d'Etat* ruled on 14 May 1993 that an international convention published in metropolitan France applies fully as a matter of law in overseas France without any need for further formalities provided that it does not include an express exclusion clause.

27. In the absence of any specific reserves, international conventions on the protection of the rights of the child which have been ratified by France are fully applicable as a matter of law in the French overseas *départements* and collectivities (the New York Convention on the Rights of the Child of 20 November 1989, the Hague Convention on Protection of Children and Cooperation in respect of Inter-country Adoption of 29 May 1993 etc.).

28. The promotion of the rights of the child is a priority for the overseas *départements* and collectivities. Across the whole of French overseas territory, the anniversary of the International Convention on the Rights of the Child is celebrated, and treated as an opportunity to make what the collectivities are doing about child protection better known. They are also an occasion for reflection on the range of problems affecting children by all of the services of the State, associations and partner organizations such as the Family Allowances Funds.

29. In New Caledonia, for example, regular action is taken to disseminate the Convention and information about it, and added emphasis has been placed on this since 2005. The local representative of the Children's Ombudsman intervenes frequently in schools and works in close collaboration with the social and judicial services. The local media pass on information about these matters effectively. In future, additional stress will be laid on activities in the villages and among remote tribes.

30. In 2003, the Northern Province of New Caledonia organized events in all public and private primary schools through the Directorates for Teaching and for Health to commemorate the anniversary of the Convention as part of the International Day of the Rights of the Child. Posters, publications and competitions for designing Advent calendars were distributed to teachers and provided the basis for classroom activities.

31. The Assembly of the Northern Province approved an information campaign on children's rights and child protection directed at all pupils of primary schools in the Province, their parents, teachers and the State and customary authorities. This campaign was begun in November 2003 in one commune and was rolled out over the whole of the Northern Province's territory by 2007. These events received wide media coverage.

32. Similarly, the Southern Province organizes awareness-raising events for children and adults as part of the annual celebration of the signature of the Convention on the Rights of the Child. In 2001 a special theme – the right to health – was chosen. As part of special teaching projects, primary school children were invited to do work on this theme which was then exhibited for a week at the Town Hall at Nouméa. In 2002, the special theme was the right to the family, and in 2004 it was the right to rest and leisure.

#### **A. The legal status of indigenous populations overseas**

33. France stated a reservation in relation to Article 30 (which provides that: “in those states in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to practise his or her own religion, or to use his or her own language”).

34. The territory of the French Republic includes populations which correspond to the definition of “autochthonous, indigenous or aboriginal populations” which, according to the work of the United Nations, are distinct from “minorities” because of their presence on the land from time immemorial and of the fact that they have continuous historical links with pre-colonial societies which existed prior to invasion. (See the report of José R. MARTINEZ-COBO, United Nations, doc. E/CN4/1986/7 and addenda 1-4).

35. In French Guiana, French Polynesia, New Caledonia, Mayotte and the Wallis and Futuna Islands, the indigenous populations are respectively Amerindians, Polynesians, Melanesians, Mahorais, and Wallisians and Futunians.

#### **1. The principle of equal rights**

36. Article 72(3) of the Constitution put an end to the existence as a legal concept of “overseas peoples” (Constitutional Law No. 2003-276 of 28 March 2003 on the decentralized organization of the Republic): this Article nevertheless provides that “the Republic shall recognize the overseas populations within the French people in a common ideal of liberty, equality and fraternity<sup>xxiv</sup>.” In fact, although the concept of rights for indigenous and local communities is alien to French law<sup>a</sup>, the State has for many years been finding ways to integrate local popular knowledge and the practices and customs of the overseas populations into its policies for the conservation of biodiversity.

37. For example, Article 8j of the Convention on Biological Diversity (which recognizes the contribution of local and indigenous communities to the preservation and sustainable use of biodiversity) has now been transcribed virtually in its entirety into national law by Law No. 2000-1207 on orientation for overseas France of 13 December 2000 in Article 33: “The State and local collectivities shall encourage the respect, protection and preservation of the

---

<sup>a</sup> In international forums, indigenous representative organizations insist on being referred to as peoples. But the French constitutional judge has decided, in a judgement of 9 May 1991, that the expression “(Corsican) People, as a component of the French people, was unconstitutional”; there can be only one French People in France, by reason of the principle of equality and unity. The concept of “People” implies in effect that several exist within the State, and in so doing conflicts with the principle of unity. It can also be taken as meaning that rights are conferred on a group on a footing which relates to a community, rather than being territorially-based. It also follows from Article 1 of the Constitution that the Republic cannot accept the existence within itself the legal existence of any “indigenous” category.

knowledge, customs and unique characteristics of indigenous and local communities which are based on their traditional ways of life and which contribute to the preservation of the natural environment and the sustainable use of biological diversity”.

## **2. Respect for special local factors**

38. The French approach does not exclude the right for overseas indigenous populations to lead their own cultural life in common with the other members of their group, to profess and practise their own religion or to use their own language.

39. The approach that France has adopted to special local factors is to take them into account in the legal norms that apply locally. This has led to the development in the overseas *départements* and regions of one-off systems for coexistence between codified civil law and local custom passed on by oral tradition, with each of the two governing the way in which society is organized at particular levels, and conflicts between the two being resolved according to precedent.

### **2.1 The preservation of personal status<sup>b</sup> under local law in some collectivities responds to a Constitutional requirement**

40. The field in which the Republic has shown its commitment to the recognition of indigenous overseas populations is the law of the person. It has written that recognition into the constitution (art. 75).

41. Article 75, which replaces article 82 of the Constitution of 27 October 1946 and is drafted similarly, provides that “Citizens who do not have ordinary civil status, as exclusively referred to in Article 34, shall retain their personal status so long as they have not renounced it.”

42. This means that two kinds of personal status exist alongside one another in Mayotte and in two overseas collectivities in the Pacific (New Caledonia and the Wallis and Futuna Islands). One status is under ordinary law, governed by the provisions of the Civil Code; the other under local or customary law. In Polynesia, personal status has not existed since the Order of 24 March 1945 for the abolition of personal status in French Polynesia.

43. Article 75 of the Constitution refers only to civil status, as the criminal law is consistently excluded from the competence of the collectivities.

44. In preparing laws establishing overseas collectivities (New Caledonia, the Wallis and Futuna Islands and the Departmental Collectivity of Mayotte), France has always scrupulously observed the provisions of Article 75 of the Constitution. This constitutional provision guarantees to these collectivities respect for their traditions and customs.

---

<sup>b</sup> Personal status is a concept that describes a situation in which a person is personally subject to local law and not to ordinary law. In practical terms, this dual arrangement means the existence of two kinds of civil status.

**2.2 Respect for forms of personal status under customary law does not rule out bringing them into conformity with the general legal principles of the rule of law and of international law**

45. Bringing forms of personal status into conformity with the principles which provide the framework for the rule of law in France does not imply that they must be systematically aligned with the ordinary law.

46. For example, a number of legislative provisions have brought the civil law of Mayotte into line with that in force in metropolitan France. The programming law of 21 July 2003 for overseas France ends polygamy, establishes the termination of marriage by divorce, and prohibits unilateral repudiations along with discrimination between children in inheritance matters based on gender or on whether their birth is legitimate or natural. Article 68 of the Law of 21 July 2003 amends Title VI of Law No. 2001-216 of 11 July 2001 on the status of Mayotte so as finally to restrict the field of application of personal status under local law to personal capacity, to matrimonial arrangements and to inheritance and gifts, to the exclusion of all other aspects of the life of society.

47. The profound modification of civil status under local law undertaken through these legislative reforms undeniably allows it to develop in a way which is consistent with the principles of the Republic, without calling into question the very existence of such status, which is guaranteed by the Constitution. Throughout the whole process of change in status, including the most recent developments, France has taken a gradual approach in order to avoid violent breaks with ancestral customs in the overseas collectivities.

48. France intends to continue this process of bringing forms of civil status under customary law into conformity with the requirements of the rule of law in relation to human rights.

49. Dealing with the field of application of Melanesian customary law, in a judgement of 16 December 2005<sup>c</sup>, The Court of Cassation considered that local custom enjoys full standing in society, as customary law cannot be seen as a subsidiary system of law. Bringing it into conformity with the rule of law must not lead to it being purely and simply assimilated with the principles of the general law.

50. The Court of Cassation retains full jurisdiction over customary Law so that it can supervise all of the relationships under private law dealt with by the Civil Code (persons, goods and contracts). By contrast with Mayotte's constitutional law (Law No. 2001-616 of 11 July 2001), which limits the field of application of customary law to certain areas of personal law, New Caledonia's equivalent law (institutional Law No. 99-209 of 19 March on New Caledonia) bears on civil law as a whole, thus by definition ruling out the concept of a general law which would come automatically into play in any circumstances not dealt with in customary law.

**B. Personal status under local law in the overseas collectivities**

51. In French Guiana, French Polynesia, New Caledonia, Mayotte and the Wallis and Futuna Islands, original populations (respectively Amerindians, Polynesians, Melanesians, Mahorais and Wallisians and Futunians) coexist in varying proportions with non-indigenous populations.

---

<sup>c</sup> Judgement No. 0050011P.

52. The relative proportion of the indigenous and non-indigenous populations to one another is difficult to establish given that France does not cover ethnic origin in censuses. It is, however, possible to contrast French Guiana, where Amerindians represent less than 5% of the population, with the Wallis and Futuna Islands, where the population is more or less homogeneous. In New Caledonia, 44% of inhabitants are Melanesians, while the proportion of Polynesians in French Polynesia exceeds 80%.

53. The nuances that need to be applied in interpreting these proportions should be borne in mind, in the absence of precise information about the populations concerned.

54. On Mayotte, as in the two Pacific overseas collectivities of New Caledonia and the Wallis and Futuna Islands, two personal statuses exist alongside one another: one under ordinary law, ruled by the Civil Code; and the other under local and customary law. In its Decision No. 2003-474 DC of 17 July 2003, the Constitutional Council considered that: *“once the Legislature had decided not to question the existence of civil status under local law, [it] had the power to make provisions likely to bring about changes in the rules of such status with the intention of making them compatible with the principles and rights protected by the Constitution.”* By insisting that *“the result of the combined effect of these provisions [the Preamble to the Constitution of the French Republic and Articles 1, 72-3 and 75 of the Constitution] is that citizens of the Republic who retain their personal status enjoy the rights and liberties attaching to French citizenship and are subject to the same obligations [ ]”*, the Constitutional Council justified the action taken by the Legislature to set aside regimes resulting from local customary law, such as marital repudiation, polygamy and inequality of children for purposes of inheritance, which were exceptions to ordinary law and capable of conflicting with the principle of equality between men and women.

## **1. The situation in New Caledonia**

55. In New Caledonia, according to the last census in 1996, the population was 196,836, compared with 164,173 at the preceding census in 1989. At 31 December 2001, the population is estimated at 216,132, as a result of very dynamic demographic change. Almost half the population is aged under 25.

56. The proportion of the population belonging to the various communities of origin is as follows:

- Melanesians: 44.1%
- Europeans: 34.1%
- Wallisians and Futunians: 9%
- Tahitians: 2.6%
- Indonesians: 2.5%
- others: 7.5%

57. The basic unit of Melanesian life is the clan, which is a grouping of several families. Between the different clans, there exists an extensive network of interchange and alliances. The clans share a common origin in the land and regard New Caledonian territory as an ensemble of places charged with mythic significance.

58. Melanesians have been French citizens since the Constitution of 1946, which stated in Article 80 the principle of recognising all those from overseas France as citizens.

59. The Nouméa Agreement of 5 May 1998, to which Article 77 of the Constitution gives full constitutional force, explicitly recognizes Melanesian identity and establishes a citizenship of New Caledonia.

60. The effects of this citizenship, referred to in Article 77 of the Constitution, are mainly electoral (the election of the Congress and the Provincial Assemblies). In addition, Article 24 of the institutional Law allows the local Legislature to put in place measures for “*the protection of local employment*” (that is, for local preference) for the benefit of citizens of New Caledonia and of persons qualifying by a minimum period of residence (fixed by a local Law).

### **1.1 The coexistence of ordinary law and customary law**

61. Changes in New Caledonia in the institutional Law of 19 March 1999 represent an attempt to balance the Republican principle of equality with arrangements which take account of the special features of the original population. The Law contains provisions which favour customary law and measures dealing with cultural matters.

62. The Law provides for progressive transfers of competence to New Caledonia, creates a citizenship of New Caledonia and consolidates the civil status of the Melanesians under customary law.

63. The institutional Law of 19 March 1999 is part of a continuous process following from the Nouméa agreement, which puts custom in the front rank of the component elements of Melanesian identity. It devotes a Chapter to the customary Senate and councils (Articles 137 to 152).

64. The last twenty years have seen the recognition of the traditional authorities clarified and their role increased, especially after 1988, when the territory was divided into 8 traditional areas<sup>d</sup>. These areas are represented by customary councils and each is composed of several clans or “*mound-lineages*”, which recognize a common and consistent set of customary laws, beliefs and customs, as well as a relationship to a common ancestor, considered to be the most ancient known representative of all of the original families. Each of these areas decides the composition of its customary council, which is consulted on a very extensive range of matters by the Senate, the High Commissioner and the Government. Today, New Caledonia has 57 districts and 340 tribes, 14 of them “independent”, in other words located outside the areas of jurisdiction of the districts.

65. The way in which jurisdiction is shared has now been clarified: the President of the Government of New Caledonia is notified of the appointment of the customary authorities, after this has been decided by the customary Senate, and the customary authorities remain, locally, the indispensable link with the public authorities. Acting as the focus for contact between the Melanesian collectivities and the State administration, the Syndic for Traditional Affairs confers official standing on the decisions taken by the tribe by including them in the official record of a tribal debate: since the beginning of the century, this function has been fulfilled by the

---

<sup>d</sup> Hoot Ma Whaap, Paici Camuki, Ajie Aro, Xaracùù, Djubéa-Kaponé, Iaai, Drehu, Nengoné

gendarmérie. In the event of dispute over the interpretation of an official record of a tribal debate, the parties raise the issue with the customary council.

66. The Customary Senate, which takes the place of the consultative council created by the referendum Law of 9 November 1988, is consulted on questions involving customary practice, and takes part in the legislative process on local laws with a bearing on Melanesian identity. It consists of sixteen members designated by each customary council, according to custom, who choose a President and an executive committee every year. The Customary Senate of New Caledonia takes part in the preparation of rules on property law and civil law

67. A specific civil status for the Melanesian population, to be known as customary civil status, is recognized in New Caledonia, applying Article 75 of the Constitution. This status is established by the first Part of institutional Law No. 99-209 of 19 March 1999. At present, almost 90,000 people have this status in New Caledonia.

68. The provisions of Article 7 of the institutional Law provide for partial exceptions to the Constitution, by offering the possibility, not only of passing from customary civil status to civil status under ordinary law, but also of passing from civil status under ordinary law to customary civil status (Articles 11, 12 and 13).

69. The recording of persons with customary civil status on special registers of civil status kept in each *commune* by Mayors, acting as registrars, was begun by a judgement of the superior appeal tribunal of Nouméa of 28 February 1920. This was incorporated in a Decree No. 631 of 21 June 1934 on the creation of a civil status for indigenous people, amended and supplemented by Resolution No. 424 of 3 April 1967, which was itself supplemented by a Circular No. 13-2815 of 25 August 1967.

70. The Resolution of 3 April 1967 defined the rules which apply to the registration service for the registration of citizens with special civil status. To a large extent, they coincide with the rules which govern civil status under the ordinary law, but some differences are provided for, for example, a time-limit of 30 days for the registration of births.

71. Alongside the customary registers (of births, marriages and deaths), the *communes* keep registers which contain details of the population of each tribe. The birth of a child subject to customary law must be registered (as under ordinary law) in the *commune* of birth, but the person who registers it can also require that the child is registered as a member of the tribe of the father. Article 10 of institutional Law No. 99-209 of 19 March on New Caledonia provides that a legitimate, natural or adopted child whose father and mother have customary civil status, also has customary civil status.

72. Custom constitutes the foundation of Melanesian social interrelationships, as in other Oceanian societies: a term which has layers of meaning, it means at the same time both the oral code which regulates Melanesian society and the “traditional ceremony” involving the giving of gifts and the exchange of expressions of friendship on the occasion of a visit to a Melanesian host. All the distinctive features of customary life, and the High Chiefs foremost among them, are imbued with its authority.

73. To avoid the fragmentation of traditional structures, the Imperial Government, by a Decree of 24 December 1867, gave a legal existence to the customary structure of the tribe, which brings together in one place the members of one or more clans. The imposition of this geographically-based arrangement was supplemented by the Decree of 9 August 1898, which set up districts, or

groupings of tribes: at their head were placed High Chiefs, who in principle were chosen unanimously by the council of elders, while minor chiefs ran the affairs of the tribes.

74. Melanesian special status is a living system of customary law based on oral tradition. It varies from place to place and now covers the law of persons (civil status, marriage, adoption and testamentary matters) and the regime for property (which embodies the principle of collective ownership by the tribe).

75. A debate has begun on the scope of application of Melanesian customary law in the courts. Even though the Appeal Court of Nouméa adopted an *a contrario* interpretation of Article 1 of Law No. 70-589 of 9 July 1970 on civil status under ordinary law<sup>e</sup>, by inferring that customary Law governed only civil status and personal capacity, matrimonial regimes, inheritance and gifts, the Court of Cassation has underlined by two decisions<sup>f</sup> that customary law cannot be regarded as a subsidiary system of law.

76. More recently, in an opinion dated 16 December 2005, the Court of Cassation was required to determine whether Article 7 (referred to above) of the institutional Law, which provides that persons with personal civil status are governed “by their customs as regards civil law”, applies to civil law in its entirety, or only that part of civil law which is directly dealt with by customary law (many areas of law, such as tutelary assistance, are in practice not dealt with in customary law).

77. The Court of Cassation retains full jurisdiction over issues dealt with in customary law so that it can govern in their entirety all of the private law relationships dealt with in the Civil Code (persons, goods and contracts). In contrast to the statute for Mayotte, which limits the scope of the application of customary law to certain areas of the law of the person, the statute for New Caledonia addresses the civil law in its entirety, thus by definition ruling out the notion that ordinary law would automatically apply to fill any gaps left by customary law.

## 1.2 The recognition of traditional lands

78. Land has a special importance in the rationale both for the recognition of Melanesian identity and for establishing a new economic balance in the territory.

79. “Traditional lands”, along with goods belonging to persons with customary civil status, are governed by customary law. The institutional Law defines this concept of “traditional lands” as reserves of land, ownership of which is ascribed to groups subject to local customary law; and of land, ownership of which is ascribed by the territorial collectivities or public establishments dealing with land questions (the Agency for Rural Development and Land Management) in response to requests which have been made on the grounds of connection with the land.

80. At the legal level, these lands are an exception to the classic concept of ownership. The institutional Law repeats the principle that they are inalienable, and not subject to cession,

---

<sup>e</sup> “This Law applies to provisions relating to the status and capacity of persons, to matrimonial regimes and to questions regarding inheritance and gifts which form part of the civil status under the general law referred to in Article 75 of the Constitution.”

<sup>f</sup> Second civil chamber, 6 February 1991 (Bull.1991, II No. 44 and Dalloz 1992, 93) and first civil chamber, 13 October 1992 (Bull.1992, I No. 248).

substitution or seizure, reflecting the terms of the decree of Governor Guillain of 1868 and territorial resolution No. 67 of 10 March 1959 on the regime for indigenous reserves.

81. The Agency for Rural Development and Land Management, which has existed since 1988, has ceded some 80,000 hectares back to the Melanesian community since 1989. The ownership of the land is recognized as belonging collectively to the tribes.

### **1.3 Absence of a separate court**

82. Order No. 82-877 of 15 October 1982 followed through the implications of the existence of a customary Melanesian civil status alongside civil status under the general law by establishing customary law judges responsible for sitting with the normal courts dealing with disputes between litigants with civil status under customary law, including land cases (five customary law judges per customary law area).

83. Article 19 of the institutional Law confirms this special arrangement, by empowering customary law judges to sit with judges in the civil courts of first instance and appeal dealing with "*cases and applications relating to civil status under customary law or to traditional lands*". The function of these customary law judges, who are aged over 25 and must be able to give guarantees of competence and impartiality, and who sit in numbers equal to those of the other judges and have a vote when the court reaches its conclusions, is to help the ordinary law judge to gain a fuller understanding of the customary rules which he must apply to persons with local civil status under customary law.

84. Even before the statute of 1999, Order No. 82-877 of 15 October 1982 set out the practical arrangements for the involvement of these customary law judges, of whom there are five for each customary law area. The Order provides them with powers to conciliate between citizens with civil status under customary law and allows disputes between citizens with civil status under customary law to be brought directly before the court of first instance in subject areas which are governed by that status. The Court of Cassation upholds the requirement for customary civil law to be systematically applied by conventional judges sitting with customary law judges whenever the case concerns a person with local civil status.

## **2. Mayotte**

85. The island of Mayotte has been a cultural and religious melting-pot with very strong African, animist, Bantu and Islamic influences. The Muslim religion has been established there since the fifteenth century and has a major influence on how society is organized: 95% of the population of the island is Sunni Muslim. The mother tongue of the Mahorais is either Shimaore (Swahili in origin) or Kibushi (Madagascan in origin).

86. Traditional society on Mayotte works on the principle that group interests take precedence over individual interests, and is matriarchal (with filiation determined through the maternal line and with the home of the mother as the family's place of residence). The culture is underpinned by a rich oral tradition.

87. Customary law inspired by Islamic law and African and Madagascan customs applies to persons who have retained their personal civil status, as permitted by Article 75 of the Constitution. The Law of 11 July 2001 on Mayotte preserves this local civil status based on customary law and sets out the scope for renouncing this status in favour of civil status under ordinary law.

88. Personal civil status is essentially concerned with personal and family rights, and with inheritance rights. So, in these areas, persons who have retained their personal civil status are subject to special rules.
89. There are special courts which have jurisdiction over litigation arising from the application of local law.
90. The legislature has taken action to set aside exceptional regimes, arising from local and customary law, which were incompatible with the equality of men and women in the Collectivity of Mayotte.

## 2.1 Civil status under local law

91. The Constitutions of the Fourth and Fifth Republics gave general application to the system of dual civil status<sup>g</sup>, while limiting the field of application of personal status to questions of personal civil standing and capacity, matrimonial regimes, inheritance and gifts<sup>h</sup>.
92. Society on Mayotte, which is predominantly Muslim, and its personal civil status embodies a number of legal traditions including the precepts of the Sunnah.
93. A number of provisions have aligned civil law on Mayotte with that in force in metropolitan France.
94. Order No. 2000-219 of 8 March 2000 on civil status on Mayotte made it compulsory for both bride and groom to appear personally so as to establish the free and full consent of both as well as to ensure the presence of a registrar at the celebration of the marriage.
95. Law No. 2001-616 of 11 July 2001 on Mayotte asserted the right of women with civil status under local law to the free exercise of a profession either as a self-employed or employed person, along with the rights and duties attaching to this freedom. This Law also specified the rules governing the reconciliation of civil status under local law with civil status under ordinary law and arrangements for the renunciation of civil status under local law.
96. Order No. 2002-1476 of 19 December 2002 on the extension and adaptation of arrangements for the civil law on Mayotte helped to bring civil law on Mayotte to brought into line with that in force in metropolitan France.
97. The Law on programming for the overseas territories No. 2003-660 of 21 July 2003, amending Law No. 2001-616 of 11 July 2001 on Mayotte, allowed a significant advance in equality between men and women by establishing monogamy and termination of marriage by divorce, prohibiting unilateral repudiation and forbidding discrimination between children on

---

<sup>g</sup> Articles 81 et 82 of the Constitution of 27 October 1946 and article 75 of the Constitution of 4 October 1958, which provides that: “*Citizens of the Republic who do not have civil status under the general law, which is the only such status specified in Article 34, shall retain their personal civil status provided that they have not renounced it*”. The phrase “*the only such status specified in Article 34*” is a cross-reference to the list of matters to be determined by statute, among which are personal status and capacity, matrimonial and property regimes, inheritance and civil rights.

<sup>h</sup> Areas of competence listed in Article 59 paragraph 2 of Law No. 2001-616 of 11 July 2001 on Mayotte.

matters of inheritance based on their sex or the legitimate or natural character of their birth. Article 68 of the Law of 21 July 2003 amends Part VI of the constitutional Law of 11 July 2001 on Mayotte so as finally to restrict the field of application of personal civil status under local law to the civil status and capacity of persons, matrimonial regimes, inheritance and gifts, to the exclusion of all other aspects of civil life.

98. Law No. 2004-439 of 26 May 2004 on divorce complemented this reform on two points: the general law procedure for divorce was made available in the case of divorce between persons with civil status under local law and access to the ordinary law judge was made possible for the party who applies for divorce first.

99. The profound change made by these reforms to civil status under local law undeniably allows it to evolve in ways which are consistent with Republican principles, without calling into question its fundamental existence, which is guaranteed by the Constitution.

## **2.2 Cadi courts**

100. On Mayotte, citizens with civil status under local law are able, if the instigating party so wishes, to refer some types of litigation to courts presided over by cadis, which are customary courts under Islamic law.

101. This system was explicitly preserved by Article 1 of the treaty of 25 April 1845. Its organization is provided for in Resolution No. 64-12a of 3 June 1964 of the Chamber of Deputies of the Comoros on reorganization of procedures for Islamic justice and the Decree of 1 June 1939 on the organization of native justice in the Comoros archipelago, amended by Order No. 81-295 of 1 April 1981 on the organization of justice on Mayotte.

102. The civil status under local law applicable on Mayotte established by Law No. 2001-16 of 11 July 2001 (Title VI) takes account of the fact that almost 95% of the populations of Mayotte belong to the Muslim faith. France has found ways to develop and manage the system of cadial justice (the customary courts under Islamic law), ensuring that special local considerations are respected. The customary judicial system is organized around three courts:

- the 17 cadi courts (first level), located in each commune on Mayotte, have jurisdiction over issues of personal status and disputes over inheritance up to €300. The court receives a written application, usually in Shimaore, translated by the registrar of the court.
- The higher cadi court rules on appeals from the decisions of the cadi courts and is the court of first instance for disputes over €300. It also takes cases which fall within the competence of the cadis when they consider that they should disqualify themselves on owing to the complexity of the litigation.
- The Muslim cassation division of the high court of appeal, consisting of the President of the upper appeals tribunal and of two cadis who do not have voting rights, has jurisdiction to rule on appeals from decisions of the higher cadi court.

103. Since the passage of programming Law No. 2003-660 of 21 July 2003 for overseas France and Law No. 2004-439 on divorce, cadis can take cases between persons with civil status under local law in the following areas of law: cases concerning personal status and capacity, marriage,

with the exception of divorce, and judicial separation. They also have jurisdiction in minor cases concerned with inheritance, gifts and liabilities.

104. Outside their jurisdiction are: criminal matters, tutelary assistance and disputes of medium and high value over liabilities.

105. Until the coming into force of Law No. 2006-911 of 24 July 2004 on immigration and integration, cadis celebrated the marriages of persons with local legal status<sup>i</sup>. Since then, they are celebrated in the *mairie* by the registrar in the presence of two witnesses, which allows the consent of both parties to be clearly established.

106. Cadial justice makes no explicit provision for the representation of children in proceedings which concern them.

### **3. The Wallis and Futuna Islands**

107. The Law of 29 July 1961 provides that “*The Republic shall guarantee to the population of the Wallis and Futuna Islands the free exercise of their religion and respect for their beliefs and customs in so far as they are not contrary to the general principles of the law and to the provisions of this Law*” (Article 3)

108. The constitutional statute for the Wallis and Futuna Islands takes account of its indigenous political structures. The statute retains the traditional chiefs (Sau), who are commonly referred to as “*Kings*”, and thus gives effect to the organization of society according to customary rules. The “*Kings*” are members of a territorial council, which assists the senior administrator. The territory is divided into three districts, which correspond to the three “*Kingdoms*” (Wallis, Sigave and Alo).

109. Traditional social structures on the Wallis and Futuna Islands continue to show strong influence by the Catholic church. They still rest largely on a clan-based conception of the family and on avoiding division of inherited land.

110. Almost all of the population have retained their personal status, and are governed by customary rules which are characterized by specific rules in relation to civil law (the law of the person and the inheritance of property).

111. Article 2 of Law No. 61-814 of 29 July 1961 confers French citizenship on the inhabitants of the Wallis and Futuna Islands. In addition, the Law specifies that French citizens “*who do not have civil status under the ordinary law shall retain their personal status provided that they have not expressly renounced it* (Article 2).

112. As for the courts, Article 5 provides for the creation of a tribunal applying the ordinary law within the jurisdiction of the court of appeal of Nouméa, and a tribunal applying local law. For disputes between citizens governed by local law and for disputes involving possessions held according to custom, the ordinary law tribunal has never been put into operation, leaving a purely customary system of justice. In criminal matters, the jurisdiction of the ordinary law judge is unambiguously asserted by the law of 1961.

---

<sup>i</sup> These marriages had however been celebrated in the presence of the registrar since Order No. 2000-219 of 8 March 2000 on civil status on Mayotte (Article 16).

113. The three “*traditional Chiefs*” (Sau) of the Wallis and Futuna Islands, who are commonly called “*Kings*”, are the supreme customary authorities. They each have an entourage of five dignitaries, or “*Aliki Fau*”, more often known as “*customary ministers*”, a master of ceremonies and a chief of “police”.

114. The main task of the chiefs’ organizations is to ensure that the traditional rules that they are there to uphold are observed. These rules govern dealings within the community and between the community and its environment.

115. Each king to some extent embodies the basic memories of his people and is their supreme judge. He is reputed to know the genealogy of each family and the boundaries of its property.

116. The ownership of land is collective, inalienable and immune from cession, according to the customary law that applies to persons with personal civil status, who constitute about 99% of the population of the Wallis and Futuna Islands.

117. There are three distinct types of “*property*”:

- public property, which belongs to the King, although customary rights to gather food and wood can be exercised there;
- village property, which in principle is divided between the families and may be planted communally; and
- family property, on the scale of the extended family, which generally includes a living space, plantation land and a coconut grove.

#### **4. French Guiana**

118. For a long time, traditional societies have co-existed alongside Creole and European societies. They have retained family and social structures and customs with very distant origins.

119. The Amerindian population of French Guiana includes six ethnic groups: Arawak and Galibi, who live on the coast, are the most numerous (about 6,000); Palikur, Emerillon and Wayapi (a few hundred strong) live mainly on the banks of the Oyapock river; and in the interior, the Wayana live along the upper Maroni.

120. The Amerindian populations of French Guiana have been subject to a very liberal governance system since the Inini territory was set up in 1930.

121. The “Noirs-Marrons” or Bushi-Nengi are descended from populations which established themselves in the hinterland of Surinam and on the Maroni in order to escape from slavery. There are four ethnic groups of Noirs-Marrons: the Boni (or Aluku), living at Apatou, Papaïchton and Maripasoula; the Djuka living at Grand-Santi on the Maroni; and the Paramaca and Saramaca, who originate from Surinam.

122. The Hmongs have established themselves much more recently in French Guiana, in the 1970s, to escape the war in Indochina. They have set up two main villages: Cacao and Javouhey.

123. A specially adapted system of regulation has grown up over time which takes realistic account of the traditional customs of the country.

124. To protect the health and culture of the Amerindians, a decree of 14 December 1970 made access to Amerindian territory subject to prefectoral authorization.

## **5. French Polynesia**

125. Institutional Law No. 2004-192 of 27 February 2004 grants autonomy to French Polynesia, stating in Article 1 the concept of "Respect for its particular geographical circumstances and the identity of its population". The collectivity has full competence in environmental matters, the exploitation of natural maritime resources and cultural development. In addition, Polynesian languages are recognized and the study of the country's culture and the Tahitian language form an integral part of the timetable and teaching in schools.

## **II. FREEDOMS AND CIVIL RIGHTS**

### **A. Personal civil status**

#### **1. The identity of the child**

126. Law No. 2002-93 of 22 January 2002 on access to personal origins for adopted persons and wards of the State applies in French Polynesia and New Caledonia. The State has agreements with French Polynesia and New Caledonia which govern the transmission of data about the child and birth parents to the National Council for Access to Personal Origins.

127. The task of the National Council for Access to Personal Origins is to ensure that the overseas *départements* and collectivities have information on the arrangements established by the Law. The Minister for Overseas France sits on its governing board.

#### **1.1 Civil status on Mayotte**

128. The duality of legal systems (ordinary and customary) entails a twin system of civil status. Until 2000, this situation caused legal uncertainty for reasons which included the different rules (governing arrangements and time-limits for making entries and issuing family civil-status books, the powers of registrars and the courts which had jurisdiction) which applied to the keeping of the registers of civil status.

129. There was a general problem of registers which were missing or in a poor state of preservation, often poorly maintained and damaged or even lost altogether owing to climatic conditions (such as cyclones and very high humidity) and termites. What is more, some births were not registered (in particular those of girls or children born outside marriage), marriages were not systematically registered and repudiations were almost never registered at all. This meant that a part of the population did not know which type of law it came under: errors in recording caused difficulties in proving French nationality. At the time, supplementary rulings made by the *cadis* often took the place of civil status, for lack of an extract from the register of births or a standard dossier establishing civil status.

130. Added to this, because of the co-existence of a tradition of African (Bantu) origin and Islamic law, no transmissible name derived from the father's name existed, which made the reliable establishment of civil status very difficult. It meant that how a person was identified

varied over the course of life. Each person had in succession a name indicating filiation, made up of the phrase “son” or “daughter of” and the father’s given name, then a name indicating parenthood, composed of the word “Ba” (father) or “Ma” (mother) of, and the given name of the eldest son. In the “third age”, the name became “grandfather of” or “grandmother of”. On Mayotte, the name indicating parenthood had main place, as in traditional Arab cultures.

131. In addition, the father would keep the name of his child secret in order to protect him or her against bad luck. In everyday life, a pseudonym was used, and the *cadi* could also be asked to change the given name of an individual for traditional reasons, after an illness, for example.

132. Thus, the individual’s identity included various elements: the parent-name, the usual or family given name, not declared to the civil status registry and used in relations with close connections, a nickname and a given name which would be declared to the civil status registry and used at school and in relations with officialdom.

133. Order No. 2000-219 of 8 March 2000 on civil status on Mayotte, since amended, gave an opportunity to clarify and simplify this situation:

- by creating one civil status administration under ordinary law and one under local civil status in each commune;
- by making rules for determining family names and given names for persons with civil status under the local law applicable on Mayotte; and
- by making a set of rules designed to put civil status on the island of Mayotte on a viable basis by providing for transmissible names derived from the father and by bringing up to date the Resolution of the Territorial Assembly of the Comoros of 17 May 1961 on the civil status of those with personal status. From now on, everyone with personal civil status under local law must choose a name derived from his or her father and a given name or names. The name taken from the father will be unchangeable and will pass from parents to children under rules similar to those which apply under ordinary civil law.

134. Law No. 2006-911 of 24 July 2006 on immigration and integration provides that declarations of births must take place on Mayotte in the manner stipulated by Article 55 of the Civil Code. It also makes it compulsory for marriages of persons with customary civil status to take place in the *mairie*, in the presence of the registrar and two witnesses. Previously the *cadi*, who is the customary judge under Islamic law, was also a registrar, and was therefore able to celebrate marriages: the reform of 2006 allows guarantees to be obtained that the woman has given her consent, and obviously does not prevent a religious marriage following the civil ceremony.

135. The stakes in the modernisation of civil status are high. It is about asserting the rights of everyone, in his or her capacity as a person with clear individual standing, and making sure that, from the time of birth onwards, he or she has an official and permanent identity. Apart from establishing the use of a family name deriving from the father and of a number of given names, the establishment of a universal civil status forms part of the process of advancing towards the status of a *département*.

136. The State has agreed to a substantial effort to give financial backing to help the *communes* to equip and organize themselves. Article 22 of Order No. 2000-219 of 8 March 2000 on civil

status on Mayotte has provided that the State should make computer equipment available to the *communes* for this purpose.

137. In 2001, Mayotte made the transition from a territorial collectivity to that of a departmental collectivity, as a staging post towards acquiring the standing of a French *département*. This change assumes the progressive application of Republican rules and laws. Accordingly, laws and decrees on nationality, matrimonial regimes, criminal law procedures, electoral laws and administrative procedures have been progressively put in place. At the same time, since 2001, the Island has been provided with a General Council, a registry of births, marriages and deaths, a land registry, an urban development code and an environmental code. This new suite of legal institutions has changed society on Mayotte.

138. “Nameless” persons have been invited to choose a parental name from a list drawn up by a committee on parental names, with legitimate children taking the names of their fathers and natural children those of their mothers.

139. The Review Committee on Civil Status, set up by Order No. 200-218 of 8 March 2000 laying down rules for the determination of family names and given names for persons with civil status under local law on Mayotte, has the following tasks:

- to establish definitively the family and given names of persons with civil status under local law;
- to establish entries for the civil status registry to take the place of entries which are missing, lost or destroyed, or those whose state of preservation makes them incapable of use; and
- to correct entries which contain irregularities and entries which ought to be entered in a civil status under ordinary law, but feature in a register under local law, or vice-versa.

140. The mandate of the Committee, which was set up in April 2001, has been extended for a period of five years by Decree No. 2005-1620 of 22 December 2005. Between starting its work and 31 December 2005, the Committee in fact issued only 33,000 decisions, which allowed the establishment of entries for 31,861 births, 6,978 marriages and 434 deaths. Bearing in mind the total population with local civil status on Mayotte, the number of decisions still to be made is still substantial.

141. The Committee has been given the task of reconstructing the civil status registry prior to 2000. The decision has been taken to provide the *mairies* with specially adapted computer equipment, capable of dealing both with ordinary law and local law entries, to help them to establish a viable civil status registry.

## **1.2 Civil Status in French Guiana**

142. Many thousands of people living along the Maroni and Oyapock rivers find themselves today without civil status. This poses many problems, both in terms of monitoring net migration and for the people concerned when they wish to travel within French Guiana or, for example, to study at a lycée or university. These Amerindian populations, the first inhabitants of the region, and descendants of “*Marron*” slaves who escaped from plantations in Dutch Guiana in the 18<sup>th</sup> century, are living without nationality at Apatou, Grand Santi, Papaïchton, Maripasoula and

Saint-Laurent-du-Maroni, *communes* of French Guiana forming enclaves between the Maroni river and the Amazonian forest on the border of Surinam.

143. Members of a single tribe may equally well live on the left or right bank of the Maroni river, which raises two major problems:

- depending on their place of birth, members of a single tribe do not have the same nationality (French or Surinamese): the right bank (French Guiana) is about 15 minutes by pirogue from the left bank (Surinam). The important thing for these populations is belonging to their tribe.
- The tribe has a hierarchical structure on which the organization of the area into communes has been based. The communes are a series of villages, some of which can be several hours distant by pirogue from the seat of the commune.

144. Up until 1969, when the first of the *communes* on the river were created, there was no real civil status registry service in this region of French Guiana. The absence of land routes, the immense size of the Maroni valley region (500km of river) and its isolation, upstream from Saint-Laurent, were the main obstacles to establishing one. The inhabitants, living well away from the seats of civil administration, have often not been registered at birth.

145. To deal with this situation, Order No. 98-580 of 8 July 1998 extended the time-limit for the declaration of newborn children to the registry of civil status in the riverside communes of Maroni and Oyapock in the interior of French Guiana to thirty days, instead of the time-limit of three days applying in ordinary law. In addition, a campaign to take a “census of French citizens lacking civil status” was begun in June 1998.

146. An administrative census of populations without civil status along the Maroni was put into effect to set in motion with the intention of subsequently making legal applications for judicial declarations of civil status to the *tribunal de grande instance* (regional court) of Cayenne.

147. First, joint committees of the customary and ordinary authorities studied dossiers, based on testimony, on candidates who stated that they were born on the French Guianan bank of the river, and not on the Surinam side. By the end of 2000, out of 2,015 candidates, 774 obtained a declaratory judgement acknowledging that they were born in France.

148. For the Amerindian population, a degree of tolerance is applied by the French registry of civil status. This allows traditional names to be entered directly onto children’s identity cards.

149. The registration of births along the Maroni river nevertheless remains something of a matter of chance, as the frontier with Surinam is difficult to monitor.

### **1.3 Civil status in New Caledonia**

150. The requirement to register persons with customary civil status in special civil status registers by the mayor acting as civil registrar was laid down in a decision of the Nouméa Superior Court of Appeal on 28 February 1920. It was reiterated in Order No. 631 of 21 June 1934, establishing a civil status for indigenous people, which was amended and supplemented by Resolution No. 424 of 3 April 1967, which in turn was supplemented by Circular No. 13-2815 of 25 August 1967.

151. The Resolution of 3 April 1967 defined the rules governing the registry service for citizens with specific civil status, which coincide to a large extent with the rules on ordinary-law civil status but make certain changes, such as, for example, a 30-day deadline for the registration of births.

152. In addition to the usual registers (births, marriages and deaths), the *communes* also keep records on population census figures for each tribe. The birth of a child with customary civil status must be registered, as is the case under ordinary law, in the *commune* of birth. The person reporting the birth may also ask for the child to be registered as a member of the father's tribe.

## **2. Non-discrimination**

### **2.1 The age of marriage**

153. The new Article 144 of the Civil Code provides that in future “a man or a woman cannot marry before reaching the age of 18”. This article applies to overseas collectivities as a whole. Statutes and regulations apply ipso jure in the overseas departments and regions (Guadeloupe, French Guiana, Martinique and Reunion) based on the principle of “legislative identity” or “assimilation” (Constitution, Article 73). Lastly, article 144 of the Civil Code, concerning the status of persons, applies ipso jure in Mayotte (Article 3 of Law No. 2001-616 of 11 July 2001 on Mayotte, art. 3) and in Saint-Pierre and Miquelon (Law No. 85-595 of 11 June 1985 on the status of the Saint-Pierre and Miquelon archipelago).

### **2.2 Equality in inheritance matters**

154. In the overseas *départements* and collectivities, access (or absence of access) to economic and social rights is identical for every community and there are no cases of discriminatory practice that could affect particular categories of children.

155. Law No. 2001-1135 of 3 December 2001 on the rights of surviving spouses and adulterine children and modernising various provisions of the law of inheritance applies in the overseas collectivities (with some modifications).

156. On Mayotte, programming Law for overseas France No. 2003-660 of 21 July 2003, allowed for a significant advance in equality between men and women by establishing monogamy (polygamy is prohibited for citizens aged 18 after 1 January 2005), the termination of marriage by divorce, the prohibition of unilateral repudiation and the banning of discrimination between children over inheritance rights based on gender or on legitimate or natural birth.

## **B. Freedoms of the individual**

### **1. Freedom of expression**

157. The principle of freedom of expression is respected throughout the French overseas collectivities. One particular point about the Wallis and Futuna Islands should be noted, however.

158. The population Wallis and Futuna Islands is a little under 15,000, of whom 10,071 live on Wallis (Uvéea) (67%) and 4,873 on Futuna (33%). The population is strikingly young, with 45% aged under 20.

159. In the social traditions of the Islands, modes of speech and expression are highly codified. Children do not speak directly to adults unless directly invited to do so. The respect felt for hierarchical authority in traditional society creates pressure for acquiescence in this situation, although it leaves young people without a clear locus or social context in which they can express themselves.

160. For this reason, dialogue, argument and the exchange of views more generally, cannot take place in a conventional way.

161. On the Wallis and Futuna Islands, action to promote freedom of expression has been taken in a number of ways. The work of the inspectorate of the national education service, backed up by special training activities, has succeeded in developing lessons for building the competences needed for dealing with these communication challenges.

162. Evaluation of the action taken shows real progress with spoken language. Work must now turn to dealing with written language.

163. Finally, it is now possible in schools to apply the legislation in force on children's rights to pictorial or verbal expression, thanks to stringent guidelines and systematic monitoring arrangements.

164. Young people receive a high level of attention from State services on the Wallis and Futuna Islands. So that their expectations could be taken in account, the first youth conference for the young people of the Islands was held from 8 to 10 December 2006. More than a thousand young people had been involved in advance through a series of working meetings held over several weeks in the various villages with sports and cultural associations, the chiefs' establishments, elected representatives and the religious authorities.

165. Young people had the opportunity to talk about their needs in five areas: education and training, culture, sport, leisure and voluntary activity. This conference was very successful, and threw up many concrete examples of areas in which young people felt dissatisfied. The new contract for development will allow the State to be the motive force in developing youth policy for the Islands.

## **2. Access to information**

### **2.1 Coverage of media services**

166. In the heart of the Pacific, the Caribbean or the Indian Ocean, French overseas collectivities have access to a broad range of media services, although the Wallis and Futuna Islands are lagging slightly.

167. On the Wallis and Futuna Islands, coverage offered by media services is limited: there are no local newspapers, cultural centres or public reading-rooms, and Internet access for very few indeed. Only Radio France Overseas provides a radio and televised information service, so that, on the whole, media communications are extremely limited.

168. The Vice-Rector's office is making strenuous efforts to improve this situation by creating more school libraries and, eventually, by equipping all schools with IT equipment that will allow real access to information.

## 2.2 The commemoration of slavery

169. The Law of 21 May 2001 for the recognition of slavery and the slave trade as a crime against humanity makes provision for a Committee of qualified persons. The Committee for the Remembrance of Slavery (le comité pour la mémoire de l'esclavage, CPME), set up by Decrees of 5 and 15 January 2004, has 12 members selected for their achievements in research in the field of slavery and the slave trade, for having taken an active part in voluntary action to defend the memory of the slaves and for their knowledge of overseas France (Maryse Condé is the Chair, Françoise Vergès the Vice-Chair).

170. The Ministry for Overseas France provides the secretariat for the committee, whose tasks are to make proposals:

- for a date for an annual commemoration in metropolitan France; five dates, established by decree, already existed for commemorating abolition in the overseas départements and Mayotte;
- identifying locations throughout French territory suitable for commemorating slavery and celebrating abolition, and means of raising public awareness of them; and
- for adapting teaching programmes and awareness-raising activities in schools and to suggest programmes of historical research, and research in the other human sciences, into slavery and the slave trade.

171. Finally, the Committee awards a prize each year for a doctoral thesis on these subjects. It submits a report each year to the Prime Minister on its activities

172. In his address of 30 January 2006, the President of the Republic accepted the proposal that 10 May should be a day for honouring the memory of the slaves and commemorating the abolition of slavery. The Decree of 31 March 2006 made this date official. The first commemoration day on 10 May 2006 was a great success with voluntary organizations and public establishments, including schools, mairies and other local bodies. Expectations were high, but the day lived up to them, and fulfilled its objective of showing respect for the memory of those affected by slavery and sharing a story which belongs collectively to all citizens. On 10 May 2007, the President of the Republic inaugurated a memorial in the Luxembourg gardens and a large number of other events were held.

173. The Committee's second report, in 2007, took stock of the events held and action taken in 2006 and proposed new lines to follow:

- in education, the committee's activities have paved the way for the creation of a much wider awareness, shown for example by the publication of a ministerial circular urging teachers to organize activities in schools on 10 May. Work remains to be done on syllabus and teaching materials for these;
- in research, the creation within the National Centre for Scientific Research of a group for international research; and
- in the cultural field, the production of an inventory and guide dealing with archive sources in the national museums relating to slavery and the slave trade and their abolition, which was published at the beginning of 2007. An inventory will be taken

of sites with historical associations with these subjects, so that they can be mapped and commentary provided. Finally, the administrations of the musées de France and the archives de France intend to propose the creation of an Internet resource site to the new Minister of Culture.

### **3. Liberty of thought, conscience and religion**

174. The principle of secularism is one of the principles and rules that have constitutional significance and apply across the whole of the territory of the Republic. It follows that religious beliefs can have no part in determining the personal civil status of citizens resident in overseas France.

175. The island of Mayotte has been a cultural and religious melting-pot with very strong African, animist, Bantu and Islamic influences. The Muslim religion has been established there since the fifteenth century and has a major influence on how society is organized: 95% of the population of the island is Sunni Muslim. Children attend Q'uranic school, generally in the early mornings before secular school. Teaching is by a "fundî", an unpaid mentor who may be female, who is able to read and write the Q'uran. In practice, Q'uranic school is pretty much a place where children can learn the rules governing life in society. It is also a means of looking after children while parents work. There is no set curriculum and all that is taught is the basics of reading Arabic and the learning by heart of the Surrahs of the Q'uran.

176. For the Wallis et Futuna Islands, Article 3 of Law No. 61-814 of 29 July 1961 reiterates that the Republic guarantees the population of the territory the free exercise of their religion, along with respect for their beliefs and customs provided that they are not contrary to the general principles of the law and the provisions of the Law of 29 July 1961 itself.

177. Catholicism is overwhelmingly the majority religion. At primary level, no State schools exist. The new Convention 2007/2011 dealing with negotiations on the delegation of primary education to the Catholic missions contains an article that provides for strict observance of liberty of conscience. Work done jointly with the Catholic educational authorities has provided for the broadening of religious education beyond the catechism towards an approach which addresses the teaching of religious matters on a more inclusive basis.

178. No principle is enforced in New Caledonia relating to the wearing of insignia denoting a particular religious affiliation

### **4. The right to a cultural identity**

179. The school population of the overseas collectivities and *départements* currently numbers around 711,000 pupils and nearly 30,000 students (engaged in study at university level). The expansion of the school population – in the region of 3.5% over the past five years – is higher than in metropolitan France, where the school population has been stagnant or, indeed, has been falling by about 1.3%.

180. The trend is not, however, uniform throughout the overseas collectivities. There has actually been a more striking increase in two of those collectivities, namely Mayotte with an increase of 22% over the past three years and French Guiana where the school population rose by 15% during that same period. The reasons for this include a high birth rate combined with a high level of positive net migration.

181. These specific features of the situation in the overseas collectivities and *départements* have prompted France to embark on a major project to provide equipment and human resources in order to make good any shortfall in the educational field.

182. As far as school and university buildings in the overseas *départements* are concerned, in addition to paying decentralisation grants, the State, exceptionally, is involved directly in funding the infrastructure required to increase the number of places available in the context of the regional development contracts. In relation to the overseas collectivities, the State is involved via the different contractual arrangements that have been set in place for them individually.

183. Turning to the provision of human resources, the State has made a significant effort to create teaching posts, as well as training and administrative positions for the overseas *départements*, particularly within those education authorities experiencing the greatest shortages, in French Guiana and Réunion. Creating those posts has made it possible, among other things, significantly to improve training rates which are currently higher, in the field of secondary education, in Martinique, French Guiana and Guadeloupe than in metropolitan France.

184. Furthermore, France has implemented specific responses in terms of quality. Learning Creole must facilitate improved mastery of the French language and make it possible to combat the problems implicit in a bilingual society. The creation of a CAPES (*Certificat d'aptitude au professorat de l'enseignement du second degré* – secondary school teacher's diploma) in Creole forms part of teacher training policy in this area. The recognition of regional identities has led to history and geography syllabuses being adjusted to reflect actual circumstances in overseas France.

185. The creation of an office of deputy director of education in Mayotte, in 2000, and the establishment of a regional centre for pedagogical materials and a university institute for teacher training in each of the educational authorities of the overseas *départements* are part of the process of improving the educational environment and training opportunities. Furthermore, the development of new information and communication technologies is the subject of integrated planning within the academic programmes. For the past six years, the French Ministry of Education (*Education Nationale*) has substantially increased the number of places available in schools. Mayotte has benefited from an unprecedented effort to build new establishments (five schools) that are both functional and attractive, and existing facilities have been re-built and upgraded.

186. State responsibilities in relation to training in New Caledonia, French Polynesia, Wallis and Futuna and Mayotte are carried out by a deputy director of education. In Saint-Pierre-et-Miquelon, those functions are performed by a chief education officer. Responsibilities are allocated on the basis of the statutory arrangements for each collectivity. In Mayotte, for example, as far as primary education is concerned, the municipalities are responsible, for building and maintaining schools, while the French State has responsibility for all secondary education. In Saint-Pierre-et-Miquelon, the State is responsible for both primary and secondary education.

#### **4.1 In the overseas collectivities**

##### **4.1.1 New Caledonia**

187. Measures have also been introduced in the cultural field and to enhance the standing of the regional languages in overseas France: educational programmes have been adjusted in line with

the cultural and linguistic circumstances for which the provinces have responsibility; the Melanesian languages have been recognized as teaching and cultural languages (organic law of 19 March 1999), including by way of commitments in relation to teaching, scientific and university research [sic] and teacher training. Article 215 of the 1999 organic law also provides that, in order to contribute to the cultural development of New Caledonia, the latter is to enter into a specific agreement with the State, after taking the opinion of the provinces. That agreement relates, in particular, to Melanesia's cultural heritage and the Tjibaou cultural centre, and was signed on 22 January 2002. As far as teaching and teacher training are concerned, under that specific agreement between the State and New Caledonia, commitments have been entered into in relation to teaching, scientific research and university teaching and teacher training.

188. Article 210 of the law also stipulates that multi-annual development contracts are to be concluded between the State, on the one hand, and New Caledonia and the provinces on the other. The development contracts are to be concluded and renewed for a five-year period.

189. The actions and measures for which the contracts provide promote access to basic training and continuing education, the integration of young people, economic development, improvement of peoples' living conditions and cultural development.

190. In 1999, New Caledonia introduced university teaching of the four Melanesian languages available in the context of the Baccalauréat (school leaving certificate), leading to the award of a general university studies diploma (*DEUG*). That qualification was included in the 2000-2003 institutional contract entered into between the Ministry of Education and the University of New Caledonia.

191. The agreement also provides for the teaching of the Melanesian languages to be included in the training of primary and secondary school teachers at the territorial teacher training institute and the university teacher training institute for the Pacific respectively. In relation to the Pacific Teacher Training College (*Institut universitaire de formation des maîtres – IUFM*), that training was included in the institutional contract concluded with the Ministry of Education for 2000-2003. The latter agreement also makes provision for the creation of an academy of Melanesian languages, a territorial public-law institution.

192. In New Caledonia, the State is responsible for higher (university) education and – until its transfer to New Caledonia, as of 2009 – State and private secondary education, except secondary school building, private primary education and school health services.

193. Pursuant to article 22 of Organic Law No 99-209 of 19 March 1999, New Caledonia has responsibility for primary education: [including] syllabuses – except where the provinces are responsible for adjusting them in the light of cultural and linguistic circumstances – teacher training and teaching supervision.

194. In New Caledonia, the municipalities are responsible for building, maintaining and equipping State schools. Education and culture are essential areas of activity.

195. Moreover, pursuant to article 181 of Organic Law No 99-209 of 19 March 1999 on New Caledonia, the State annually accords the provinces, separately from development contracts, a general grant for building and equipping schools. In 2000, that grant at least matched the total funds which the provinces allocated to the construction and equipment of schools, established as an average for the previous three financial years. As of 2001, that grant is determined according to student numbers in State schools.

196. French is the official language of New Caledonia, alongside the 27, all very different, vernaculars. However, even though French is spoken even among the most remote tribes, fluency in French varies throughout the population. The fact that fluency in French is uneven is largely a matter of schooling. Melanesian children have had general access to State schools since 1953.

197. All of the vernaculars are transmitted orally and are spoken in very clearly defined geographical (linguistic) areas.

198. The most significant languages are (figures from the 1996 survey): Drehu spoken on Lifou (11,338 speakers); Nengone spoken on Maré (6,377 speakers); Paicî spoken in Poindimié, Ponérihouen and Koné (5,498 speakers); Ajië spoken in Houailou (4,044 speakers); and Xârâcùù spoken in Canala and Thio (3,784 speakers).

199. The languages with the fewest number of speakers are Arhö (Poya/Houailou, 62 speakers); Arhâ (Poya/Houailou, 35 speakers) and Pwapwâ – or Poapoa – (Gomen, 16 speakers). Sishö (Bourail region) is barely spoken any longer (4 speakers at the time of the 1996 survey), and Wâmwang (Koné) is considered to be extinct.

200. The indigenous languages are all of the “Melanesian” family, except for one that is classified as “Polynesian” (Faga Uvea), and are related to the “Oceanic languages” which form the eastern subdivision of what is known as the “Austronesian” family.

201. The languages of the communities of Wallisian and Polynesian origin (Polynesian languages), Vietnamese, Indonesian and Caribbean origin (Creole), and Vanuatuan origin (Bichlamar) are also used. They account for 400,000 speakers.

202. The vernaculars in primary education: since 1990, a letter from the Minister of Education has provided a framework for the teaching of mother-tongue languages at primary level. In nursery education, there is provision for children to be taught in their mother tongue when they arrive at school and gradually be introduced to French. In primary schools, five hours per week are timetabled for that. Since 1998, under the Nouméa Agreement, “the Melanesian languages are the languages of education and culture, together with French”.

203. Nonetheless, education policies vary significantly from one province to another, between the State and private sector and between different elements of the private sector. Those differences result from the effect of special local factors on the state of language teaching in each region.

204. The integrated mother-tongue teaching programme introduced by the Islands Province after an experimental period has been in force since 1992 in all of the Province’s State and private schools.

205. The objectives of the integrated mother-tongue teaching programme are as follows:

- to take account of the child’s cultural identity;
- to consolidate and strengthen the child’s knowledge of his or her language and culture;
- to integrate the child smoothly into the education system;

- to secure bilingualism and bi-culturalism with a view to educational achievement and socio-cultural integration.

206. The PHAX project derives its names from the initial letters of the four cultural areas of the Northern Province (Paicî, Hoot Ma Whaap, Ajië and Xaracù). It was created because the Northern Province wished to “*respect differences and protect unity by preserving diversity*”.

207. Four regional Melanesian languages (Aijië, Drehu, Nengone and Paicî) are taught at secondary level. Since 1992, those four languages have been included in oral and written tests for the Baccalauréat.

208. In 2006, educational statistics for New Caledonia are as follows:

- 68, 735 pupils (at primary and secondary level);
- 356 educational establishments, including 285 schools (67 State nursery schools, 128 State primary schools, 16 private nursery schools under contract and 74 private primary schools under contract), 50 secondary schools (collèges) (27 State secondary schools and 23 private secondary schools under contract), 9 general and technological lycées and 12 vocational training lycées;
- for the 2005 academic year, 6,973 secondary education certificates were awarded (370 general education certificates, 2,854 diplomas, 1,924 technical schools certificates and 1,825 Baccalauréats).

#### **4.1.2 French Polynesia**

209. Within the chapter that deals with cultural identity, article 57 of the organic law of 27 February 2004 provides that French is the official language of French Polynesia. It must be used by public-law entities and persons governed by public law providing a public service, as well as by users in their relations with the authorities and public services.

210. However, the framework law provides that the Tahitian language is an essential element of cultural identity: underpinning social cohesion and a means of daily communication, Tahitian is recognized and must be preserved, like the other Polynesian languages, alongside the French language, so as to secure the cultural diversity that is among the treasures of French Polynesia.

211. French, Tahitian, Marquesan, Paumotu and Mangarevan are the languages of French Polynesia. Private-law individuals and legal entities use them freely in their acts and agreements, which remain valid even if they are not drafted in the official language.

212. Tahitian is a subject that is taught as part of the normal time-table in nursery and primary schools, in secondary schools and in higher education establishments.

213. By decision of the Assembly of French Polynesia, Tahitian may be replaced by one of the other Polynesian languages in some schools or other educational establishments.

214. The study and teaching of the Tahitian language and culture are catered for in teacher training institutions.

215. The University of French Polynesia offers a course in the Tahitian language (DEUG/Degree/Masters) and the Polynesian branch of the Teacher Training College for the Pacific has been preparing a secondary school teaching diploma in Tahitian/French since 1998. There is a compulsory test in Tahitian for primary school teachers wanting to join the French Polynesian corps of the French public administration. In addition, the University of French Polynesia offers a training module in Tahitian as part of the training which it provides to prepare candidates for the administrative competitions for the local civil service. There is also a proposal to create an academy for the Marquesan language.

216. Autonomous status and all of the legislation accompanying it have led to responsibility being transferred to New Caledonia for the bulk of the powers which the State exercises in metropolitan France in the field of education, particularly the organization of teaching, the allocation of resources and the supervision of teaching establishments, as well as examinations.

217. The organization of the Ministry of Education and Technical Education in French Polynesia is largely based on that of metropolitan France. It is, however, specifically geared to French Polynesia, and takes account of local geographical, economic, social and cultural conditions. The syllabuses followed and time-table are practically the same as those of metropolitan France.

218. The State covers some of the expenditure incurred by French Polynesia as a result of its responsibilities, by allocating to it the financial and human resources needed to secure the success and development of Polynesia's educational system, the subject of Convention No. 214-99 of 19 July 1999 on education in French Polynesia. The French Republic guarantees that diplomas are valid France.

219. Pursuant to the provisions of Organic Law No. 2004-192 of 27 February 2004, French Polynesia is also responsible implementing measures relating to basic, continuing and vocational education in its territory. Here again, the State guarantees the validity of the national diplomas by approving the education provided at secondary level.

#### **4.1.3 Wallis and Futuna**

220. As regards enhancing the status of the overseas regional languages, the Convention of 16 October 2006 according primary teaching responsibilities to the Catholic Mission provides that the teaching provided in the nursery and primary schools may include courses or activities delivered or organized in the Wallisian or Futunian language. The same provision existed in the earlier Convention of 1995. In nursery schools, children whose parents request this are initially taught in the local language. Only gradually is there a transition to teaching in French.

221. In primary schools, in accordance with national syllabuses, the local language is offered as part of modern language learning.

222. During their training, all teachers are instructed in teaching the local languages and culture.

223. Since 1998, the use of local languages has been the subject of a continuing experiment at primary level. Once that experiment is concluded, an assessment will be made. At secondary level, four teachers give one hour of lessons per class in the vernaculars.

224. The branch of the Pacific Teacher Training College (*IUFM*) in Wallis and Futuna that trains local teachers offers a teaching module in the vernaculars during the three-year training period.
225. In Wallis and Futuna, the Catholic Mission is responsible for primary education, whereas the State is responsible for secondary education.
226. The institutional structure of Wallis and Futuna is based on the co-existence of a State administration, a local assembly, three kingdoms organized on the basis of a hierarchy of traditional chiefs and, in addition, the marked influence which the Diocese exercises at all levels of social life. Law No. 61-814 of 29 July 1961 involves a very specific *modus operandi*. The Catholic Mission is in fact responsible for primary education under a five-yearly agreement. Educational objectives are exactly the same as those in the State school system in metropolitan France. Supervision lies with the State.
227. Primary school numbers in Wallis and Futuna have fallen consistently over the past ten years (about 100 fewer pupils every year). In 2007, 2,428 pupils attended school at the start of the new school year, compared with 3,337 in 1997. That decline is partly offset by an increase in early school attendance (by two-year olds). The teaching staff, which is not highly qualified, is recruited and trained locally. Teachers are employed by the Catholic teaching directorate, but paid by the State.
228. The introduction of a vocational training certificate for specialist assistance, adapted education and the teaching of children with a disability at local level requires certain adjustments. In point of fact, the status of primary school teachers does not allow them to be integrated into the managerial structure of State education. Specific training has been developed with the higher national training and research institute for the education of young people with a disability and special teaching, and the deputy director of education. It has been in effect since the beginning of the 2007 school year and involves training six teachers who will be responsible for administering the new structures.
229. A proposal currently being drawn up relates to the training, by a specialist teacher, of young people to support individuals and families, organize educational activities within the framework of specialist structures, provide specific information, assistance and support for “life plans” for transport, recreation and learning.
230. French, used almost exclusively in schools, is currently the teaching language. The results are poor. Measures are being taken at two levels.
231. In class, at key stage 1 (between the ages of two and six), the focus has been on the early development of pupils’ ability to learn by listening, and to speak up in a society where it is customary for children to be silent. Educational outreach activities followed by support measures in class have made it possible to achieve very promising elements of success on which more work will need to be done.
232. At key stage 2 (between the ages of six and eight), where teaching aids are more or less non-existent, ill-assorted and inconsistent, the focus has been on clarifying learning methods. As, under its governing statute, the Territory does not have authority over equipment, progress has been more modest.

233. At key stage 3 (between the ages of eight and eleven), priority has been given to extracting and understanding the information implicit in a text and to reading books – an area of widespread failure on entry to secondary school – and producing written material.

234. Reading as cultural policy (families do not have books) has been promoted on the basis of selective measures throughout the Territory (including the “*De livres en îles*” (Island Books) project and reading parties).

235. As a result of an ambitious training programme, carried out with the local branch of the university institute for teacher training, the teaching of English (necessary in this part of the Pacific which situated in an English-speaking environment) is becoming more widespread. Very specific teaching programmes have been devised. There will be an assessment, based on the European reference system; it will encompass the whole of the Territory and be founded on a protocol that is currently being drawn up. The level A1 certificate at the end of CM2 (11 years of age [UK Year 6]) will thus be introduced.

#### **4.1.4 Mayotte**

236. As regards enhancing the status of the regional languages of overseas France, the Agreement on the future of Mayotte of 27 January 2000 provides for a special convention between the collectivity and France on cultural development, promoting the Mahoran identity and the development of the French-speaking world.

237. Article 23 of the Law of 11 July 2001 on Mayotte introduces into the general code of territorial collectivities an article L. 3533-4 which reiterates the responsibilities of the council for culture, education and the cultural and educational environment in the cultural and educational field accorded to the overseas regions and *départements*.

238. Moreover, articles L. 3551-24 and L. 3551-25 lay down specific provisions in relation to language. For example, the collectivity may enter into agreements with public companies in the audiovisual sector to promote the making of television and radio broadcasts designed to develop languages and culture. In those same circumstances, the collectivity may put forward a proposal to boost the learning of French and further develop the teaching of Mahoran languages and culture. The methods of implementing that proposal are the subject of a convention entered into between the departmental collectivity and the State.

239. The very special situation of the collectivity in which two local languages – Shimaoré and Kibushi – exist and are spoken by the majority of the population against a background of widespread illiteracy and failure to master French, led the General Council to set up the Institute for learning French (*IAF*) in 1997. The aim of the *IAF* is to engage in linguistic research into those two languages and to devise methods for learning French as a second language, taking into account the particular traits of the Mahoran identity, by developing the appropriate teaching aids and training teachers in those methods, as Mahoran teachers are generally better versed in the local languages than in French, and by updating documentation.

#### **4.2 The overseas departments and regions**

240. The three French American *départements* (Guadeloupe, French Guiana and Martinique) which used to constitute the education authority of the Caribbean and French Guiana were transformed by decree of 26 December 1996 into three separate education authorities. They are organized in the same way as in metropolitan France. As part of the new statute of the Northern

Islands,<sup>j</sup> the proposal is to establish a national education service in Saint-Barthélemy and Saint-Martin. As far as Réunion is concerned, the education authority is organized in the same way as in metropolitan France.

#### 4.2.1 French Guiana

241. As regards strategies relating to cultural and educational heritage, the Basic Law for overseas France of 13 December 2000 contains measures to support the regional languages and cultures of the overseas *départements* and territories. French Guiana is a special case because of the presence of ethnic Amerindian minorities, whose languages had yet to be included in the educational system. The Ministry of Culture has launched a multi-annual action plan (2000-2003) called “*Linguistic practices in French Guiana*”, with the aim of extending knowledge of the Amerindian languages, codifying them and developing teaching aids.

242. As far as enhancing the status of the languages of overseas France is concerned, the Law of 2 August 1984 concerning the responsibilities of the regions of Guadeloupe, French Guiana, Martinique and Réunion stipulates that the regional council is to determine which educational and cultural activities that complement a knowledge of regional languages and cultures can be organized in those educational establishments for which the region bears responsibility (arts. L. 4433-25, L. 4433-26 and L. 4433-27 of the general code of the territorial collectivities).

243. Article 34 of the Basic Law for overseas France of 13 December 2000 stipulates that the regional languages in use in the overseas *départements* form part of the Nation’s linguistic heritage. As a result, they benefit from a strengthening of the policies promoting them so as to facilitate their use. Furthermore, the basic law states that the Law of 11 January 1951, called the Deixonne Law, on the teaching of local languages and dialects applies to the languages that are used in the overseas *départements*.

244. Law No. 2005-380 of 23 April 2005 laying down a framework and programme for the future of schools confirmed the status of the teaching of regional languages within the whole of the education system. Under article 20 of the law, that teaching must be developed in the context of the conventions between the State and the territorial collectivities. Those conventions must afford the territorial collectivities concerned the opportunity to develop measures designed to support the spread of the teaching of regional languages and cultures, and the teaching methods have been extended to include Tahitian, the Melanesian languages and Creole, pursuant to article 34 of the Basic Law for overseas France of 13 December 2000. The conclusion of those conventions must also reinforce the partnership that has already been set in place with the collectivities within the academic councils for regional languages established in the four French overseas education authorities of French Guiana, Guadeloupe, Martinique and Réunion, pursuant to the Decree of 31 July 2001 creating the academic councils for the regional languages.

245. As regards teaching and teacher training, in the overseas *départements* and territories, the Creole and Amerindian languages have so far been taught experimentally in some establishments, rather than more generally. However, the gradual application of the Deixonne Law to the Creole languages used in the overseas *départements* should make it possible improve the way in which this learning is structured and to extend it to all levels of education. The implementation of those new measures is now covered by the integrated priorities within the

---

<sup>j</sup> The islands of Saint-Martin and Saint-Barthélemy, which were attached to the *département* of Guadeloupe, will become full overseas collectivises on 15 July 2007.

academic plans of the overseas *départements*. The decree of 31 July 2001 set in place academic councils for the regional languages whose role is to guarantee the development of and follow-up to the policies on regional language learning.

246. Even now, at secondary level, there is the option of learning the Creole languages, and an optional examination has been included in the Baccalauréat since the 2004 school year. As of the 2007 school year, the list of modern languages in the examination will include one or two for which candidates may opt, as part of the compulsory tests, in the general and technological series. Like Creole, Tahitian and the Melanesian languages may be the subject of optional or compulsory tests in the Baccalauréat.

247. Furthermore, the opportunity afforded, since 2006, to all candidates in the competitions for teaching posts, to ask to take an optional regional language test is one of the measures capable of consolidating knowledge of these regional languages in school. In addition, in relation to teacher training, a secondary school teacher's diploma (*CAPES*) in Creole was established in 2002.

248. The University of Antilles-Guiana offers a master's degree in regional language and culture and, since, 1995, there has also been a degree course in Creole at the faculty of arts in Martinique. The Guyanese branch of the university teacher training institute of Antilles-Guiana holds beginner's courses in the Amerindian languages for all second year students.

249. The French Overseas Ministry has sought to continue and further develop the work already done, particularly to promote the Amerindian languages of French Guiana, in an effort to set in place specific educational measures for pupils and teachers alike. Hence its commitment to continue supporting the research programmes in the languages of French Guiana.

250. French Guiana is subject to significant demographic and migratory pressures. Education is a real issue in a society in which 44% of the population is less than 20 years old. In the largest of the French *départements*, there are thousands of children aged between three and 16 who do not attend school: Amerindians, Bushinengues, the children of migrants and so on. On the other hand, several hundred children are on the waiting list to attend school throughout the territory because of the lack of infrastructure.

251. The problems include the fact that, in some parts of the country, there is inadequate or, indeed, no transport to get children to school. The arrangements for accommodating children who live more than an hour away from school are also inadequate.

252. The suicide rate among young people excluded from the education system is between 30 and 50 times higher than in metropolitan France.

253. The State's commitment to educating all children has been demonstrated in the form of the monitoring centre on non-attendance at school whose purpose is to encourage the integration of the children of French Guiana into the education system.

254. The education department constantly monitors the school populations in French Guiana's river communities and in remote areas. Academic action programmes have been set in place (distance-learning programmes).

255. Between 1998 and 2002, 60 schoolchildren from Amapa (Brazil) took part in an exchange with French Guiana, enabling 120 children to visit Amapa. Situated in Amazonia, in the far north of Brazil, Amapa is in some ways similar to French Guiana, from which it is separated by the

Oyapock river, over which a bridge is currently being built. There is increasing co-operation between Brazil and the *département* of French Guiana in the fields of health (effectively combating infant mortality), education (teaching of French and Portuguese), security (combating drug trafficking and the trafficking in human beings).

256. Special structures are also in place to support:

- young people who are not French speakers;
- pupils with a mental, mobility-related or sensory disability;
- pupils with learning difficulties.

257. In 2005, at primary and secondary level, there was a school population of 63,838 (59,627 in the State sector and 4,211 in the private sector) in 184 (174 State-run and 13 private) establishments.

258. In January 2006, according to studies by the monitoring centre on non-attendance at school, 3,383 children were not attending school in French Guiana – a reduction largely achieved as a result of French Guiana's commitment to tackling this issue.

259. The measures taken by the education department on the occasion of the general assembly setting up the monitoring centre on non-attendance at school of 13 January 2005 are proving to be very effective. It has been possible to reduce the number of between 5,000 and 8,000 children not attending school estimated in 2003 and 2004. The efforts to bring all children of compulsory school age into the school system are producing results.

260. Getting families to enrol their children at school has involved mobilizing the academic centre for educating new arrivals and traveller children and the department for school life, by:

- creating a single information point to support families;
- providing a number to call for advice and guidance;
- adjusting and making generally available at town halls a single enrolment form.

261. Those efforts have resulted in an increase in the number of children aged between 12 and 16 who have been enrolled at school, namely 606 in December 2005, compared with 317 in December 2004 and 303 in December 2003.

262. We should, however, highlight a particular feature of French Guiana in relation to population censuses. This particular feature is the result of substantial levels of migration, with sections of the population coming and going in a way that makes assessment difficult (alternating, "circular" migration, with people entering and then leaving French Guiana).

263. The census must be continued and focus further on children who do not attend school and young migrants of between 16 and 18 years of age; vocational colleges could be the answer for them.

#### 4.2.2 Martinique

264. Martinique's regional education authority covers a population of 381,427 inhabitants spread over 34 municipalities (1999 census). In 2005-2006, there were 348 State and private educational establishments in Martinique (267 at primary level, 254 State-run establishments and 11 private establishments under contract and two private establishments not under contract; and 81 at secondary level, 65 of them State-run establishments, 14 private establishments under contract and two private establishments not under contract).

265. 99,009 pupils are educated in the State-run establishments at primary and secondary level and the private establishments both under and not under contract (49,173 primary school children, of whom 46,050 are in State-run schools and 3,123 in private schools, and 49,836 students in secondary schools, 45,428 in State-run schools and 4,408 in private schools). The regional education authority also has 1,998 trainees and 707 students in agricultural colleges.

#### 4.2.3 Réunion

266. There are 224,172 students in primary and secondary schools in 657 educational establishments (536 schools, 77 secondary schools and 44 *lycées*).

267. For the 2006 academic year, pass rates in the general Baccalauréat for the regional education authority rose, during the period 1995 to 2006, by 57.7% to 82.4% (in 2006, the pass rate was 80.43% in Martinique, 75.6% in Guadeloupe, 72% in French Guiana and 78.6% in French Polynesia). During the same period, in metropolitan France, it rose from 74.8% to 86.7%. In 2006, the pass rate in the technological Baccalauréat was higher in Réunion than in metropolitan France (78.9% compared with 77.4%).

268. In 2006, the pass rate for the *brevet* [equivalent to GCSEs in the UK] in Réunion was 72% (75% in metropolitan France and 69.6% in the overseas *départements* generally – 72.8% in French Guiana, 65.1% in Martinique and 64.8% in Guadeloupe). In French Polynesia, the pass rate for the *brevet* was 71.5% in 2005.

### III. THE PROTECTION OF THE CHILD

#### The Children's Ombudsman

269. Article 13 of Law No. 2002-93 of 22 January 2002 on access to original birth records of adopted persons and wards of the State extended the powers of the Children's Ombudsman to cover Mayotte, French Polynesia, New Caledonia and Wallis and Futuna.

270. By confirming the extension of those powers, Organic Law No 2004-192 of 27 February 2004 conferring autonomous status on French Polynesia attaches special importance to protecting the rights of the child. That law provides that measures of concern to the Children's Ombudsman apply *ipso jure*.

271. Since the year 2000, an annual report has been drawn up which generally contains a chapter devoted to one overseas collectivity which the Ombudsman has visited during the course of the year (Réunion in 2001, French Guiana in 2002, French Polynesia in 2003, Guadeloupe in 2004 and New Caledonia in 2005).

272. Discussions took place between the Minister for Overseas France and the Ombudsman in March 2001, January 2003 and December 2005.

273. The Children's Ombudsman currently has regional agents in French Guiana, Martinique, Guadeloupe, French Polynesia, New Caledonia and Réunion.

274. The overseas *départements* and collectivities account for between 1% and 2% of individual referrals.

***The Public Interest Group Children at risk (Le Groupement d'intérêt public – GIP– Enfance en danger)***

275. The 119 number can be called from the overseas *départements* and regions but some departmental General Councils in overseas France have set in place an emergency telephone number: that is the case in Réunion and the *départements* of the French West Indies (a local review was set under way in 2006 to consider how that telephone service could be improved for the *départements* departments of the French West Indies and Guiana).

*Law No. 2007-293 of 5 March 2007 for the reform of child protection*

276. Article 40 of that law authorizes the Government to adopt by order, in the conditions for which Article 38 of the Constitution provides, the measures necessary to adjust its provisions to Mayotte, French Polynesia, Wallis and Futuna and New Caledonia, within 18 months of its publication. In point of fact, bearing in mind the particularly sensitive nature of this issue, which requires close co-operation with the local authorities, it seemed more sensible to base the process of adjustment on a consolidated text. The French overseas ministry will be carrying out that task in the coming months.

**A. Children at risk**

**1. Combating exclusion**

277. The French Overseas Ministry is a stakeholder in the Standing Committee for Combating Exclusion, which is chaired by the Director-General for Social Action (*DGAS*). It also sits on the board of the National Agency for Social Cohesion and Equality of Opportunity, which was set up by the law of 31 March 2006 on equality of opportunity.

278. Under the territorial support contract between the State and the departmental General Council of Réunion concerning the departmental programme for social cohesion ((2005-2007), the State undertook to finance, by 2007, the creation of 120 places in accommodation and social reintegration centres (*centres d'hébergement et de réinsertion sociale – CHRS*) in Réunion.

279. In 2005, 119 places had been created. In 2006, the *DGAS* funded the creation of 35 places. In order to fulfil its contract, in 2007, the State disbursed the resources needed to fund 60 places.

280. Moreover, at national level, the Prime Minister's Office has endorsed an accommodation improvement programme 2006-2009, under the auspices of the Interministerial Committee on Combating Exclusions [meeting] on 12 May 2006. That programme takes account of the shortfall in resources established in the overseas *départements* and promises to create 300 additional places, as of 2007, that is to say 100 places a year.

281. The allocation of the new places in accommodation and social reintegration centres by the Directorate-General for Social Action makes provision as follows for the overseas *départements*: 10 places in French Guiana, 15 places in Guadeloupe and 15 in Martinique.

282. The figure of 100 has certainly thus been achieved, but it includes the 60 places in Réunion reflecting an earlier State commitment. The new measures do not therefore meet the requests made by the Directorates for Health and Social Development of Guadeloupe (30 places) and Martinique (30 places).

## **2. Monitoring publications designed for young people**

283. Pursuant to Law No. 49-956 of 16 July 1949 on publications intended for young people, which applies to all of the overseas collectivities, all publications, whether or not periodicals, which appear by nature, presentation or subject, to be principally intended for children and young people, must be subject to regular monitoring and checks.

## **3. Care in French Polynesia**

284. Article 43 of Organic Law No. 2004-192 of 27 February 2004 conferring autonomous status on French Polynesia stipulates that the municipalities of French Polynesia are responsible for social welfare matters, in the conditions laid down by the “local laws” (*lois du pays*) and [subject to] the regulations adopted by the government of the territory. Consequently, youth welfare services, which are funded by the General Councils of the *départements* in metropolitan France, have a local counterpart but one that is financed from French Polynesia’s own budget.

285. The Government of French Polynesia includes a Ministry of Social Solidarity, Housing and the Family which is responsible for youth welfare. French Polynesia has set up a specialist unit within that ministry and created a monitoring service for children at risk to monitor children who are physically or morally at risk.

### **3.1 The local structures**

286. A number of initiatives may be highlighted.

287. The “Te Aho Nui” association, which was set up, on 15 November 1993, at the initiative of volunteers from the “Pipirima” association and the social affairs department runs a hostel that takes in and cares for children at risk. This emergency hostel for children – girls and boys aged between three and 12, who must be in good mental health, and not suffer from a mobility or sensory disability requiring a high level of care – operates as a boarding school round the clock and throughout the year.

288. Children are placed in it either on the basis of an order by the State Prosecutor or the Children’s Judge, or on the basis of an administrative contract if the placement has been arranged with the social affairs department.

289. Between the time that the Te Aho Nui centre was opened, on 1 March 1994, and 31 December 2005, it had taken in 322 children. The hostel is regularly obliged to refuse to admit children because of a lack of places. In 2004, for example, it refused admission on 18 occasions.

290. During 2005, of the 30 children placed in the hostel, two were administrative placements, while the other 38 were placed under court orders.

291. It should be noted that returning a child to its family is always a priority and, in March 2005, nine children were placed in a family and six transferred to a different institution.

292. The lack of hostel accommodation poses a real problem in responding to the need to place children at risk. Only 53 places are in fact available in the Te Aho Nui hostel and children's home, although 114 requests for placement were notified to the child protection unit of the social affairs department in 2005.

293. Where children under 12 from the same family have to be referred to other care facilities, the SOS Children's Village Polynesia is the sole alternative. For abandoned children or orphans, foster families and the SOS Children's Village in Papara (on the west coast of Tahiti) are very effective structures providing family-type support.

294. The SOS Children's Village in Papara is the only facility capable of accommodating and bringing together siblings. Sadly, all of its places are now full.

295. The facts that the hostels are concentrated on Tahiti and the geographical dispersal of the islands over an area as large as Europe makes it difficult to place children or monitor them, particularly in the case of children resident outside Tahiti and Moorea, or Tahiti's co-called urban zone (Punaauia/Mahina).

296. In Polynesia, the problems relating to children taken into care are complex because of:

- geographical diversity and the distances separating the different archipelagos, and because the particular living conditions increase the risks of conflict, particularly between adults who still profess traditional values and children's demands for a modern lifestyle;
- in traditional families, there are great emotional bonds with babies and young children, but a kind of "emotional abandonment" or greater indifference when it comes to the emotional needs of older children, and that leads to specific difficulties for that age group.

### **3.2 Reporting children at risk**

297. The arrangements for reporting a child at risk and that child's treatment by the courts are largely similar to the procedure in metropolitan France. Since the State has legislative authority in all matters pertaining to the status of individuals, articles 375 *et seq* of the civil code, which deal with assistance in children's upbringing (*assistance éducative*), apply throughout the territory.

298. As far as civil procedure is concerned, French Polynesia by and large adopts the provisions that apply in metropolitan France, save for those concerning the issue of copies of documents in a care dossier. It has its own code of civil procedure.

299. As is the usual practice in metropolitan France, automatic referral to the Children's Judge is a procedure that has been applied decreasingly in recent years, with most reports being transmitted to the State Prosecutor's office for an assessment of whether it is appropriate for the case to be referred to the Children's Judge by means of an application for a care order.

300. As in metropolitan France, it can happen that the reports lack detail or have been drawn up without the different services responsible for monitoring the situation of minors having worked properly in partnership.

301. The arrangements for the legal processing of reports of children at risk are also comparable to the procedure in metropolitan France: after a family hearing, the Children's Judge may order investigative measures (social service inquiries or medical, psychological or psychiatric reports). There is, however, no service equivalent to the *Service d'investigation et d'orientation éducative* [a service that conducts investigations in order to provide the Children's judge with the information needed to back up his decision].

302. More specifically, in French Polynesia, there are no private-law bodies providing educational welfare measures in the community: responsibility for protecting children at risk resides exclusively with the social affairs department, which falls under the auspices of the local government.

303. Demonstrating the very important position that the churches still occupy in French Polynesia, hostels and centres that take in minors placed in care are more often than not run by religious associations; as is the case elsewhere, the number of places they can offer is inadequate, and they may sometimes be understaffed.

304. From a legal perspective, the local situation varies greatly, as there is no social welfare code or family code.

305. The social affairs department is currently studying whether to setting up a branch responsible for collating and transmitting all information to the judicial authorities, in an effort to rationalize the information-gathering process and encourage better partnership between all of the services involved in the social, medical and behavioural problems which families may experience.

306. At the same time, the monitoring service for children at risk and adolescents in difficulty is working on drawing up a methodological guide which could be shared by professionals working in the field of child protection.

## **B. Child victims of crime**

307. Law No. 2004-1 of 2 January 2004 on childcare and child protection has provided for the extension to New Caledonia, French Polynesia, Wallis and Futuna and Mayotte of the provisions concerning both reporting ill-treatment and the joining of civil actions by associations working to prevent child abuse.

308. Based on cases that have been reported and resolved, it is possible to identify trends in crimes solely against minors: these relate to murders of minors aged less than 15 years, rape of and sexual attacks on minors, violence against minors, abandonment and ill-treatment.

309. 1,257 crimes falling within those categories were recorded in 2006, that is to say a fall of 9.83% compared with 2005. The clear-up rate was 92% compared with 85.6% in 2005.

310. Although the situation improved in 2006, it remains worse than in metropolitan France. These crimes actually account for 0.85% of all serious crimes and major offences in overseas France, compared with 0.36% of the total in metropolitan France.

311. As regards the total number of rapes and sexual attacks recorded (on both adults and minors), 62% of victims were minors, compared with 59% in metropolitan France.

312. Looking beyond the raw data set out above, in terms of both minors who commit crimes and minors who are the victims of crime, it should be pointed out that, in overseas France, minors account for more than 35% of the population compared with 25% in metropolitan France. Consequently, the situation in regard to minors is better than in metropolitan France, as regards both minors who commit crimes and minors who are the victims of crime.

## **1. The situation in the overseas collectivities**

### **1.2 French Polynesia**

313. Faced with the problem of child abuse, the territorial authorities in French Polynesia set up the “Fare Tama Hau”, a public institution responsible for co-ordinating and implementing all preventive, medical, social welfare and educational care measures designed to protect and assist children and adolescents.

314. The “Fare Tama Hau” consists of four units:

- a unit for children at risk (an interdisciplinary facility to combat child abuse);
- a unit for adolescents in difficulty;
- a helpline (a freephone number to prevent child abuse); and
- a monitoring service for children at risk (in December 2005, a report was finalized).

That institution represents an essential stage in protecting children in French Polynesia and underscores the acknowledged progress that has been achieved as a result of resolute action by the various players in both French Polynesia and the French State.

315. *The activities of “Fare Tama Hau” have been developed in conjunction with the health and educational social welfare services to encourage the units dealing with adolescents and children at risk to bring in many children, often with their families, for discussions with doctors, child psychiatrists and psychologists (in 2006, there were more than 600 consultations in the units dealing with adolescents and 800 in the children’s units).*

316. Documentation helpful to political leaders and professionals and adults in contact with children has been drawn up in order to establish a policy of abuse prevention (report on children at risk in December 2006 and a guide to children at risk in April 2007).

317. The freephone number has been extended and now operates throughout the week and takes several thousand calls a month (10,000 in March 2007), several hundred of which require action and follow-up.

318. The social services for which French Polynesia is responsible are the authority responsible for reporting cases. They act in conjunction with the Children’s Judge and the services for the judicial protection of young people (set in place by Decree No. 2005-1536 of 8 December 2005).

319. French Polynesia funds the placing of young offenders in two hostels: the educational welfare hostel and the Uruai a Tama hostel.

## **1.2 New Caledonia**

### **1.2.1 Local authority responsibilities**

320. The department for the judicial protection of children and young people is a territorial responsibility, and the territory has become aware of the gaps that exist in this area: in 2007, three new facilities were being built in the three North, South and Islands Provinces, as well as an emergency hostel in Nouméa.

321. The North Province has set in place arrangements to protect children at risk in co-ordination with the judicial protection system, based on the measures adopted in metropolitan France (social support, parental support for the family, placing the child with foster parents or in a specialist establishment).

322. Since October 1995, at the initiative of structures within New Caledonia, an association SOS Violence, an association created jointly in 1992 (by a judge and Marie-Claude TJIBAOU, a member of New Caledonia's Economic, Social and Cultural Council), has also been established on Wallis and Futuna to help women combat the sexual abuse to which children are prey.

### **1.2.2 Corporal punishment**

323. According to the 2005 Annual Report of the Children's Ombudsman for New Caledonia, children may, traditionally, be subject to corporal punishment within the family and even at school.

324. For several years now, the territory's Government has been engaged in a proactive policy to help children and adolescents. The Government of New Caledonia in fact includes a minister for health and handicap and a minister for young people and sport. The President of the Government is also responsible for social affairs and social solidarity.

## **2. The situation in the overseas départements and regions**

325. In 2003, the national helpline for children suffering from abuse was extended, at their request, to Réunion and French Guiana.

326. Most of the calls (between 1,000 and 1,200 a year) that the freephone helpline (*Numéro vert enfance maltraitée*) in Réunion takes concern physical ill-treatment and sexual abuse. The instability of family relationships encourages sexual abuse within the family. Many families split and "re-constitute" themselves, and stepfathers, known as "little fathers" in Réunion are often among those responsible for the sexual abuse of children and adolescents (2001 Report of the Children's Ombudsman).

327. In Guadeloupe, in relation to youth welfare, the Abuse Prevention Unit and the helpline (freephone number) make it possible to gather information on "children at risk" around the clock.

### **C. Children subject to economic exploitation**

328. There do not appear to be any child forced labour networks in the French Overseas Departments and Territories.

329. Adopted in 1999 by the International Labour Organization (ILO), ILO Convention No. 144 was ratified by France on 11 September 2001, but that did not render it applicable outside metropolitan France.

330. According to article 35 of the constitution of the International Labour Organization, it is in fact for the Member State that has ratified the convention to ensure that it is effective in its non-metropolitan territories by a declaration to that effect to the International Labour Office.

331. Under the tripartite consultative agreement (government/trade organizations, trade union organizations), it was, nonetheless, announced during May 2006 that ILO Convention No. 182 concerning the prohibition and immediate action for the elimination of the worst forms of child labour was being extended to the non-metropolitan French territories.

332. Naturally, extension is subject to the approval of the local authorities where matters covered by the convention affect areas for which they have legislative competence. That applies, for instance, to the health and employment of children in New Caledonia and French Polynesia. Consulted by the Ministry for Overseas France, the Governments of those collectivities indicated that, as far as they were concerned, the extension of ILO Convention No. 182 to them could only be beneficial. A study on the matter is currently in progress.

### **IV. THE WELL-BEING OF CHILDREN**

333. The situation of the collectivities in the Pacific should be highlighted here, since, under their autonomous status, they exercise powers usually devolved on the State. For example, pursuant to article 22 of Organic Law No 99-209 of 19 March 1999, New Caledonia has responsibility for social security and welfare, public hygiene and health.

334. Article 47 provides that, at the request of a provincial assembly, the Congress may authorize the provincial authorities to adjust and apply the rules on public hygiene and health and on social security and welfare.

335. In French Polynesia, in matters of health and education, the child protection unit is continuing to take effective action, and the services of the education ministry are handling the issue of absenteeism and preventing dangerous behaviour in conjunction with the relevant departments of the ministry of health and the national gendarmerie.

336. French Polynesia's social welfare service employs about 100 social workers scattered throughout all of the archipelagos (covering an area the size of Europe), in proportion to the number of inhabitants and their remoteness. In that way, the action of the social services takes account of an economic and cultural backdrop that has both its strengths and its weaknesses.

## **A. Social security and welfare**

### **1. Family allowances**

#### **1.1 In the Overseas Départements and Regions**

337. As of 1988, the conditions governing the award of family benefits in the overseas *départements* have gradually been brought into line with those in metropolitan France.

#### **1.2 In the overseas collectivities**

##### **1.2.1 New Caledonia**

338. At this point, it is worth detailing the measures taken by New Caledonia's Government in 2005 in relation to child welfare. The Government in fact learnt that 20,000 children belonging to the poorest families were excluded from family allowances because the payment of those allowances required an adequate level of employment.

339. In accordance with the principle of social solidarity and in the interests of the child, that situation has been remedied by introducing, on the basis of a local law (that is to say a legislative text adopted by the Assembly of New Caledonia), family allowances provided under a special social welfare regime. The reform is designed to provide benefits to all families with children under 21, in education or undergoing vocational training or with a disability or incapable of work, whose resources fall below a certain threshold. That allowance is funded from the budget of New Caledonia and not from State-assigned appropriations.

340. As regards the right to health care for disadvantaged families, the medical aid system meets the costs of care without payment in advance and offers special measures to support children with a disability (the "long-term card"). Maternity allowances and child benefit during early childhood support families during pregnancy and until children are 33 months old.

341. Since 2003, New Caledonia's North Province has enhanced its efforts to protect mothers and children by creating two mother-and-child centres based in Poindimié and Koumac, with two paediatricians, a speech therapist, two nursery nurses and a child-care worker for young children, and providing decentralized short-term services in the 14 socio-medical centres, with home visits and visits to tribes.

342. There are activities under way in schools, with health education workers involved at both primary and secondary level on issues of preventive health care.

##### **1.2.2 Mayotte**

343. Under Decree No. 2002-423 of 29 March 2002 on family allowances in Mayotte, the payment of family benefits and the back-to-school allowance have been subject to the obligation to attend school.

##### **1.2.3 French Polynesia**

344. Social welfare legislation has been a local responsibility since 1984.

345. An annex to Framework Law No. 94-99 of 5 February 1994 for the economic, social and cultural development of French Polynesia seeks to “improve the social welfare and health of the population of the territory by providing social cover that separates out the insurance schemes and the social solidarity scheme”.

346. Resolution No. 94-6/AT of 3 February 1994 laid down the parameters of the general social cover applicable to the residents of French Polynesia and extended the principle of social welfare to the whole of the population, under three local schemes:

- the scheme for employees: 162,363 beneficiaries;
- the scheme for the self-employed: 15,943 beneficiaries;
- the territorial solidarity scheme: 48,758 beneficiaries.

347. Those schemes are supplemented by :

- the national social security scheme (or supplementary schemes) for those covered residing in French Polynesia (25,517 persons, or 10% of members), that is to say principally employees from metropolitan France;
- private insurance companies or mutual companies for persons not covered by the three local schemes or the social security scheme; and
- the creation of a territorial solidarity scheme (RST or RSPF), which makes it possible to provide social cover to persons hitherto excluded from the system (19% of members)

348. The State has undertaken to provide financial support for French Polynesia’s efforts to extend general social cover to the whole of the population.

349. The signing of two successive five-year agreements between the Ministry of Health and Solidarity (Directorate-General for Social Action) and French Polynesia constitutes the practical expression of that effort.

350. As of 1 January 2006, the appropriations relating to the territorial solidarity scheme were transferred to the Overseas Ministry by the Ministry for Social Affairs.

351. In 2006, the High Commissioner’s office and the Government of French Polynesia signed a new annual agreement (valid until June 2007) taking into account the interrelationship between the provisions of the organic law and national finance laws.

352. A new agreement was signed on 9 March 2007 between the representative of the State and French Polynesia’s President (Mr Tang Song) for €16 million. That agreement expires on 31 December 2007.

353. In the interim, French Polynesia will have to provide a statement of activity and a financial statement for 2006, as well as reports against quantitative and qualitative quarterly indicators for the current financial year.

## 2. Social security

354. Article 19 of Law No. 2007-224 of 21 February 2007 laying down statutory and institutional provisions in respect of overseas France stipulates that the Government is empowered, by order, to update social welfare legislation in overseas France.

355. In the case of Mayotte, it is proposed to extend, with the necessary adjustments, Law No. 2004-810 of 13 August 2004 on sickness insurance, Law No. 2004-806 of 9 August 2004 on public health policy, Law No. 2005-102 of 11 February 2005 on equal rights and equality of opportunity and the inclusion and citizenship of disabled people and Law No. 2006-396 of 31 March 2006 on equality of opportunity, [as well as] provisions on bioethics and the rights of the sick.

356. Article 20 of the law of 21 February 2007 has already ratified the following orders in Mayotte: Order No. 2003-720 of 1 August 2003 on the freedom to choose the beneficiary of family benefits in the overseas *départements*; Order No 2004-688 of 12 July 2004 on adjusting the law on public health and social security to Mayotte and Order No. 2005-56 of 26 January 2005 on extending and adapting the law on health and social security in the overseas *départements* and Mayotte (also applicable to Wallis and Futuna).

## B. Health

357. The State has responsibility for health care in the overseas *départements*, Saint-Pierre-et-Miquelon, Mayotte and Wallis and Futuna. French Polynesia and New Caledonia, on the other hand, have been given complete authority in relation to healthcare. However, the State is concerned with health issues throughout French territory and continues to support French Polynesia and New Caledonia by providing substantial financial support and technical assistance measures, either directly or on the basis of health agencies and research institutes.

358. In Organic Law No. 2004-192 of 27 February 2004 conferring autonomous status on French Polynesia (art. 140) the list of legal acts, called “local laws”, of French Polynesia’s Assembly over which the *Conseil d’Etat* exercises specific judicial supervision include employment law, trade union law and social security, including access to employment for foreigners, public health law – including in relation to children – and legislation on the social services and family law.

### 1. Hospital investment in overseas France

359. In the overseas *départements*, Mayotte and Saint-Pierre-et-Miquelon, public health establishments are lagging because of structural problems. At national level, an effort is under way to bring them up to standard in terms of the provision of care in metropolitan France, but both infrastructure and equipment are subject to rapid deterioration because of the climatic conditions.

360. Hospital investment is no longer put out to contract, but benefits from the support of the National Hospital Plan 2007, with additional funding from the collectivities and the support of the ERDF (European Regional Development Fund). Action by the Fund, which varies according to local priorities, relates to the construction or renovation of infrastructure, as well as the acquisition of high-tech equipment, particularly in the field of medical imaging, and specific measures geared to zones in which access to care is difficult, such as French Guiana’s land-locked communities (use of telemedicine).

361. The National Hospital Plan 2012 will finance construction that is under way, such as the health centre for eastern Réunion, or new building work, such as the renovation of the two university hospital centres in Pointe-à-Pitre and Fort-de-France, which are due to be brought up to standard in terms of earthquake-proofing technology, and the construction of a new hospital in Saint-Pierre et Miquelon, funding for which, amounting to €39 million, was announced to members of the Assembly in December 2006 by the Minister of Health and confirmed by the Directorate for hospitals and health-care provision (*Direction de l'hospitalisation et de l'organisation des soins – DHOS*).

362. Mayotte currently has nine maternity units, seven of them in rural locations. Since 2001, more than 50% of births have taken place in Mamoudzou (54% in 2002). The percentage is so high because the hospital's technical and human resources attract mothers-to-be: for 2003, the hospital had a budget of €47.8 million, largely financed from State grants.

363. The Mamoudzou maternity unit is by far the main centre for births: more than 3,800 births were recorded there in 2002, that is an average of 11 births every day. That rate is clearly higher than in the hospital of Saint-Pierre à La Réunion, where there were 3,056 births in 2002, making it the maternity unit with the highest birth rate in Réunion.

364. Although Mamoudzou stands out, the number of births in the rural maternity units is not in decline. They accounted for more than one-third of births in the territory in 2002. However, on average, they account for just one birth per day.

**Number of births in Mayotte's maternity units between 1999 and 2002**

	<i>1999</i>	<i>2000</i>	<i>2001</i>	<i>2002</i>
Mamoudzou maternity unit	3,028	3,274	3,466	3,866
Dzaoudzi maternity unit	621	598	592	614
Rural maternity units	2,557	2,707	2,561	2,648
Total	6,206	6,579	6,619	7,128

*Source* : DASS

365. In Wallis et Futuna, under the amendment to the development agreement 2003-2007, € 6.8 million (€3 million made available by the Overseas Ministry and €3.8 million by the Ministry of Health) have been provided to make it possible to carry out work to bring facilities up to standard, to make buildings secure as a matter of urgency and for the purchase of equipment.

366. Ratified by the Ministry of Health and approved by the local authorities, the investment programme provides for the restructuring and partial reconstruction of Sia hospital in Wallis on the current site, as well as bringing up to standard, as a matter of priority, the premises of Kaleveleve hospital in Futuna, at an overall estimated cost of €22 million, excluding equipment, partially funded under the 2007-2011 development agreement to the level of €7 million (€4 million made available by the Overseas Ministry and €3 million by the Ministry of Health).

367. Wallis and Futuna's health agency has a public service remit for hospitals, with responsibilities extended to cover public health. It has a staff of 187, the majority of whom are

covered by a collective labour agreement. It performs its public health responsibilities based on an organization at three levels:

- a primary level comprising three health centres on Wallis and two on Futuna, providing general consultations, mother and child care and health education;
- a secondary level comprising Sia hospital on Wallis and Kaleveleve hospital on Futuna, providing emergency services, specialist consultations and acute care, whether or not this requires admission to hospital;
- a third level for patients who cannot be cared for on Wallis and Futuna and are transferred to Gaston BOURRET hospital centre in New Caledonia or to metropolitan France.

368. Since there is no sickness insurance scheme in Wallis and Futuna, care on the islands and outside them is free and costs are met by the health agency, whose budget has been supplemented by State funding from the budget of the Ministry for Overseas France since 1 January 2006.

369. In New Caledonia, the future Gaston BOURRET hospital centre, which remained at the planning stage during the 2000-2005 development contract, will be rebuilt on a single site in Koutio, as part of the construction of a multi-service medical facility that will also combine the new Pasteur Institute, a follow-up treatment and rehabilitation unit and a cancer treatment unit, expected to open around 2014.

370. The State's contribution, under the development contracts concluded between the State, New Caledonia and the Provinces for the period 2006-2010, amounts to €26 million, of which €23.464 million are earmarked for reconstructing the territorial hospital centre.

371. The Government of French Polynesia has assumed sole responsibility for reconstructing the new territorial hospital centre, which is due to open in 2008, but the State has provided technical assistance by providing two hospital consultants to ensure that this new structure is brought properly on stream.

372. The annual agreements provide for the Ministry for Overseas France to consider requests for financial support from the territory.

## **2. Pathologies linked to the specific conditions overseas**

373. The main pathologies encountered, apart from those linked to the environment, include pathologies resulting from the tropical surroundings and those whose prevalence is largely behaviour-related, and particularly nutrition-related.

374. From an epidemiological perspective, the region of the French West Indies-Guiana, and French Guiana more particularly, is one of the regions worst affected by AIDS. It accounts for about 5% of people affected in France, despite accounting for less than 2% of the national population. Infection is probable for newborn babies.

## 2.1 Specific illnesses

### 2.1.1 Drepanocytosis

375. This genetic illness affects one birth in 300 in the French West Indies, compared to one in 3,500 in metropolitan France. It is a rare, serious, painful, potentially debilitating and fatal disease. Neonatal screening routinely takes place in the four overseas *départements*. There are two [clinical] reference centres for combating drepanocytosis in Guadeloupe and Martinique.

### 2.1.2 Beriberi

376. In Mayotte, 32 cases of children aged between one and four months suffering from beriberi were reported between 4 April and 13 July 2004. The majority came from the municipality of Mamoudzou (53.1%). Twenty of the children died. The emergency introduction of campaigns to distribute vitamin B1 in early June brought the epidemic under control. The majority of the mothers of the children concerned were not of French nationality (85% were Comoran). Nutritional analysis revealed that the mothers of the children suffering from beriberi had a less varied diet than the control group of mothers, both during pregnancy and in the postpartum period.

## 2.2 Vector-borne diseases: malaria, dengue fever and chikungunya.

### 2.2.1 Malaria

377. The only cases of malaria in Réunion are imported cases. However, the disease is endemic in Mayotte where there has been an increase in the number of cases over time, rising from 1,841 cases in 2002 to 404 cases in 2005.

378. Malaria continues to be endemic in Mayotte, where it is both indigenous and imported. The widespread use of rapid diagnostic tests, facilitating early and effective treatment, has resulted in a fall in the death rate and restricted complications. Currently, Mayotte carries out 24,000 tests annually, resulting in the diagnosis of just 500 cases a year (539 in 2005 and 743 in 2004). This endemic disease, which was widespread in Mayotte until 2002, is now rife only in the north of the Grande-Terre, which records 70% of reported cases.

379. In Mayotte, the main and specific function of the health promotion task force for school children and students is to secure their well-being, help them succeed and support them in the development of their personality as individuals and a community [:] “general guidelines for a health policy for the benefit of school children and students”.<sup>k</sup>

380. Two services work to complement each other within the framework of their individual responsibilities:

- medical service: “responsibilities of the doctors of the Ministry of Education”;<sup>l</sup>
- nursing service: “responsibilities of the nursing staff of the Ministry of Education”.<sup>m</sup>

---

<sup>k</sup> Circular No. 2001-012 of 12.01.2001 in *Journal Officiel*, Special Edition No. 1 of 25 January 2001.

<sup>l</sup> Circular No. 2001-013 of 12.01.2001.

<sup>m</sup> (Circular No. 2001-014 of 12.01.2001).

381. The medical service is made up of a doctor responsible for all of the island's schools and educational establishments.

382. In French Guiana, the number of confirmed cases of malaria is in the region of 5,000 a year. The geography of French Guiana and population movements make it very difficult to implement programmes to control the disease.

### **2.2.2 Dengue fever**

383. The French American *départements* regularly experience more or less severe epidemics of dengue fever, but, since 2005, there has been an unusual rise in the number of cases.

384. Between June 2005 and March 2006, Martinique suffered an epidemic that affected some 14,500 people and resulted in 200 being hospitalized and four deaths.

385. Between July 2005 and May 2006, an epidemic developed in Guadeloupe, affecting some 8,350 people.

386. As early as October 2006 in Martinique and November 2006 in Guadeloupe, an early warning of a possible epidemic was issued. The situation returned to normal in March 2007.

387. In December 2005, French Guiana experienced an epidemic that affected more than 16,000 people, resulted in hospitalization in severe cases and led to four deaths.

388. The particular features of the demographic situation in French Guiana, compared with French territory overall, means that vaccination services have regularly to be adjusted.

389. French Guiana's Directorate for health and social development has carried out studies that have brought to light significant differences in rates of child vaccination, particularly in the most remote sectors. The lack of transport facilities (by air or river) makes it particularly difficult to supply vaccines, since it is essential that the cold chain be maintained.

390. In the field of public health, French Guiana is co-operating with Brazil and, more particularly, the federal State of Amapa with regard to emergency services and services to control endemic diseases such as malaria, dengue fever, yellow fever and the waterborne diseases present in the zone. Brazil and France have, for example, boosted healthcare systems – paying particular attention to populations along the borders – in the following fields: epidemiological monitoring, environmental health surveillance and medical assistance.

391. In the French West Indies, the improvements made to the epidemiological monitoring system have been incorporated into a programme for the monitoring, early warning and management of epidemics (*Psage-dengue*) officially adopted by all of the parties on 13 July 2006.

392. The French collectivities in the Indian Ocean and Oceania also face epidemics of dengue fever.

### **2.2.3 Chikungunya**

393. Chikungunya, which was rife in the Indian Ocean, affected Réunion from the spring of 2005 and Mayotte from January 2006. When summer returned to the southern hemisphere,

Réunion experienced an unprecedented epidemic outbreak, with 20,000 people a week being infected in February 2006.

394. As early as December 2005, an interministerial taskforce made recommendations on the improvements to be made to the existing arrangements concerning surveillance and anti-vectoral efforts, and an interministerial plan to combat the epidemic was set in place, among other things by increasing to 2,870 the personnel assigned to anti-vectoral activities in Réunion.

395. The epidemic affected 266,000 people in Réunion, with 246 reported severe cases and 254 deaths, three-quarters of which involved people more than 70 years old.

396. On Mayotte, 7,290 cases were reported. However, that figure does not reflect the true scale of the epidemic, as many patients did not use the medical services. No deaths were recorded.

397. The very low weekly incidence of the disease recorded since March 2007 has made it possible to move into the inter-epidemic phase on the two islands. On the advice of the French Agency for the safety of blood products, the French blood collection establishment decided to resume blood donations in Réunion from next June. Surveillance, combating and protecting against mosquitoes are a matter of continuing vigilance.

398. The vector-borne disease control service of Mayotte's directorate of health and social affairs, whose main role is to combat malaria, had to take action in 2006 against the chikungunya virus. Rife on Réunion and in the Indian Ocean, it struck Mayotte in January 2006.

399. In the context of the interministerial plan set in place because of the scale of the epidemic, €6.27 million were committed to Mayotte – €3.3 million for mosquito control, €3,000 for communication purposes and staff costs and €2.864 million for the purchase of insect repellent and mosquito nets.

400. At 7 July 2006, 599 persons, including 80 officials from the Directorate of health and social affairs, were engaged in anti-vectoral activities.

### **2.3 High-incidence pathologies: metabolic disorders**

401. The national action programmes to prevent and treat diabetes, cardio-vascular diseases and renal insufficiency are designed to make it easier to combat these chronic pathologies, prevent them and reduce their incidence and complications. Even now, regional programmes to prevent these illnesses, which constitute public health problems, are being implemented in Guadeloupe, Martinique and Réunion.

402. As regards the "child obesity epidemic" in Réunion, measures to combat increasing levels of obesity in children and adults are being implemented with medical and educational support. There are, in fact, more than 50,000 obese children on the island.

403. The aim of those measures is to increase educational activity as close to the population as possible in order to co-ordinate national action on nutrition in the *département*.

404. A multi-disciplinary facility, comprising a co-ordinating paediatrician, a dietician, an expert in social economy and home economics, an administrative co-ordinator and a psychologist, is tasked with meeting with children both in their family context and at school.

405. In addition, the facility makes it possible to provide advice on diet and nutrition as close as possible to the population and to create associations that act as an intermediary with the local districts. It also arranges a holiday camp for diabetic children on the island.

406. The aim is, therefore, clearly, to check the increase in obesity in young people by applying a number of basic principles: eating more fruit and vegetables, cutting back daily energy intake, reducing alcohol consumption and increasing physical activity.

407. In point of fact, children who are overweight have an increased death risk in adulthood of between 50% and 80%, not to mention the short-term effects in terms of orthopaedic disorders, increased arterial pressures or, indeed, abnormal blood lipid values.

408. Finally, attention should be drawn to the investment made by the public authorities in raising the awareness of the population by broadcasting advertising spots and publishing a guide to nutrition.

### **C. Children with a disability**

409. The lack of facilities suitable for minors is the main obstacle in dealing with disability.

410. The proposed order extending and adapting to Mayotte, Saint-Pierre-et-Miquelon, New Caledonia, French Polynesia and Wallis and Futuna various measures concerning equality of opportunity for people with disabilities and the implementation of a social action and medico-social policy is designed to extend and adapt the measures necessary to take better account in those collectivities of individuals with a disability and of their needs.

411. In the case of Mayotte, those provisions establish the legislative framework for the social and socio-medical arrangements (organizational plan, arrangements governing the licensing and financing of social and socio-medical establishments and services), merging the commissions responsible for awarding the allowance for adults with a disability and the allowance for children with a disability, the creation of a single information and advice point and the funding of aid for specialist staff training by the National fund supporting independence for people with a disability and the elderly (*Caisse nationale de solidarité pour l'autonomie*).

412. The proposal does not, however, cover all of the measures for people with a disability for which Law No. 2005-12 of 11 February 2005 provides, including the measures relating to the education of children with a disability. The policy implemented for the benefit of these individuals by New Caledonia and French Polynesia, which are responsible for social welfare and, to some extent, for education, [is] further developed by the provisions of the 2005 law. It will, therefore, be for the State rapidly to supplement those arrangements. The same applies on Mayotte where the lack of structures is hampering improvements in assistance for people with a disability.

413. The proposal contains new provisions, particularly for Saint-Pierre-et-Miquelon, and is now in the process of being authorized, amended and updated.

414. Included in the Government's programme of work for 2007, the legislation is currently the subject of ministerial review.

415. In addition, the abovementioned law on equal rights and equality of opportunity and the inclusion and citizenship of disabled persons provides for the establishment of a departmental

structure called the “Departmental centre for disabled persons ” (*Maison Départementale des Personnes Handicapées*) tasked with providing support, information and aids to establish the life plan of such persons.

416. In Wallis and Futuna, however, there are still barriers of an institutional, structural and cultural nature to the implementation of those measures.

417. As far as the institutional barriers are concerned, since the territory is not organized as a municipality or *département*, there is no departmental General Council or municipal structures. That being so, in the current circumstances, the creation of the appropriate structures, other than those offered by the education system and by ensuring that public spaces are accessible – essential elements in the first steps to integration – is not guaranteed.

418. Structurally, the system of care is organized on the basis of health care centres. Practitioners are exclusively employees of the health care agency and this has the effect of limiting the numbers of healthcare workers, particularly in the paramedical field. In addition, there is no real social welfare network.

419. Finally, from a cultural perspective, disability is still considered something “to be ashamed of”, and the parents of children with a disability find it hard to allow their children to leave the home. But perceptions have begun to change, particularly thanks to those establishments that provide specialist structures. The setting up of a facility like the departmental centre for children with a disability would mark important progress for Wallis and Futuna.

420. Measures have, therefore, been taken at various levels and include the establishment of a territorial centre for persons with a disability. In the light of the specific features of the territory and to comply with the spirit of the law of February 2005, the requisite operational adjustments have been set in place, given the limited number of personnel available in the territory to staff the facility that would become the territorial centre for people with a disability.

421. Consequently, creating a place where families could obtain information and find people ready to work with them on their children’s life plan, now seems to be a necessary stage in extending disabled people’s involvement in life in society and according them the equal rights and equality of opportunity to which the text of the law refers. That proposal is currently being drawn up.

422. Furthermore, support structures for disabled people have been further reinforced and extended: a class for the educational integration of disabled children has been created on the island of Futuna. Hitherto, children with a disability were taught in ordinary classes. That was not entirely suited to the provision of adapted education, and so, at the beginning of the 2007 school year, a specialist class was opened on the island. School transport and catering facilities have been specially created for those pupils.

423. The territory had an establishment providing home economics courses at primary and secondary levels. At the beginning of the 2007 school year, it was transformed into a specially adapted vocational training centre, a facility making it possible to support disabled children when they are no longer of compulsory school age, as well as pupils who have left school early or suffer from confirmed cognitive disorders. The underlying principle is to alternate between basic learning and teaching the kind of real and practical know-how that will facilitate pupils’ social and professional integration in the territory. This project is backed by an extended

partnership (the French Ministry of Education, the Catholic teaching directorate, the Ministry of Agriculture, the Ministry for Young People and Sport and [various] associations).

424. Given the low level of socialization of disabled people in the territory, it seemed necessary to create a meeting point that would allow some children who had never been to school to take the first steps to becoming socialized, to allow the level at which they might be integrated into schools to be assessed and to prepare them to respect the rules that would enable them to be educated in the future (creation of a socialization and communication centre).

425. In addition, this would be a place where families and young people with a disability could come, so that they were no longer isolated, and it could act as a facility for providing advice, listening and discussion.

426. The project is under way. The communication measures undertaken, in partnership, by the deputy director of education, the Catholic teaching directorate and the traditional chiefs has made it possible to educate eight young people who had never been to school (some of them 14 years old).

427. For the deaf and hard-of-hearing, training was offered in April 2007 to teachers, family members and educators working with people suffering from hearing loss. Training in sign language is going to make it possible to establish a core of individuals able to facilitate communication with and the education of individuals with that kind of disability.

428. Preventive and remedial measures based on specialist assistance have been entirely restructured to make them more effective. An individual road map makes it possible to monitor the progress of every child with special needs and to make the necessary adjustments. Special continuing training for staff has been provided since 2006.

429. Not until fairly recently has it been felt necessary to take account of disabled persons in the territory. However, as progress is made in educating some young people with a disability, the social perspective seems to be changing quite rapidly, and local and customary institutions seem also to want to contribute to expanding structures, in order to offer and improve opportunities for a life plan for disabled persons.

430. In New Caledonia, pursuant to article 181 of Organic Law No. 99-209 of 19 March 1999 on New Caledonia, the State pays to the provinces annually, apart from the development contracts, a general operating grant corresponding to the sums disbursed by way of free medical assistance for the elderly, assisted children, disabled persons, State primary education and the operation of secondary schools.

431. A care policy has been implemented in the North Province via the Maurice Leenhardt association. Social and educational integration assistants operate in 15 of the North Province's 17 municipalities in relation to some 70 children (that is a third of the Province's disabled children) aged between 0 and 21. The assistants' main task is to enable these children, who lack independence, to access all of the places children visit (educational establishments, holiday camps and so on) and to provide families with assistance in the home.

432. Since April 2004, specialist foster families have been selected to take in children with disabilities placed with them by the courts or by administrative order.

433. In 2003, for the European Year of People with Disabilities, the South Province of New Caledonia chose to adopt the theme of the right of disabled to children to benefit from specialist care, as well as appropriate education and training to encourage their independence and facilitate their active participation in the life of the community. In the context of teaching projects, school children were invited to carry out projects on that subject. There was a major event on the *Place des Cocotiers* with associations working with the disabled. Following that event, disabled children enjoyed a cruise on a sailing ship lasting several days together with children from the provincial sailing school.

434. There are apparently more than 5,000 disabled adults and 1,300 disabled children in French Polynesia. “Te Niu O Te Huma” is the union of associations of disabled persons, created in January 1993.

435. The role of “Te Niu” is to promote the development of associations working to support the disabled by setting in place a structure providing support and action, advice, review and analysis, proposals, studies, information and making representations to institutional and guardianship bodies.

436. Its activities include:

- assisting integration into working life in conjunction with the Ministry of Employment;
- securing the accessibility of public spaces;
- taking action to help disabled children;
- securing agreement between the association and the driving schools;
- calling for recognition as an association in the general interest with a humanitarian objective;
- participation in the Telethon.

437. “Fare Moe Tini”, literally, the “house of a dream fulfilled”, is the only approved centre in the whole of French Polynesia and, as such, recognized as a specialist medical educational establishment (*Permanence Educative, Médicale Spécialisée – PEMS*). It takes in children of all ages, whatever their disability.

438. In Mayotte, pupils with a disability are taught either in ordinary classes or in an “integrated class”.

439. The integrated classes replace “special classes”, and there are four types covering children with a mental disability, who have a hearing impairment or a visual impairment or whose mobility is impaired.

440. Those measures were taken to avoid the kind of segregation that children with a disability could suffer, and to promote their integration. And indeed, experience has shown that integrating disabled pupils within the school environment has benefits for the whole of the school community.

441. Réunion is one of the French *départements* least well equipped to care for disabled children and adults. To give an illustration, provision exists equivalent to 8.44% of young people

under 20 in metropolitan France, but only 5.17% in Réunion. Since 1990, the number of places in institutions and the provision of outpatient care have constantly increased, but barely keep up with population growth. That problem is reflected in the huge waiting lists of institutions for disabled children.

442. Réunion's Regional Directorate for health and social affairs has drawn up a summary report (November 2004) on identifying and caring for persons with a disability.

**Activities of the Departmental Special Education Commission**  
*(Commission Départementale d'Éducation Spéciale – CDES)*  
**1 January 2003 \***

	<i>Number</i>	<i>Rate as a ‰</i>
Total of disabled children identified	5,524	19.9
Recipients of the special education allowance (SEA)	2,298	8.2
Placed in institutions	1,466	5.3

\* The Departmental Special Education Commissions are responsible for children and adolescents from birth to 20 years of age. Their job is to identify the disability and determine a disability rate, to award the special education allowance (SEA) and disability card and steer children towards institutions or services that provide special education.

443. The number of recipients of the SEA increases every year. In 2003, 2,298 were in receipt of the SEA, that is 34 more than in 2002 and 763 more than in 1990.

444. In recent years, institutional care for persons with a disability has expanded, including both care in an institution or outpatient care. Four hundred additional places were created between 1990 and 2003. In 1990, 1,003 children benefited from care, 937 in an institution and 65 as outpatients. In 2003, 1,146 children were cared for in an institution and 318 as outpatients. It is important to point out that in Réunion there are no special institutions for children with behavioural disorders.

445. The Ministry of Education has created special classes, within ordinary schools, for children with a disability. The integrated classes are able to take in 1,428 children at primary level at 1 January 2003. At that date, 963 places had been taken up.

446. Young people suffering from a disability in secondary establishments are catered for in integrated teaching units. In 2003, 144 young people were able to benefit from that facility. In addition, some young people suffering from moderate mental disability are able to be catered for in sections providing adapted general and vocational teaching. Those sections which exist in the secondary schools are designed for all young people with difficulties (not necessarily those with a disability). In 2003, 2,412 are available in Réunion.

447. In 2001, as in 1995, more than half of the children cared for in an institution had a mental disability. The visually impaired accounted for 7%, 11.4% had problems of mobility, 6% had a mobility-related disability and 12% had multiple disabilities. It should be noted that few children with disorders of speech or language acquisition or suffering from a respiratory, metabolic or nutritional disorder receive institutional care (less than 1% of the total in 1995 and 2001).

448. In 1995, 24% of those children were not in education: 65% of those under six; 17% of those between six and 17 and 32% of those aged 18 and above. In 2001, 32% of children and young people with a disability were not attending educational establishments.

449. Of that group, 65% were nonetheless taught basic concepts of communication, hygiene and basic safety. Twenty-one per cent had learnt to perform simple gestures. In 2001, 67% of children with a disability were in full-time education, that is to say 40% in nursery education, 14% in CP or CE1 (six and seven year-olds), 9% in CE2, CM1 and CM2 (eight to ten year-olds) and 4% in sections providing adapted general and vocational teaching.

450. To summarize, in 2003 :

- 2,298 children were in receipt of the special education allowance;
- 10,636 adults were in receipt of the allowance for adults with a disability;
- 1,146 were being cared for by an institution and 318 were receiving outpatient care;
- 1,428 children were being taught in integrated classes;
- 144 children were able to be educated in integrated teaching units;
- 523 children were waiting to be allocated a place.

451. In French Guiana, the Departmental Special Education Commission, which, in conjunction with the Ministry of Education, examines applications for allowances and provides guidance for disabled children, and the Technical Occupational Counselling and Redeployment Commission which is responsible for adults, in conjunction with the Directorate for Work, Employment and Vocational Training are attached to it [sic].

452. In French Guiana, in 2007, in order to implement the law of February 2005, 11 counsellors (*référénts*), under the authority of the inspector for the adaptation and education of pupils with a disability, will closely monitor all such pupils from nursery school to university. Seventy-four teaching units will enable disabled pupils to receive a successful education. For the first time in French Guiana, a unit for pupils with a disability is going to be set up in a vocational training *lycée*. New establishments are being set up in 2007. These are educational assistance services working with teams in the field. Major work remains to be done in respect of remote communities. This year, two educational psychologists are being added to the teams in the field: one on Apatou, the other on Saint-Georges. The 11 teams in the sections providing adapted general and vocational teaching which cater for children at secondary school level with severe learning difficulties are being strengthened. Nine of them will now be headed by a director who is trained and holds the requisite diploma. The team in Paul JEAN-LOUIS secondary school in Saint-Laurent will be opening a class for 14 year-olds, thereby setting in place arrangements for pre-vocational training. This year, the teams will be paying particular attention to the success achieved by pupils and to the numbers returning to ordinary classes. In addition, two sections providing adapted general and vocational teaching have opted to plan for the introduction of a sports unit.

## V. CHILDREN AND THEIR FAMILY ENVIRONMENT

### A. Children deprived of their original family environment

#### 1. Adoption in French Polynesia

453. The tradition of “child-giving” within the community, known as “fa’a’mu” (translated literally as the one who is “fed”) is commonplace. This is a “*form of adoption in which the child retains its links with its biological parents. Two-thirds of the population remain very attached to this cultural model which is based on a concept of the ‘extended family’ in which the child belongs to the group and not to a restricted nucleus*” (report of the Children’s Ombudsman in 2003). This system of traditional adoption enables the biological parents to entrust their child’s upbringing to a foster family without losing contact with that child.

454. There are a number of reasons why the biological parents may offer their child for adoption. In addition to the traditional reasons, such as an alternative to family planning or family co-operation (a sterile or older couple asking parents to compensate for their lack of children or for the loss of their grown-up children), there are now economic, professional or, indeed, marriage-related reasons (for example, a single mother wishing to marry but whose future husband does not want to keep her child). For several decades now, families in metropolitan France have been adopting children on the basis of de facto adjustment of this traditional procedure.

455. Philosophically and procedurally, this practice of “child-giving” is incompatible with French legislation.”

456. Organic Law No. 2004-192 of 27 February 2004 conferring autonomous status on French Polynesia accords the State authority in respect of civil law. De facto, the provisions of the civil code on adoption apply in French Polynesia. However, one of those provisions has long proved inapplicable. According to article 348-5, consent to the adoption of a child under two is valid only if that child is handed over to either the children’s social welfare service or a body authorized for adoption. However, French Polynesia did not have a body authorized to arrange adoption, and the authority of the territorial children’s social welfare service was recognized only belatedly (in 1983 by a decision of the government council, confirmed in 1997 by recommendation of the *Conseil d’Etat*). Since the requirement that the child be handed over could not be met, the consent to adoption was not valid under the law.

457. In order to prevent a situation in which it is impossible to adopt children under two, the judicial and administrative authorities have agreed on a practice whereby a delegation of parental

---

” In French law, two forms of adoption are possible: simple adoption (art. 360 *et seq* of the civil code) and full adoption (art. 343 *et seq* of the civil code). While the conditions governing whether a child may be adopted are the same in both cases, the effects differ. In cases of simple adoption, the child retains its link with its original family, whereas in cases of full adoption, the child acquires a new line of filiation replacing its original line of filiation. In both cases, any person seeking to adopt must, prior to adoption, obtain the approval of the children’s social welfare service of his or her departmental General Council. The children’s social welfare service examines the application for approval, carrying out social welfare checks and psychological tests. Attached to the approval is a notice describing the adopter’s proposal and indicating the age and characteristics of the child that person wishes to adopt. Once they have that approval, potential adopters may approach the French Adoption Agency.

authority is declared and accorded to the future adoptive parents until the child reaches the age of two.

458. The biological parents' renunciation of the exercise of their parental authority has thus become the first stage in the adoption procedure in French Polynesia.

459. While the delegation of parental authority appears in the civil code, it is not a prerequisite for adoption. It appears in the chapter on parental authority and not the chapter on adoptive filiation.

460. The delegation of parental authority does not, therefore, constitute consent to adoption within the meaning of the law and, as a result, does not produce the effects attaching to that consent. For example, when the future adoptive parents take the child into their home, this does not constitute a placement within the meaning of article 352 of the civil code (placement with a view to adoption).

461. Decision No. 82 SCG of 27 January 1983 on adoption in French Polynesia accorded authority in matters of adoption to the social welfare department, particularly where children under two are involved.

462. As stressed in the report published by the Children's Ombudsman in 2003, in recent years that procedure seems to have been used in significant numbers of cases. Adoption by means of *fa'a'mu* affects about 2% of the children of French Polynesia annually.

### **1.1 The advantages**

463. The central feature of *fa'a'mu* adoption is "child-giving". In the Polynesian way of thinking, that concept of giving is certainly not the same as abandonment. In metropolitan France, cases in which parents abandon or clearly have no interest in their child result in the child being handed over to the social services. But that practice is not usual in French Polynesia. The giving of the child is, in fact, usually prompted in the common interest of two families. *Fa'a'mu* adoption provides the child with two families: its biological parents and the family that has chosen or agreed to bring it up. The child is not abandoned: the biological parents entrust it to a foster family.

464. Many Polynesian families choose the adoptive family themselves. The two families may be brought into contact by a third party, a family member or a friend. Often, the child is given directly to the chosen family. There are contacts between the two families.

### **1.2 The disadvantages**

465. In the absence of specific legislation governing adoption in French Polynesia, parental authority is usually delegated until the child is two, during which period the child has generally been removed from the territory by the adoptive family from metropolitan France. In accordance with tradition, contacts between the families are, generally, maintained.

466. When the child is two years-old, the application to adopt is lodged with the president of the court of first instance (*tribunal de grande instance*) at the place of residence of the adoptive family and, on conclusion of the appropriate procedure, the adoption is confirmed. However, when the adoption order has been issued, the adoptive family may have a change of heart. In point of fact, confusion arises in relations between the Polynesian and metropolitan French

communities between maintaining legal contacts and maintaining the kind of human relationship that enables the child to be in touch with its origins.

467. Those circumstances have resulted in pressures on mothers who are potential “donors”, and some abuses have been identified in cases of adoption by families from metropolitan France.

468. The aim, therefore, is to establish a means of monitoring the legality of adoption and ensuring that there is no abuse in the adoption procedure in French Polynesia, so as to guarantee that the children concerned are monitored, so that they grow up in the best possible conditions, that the fact of being uprooted does not disadvantage them and that they are able to maintain their links with their country of origin, their biological family and their culture.

469. Since abortion was introduced into French Polynesia in 2001, the number of *fa'a'mu* adoptions has decreased (contraception leading to a fall in the birth rate), however, the practice still exists.

470. According to an opinion handed down by the *Conseil d'Etat* on 4 February 1997, “*responsibilities for children's social welfare may be accorded to services pursuing the same objective in French Polynesia*”. A new procedure, consistent with the requirements of the Civil Code, seems to be becoming increasingly widespread. French Polynesia's social services or social welfare services want, in fact, to be automatically involved in the adoption process, making it possible to verify the basis of the consent given by the biological parents and the motives of the adoptive parents.

471. That interpretation of the law has made it possible to set in place a system of wardship under the ordinary law for children under two years of age who are handed over to the social welfare service. The latter has thus extended its sphere of responsibility to include measures to help children and young people by means of targeted measures in relation to the protection of children and young people, the delegation of parental authority and adoption procedures. On that basis, the social welfare service has the authority to approve an adoptive family and draw up the adoption file, as well as assess and carry out the psychological monitoring of a family wishing to adopt.

472. If the family in Polynesia does not know of any future adopter whom it could suggest to the service, a family council, made up of three officials from the social services and two suitably qualified individuals proposes three families to it: a Polynesian family, a family of residents and a family from metropolitan France (both of the latter having obtained official approval to adopt). That procedure allows the choice of adoptive family by the original family to be respected.

473. The family that has been selected is notified before the child is born and contacts are immediately set in place. When the adoption seems to have reached the stage of being well prepared, the future adoptive family may be designated as the foster family and become the child's guardians during the two month cooling-off period for which the law provides, on condition that the child does not leave the country during that time. If, however, the situation is not clear cut, the child is given to a different foster family or to the territorial nursery (part of which has been transformed into a baby nursery). Biological parents and adoptive family are therefore gradually brought together as the adoption takes shape. Throughout that time, the birth mother can express her distress and sense of loss but also her desire to keep the child.

474. Moreover the abovementioned order of 21 December 2000 extends the status of wards of the State to children born in French Polynesia. That order creates rights for children taken in for

more than two months by the social welfare service. The status of ward of the State prohibits the delegation of parental authority. Two decrees are required for the provisions of the order to apply: one relates to the composition and operation of the family council and the other to the approval commission. They should be adopted in 2007.

475. Pursuant to article L. 224-4 of the code of social action and families, children whose line of filiation is not established may be given the status of ward of the State, but that does not usually apply to children adopted according to the *fa'a'mu* procedure. Since the system of wards of the State was designed primarily to apply to children who had previously been abandoned, it could clash with the practice in French Polynesia where it is the biological parents themselves who plan adoption.

476. That system is not, therefore, likely to eliminate the practice of delegating parental authority completely, but it is to be hoped that parents will see in it a guarantee of their child's safety.

477. The procedures governing the adoption of children in French Polynesia by families from metropolitan France have improved significantly – even without the decree setting up the family council required for the adoption of wards of the State – as a result of the substantial degree of co-ordination between the family courts and social welfare service. There has also been a significant decrease in the number of adoptions.

## **2. Adoption in New Caledonia**

478. The customary law culturally and socially linked to the Melanesian community of the Pacific traditionally distinguishes between two categories of “child-giving” which do not require the relinquishment of [parental] rights as a pre-requisite and are voluntary:

- adoption based on friendship (or “fosterage”) is very widespread and simply involves handing over the child without any effect on the latter's personal status;
- customary adoption (or “Popa èpo”) where the child becomes completely integrated into the foster family. It involves a change in the child's name and situation and, in those respects, resembles adoption under French law. More often than not, the adopted children return to the maternal family and there is no break with the family of origin. That form of adoption is entirely governed by customary law and is registered in the register for citizens with customary civil status.

479. There appear to be a number of reasons for employing that practice: settling a “debt”, reconciliation between families, thanks for a service rendered, lack of progeny or as a reminder of former alliances. The choice of boy or girl will clearly depend on the reason for the adoption (where a family dies out, for example, a boy is “given”).

480. Customary adoption is designed to maintain a social and cultural balance, as well as a balance in terms of land tenure. It reflects an approach based on exchange between families, within the family or between near or distant neighbours. An individual exists only in relation to others, his family and his land.

481. During the early months of a child's life, the biological mother has privileged contact with the child. Once it has been weaned, a system of upbringing by the other women of the tribe is

established. Tradition accords only a secondary role to the biological father. It is the maternal uncle who is the true father and must take responsibility for raising the child.

482. The adoptive mother is subject to collective representations and the rules of social life, which are highly codified in Melanesian society. The adoptive father acts as a spokesman in dealings between the customary bodies and the family. Acceptance of the adoptive parents often appears more like submission to a rule of society than heartfelt agreement.

483. In the Melanesian community, the procedure of “child-giving” is strictly regulated: parents wishing to adopt make a proposal to the biological parents, who then request approval of their elders. The families may then “follow custom”, that is to say proceed to exchange gifts and enter into discussions. When a child grows up, he or she may return to the original family (the “customary gift of returning”), and is then “re-adopted” by its own family.

484. Since the adoption process is not confidential, it is hard to imagine that a Melanesian child with customary status who has been “given away” retains no links with its biological family.

485. While it is difficult to confirm that these children are more frequently the victims of sexual abuse than other children, as the Children’s Ombudsman states in her 2005 report<sup>o</sup>, the fact remains that the major changes that have now taken place in Melanesian society, particularly with the large-scale movements of families to Nouméa, affect the way in which children are transferred (questions arise as to the way in which the foster families operate within the family and the true status of the child). It may happen that adopted children, and girls more particularly, are the victims of sexual abuse, but this is no longer a taboo issue and heightened awareness among the women of the South Sea Islands is enabling positive developments to be achieved. They have the support of social bodies and various other associations.

### **B. Immigrant children**

486. Perceived as rich and attractive regions, the overseas *départements* and collectivities have to deal with high levels of immigration, largely as a result of the attractive living standards and levels of social protection, which are higher than in neighbouring States.

487. By way of illustration, in the Caribbean, per capita gross domestic product (GDP) in Puerto-Rico, the most developed territory in the region is just 2/3 that of Martinique. The gap between Haiti and Guadeloupe or Martinique is greater still.

488. Pursuant to the social welfare and family code, no condition pertaining to nationality, legality of stay or length of residence is required in respect of persons affected by the application of the child protection tasks set out in article L. 221-1.

489. It should be noted that the statistics on illegal immigration are only approximate.

---

<sup>o</sup> “In Melanesian society, adoption is a customary gesture, between families, the gift of a child being used to seal alliances. These children who are entrusted to another family, often the mother’s own family, may be ‘given’ at a relatively late age, sometimes when they are between seven and eight years old. There are also cases in which these children ‘given’ officially under customary law are not well treated by their new family and fall victim to sexual abuse.”

## 1. The situation in the French West Indies-French Guiana region

490. With a population of 422,000, Guadeloupe recorded the following figures for illegal immigrants in 2005: 27,000 people, 10,000 of them children.

491. Illegal immigrants account for about 3% of the population in Guadeloupe, and the number of deportations increased from 370 in 2005 to 468 for the first quarter of 2006 (that is an increase of 26.49%). Most illegal immigrants are from Haiti, the Dominican Republic and Dominica.

492. As regards the social welfare of unaccompanied foreign minors who are either legal or illegal immigrants (at 31 December 2005), in the majority of cases, those minors are brought to the *département* by their parents or a family member. Usually, they are handed over to a third party, a relative or a compatriot, who “disappears” because of various difficulties, so that the young person is suddenly left alone.

493. Guadeloupe’s child social welfare service takes care of the immigrant population, and this includes:

- caring for minors entrusted to it by their parents or the courts;
- wards of the State;
- minors taken in provisionally as an emergency, pursuant to article 56 of the social action and family code, according to which a minor who has no legal representative may be taken in as an emergency. In such cases, the social welfare service tries to track down the parents and refers the matter to the State Prosecutor’s Office;
- caring for pregnant women and lone mothers, with their children under three, who are in need of material and psychological support;
- caring for minors declared to be of full age and capacity and adults under 21 who have problems of social integration.

494. It is worth highlighting some of the problems that Guadeloupe’s social services encounter:

- conflicting institutional approaches linked to the arrangements for protecting children and controlling migrant flows;
- the obstacles to obtaining refugee status for minors;
- obtaining legal representation;
- obtaining parental authority or the authority of the child’s family members in its country of origin;
- access to the law, to French nationality and to vocational training;
- the need for appropriate accommodation in the reception centre;
- authentication of the identity documents issued in the country of origin, particularly in respect of minors from Haiti;
- establishing the age of minors;
- the lack of a reception centre for asylum-seekers;
- obtaining identity papers that will enable these young people to access the diploma providing confirmation of attendance at school;

- the fact that these young foreigners, who have no status under employment law, do not have the right to work.

495. There also appears to be a recent phenomenon whereby these lone foreign minors abscond. The role of social workers, particularly specialist childcare workers, seems to be crucial. They seem best placed to identify young people at risk of absconding. The increase in the population group is partly linked to the phenomena of addiction, drug-addiction and the problems of adapted care. Most young immigrants who abscond are, like other minors, under the influence of various drugs. Their emotional, social and economic situation is complex. They are in poor physical and psychological health, and most of them are inclined to wrong-doing.

496. At 31 December 2005, there were 38 unaccompanied foreign minors in Guadeloupe, most of them boys, and the majority from Haiti (14 minors). The following States are also involved: Dominica, the Dominican Republic and Sint-Maarten (the Dutch part of the island of Saint-Martin). Most, namely 23 minors, are placed with foster families.

497. The collectivity of Saint-Martin remains a focus for illegal immigration for several reasons, including the permeable nature of its frontier and its administrative set-up. Attempts to curtail illegal immigration are encountering new strategies by the networks, which may be described as “aggressive and sophisticated”, and involve even minors, particularly girls.

498. Illegal immigration has critical effects on minors’ development (uprooting and destruction of the family unit, the development of an unclear sense of identity and a poor self-image, cultural conflict and discrimination).

499. Of the 84 foreign minors and young adults taken into the care of the child social welfare service on Saint-Martin, 68% are the subject of judicial action and 61% have been placed with foster families.

500. The main problems are as follows:

- their parents are illegal immigrants who do not have the right to stay;
- their parents are illegally resident as their visas have expired;
- they are minors who have not come to the territory to join their family;
- it is impossible to establish their date of entry;
- it is impossible to confirm the years of school attendance required on French territory;
- they are adolescents who have arrived in their later teens and cannot prove they have been present long enough before reaching their majority;
- it is impossible for them to access integration facilities.

501. The authorities on Saint-Martin are hard hit by illegal immigration. The island’s service-providers have to meet the needs of providing medical and social care for foreigners who account for 80% of users on average.

502. They have been reduced to providing social cover that may be described as “humanitarian” but excludes all preventive or tutelary measures.

503. Foreigners who are illegally resident actually benefit from State medical assistance only if they are habitually (and not occasionally) resident in France, and, above all, if they are genuinely destitute. They may obtain exceptional help by way of child welfare assistance.

504. The fact that few physicians take part in the system of State medical assistance, because of the time it takes for them to be reimbursed, and the confidence established between users and local officials, encourages the increased levels of attendance at clinics. The population is increasingly in need of free medical care, regular monitoring of difficult pregnancies, vaccination and medical analysis. Few women who are illegally resident are able to access such services.

505. The implementation of universal medical coverage and State medical aid has dramatically changed care procedures.

506. The social policy that has been developed on Saint-Martin makes it possible to support foreign families experiencing serious difficulties, particular in the absence of social benefits:

- support for parenthood;
- support for psychological/behavioural problems;
- various forms of financial assistance (school, extracurricular activity, food, clothing, temporary accommodation).

507. In relation to the care and monitoring, by the service for the protection of mothers and children, of pregnant foreign women who are legally or illegally resident, since 2003, there has been a sharp rise in the number of pregnant foreign women throughout the territory of Guadeloupe and particularly on Saint-Martin.

508. The departmental collectivity takes the place of the State in assisting families who are in acute difficulty.

509. In Guadeloupe, the scale of the problem and the consequences of delays in providing care require a detailed review of the situation, so that the most appropriate measures can be introduced to support underprivileged and vulnerable groups in the population.

510. As a result of its social welfare work in the community and its responsibility for protecting mothers and children, Guadeloupe's departmental General Council is helping to maintaining a reasonable standard of living for population groups in severe difficulties. A partnership entered into with neighbouring States should check the flow of illegal immigrants.

511. In Martinique, only 1% of the population is illegally resident and, in contrast to Guadeloupe and French Guiana, this year, it has seen a reduction in the number of foreigners deported as compared with 2005 (that is to say, a reduction of 7.19% recorded during the first quarter of 2006). Most immigrants come from Saint Lucia – and are well integrated – and Haiti.

512. Far greater than in Guadeloupe and Martinique, French Guiana's illegal residents account for between 20% and 25% of the total population (that is to say between 30,000 and 35,000 illegal residents). During the first quarter of 2006, 2,363 people were deported from French Guiana to neighbouring States: the majority came from Surinam (1,450), Brazil (1,418) and Haiti (89). There had already been nearly 5,942 deportations in 2005. The issue of illegal immigration poses problems in terms of educating the "river children".

## 2. The situation in the Indian Ocean

513. Unlike the other [overseas] French collectivities, Réunion is not exposed to major immigrant flows: it is estimated that fewer than 1% of immigrants are illegally resident. The majority are from the Comoros, Madagascar and Mauritius. Given that low figure, which the directorate of the border police has provided, the risks associated with migrants are low, and there has been little change for a number of years.

514. Mayotte, in contrast, is exposed to significant migratory pressures from the islands that make up the Union of the Comoros, and the island of Anjouan more particularly. Illegal residents account for almost 35% of Mayotte's total population. Compared with 2005, during the first quarter of 2006, deportations from Mayotte increased by 3,704.

515. Mayotte now has a population of about 170,000 habitants, 55,000 of them foreigners. Over 30 years, it has grown fivefold. The high birth rate and immigration from neighbouring islands are the reasons behind this high level of population growth.

516. Whereas, in 1958, only 1,300 births were registered in Mayotte, there were more than 3,800 in 1992 and 7,660 in 2004. Between 1992 and 2004, the number of births doubled therefore.

517. That is a continuing trend: 4,280 births were registered during the first half of 2005, so that the estimate for the whole year is 8,560 – a 12% increase.

518. Nearly seven out of ten women who give birth are of foreign extraction, the majority from the Comoros.

519. For the population of Mayotte as a whole, the fertility rate is 4.7 per woman. But that average rate masks a marked difference based on the mother's origin: for women born on Mayotte, the figure is 3.5 children, increasing to 5 children for other women. Those rates are far higher than in metropolitan France, where the rate is 1.9 (and 2.5 in Réunion).

520. In 2002, the average age of a mother giving birth was 26.2, compared with 29.4 in metropolitan France for the same period. It is the distribution by age group, rather than by average age, that indicates the difference in behaviour patterns between Mayotte and metropolitan France. For example, 44% of women who gave birth in Mayotte in 2002 were less than 25 years old, whereas the figure was just 15% in metropolitan France.

521. That situation reflects the fact that different attitudes exist in relation to child-bearing, influenced by different lifestyles, depending on origin. Women born on Mayotte are gradually adopting the French model and delaying having their first child and limiting the size of their family, but Comoran women want to have many children, as this continues to be a mark of success within society.

522. The rise in the birth rate is likely to continue on Mayotte in the coming years.

523. In order to benefit from the high-quality healthcare structures that exist on Mayotte and give their children the chance of some day acquiring French nationality, a number of Comoran women come to Mayotte to give birth and then return home. Currently, Mayotte has nine maternity units, seven of them in rural locations. Since 2001, more than 50% of births have taken place in Mamoudzou (54% in 2002). The percentage is so high because the hospital's technical and human resources attract mothers-to-be: for 2003, the hospital had a budget of €47.8 million, largely financed from State grants. The Mamoudzou maternity unit is by far the main centre for

births: more than 3,800 births were recorded there in 2002, that is an average of 11 births every day. That rate is clearly higher than in the hospital of Saint-Pierre à Réunion, where there were 3,056 births in 2002, making it the maternity unit with the highest birth rate in Réunion and, indeed, metropolitan France.

524. Law No. 2006-911 of 24 July 2006 on immigration and integration takes account of the specific problems of illegal immigration to which Mayotte is exposed. It is designed to put an end to the recognition of so-called children of convenience by limiting cases of “name-giving” and making it compulsory for persons with customary civil status to enter into marriage, at the *mairie*, in the presence of the registrar and two witnesses.

### **3. The situation in the Pacific**

525. The collectivities in the Pacific face few problems of illegal immigration.

526. In New Caledonia, the only foreign children who are illegally resident come from Vanuatu. There are not many of them, and they are automatically cared for and educated.

## **VI. CHILDREN IN CONFLICT WITH THE LAW**

527. Order no. 45-174 of 2 February 1945 on youth offenders applies in the overseas departments (Article 42), in New Caledonia, in French Polynesia, on Wallis and Futuna (Articles 44 to 46) and on Mayotte (Articles 47 to 49). It also applies to Saint-Pierre-et-Miquelon in so far as it does not fall into one of the categories for which the collectivity has responsibility pursuant to Article LO 6414-1 (II) of the general code of the territorial collectivities.

### **A. Young offenders**

528. Looking beyond the raw data set out above [sic], as regards both minors who commit crimes and minors who are the victims of crime, it should be pointed out that, in overseas France, minors account for more than 35% of the population compared with 25% in metropolitan France. Consequently, the situation in regard to minors is better than in metropolitan France, as regards both minors who commit crimes and minors who are the victims of crime.

529. Thus, in 2006, minors subject to legal proceedings accounted for only 0.5% of young people, compared with 1.3% in metropolitan France. At the same time, minors who were the victims of sexual abuse accounted for 0.06% of all minors in overseas France, compared with 0.09% of all minors in metropolitan France

## **1. Analysis of youth offending in the overseas départements and regions**

### **1.1 The youth courts**

#### **1.1.1 In the overseas départements and regions**

530. Basse-Terre court of appeal has jurisdiction to hear appeals relating to cases from Guadeloupe. The courts of first instance for minors are:

- the Basse-Terre youth court (attached to the Basse-Terre regional court): it has a children’s judge. That court has jurisdiction in relation to Saint-Martin, Saint-Barthélemy and Les Saintes;

- the Pointe-à-Pitre youth court (attached to the Pointe-à-Pitre regional court): it has a vice-president and a children's judge. That court has jurisdiction in relation to Marie-Galante and La Désirade.

531. The Fort-de-France court of appeal has jurisdiction to hear appeals in cases from Martinique and French Guiana. The courts of first instance for minors are:

- the Fort-de-France youth court (attached to the Fort-de-France regional court): it has two vice-presidents and a children's judge;
- the Cayenne youth court (attached to the Cayenne regional court): it has a vice-president and a children's judge.

532. The court of appeal of Saint-Denis de La Réunion has jurisdiction to hear appeals relating to cases from the island of Réunion and the French Southern and Antarctic Lands. At first instance, the courts for minors are organized as follows:

- the youth court of Saint-Denis de La Réunion (attached to the regional court of Saint-Denis de La Réunion): it has a vice-president who sits as a children's judge and two children's judges;
- the youth court of Saint-Pierre de La Réunion (attached to the regional court of Saint-Pierre de La Réunion): it has two vice-presidents who sit as children's judges and a children's judge.

### **1.1.2 In the other overseas collectivities**

533. The Nouméa court of appeal has jurisdiction to hear appeals relating to cases from New Caledonia and the islands of Wallis and Futuna. At first instance, the youth courts are organized as follows:

- the Nouméa regional court: it has a vice-president who sits as a children's judge and a children's judge;
- the Mata Utu regional court (Wallis and Futuna): it has a judge who also sits as a children's judge;
- in the Koné and Lifou subdivisions, the subdivisional judge may be required to act as a children's judge. In point of fact, the role of children's judge is performed either by the children's judge from Nouméa sitting outside his court, or by the subdivisional judge delegated by him.

534. The Papeete court of appeal has jurisdiction to hear appeals relating to cases from French Polynesia. At first instance, the courts are organized as follows:

- the Papeete regional court which has a vice-president who sits as a children's judge and a children's judge;
- in the Raiatea (Windward Islands) and Nuku-Hiva (Marquesas Islands) subdivisions, the children's judges from Papeete sit as a youth court.

535. The Mamoudzou higher appeal court has jurisdiction to hear appeals relating to cases from Mayotte. At first instance, there is just one court, the Mamoudzou regional court, which has a children's judge.

536. The higher appeal court of Saint-Pierre-et-Miquelon has jurisdiction to hear appeals in cases originating on the archipelago. At first instance, the regional court has jurisdiction. There is no children's judge. One of the court's vice-presidents sits as children's judge.

## 1.2 The proportion of minors prosecuted

537. In 2006, offences by minors accounted for 12.7% of prosecutions in overseas France in 2006, compared with 18.33% in metropolitan France.

538. However, that figure is to some extent distorted by the major efforts to counter illegal immigration, which account for more than 20% of all the offences recorded, compared with 2.3% in metropolitan France. That category of offence, which results more or less automatically in arraignment is principally committed by adult offenders.

539. If offences pertaining to immigration are left out of account, then, in 2006, offences by minors accounted for 17.14% of prosecutions in overseas France, compared with 19.67% in metropolitan France:

Guadeloupe	12.54%	Martinique	13.10%
French Guiana	11.07%	Réunion	20.96%
Saint-Pierre-et-Miquelon	12.36%	Mayotte	17.00%
Wallis and Futuna <sup>P</sup>	30.38%	French Polynesia :	17.40%
New Caledonia :	23.51%		

540. The percentage of young offenders as a proportion of all offenders is slightly lower than in 2005, when it was 17.95%.

## 1.3 Tutelary measures

541. Measures for the judicial protection of young people in overseas France are steered by a regional directorate and structured around four departmental directorates (Guadeloupe, Martinique, French Guiana and Réunion), a territorial directorate responsible for Mayotte and a directorate in French Polynesia.

542. There are 14 public-sector establishments and services and 14 associated structures.

543. Public sector distribution is fairly uniform. Both the public establishments and services and the associations provide all of the services relating to accommodation, non-custodial tutelary support and day-care activities. In Saint-Pierre-et-Miquelon, there is a youth worker to monitor offenders serving non-custodial sentences.

544. Decree No. 2005-1536 of 8 December 2005 established a Directorate for the judicial protection of young people in French Polynesia. It is staffed by a territorial director and youth workers under contract.

545. In New Caledonia, there is no service for the judicial protection of young people, but staff are made available to the collectivity.

---

<sup>P</sup> The result for that collectivity is insignificant given the very low number of prosecutions; for instance, in 2005, the figure was 21% for 15 minors in total compared to 24 minors in 2006.

**Educational facilities in overseas France**

<i>Collectivity</i>	<i>Public-sector facilities</i>	<i>Facilities provided by the authorized associative sector</i>
Guadeloupe	2 tutelary activity centres (3 non-custodial tutelary units * + 3 tutelary units providing day-care activities)	1 investigation and tutelary guidance service
	1 hostel providing tutelary activities and immediate placement (1 diversified tutelary residential unit + 1 immediate placement centre)	1 social investigation service
Martinique	1 educational centre (1 non-custodial tutelary unit * + 1 day care tutelary activity centre + 1 tutelary support unit attached to the court)	1 investigation and tutelary guidance service
	1 hostel providing tutelary activities and immediate placement (1 diversified tutelary residential unit + 1 immediate placement centre)	
French Guiana	2 tutelary activity centres (3 non-custodial tutelary units * + 1 diversified tutelary residential unit + 1 day care tutelary activity unit)	2 social investigation services
		2 investigation and educational guidance services
		1 secure supervisory centre
		1 tutelary activity hostel
Réunion	2 tutelary activity centres (2 non-custodial tutelary units * + 2 day care tutelary activity units)	1 secure supervisory centre
		1 social investigation service
	1 hostel providing tutelary activities and immediate placement (1 immediate placement centre)	1 reparation and community service office
	1 tutelary activity hostel (1 collective tutelary residential unit + 1 diversified tutelary residential unit)	2 investigation and tutelary guidance services
Saint-Pierre-et-Miquelon	1 tutelary activity centre (1 non-custodial tutelary unit *)	-
Mayotte	1 tutelary activity centre (1 non-custodial tutelary unit * + 1 day care tutelary activity unit)	-
French Polynesia	1 tutelary activity centre (1 non-custodial tutelary unit *)	<b><i>An agreement has been entered into with an association that provides accommodation for young offenders</i></b>

\* : the unit also provides around-the-clock supervision for the court

546. In 2002, in French Guiana, the association *SOS Insertion et Alternatives* (an SOS Group), set up in 2002, (with the backing of the departmental directorate for the judicial protection of

young people), is behind the Cacao secure educational centre, 75 kilometres south of Cayenne. This facility, the first of its kind for young offenders, has constructed its educational project around the forest and its environment.

547. Since 8 January 2004, eight young people, with an average age of 17, have come into the centre on the basis of a court placement order pursuant to the order of 2 February 1945. This is the third period of activity for this centre, which takes in young people from French Guiana or the French West Indies only. An alternative to imprisonment or removal from a social environment which led young people to commit offences, its purpose is to “provide continuing educational support to create the conditions that allow a young person to make a fresh start”. In French Guiana, minors spend five years enjoying a unique experience and discovering new ways of life.

548. Covering five acres in the heart of the equatorial forest (on the banks of the La Comté river), the centre is accessible only by canoe. A team that speaks eight languages or dialects (Arawak, Creole, Bushi-nengué, English, Brazilian, Spanish, Hmong and French) is representative of French Guiana’s population. Residents also help with construction sites approved by the Forestry Commission (*Office national des forêts – ONF*), the protection of the environment and the restoration of many sites.

549. Similarly, in French Polynesia, the “TE UI API NO PAPEETE” federation, created in 1996, is an umbrella body for 22 district clubs and societies. Its main objective is to reintegrate young offenders through sport and cultural activities. (Water sports “Tahi, Rua, Toru”, at Tipaerui swimming pool, are a high point; the young people compete, in teams, in traditional fishing (*pêche au caillou*), canoe-racing, fishing for flying fish (*marara*) and a variety of competitions. The young people are also involved in cultural activities (Heiva Tumu Nui, a Tahitian Carnival in which the association is represented by a float), as well as environmental activities (the *Tahiti Propre* [keep Tahiti clean] campaign). Some 800 young people, aged between 12 and 25, take part in these sporting events.

#### **1.4 Minors as a proportion of detainees**

550. At 1 January 2007, there were 78 minors in detention in overseas France (53 minors on remand and 25 convicted minors) out of a prison population of 4,103, that is 1.9% of the total number of detainees in France.

551. That rate has been more or less the same for four years, varying between 1.6% and 2.2%.

552. Where there is no juvenile wing, minors are automatically kept one to a cell. For activities, they are brought together with young adults.

**Number of minors imprisoned by institution  
Numbers at 1 February 2007**

<i>Institution</i>	<i>Number of minors imprisoned</i>	<i>Number of young adults taking up places for minors</i>	<i>Number of places for minors</i>	<i>Occupancy rate of places for minors</i>
Maison d'arrêt Saint-Denis (Réunion)*	1	0	0	-
Maison d'arrêt Majicavo (Mayotte)*	4	0	6	67
Centre pénitentiaire Baie Mahault (Guadeloupe)*	8	0	15	53
Centre pénitentiaire Le Port-Plaine les Galets (Réunion)	19	0	25	76
Centre pénitentiaire Remiré Montjoly (French Guiana)	17	0	21	81
Centre pénitentiaire Ducos* (Martinique)	7	0	0	-
Centre pénitentiaire Faa'a Nuutania (French Polynesia)	4	0	2	200
Centre pénitentiaire Nouméa (New Caledonia)	2	0	2	100
<b><i>Whole of overseas France</i></b>	<b>62</b>	<b>0</b>	<b>71</b>	<b>-</b>

\*: although they do have not have places reserved for detainees who are minors, these institutions are still authorized to hold minors.

## 2. The prison regime applicable to minors

553. In the overseas *départements* and regions and Mayotte, the regime for metropolitan France applies, the prison regime for the under-21s<sup>9</sup> (as the code has not taken into account the 1974 reform lowering the age of majority):

- minors are kept in isolation at night, except where their personality or medical opinion preclude this;
- separation from adults (in practice, the detainees are held in juvenile wings of the prisons);
- a prison regime in which education, training and sport play an important role;
- improved diet;
- under-16s may not be put in punishment cells (as opposed to being confined to their cells), and over-16s may only be kept on the punishment regime for:

---

<sup>9</sup> Articles D. 514 to D. 519 of the code of criminal procedure.

- a) 15 days for first degree offences involving the use of violence (45 days for adults);
- b) 8 days for first degree offences without the use of violence (45 days for adults);
- c) 5 for second degree offences (30 days for adults);
- d) 3 days for third degree offences (15 days for adults).

554. In French Polynesia, articles DP. 514 to DP. 519 and, in New Caledonia, articles DNC. 506 to DNC. 519, have the same content as in metropolitan France (save in regard to the disciplinary regime).

555. The prison regime for minors has been amended by three decrees of 9 May 2007.

556. The new prison regime for minors combines the judicial protection of young people with the supervision of imprisoned minors; abolishes in respect of minors administrative or judicial measures ordering solitary confinement; extends to minors the arrangements governing day-release from detention centres, which is more favourable to detainees, and adjusts the range of disciplinary measures to take account of the fact that the detainee is a minor.

557. As far as disciplinary measures are concerned, for example, minors aged 16 are confined to their cells for the most serious misconduct. In addition, a reparation measure or activity is introduced, and the punishments of deprivation of activity or items are detached from the circumstances in which the misdemeanour was committed. Finally, for minors aged 16 and above, the reparation measures or cleaning duties prescribed for adults are brought together under the broader and more flexible designation of "community service". The punishment cell is used as an exceptional measure and reserved for offences committed using violence or threats, and the duration of the punishment has been reduced from 15 or 8 days for a first degree offence and to 7 days for first degree offences committed with the use of violence or threats. For second and third degree offences, the duration remains the same (five and three days), but only offences involving violence or threats may lead to use of the punishment cell.

558. The decree on the punishment regime will not apply in French Polynesia, New Caledonia and Wallis and Futuna.

## **B. Young drug-addicts**

559. The Interministerial Taskforce on Drugs and Drug Addiction is responsible for coordinating government action in relation to prevention, dealing with health and social welfare implications, deterrence, training, communication, research and international exchanges. A five-year plan (2004-2008) to combat illegal drugs, smoking and alcohol is under way, and an interim assessment has just been drawn up. There is, in addition, the recent *Plan addiction 2007-2011* (dealing with and preventing addiction) for which the Ministry of Health is the lead department.

560. Every year, the taskforce allocates to the project leaders a budget to fund activities falling within the three strands of public policy (prevention, care and combating trafficking) as part of the local element of its remit. In 2006, the funds allocated to the four overseas *départements* totalled €20,860, with an additional €2,000 to finance two studies on crack (the total for the whole of France was €17,297,811). The taskforce also allocates resources to the ministries with responsibilities in this field to enable them to adopt innovative measures at a central level. A review is currently under way of whether the taskforce might allocate to the Ministry for

Overseas France a budget that would not be used centrally but passed over to overseas collectivities which do not have project leaders but wish to implement specific projects.

## **1. Substance abuse and the children of Réunion.**

561. The aim of the “*Tendances Récentes et Nouvelles Drogues*” (Recent trends and new drugs) initiative, which is being piloted by the French monitoring service for drugs and drug addiction, is to identify emerging trends that are drug-related and to help expand knowledge of drug addiction in order to pinpoint emerging trends and better understand problematic developments. The aim of the measure is to develop rapid and appropriate responses where it proves necessary to protect users or the general population, particularly in Réunion.

562. The initiative has been in place since February 2001, and administrative responsibility for it lies with the regional health monitoring service.

563. One of the major trends to have been identified as a result of this initiative concerning actual drug use in 2002 was the very young age of some users (11 – 13 years old) and a relative increase in the number of girls affected.

### **1.1 Drug use by the very young and increasing numbers of girls**

#### **1.1.1 Cultural practices**

564. Several ways in which users are introduced to the products (alcohol, cannabis, abuse of prescription drugs) are described, in varying contexts.

565. The monitoring service records that 15% of secondary school children claim to have already taken drugs (2% of them regularly). Those figures increase with age: 2% of 12-13 year-olds and 25% of young people aged 18 and above. The numbers are greater among children taking the technology option (20% compared to 13% of those studying for the general option). *Zamal* (cannabis) is the main product used – usually in conjunction with alcohol.

566. All social groups are affected by this use, from young people with time on their hands in working class districts, who certainly constitute the majority, to students from differing social backgrounds. The concept of a gang is important in defining this drug use which is more often a group than a solitary activity. The composition of the gangs changes – gang members come and go and are highly mobile. Most of these young users have the same issues as in metropolitan France: major personal problems, a family that has broken up or is “absent”, rejection of institutions, rebellion against the education system and a lack of motivation to obtain the kind of training that will give them a qualification. The fact that they have problems outside the “norm” appears to bring them into contact with individuals who are more or less marginalized.

#### **1.1.2 Increasing numbers of girls using drugs**

567. The studies show that some girls are polysubstance dependent, from as early as 13 or 15, sometimes using in the street. They appear generally to be less frequent users than boys and to have a greater preference for misusing prescription drugs. Some girls who are minors display high-risk behaviour: excessive intake of alcohol from early morning or substantial polyuse. While the number of young girls who are users may have increased over the past ten years, it appears that the trend has really taken off, over the past eight years, among some young female

offenders. It appears that the current trend among these young girls is towards mixed use, as they attempt to prove that they can escape adult control.

568. According to youth workers, only a minority of young girls wanting money to buy drugs resort to prostitution, but some allow themselves to be sexually abused under the influence of drugs. We should bear in mind that Réunion is the French *département* in which the third greatest number of rapes occur, after French Guiana and the Territory of Belfort.

## **1.2 Multiple drug use**

569. There is also a higher incidence of multiple drug use, as users attempt to potentiate effects, and, in combination with alcohol, the result is increased violence and crime.

### **1.2.1 Alcohol**

570. The studies reveal that alcohol is a “primary product” in psychoactive polyuse and is frequently used to potentiate the use of some drugs, particularly where prescription drugs are being misused. Beer is the drink of preference rather than rum, which is striking given the island’s historical and cultural background. Even though the “*pile plate*” (the local name for a flask of rum) fits discreetly into a pocket, the effects of drunkenness are plain to see and carry a stigma. It should be noted that there is a very high prevalence of foetal alcohol syndrome in this *département*, equivalent to the levels recorded in the Nord/Pas-de-Calais regions and in Brittany.

571. Alongside alcohol “habituation”, there is absolute alcohol dependency with associated behaviour similar to that of opiate-users. The products most frequently recorded include, in variable proportions: alcohol, cannabis – usually herbal cannabis but sometimes cannabis resin – and misused prescription drugs.

### **1.2.2 Prescription drugs**

572. Even in secondary schools, there is increased experience of the abuse of prescription drugs, and their use appears to be on the increase. For example, some surfers “sniff” prescription drugs, used in place of narcotics, for recreational purposes. A Madagascan smuggling network enables addicts to obtain medicines that have been withdrawn from sale.

573. New products have recently been emerging, including “*petit cœur*” (little heart – an unidentified blue pill) and “*rhum racine*” (rum root – mint root macerated in rum and dried in earth which has an hallucinogenic effect).

574. The use of cocaine and ecstasy is apparently increasing, even though they remain hard to obtain.

### **1.2.3 Cannabis**

575. Very much a part of the local culture, *zamal* is not really considered to be illegal by the people of Réunion, as it is deeply rooted in local custom.

## **2. Drug abuse among children in the French American départements**

576. Three drugs are principally used in French Guiana, Martinique and Guadeloupe: crack, cannabis (known locally as “kali”) and alcohol. The increase in the numbers of young and very

young users as a proportion of all users is a matter of concern; that is why the focus of government and the associative sector is to study and combat this development.

577. As far as the French American *départements* are concerned, the five-year plan (2004-2008) to combat illegal drugs, smoking and alcohol, introduced by the Interministerial Taskforce on Drugs and Drug Addiction, and currently up and running, places particular emphasis on enhancing care facilities. In Martinique, for example, a 20-bed emergency shelter and an addictology network have been in operation since 2005. In French Guiana, a 20-bed shelter and social reintegration centre opened in early 2006, and a therapeutic community is to open its doors during the first half of 2007, despite the strong reservations of the residents of Montsinéry. In Guadeloupe, an addiction network is in place, as well as a drop-in and risk reduction support centre for drug users.

578. The structures in French Guiana and Martinique have also taken part, since 2000, in the survey *Tendances Récentes et Nouvelles Drogues* under the auspices of the French monitoring service for drugs and drug addiction. Their involvement came to an end in 2004, as French Guiana and Martinique had to bring an end to their research activities because of budgetary restrictions at national level.

## 2.1 French Guiana

579. In French Guiana, the main user groups within which there is a significant proportion of minors are:

- among prostitutes: the vast majority are female and come from outside French Guiana (from neighbouring countries) and are to a large extent linked to the traffic in illegal drugs; this group is characterized by the prostitution of foreign girls who are minors and transvestites, often of Brazilian origin. A more recent development has seen teenage male prostitutes among young crack users.
- among the affluent: far from not being represented among users in French Guiana, these are disparate and discreet groups that change as people come and go. The individuals who make up the groups are of varied origins: Guyanese, citizens of metropolitan France and socially integrated foreigners – from all kinds of working backgrounds. Recreational use predominates among these groups, with increasingly varied forms of multiple use, but in the case of crack-cocaine users, more and more instances of users sliding into drug abuse and dependency are being recorded, leaving them completely disorientated.
- among schoolchildren and students: secondary schools, *lycées* and universities are more or less directly affected by drug use/dealing outside or, indeed, inside educational establishments. The most commonly used products by far are alcohol (beer) and cannabis (herb and resin), ecstasy, in the university environment, and, to a lesser extent, products that are inhaled (solvents) in schools (a practice introduced by young Brazilians). In 2004, there appears to be a trend towards abuse becoming more commonplace among many young people for recreational purposes.
- young people living on the streets: this group seems to be constantly growing but is hard to quantify; largely, but not exclusively, formed of young people without legal status, it is made up of young minors who live on petty crime or prostitution, and sometimes “odd jobs”. Theirs is the most precarious of existences, and they live in squats. They mainly consume alcohol, sometimes mixed with unleaded petrol,

detergents that they sniff, herb cannabis sometimes mixed with crack (“Blaka”), which a veritable gateway to crack use.

580. Over a four-year period, all of that data has simply confirmed the picture of widespread cannabis use among all social groups, of all ages, with a marked trend towards a lowering of the age of first use: there have been some reports of users as young as between eight and ten.

581. The prevalence of use in schools and universities (13%) is lower than the national average, so that it can legitimately be assumed that the young people of French Guiana consume less cannabis. However, the number of young people in western French Guiana who do not attend school is a matter of great concern, and it has not been possible to conduct a study in relation to these disadvantaged young people.

582. The results of the study in educational establishments show more substantial use by boys than girls, in relation to both experimental and regular use.

583. The most significant developments in recent years have been:

- the fact that it has become commonplace to see young teenagers using in the streets, outside educational establishments;
- reports of the use of, and also dealing in cannabis, in and around some educational establishments;
- the spread of cannabis use to rural locations: there appears to be increasing use of cannabis by teenagers outside the urban environment; in addition, the realities on the ground mean that the methods of prevention made available to rural communities are virtually non-existent.

584. Cannabis use also appears to be on the increase as a result of a rise in the popularity of the “Rasta” movement among young people, particularly from Anglophone countries (Surinam and Guyana), with a culture and lifestyle that involve the use of that type of drug, as they identify with Africans. In addition, there is small group called “*Rasta blancs*” (white Rastas) from metropolitan France. All smoke “kali” and are followers of the “Rastafari” movement, with the appropriate colours and hairstyles and “Reggae” music.

585. Finally, carnival, local festivals and musical events are all occasions when young people increasingly commonly use drugs and drink alcohol in public.

## 2.2 Martinique

586. As far as users are concerned, those involved in the field continue to report an increase in the number of crack users with a widening of the age range. First crack use may be taking place a little earlier and the number of women affected also appears to be increasing.

587. Between 1994 and 2004, a survey was carried out in educational establishments every three years. The last survey was conducted between December 2003 and May 2004 and based on a representative sample of pupils in Martinique’s secondary schools and *lycées*. The sample was randomly selected from 59 secondary school classes (13 and 14 year-olds only) and 89 classes from general and vocational training *lycées*, theoretically involving a total of 3,454 pupils. A total of 2,988 questionnaires were filled in (1,245 from the secondary schools and 1,743 from the *lycées*). The results cover pupils in respect of whom it was possible to make a statistical

analysis by age group (sufficiently large numbers), that is to say those aged between 14 and 19, totalling 2,630 pupils.

588. Among this group, experimentation with cannabis during their lifetime lags far behind experimentation with legal products like tobacco and, above all, alcohol. But cannabis is the product banned by law that is most frequently used, very often in combination with alcohol, and experimentation with other products (crack, cocaine, heroin and so on) is extremely rare. Use increases with age, and there are more boys than girls who are users. Compared with the first survey carried out in 1994, there has been an increase in *lycée* students using cannabis (rising from 11% in 1994 to 29% in 2003- 2004), while the figure is largely unchanged in the two most recent surveys for secondary school pupils.

589. That data on young people at school has been supplemented since 2000 by the survey on health and use on the occasion of the Call-up for Defence Preparation. Set in place by the French monitoring service for drugs and drug addiction, that survey takes place on the day of the Call-up for Defence Preparation. It is based on a strictly anonymous questionnaire, which young people fill in for themselves, relating to the use and circumstances of use of psychoactive products, as well as the health and lifestyle of young people. The aim is to provide an accurate picture of a restricted age group in their late teens, which is a crucial period from the point of view of experimentation. Since 2001, the survey has been extended to the overseas *départements*, where it extends over several weeks in order to cover sufficient numbers of young people.

590. In 2003, experimentation with cannabis affected nearly one in two boys and one in seven girls, with first use at an average age of 15.5 years. That difference between the sexes holds good in respect of more recent use: 36% of boys and 9% of girls state that they have used the drug at least once during the past 12 months, and 23.5% of boys and 6% of girls confirm having used the drug in the last 30 days. Regular use (at least 10 times during the past 30 days) is rarer. Experimentation with other psychoactive products is very unusual (less than 1%), except for products that are inhaled (2% of girls and 3% of boys have already tried them at least once), ecstasy (1.3% of boys) and above all psychotropic medicines (28% of girls and 12% of boys).

### **3. Drug use by children in New Caledonia**

591. Multi-drug use also exists in New Caledonia. Cannabis use is becoming more commonplace and more widespread among the very young (12 years old). The consumption of “*kava*” – a root imported from Vanuatu which is a highly toxic local drink – should also be mentioned.

## Annex II

### THE FRENCH APPROACH TO THE ISSUE OF NATIONAL MINORITIES

1. Two fundamental constitutional concepts underpin French law on minorities: citizens have equal rights, implying non-discrimination, and the nation is united and indivisible, in terms of both territory and the population.
2. Accordingly, when the *Conseil d'Etat* was asked to give its opinion when France was considering signing and ratifying the framework Convention for the protection of national minorities, it took the view that the Convention was by its very purpose contrary to article 2 of the French Constitution of 4 October 1958, which affirms that "*France shall be an indivisible [...] Republic*",<sup>a</sup> and the principle that the French nation is made up of all French citizens "*without distinction as to origin, race or religion*" (opinion of 6 July 1995).
3. When reviewing the compatibility of the 1992 European Charter for Regional or Minority Languages with the French Constitution, the Constitutional Council took the view that the principles of the indivisibility of the Republic, equality before the law and the unity of the French people meant that "collective rights may not be recognized in respect of any group whatsoever, defined in terms of a community of origin, of culture, of language or belief". In the decision of 15 June 1999, the Constitutional Council held to be contrary to both those fundamental principles and article 2 of the Constitution, according to which "French shall be the language of the Republic", both the preamble to the Charter, which proclaims an "inalienable right" to use a minority or regional language not only in "private life" but also in "public life", and some provisions of Part II (and the provisions of art. 7, paras. 1 and 4, in particular). It also drew attention to the constitutional value of the principle of the unity of the French people.
4. As actually interpreted, the French view assumes that the assertion of identity is the result of a personal choice and not of applicable criteria that *a priori* define any particular group. That view leads to a refusal to consider the different elements that go to make up the French people as forming one or more minorities. France takes the view that applying human rights to all of the citizens of a State, on the basis of equality and non-discrimination, will normally ensure that, whatever their situation, all citizens enjoy the full protection to which they are entitled. This is, therefore, a particularly exacting approach to human rights.
5. This set of principles does not, however, imply a legal framework that denies France's cultural diversity. It simply demonstrates that the fact that all citizens are equal, irrespective of the basis on which they have built their identity, is one way of implementing the principle of non-discrimination throughout the Republic. That is why France has adopted measures and policies which, while promoting the principle of equal treatment between persons without distinction as to origin, allow all persons, in practice, to exercise their rights and freedoms without discrimination based on their identity, regardless of whether they identify themselves with one or more minorities.

---

<sup>a</sup> Article 1 since the constitutional revision of 4 August 1995: "*France shall be an indivisible, secular, democratic and social Republic. It shall guarantee the equality before the law of all its citizens without distinction as to origin, race or religion. It shall respect all faiths*".

6. The information provided below is designed to illustrate how the principle of non-discrimination is actually implemented in France and to provide, in various spheres, some examples of measures that have a positive impact on individuals belonging to minorities.

### **I. Measures to promote cultural, religious and linguistic diversity**

#### **1. Freedom of religion and conscience:**

7. In France, religions are, in principle, protected. In point of fact, since the law of 9 December 1905, the Churches and the State have been separate in France, leading the State to guarantee freedom of worship and, consequently, the right of all to practise a religion and, with others, form a religious association (“[t]he Republic shall guarantee freedom of conscience”, art. 1), but to recognize none (“[t]he Republic shall neither recognize, pay for nor subsidize any religion”, art. 2). That system of separation or secularity draws a clear dividing line between, on the one hand, matters of individual conscience or personal choices and on the other, matters pertaining to the State: the principle of secularism enables persons belonging to different religions to live together peacefully, while preserving the neutrality of the public domain.

8. The French public authorities have long encouraged religious communities to establish representative institutions, enabling special consultative bodies to be set up with the task of putting forward proposals. One example is the Representative Council of Jewish Institutions in France, which brings together more than 60 Jewish associations; another is the oldest Jewish institution in France, the *Consistoire de Paris* (Consistory of Paris), which dates back to 11 December 1808. Its mandate is to organize the Jewish religions for a community that now numbers nearly half a million. Since its creation, the *Consistoire* has developed all those services that safeguard the interests of Jewish life: from establishing places of worship to religious education, and from the celebration of marriage to ritual slaughter. Similarly, since 1905, the Protestant Federation has encompassed most of France’s protestant churches and associations. Its mandate is to be the representative of French Protestantism vis-à-vis the public authorities and the media, and it also provides a number of general services in areas such as: television (*Présence Protestante*), radio, army and prison chaplaincies, bible study and ecumenical relations. More recently the *Conseil Français du Culte Musulman* (CFCM – French Council of the Muslim Faith), created on 23 February 2003, has become the body that represents France’s Muslims. The CFCM’s role is to deal with issues including the construction of Mosques, Muslim areas in cemeteries, the organization of religious festivals, the appointment of clerics for hospitals, prisons and secondary schools, and the training of imams.

9. The principle of secularism does not prevent the religious beliefs of all being catered for in the day-to-day operation of the public services. It is, for example, possible to take kosher or halal meals in the canteens and refectories of schools and military barracks. Departmental heads may accord officials, who so request, authorized leave to attend ceremonies celebrated on the occasion of the main festivals specific to their faith, subject to the sole proviso that their absence is not incompatible with the normal running of their department. Special provisions have also been enacted on ritual slaughter in abattoirs for the Jewish and Muslim faiths. Provision is also made for special areas in cemeteries for adherents of religions other than Christianity. Those examples – and they are not an exhaustive list – demonstrate that the principle of secularism certainly does not result in a denial of religion in the French public domain.

10. The issue of applying the principle of secularism in schools has seen a further development resulting in the adoption of Law No. 2004-228 of 15 March 2004, concerning the wearing of

signs or garments indicating religious affiliation in primary schools, secondary schools and State *lycées*. Since the law entered into force in September 2004, at the beginning of the 2004-2005 school year, the education code has contained an article L. 141-5-1, which is worded as follows:

*“In primary schools, secondary schools and State lycées, the wearing of signs or garments by which pupils conspicuously indicate a religious affiliation shall be prohibited.*

*Under the rules of procedure, disciplinary procedure must be preceded by dialogue with the pupil.”*

11. Those provisions guarantee the freedom of conscience of every individual in a democratic and pluralist society by protecting primary schools, secondary schools and State *lycées* from the kinds of pressure that could result from conspicuously indicating religious affiliation. French society thus establishes a principle of neutrality within the State education system, except in higher education, in relation to both teachers and pupils. It does not stigmatize any particular religion, as that would be a source of discrimination, and does not lay down a list of prohibited religious signs. The prohibition under the law is not a systematic prohibition. The circular applying it merely gives examples of signs and garments that are banned, such as “the Islamic veil, however it is designated, the kippa or a cross that is clearly excessive in size”. “*Discreet religious signs*”, such as “*accessories and garments habitually worn by pupils without religious significance*” are, however, permitted.

12. By that law, the legislature was seeking to prioritize dialogue and education. It takes a largely pragmatic approach and assigns those working in the field responsibility for securing observance of the law and penalizing any infringement of it. For example, it sets in place a preliminary stage of dialogue with a pupil in breach of the law, which must be arranged and held by the head of the establishment in conjunction with the management team and the education teams, followed, if need be, by a disciplinary procedure.

13. Pursuant to the provisions of the law, an assessment of its application was made one year after it entered into force (report submitted in July 2005 by Hanifa Cherifi, at the time ombudsman at the Ministry of Education with responsibility for resolving cases relating to the issue of the veil from November 1994).

14. At the beginning of the 2004-2005 academic year, 39 pupils, three of them boys, were permanently excluded from the State schools which they were attending. Only one case of exclusion was reported at the beginning of the 2005-2006 academic year. It should be made clear that the fact of being excluded from State schools does not prevent the pupils concerned from moving to private establishments or, if need be, following correspondence courses from the *Centre national d’enseignement à distance* (National Distance-Learning Centre – *CNED*).

## **2. The freedom to learn minority languages**

15. The regional languages of France are part of its national cultural heritage. While France is the [official] language of the Republic under the Constitution, multilingualism is officially encouraged. Article 21 of the Law of 4 August 1994 (*Loi Toubon* – Toubon Law) on the use of the French language provides that “*the provisions of this Law shall apply without prejudice to the laws and regulations on the regional languages of France and shall not preclude their use*”.

16. There are some 75 languages of France, which have been spoken for generations by French citizens in metropolitan and overseas France, and which are not, moreover, an official language

in another country. To take only the African languages, Berber and Algerian Arabic dialect are languages of France. For its part, article 34 of the Basic Law for overseas France of 13 December 2000 provides that the regional languages in use in the overseas *départements* are part of the French Nation's linguistic heritage. This shows that France's attachment to national unity goes hand in hand with respect for its heritage, and the diverse languages of France are living testimony of that heritage.

17. At the beginning of the 2001-2002 academic year, reform of bilingual teaching in regional languages was set under way in primary and secondary schools and *lycées*. That teaching is an integral part of the objective of diversifying the languages taught: the circular of 5 September 2001 includes regional languages in the language development and diversification plan from nursery school to higher education; they may be studied on the same basis as foreign languages. In addition, as part of the programme for the development of that teaching, an Academic Council for Regional Languages, a consultative body attached to the regional education authority, and responsible for encouraging expansion of the teaching of regional languages within the region concerned, was set up by decree of 31 July 2001. Courses are held either in a specialist "regional language" establishment or in "regional language" sections. For many years, those courses have adopted more intensive teaching methods, in the form of bilingual teaching, with the timetable divided equally, in primary schools and the "regional language" sections of secondary schools and *lycées* (with an enhanced regulatory framework under the decree of 12 May 2003) or using the "total immersion" method which is reserved for the associative sector (French has compulsorily to be used as a teaching language in State schools). Course attendance may be attested to on the diploma (*brevet*) or *Baccalauréat* certificate.

18. According to a 2002 report of the French Ministry of Culture and Communication (*Report to Parliament on the use of French*, 2003), in both the State sector and the private sector under contract, in primary and secondary schools and *lycées*, some 250,258 pupils (in all forms of education except that provided by associations) were taught regional language and culture.

19. The law of 23 April 2005 on the orientation and programming of the future of schools confirmed the position of regional languages within the whole of the French educational system. Pursuant to article 20 thereof, that teaching is to be further developed by way of agreements between the State and the territorial collectivities. Those agreements must afford the territorial collectivities concerned the opportunity to develop measures to support the spread of the teaching of regional languages and cultures.

20. France is more widely attached to the teaching of modern languages. For example, a wide range of languages is offered in the set and optional papers, both written and oral, of the *Baccalauréat*, including regional languages or dialects (Basque, Breton, Catalan, Corsican, the Melanesian languages, Langue d'oc, Tahitian, Berber, Chleuh, Kabyle or Tarifit ...). As well as the teaching of modern languages, education in languages and cultures of origin may be organized for foreign pupils attending primary and secondary schools in the form of optional activities within or outside the school timetable. That arrangement is the subject of bilateral agreements signed by eight countries (Portugal, Spain, Italy, Morocco, Algeria, Tunisia, Turkey, Serbia-Montenegro). The purpose of those courses, which were introduced in the mid-1970s, was to facilitate the integration of peoples of foreign extraction by recognizing their original culture and seeking to get them involved in French culture. Gradual changes to those courses are currently under review to make them available to other pupils and include them in the proposal for generalizing language-teaching in primary schools.

**3. The freedom to teach the culture, history and religion of persons from minority groups:**

21. As regards enhancing the status of the regional languages of overseas France, the law of 2 August 1984 on the competences of the regions of Guadeloupe, French Guiana, Martinique and Réunion provides that the regional council is to determine the educational and cultural activities complementing the knowledge of languages and regional cultures that may be organized in the educational establishments for which the region has responsibility.

22. Specific measures have been set in place, such as adapting school syllabuses in line with the cultural and linguistic circumstances falling within the remit of the provinces or recognizing the Kanak languages as teaching languages and languages of culture (organic law of 19 March 1999), including commitments in relation to teaching, scientific and university research and the training of trainers.

**4. The right to preserve a traditional way of life:**

23. Special measures have been taken in relation to travellers to take account of their way of life and thus help them to integrate.

24. A consultative body, the National Advisory Commission on Travellers was established by decree of 27 August 1999 to study the problems encountered by travellers and make proposals to the public authorities to enable travellers to become better integrated and to combat all forms of discrimination directed more specifically at them. Its annual report summarizes all its activities and proposals.

25. The legislature intervened to set in place reception facilities in each *département*. The law of 5 July 2000 on hosting and accommodating travellers provides, in that connection, for a departmental plan to support travellers and requires local collectivities to provide new areas in which they can park their vehicles. The facilities that must be provided are laid down by decree.

26. That law has also helped create conditions more favourable to the schooling of the children of travellers. The circular of 25 April 2002, which deals specifically with that issue, reaffirmed that these children “*are entitled to be educated in the same conditions as other children whatever the duration and form of their stay*”. It also stipulates that “*even if, when applying for enrolment at school, the family is unable to provide one or more of the necessary documents, the child must be provisionally accepted, pending the submission, as soon as possible, of those documents which will make it possible to enrol the child at school*”. The circular also recommends solutions where it is impossible to accept the child because of a lack of places in the school, such as enrolling at the regional distance-learning centre, the possibility of benefiting from the infrastructure and activities of the sector’s secondary school or the setting in place of adapted educational support (“combination schooling”).

**II. Free access to the media**

27. Several laws have been enacted to guarantee freedom of access to the media and to promote pluralism of expression within the media.

28. The law of 29 July 1982 on audio-visual communication introduced freedom of choice with regard to the language of expression in the media. One of the objectives assigned to the public television broadcasting services (art. 5 of the law) is to support the expression of regional

languages and cultures. That objective is re-stated in the law of 1 August 2000 on freedom of communication, which provides that public service radio and television companies must contribute to the expression of the main regional languages spoken in metropolitan France. Title III of the amended law of 20 September 1986 on the public audiovisual sector states that public service companies “*shall provide a diversity of programmes ... promote democratic debate, exchanges between the different sections of the population, as well as social integration and citizenship ... implement measures to promote social cohesion, cultural diversity and to combat discrimination and offer a range of broadcasts that reflects the diverse nature of French society. They shall safeguard the advancement of the French language and emphasize France’s cultural and linguistic heritage in all its regional and local diversity*” (art. 43-11 of the law of 31 March 2006).

29. An array of regional stations on the Radio France network broadcasts programmes with a regional language and culture focus. The most *typical* examples among many are France Bleu Alsace and France Bleu Radio Corse. France Bleu Alsace has two separate stations, one broadcasting in French and the other in the regional language. France Bleu Radio Corse *Frequenza Mora* is a regional Radio France station in Corsica offering 14 hours of fully bilingual broadcasts daily.

30. Radio France Internationale (RFI) also plays a key role in promoting and transmitting, in France and abroad, the culture and heritage of persons from African minority backgrounds. Although RFI is now a company independent of Radio France, it remains a public corporation in which the State is the sole shareholder. All its broadcasts are available in 20 languages on its website. RFI offers a very wide range of programming on current events and cultural or social issues, with a particular focus on Africa and the African diasporas.

31. Lastly, the above-mentioned Freedom of Communication Act of 2000 provides that the Audio-visual Media Board is to ensure that “*an adequate share of airtime is allocated for programmes by associations with a community-relations role, defined as associations that foster exchanges between social and cultural groups and the expression of different socio-cultural currents of thought ...*”. A number of “community” radio stations run by associations, such as Africa No. 1, Mangembo FM, Média Tropical, Beur FM and Radio Orient, broadcast cultural, educational and musical programmes on a daily basis, encouraging and promoting intra- and extra-cultural exchanges among the French population.

### **III. Access to education and training**

32. The French system promotes equality and the provision of universal education, in particular through free education and anonymous competitions. It has nevertheless been necessary to implement an equity policy to offset geographical or social disadvantages that stand in the way of equality of opportunity in educational competition.

33. A variety of measures have thus been introduced, such as the grants provided on the basis of social criteria, the strengthening of the priority education zones or the classes to prepare students for the entrance examinations to the *Grandes Ecoles* (top-notch higher education establishments) in *lycées* in disadvantaged neighbourhoods..

34. More recently, three innovative initiatives have introduced preferential treatment based on socio-economic considerations, since they benefit only pupils from disadvantaged areas or modest backgrounds. The role of the *Fondation Euris* (Euris Foundation), for example, is to

provide substantial support to talented but disadvantaged pupils by awarding merit scholarships. The function of the *Ecole supérieure des sciences économiques et commerciales* (Higher School of Business and Commerce – *ESSEC*) is to introduce a form of tutorship arrangement in partner schools for pupils from disadvantaged backgrounds in order to improve their chances of successfully pursuing ambitious higher education studies. Finally, the Paris Institute of Political Studies (*Sciences Po*) has introduced a partnership with some priority education zones to open up and diversify its intake. It has introduced a selection process that makes it possible to waive the "normal" competition that is open to everyone, for a certain number of pupils from *lycées* in the priority education zones that have signed the agreement.

#### IV. Access to employment

35. A charter of diversity in business was signed in November 2004 by several dozen large enterprises, which have undertaken to ensure diversity in their recruitment and to encourage career advancement through the promotion of cultural, ethnic and social diversity among their staff.

36. The High Authority to Combat Discrimination and Promote Equality (*HALDE*)<sup>b</sup> is particularly active in this field. It in fact stated in its report for 2005 that almost half of the complaints it receives relate to employment. In September 2006, it published a report on the issue. It has also asked the 150 largest companies in France and the French authorities to undertake to introduce practices and procedures capable of promoting equality and eliminating elements of discrimination, particularly linked to origin, and to carry out self-tests on those arrangements to assess their relevance and effectiveness. Measures of that nature will be able to be introduced in other areas. In a resolution of 27 February 2006, it takes the view that France “*may now effectively combat different forms of discrimination linked to ‘ethnic’ origin without it being necessary to report to ‘ethnic’ counts*”. *All mechanism based on anthropomorphic data must, in particular, be prohibited*”.

37. The rule laid down by article 2 of the Constitution, according to which “the language of the Republic shall be French”, requires public-law bodies and individuals to use French when exercising a public-service remit, and individuals cannot claim, in their relations with the authorities and the public services, that they are entitled to use a language other than French, nor can they be compelled to use it. However, that rule does not prohibit the use of translations, and its application must not lead to a failure to recognize the importance of the freedom of expression and communication in relation to education, research and audio-visual communication.

---

<sup>b</sup> Created by the law of 30 December 2004 and officially inaugurated on 23 June 2005, this independent administrative authority has, in addition to its role of informing the public, the primary tasks of dealing with cases of discrimination and promoting equality. It identifies and disseminates good practice and experience in combating discrimination in all sectors of activity and issues opinions and recommendations, to the government, parliament and the public authorities to combat discrimination, improve the texts of legislation and advance the principle of equality and the state of French law in that area. It details its activities in an annual report to the President of the Republic, the Prime Minister and Parliament. It presented its first annual report on 5 May 2006.

### Annex III

Table extracted from a report from the *Assemblée Nationale* of 25 January 2006 on the family and children's rights

<i>Applicability of the principal rights recognized by the Convention according to the case-law of the Conseil d'État and the Court of Cassation <sup>(a)</sup></i>			
<i>Articles of the Convention</i>	<i>Recognized rights</i>	<i>Creating obligations between States without giving access to rights for individuals</i>	<i>Directly applicable</i>
Article 2	1. Non-discrimination in the implementation of the rights of the child	CE, <i>M. Torres</i> , 29 January 1997 CE, <i>M. Guichard</i> , 30 June 1999, since confirmed Cass 1 <sup>ère</sup> civ, 25 June 1996, <i>Mazureck</i> , n° 94-14858	CE, <i>the Association "L'enfant et son droit"</i> , 30 April 1997 Cass crim, 16 June 1999, n° 98-84538
Article 3	1. In each decision concerning him or her, " <i>the best interests of the child shall be a primary consideration</i> "	Cass 1 <sup>ère</sup> civ, 10 March 1993, <i>Lejeune</i> , n° 91-11310	CE, <i>M. Torres</i> , 29 January 1997; other judgements confirming this one Cass 1 <sup>ère</sup> civ, 18 May 2005, n <sup>os</sup> 02-16336 and 02-20613 confirmed on 14 June 2005, n° 04-16942
	2. The right to such protection and care as is necessary for wellbeing	CE, <i>the Association "Promouvoir"</i> , 6 October 2000	
Article 4	The States Parties undertake to take all appropriate measures for the implementation of the rights recognized in the Convention	CE, <i>M. Torres</i> , 29 January 1997 Cass soc, 13 July 1994, n° 93-10891	CE, <i>the Association "L'enfant et son droit"</i> , 30 April 1997
Article 5	Respect for parental authority	CE, <i>the Association "Promouvoir"</i> , 6 October 2000	
Article 6	1. " <i>The inherent right to life</i> " ( <u>Interpretative deliration by France</u> : does not constitute any obstacle to the law authorising abortion)	CE, <i>M. and Mme Soba</i> , 29 December 1997	Cass crim, 27 November 1996, n° 96-80318
	2. States Parties shall " <i>ensure to the maximum extent possible the survival and development of the child</i> "		
Article 7	1. The right to a name and to acquire a nationality and , as far as possible, to know and be brought up by his or her parents	CE, <i>Mme Al Haji Zain, the Association "La défense libre" and M. Bertin</i> , 11 October 1996, since confirmed	
Article 8	1. The right of the child to preserve his or her identity, including nationality, name	CE, <i>Préfet de la Gironde</i> , 6 May 1996, since confirmed Cass 1 <sup>ère</sup> civ, 2 June 1993,	

<i>Applicability of the principal rights recognized by the Convention according to the case-law of the Conseil d'État and the Court of Cassation <sup>(a)</sup></i>			
	and family relations	n° 91-17487	
Article 9	1. The right of the child not to be separated from his or her parents except if “ <i>this separation is necessary for the best interests of the child</i> ”	CE, <i>Préfet de la Seine-Maritime</i> , 29 July 1994, since confirmed very frequently Cass 1 <sup>ère</sup> civ, 10 March 1993, <i>Lejeune</i> , n° 91-11310	
	3. The right of the child who is separated from his or her parents to maintain personal relations and direct contact with them on a regular basis		
Article 10	1. States Parties to take a positive approach to applications for “ <i>family reunification</i> ”	CE, <i>Préfet de la Gironde</i> , 6 May 1996, since confirmed	
	2. The right of the child to leave any country and to enter his or her country		
Article 11	1. Measures to combat the illicit transfer and non-return of children abroad	CE, <i>Préfet du Val d'Oise</i> ; 10 April 1996	
Article 12	1. The right of the child to express his or her own views in all matters affecting him or her and have them given due weight	CE, <i>M. Paturel</i> , 3 July 1996 Cass 1 <sup>ère</sup> civ, 10 March 1993, <i>Lejeune</i> , n° 91-11310	Cass crim, 8 December 1993, N° 92-85509 Cass 1 <sup>ère</sup> civ, 18 May 2005, N° 02-20613 (on the 12-2)
	2. The opportunity to be heard for this purpose		
Article 13	1. The right to free expression and to receive and impart information and ideas		
Article 14	1. Liberty of thought, conscience and religion	CE, <i>M. Paturel</i> , 3 July 1996	
	3. Freedom to manifest one's religion and beliefs (subject to the law)		
Article 15	1. Freedoms of association and peaceful assembly		
Article 16	1. Respect for privacy, family, home, correspondence, honour and reputation	CE, <i>Mme Al Haji Zain, Association “La défense libre”, and M. Bertin</i> , 11 October 1996	CE, <i>Demirpence</i> , 10 March 1995 CE, <i>Mme Douaud</i> , 21 February 1997 Cass crim, 16 June 1999, n° 98-84538
Article 17	Access to information from a diversity of sources		
Article 18	1. “ <i>The two parents have common responsibilities for</i>		CE, <i>The Association “L'enfant</i>

<i>Applicability of the principal rights recognized by the Convention according to the case-law of the Conseil d'État and the Court of Cassation <sup>(a)</sup></i>			
	<i>the upbringing and development of the child</i> "		<i>et son droit</i> ", 30 April 1997
	2. The right to appropriate assistance from the State in the exercise of these responsibilities		
	3The right to childcare services		
Article 19	1. protection of the child from all forms of violence		Cass crim, 22 June 1993, n° 91-86139
Article 20	1. The right of the child deprived of his or her family environment to special protection and assistance provided by the State	CE, <i>Mme Mosquera</i> , 6 June 2001	
	3. Possibility of placement for the child, taking account of his or her ethnic, religious, cultural and linguistic background		
Article 21	The best interests of the child shall be the paramount consideration in relation to adoption; inter-country adoption to be envisaged only in the absence of a solution in the child's country of origin		
Article 22	1. Protection and humanitarian assistance for child refugees		
Article 23	1. The right of children with a disability to " <i>lead a full and decent life</i> "		
	2. The right of the child with a disability to special care and assistance which is appropriate to his or her condition		
Article 24	1. The right " <i>to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and the rehabilitation of health</i> "	CE, <i>Préfet de la Seine-Maritime against Mme Balondo</i> , 31 July 1996, since confirmed	
	3. Abolishing " <i>traditional practices prejudicial to the health of children</i> "		
Article 25	The right of a child who has been placed to a periodic		

<i>Applicability of the principal rights recognized by the Convention according to the case-law of the Conseil d'État and the Court of Cassation <sup>(a)</sup></i>			
	review of his or her treatment or placement		
Article 26	1. The right to social security	Cass soc, 13 July 1994, n° 93-10891 CE, <i>GISTI</i> , 23 April 1997	
Article 27	1. The right to a standard of living adequate for development	CE, <i>GISTI</i> , 23 April 1997	
	3. State aids for this purpose		
	4. Appropriate measures for the recovery of maintenance		
Article 28	1. The right to education	CE, <i>M. and Mme Hemaizia</i> , 21 October 1996	
	2. School discipline to conform to the Convention		
Article 29	1. The goals of education	CE, <i>M. et Mme Hemaizia</i> , 21 October 1996, since confirmed	Cass 1 <sup>ère</sup> civ, 9 April 1991, n° 90-05026
	2. Freedom to establish educational institutions, subject to observance of the principles in 1		
Article 30	Specific cultural rights accorded to ethnic, religious and linguistic minorities	<u>Reservation by France</u> Cass 1 <sup>ère</sup> civ, 15 July 1993, n° 92-05015	<u>Reservation by France</u>
Article 31	1. The right to rest, leisure and recreational activities and to take part in cultural and artistic life		
Article 32	1. The right to be protected against economic exploitation and the prohibition of any work involving a risk to the child		
Article 33	Protection against illicit drugs		
Article 34	Protection against sexual exploitation and abuse		
Article 35	Protection against abduction, sale and trafficking		
Article 36	Protection against “ <i>all other forms of exploitation prejudicial to any aspects of the child’s welfare</i> ”		
Article 37	Prohibition of any inhuman treatment (including capital punishment); deprivation of liberty to be as brief as possible and to take account of the child’s needs; the right	Cass crim, 18 June 1997, n° 97-82008	CE, <i>M. Nezdulkins</i> , 14 February 2001

<i>Applicability of the principal rights recognized by the Convention according to the case-law of the Conseil d'État and the Court of Cassation <sup>(a)</sup></i>			
	to legal assistance and to challenge the legality of his or her detention		
Article 38	1. Respect for humanitarian law in armed conflicts		
	2. Prohibition of participation by children aged under 15 in armed conflicts		
Article 39	Right to recovery and reintegration for child victims of mistreatment		
Article 40	1. Right to treatment of certain kinds for any child suspected or convicted of infringing the penal law		Cass crim, 27 November 1990, n° 90-85658
<p>(a) When the case-law is unchanged, only the first judgement recognizing or rejecting the direct applicability of an article of the Convention is quoted.</p> <p><i>NB:</i> CE: <i>Conseil d'État</i>; Cass crim: Court of Cassation, criminal chamber; Cass 1<sup>ère</sup> civ: Court of Cassation, first civil chamber; Cass soc: Court of Cassation, social chamber.</p>			

## Annex IV

### INTEGRATING YOUNG PEOPLE INTO SOCIETY AND WORKING LIFE

#### A better introduction for young people to work and business

1. The first route to a better introduction for young people to working in businesses is through a significant extension of apprenticeships. Programming Law No. 2005-32 of 18 January 2005 set a target of 500,000 apprentices in 2009, and the number of apprentices has since risen from 357,000 in March 2005 to 374,000 in June 2006. These results were achieved thanks to the growing attractiveness of apprenticeships for young people (the attractions including tax-free income and an information campaign), improvements in the quality of monitoring and in working conditions provided in apprenticeship centres (which alternate training with work experience), a tax credit of €1,600 a year for apprentice-masters and the conclusion of “contracts of aims and means” between the State and 23 of the 26 regions, aimed at improving the supply of training and the quality of apprenticeships.
2. In a number of respects, the Government’s information and promotional campaigns addressed to young people and employers, and aimed at extending apprenticeships, reflect the action it has been taking to prevent and combat discrimination. These include the 2007 campaign, “Apprenticeship and Training: a Major Plus for Success”, launched under the Government’s Plan for Social Cohesion.
3. Arrangements for introducing young people to working in businesses have also been strengthened by “Contracts for Working Life”, which have been gathering momentum. These contracts<sup>a</sup>, especially those which train young people for working life by alternating work experience with more formal training, have been growing very rapidly in numbers: 115,000 were signed in 2005. They are shorter than Qualifications Contracts (15 months compared with 18), and the qualifications targeted are more influenced by the business sectors themselves, which have direct responsibility under the reformed arrangements for identifying the kinds of training and support best calculated to meet their skills needs.
4. In addition, the public authorities, by offering employers a reduction in charges for three years, have encouraged them to offer indefinite contracts (Young People in Business Contracts) to young people aged between 16 and 25 who do not have the Baccalauréat. Almost 120,000 young people had these contracts in June 2006 and 260,000 have signed up since they were introduced: half of these young people had left school without qualifications and a quarter were unemployed. For the future, the categories of young people eligible to benefit from this contract have been extended (to include young people living in sensitive urban areas and the long-term unemployed) and new measures of support are planned through “Contracts for Integration into Life in Society” (see below) under Law No. 2006-457 of 21 April 2006 on access for young people to active commercial life.
5. Finally, the National Employment Agency and its local branches are being required to conduct interviews with all 57,000 young people who have been unemployed for a year or more. This measure is part of the Government’s Emergency Plan for Employment of June 2005 and concentrates on groups whose employability is limited by their lack of qualifications. This

---

<sup>a</sup> These contracts replaced Qualifications Contracts under the Interprofessional Agreement on Lifelong Learning of 2003.

operation has involved 76,294 interviews with 71,533 unemployed people. Almost 84% of the young people interviewed have had a job offer, 59% were in a job between June and October 2005, and a quarter were still in employment in mid-October 2005. Although most of the young people who were interviewed are still unemployed, this operation has been productive in the circumstances. The young people involved have had a period of paid employment, which has made them more employable and allowed some of them to integrate permanently into the labour market or to get training. Persevering with the initiative has led to a drop of 9.4% in long-term unemployment among those aged under 25, significantly higher than the drop of 7.2% recorded for the over-25s.

### **Better alignment of training with employment**

6. A public advisory service has been established to help with the transition between study and working life. It will offer support to pupils and students from the end of secondary school to the third year of university, and will work on improving the alignment between the choices that students make and their prospects for employment. There is an interministerial delegate for guidance on careers and employment, with the task of ensuring consistency in guidance arrangements at national level and in the regional education authorities, and developing a national template during 2006-2007 for guidance on careers and employment, to be drawn up in consultation with the students' organizations. There are plans to open a guidance service on careers and employment in each university, in association with the lycées within the regional education authority concerned, to expand the activities of career guidance advisers, to train educators generally in giving guidance and to improve liaison between secondary and higher education.

7. Targeted measures have also been taken, including, at the end of 2006, the creation of a starting allowance for students<sup>b</sup> and a plan to promote almost 50,000 pre-recruitment placements between now and the end of 2007<sup>c</sup>, as well as the creation of a tax credit for young employees who take up jobs in sectors suffering from chronic difficulties in recruitment<sup>d</sup>.

### **Raising businesses' awareness of diversity**

8. Contracts for Integration into Life in Society are a central measure in the Government's Plan for Social Cohesion for Young People. They have been designed to support young people finding it particularly hard to get into employment (of whom there are about 800,000). Between the creation of the contracts in May 2005 and 30 June 2006, 211,000 young people signed up, of whom almost half had no qualifications. 195,000 remained under contract in June 2006, while 10,000 had left on gaining permanent employment. The Law of 21 April 2006 on access for

---

<sup>b</sup> The allowance, of €300, is a one-off payment to grant recipients drawing their first accommodation allowance (almost 80,000 students), at whatever university level they are studying.

<sup>c</sup> These placements last three months, at the end of which the business commits itself to take the applicant on under a permanent contract. They include training on adaptation to working life. The job applicant, who is paid as a trainee, is supported by a tutor from within the business.

<sup>d</sup> This credit is limited to €1,000 and is available from 1 July 2005 until 31 December 2007. The list of eligible professions is based on objective criteria (the size of the profession and the ratio of supply to demand in jobs). It includes agriculture, building and public works, mechanical engineering and metalwork, commerce and the food and hotel and catering industries.

young people to active business life reformed and improved the contracts by extending access to young graduates suffering particularly from exclusion from employment.

9. The Pathway to Careers in the Local, Regional, Hospital and State Services is a new form of recruitment to the civil service. It applies to young people between the ages of 16 and 25 who are having difficulty in finding employment, who are non-graduates, who have no recognized professional qualification or whose level of qualifications is below the level of the Baccalauréat. Preliminary selection of candidates is carried out by the public employment service. The Pathway is a contract under public law with the employment service for a period of one to two years and alternates training with placement in the service itself, under the supervision of a tutor. Pay is at least 55% of the minimum wage for 16-20-year-olds and 70% for others, and there is an exemption from social taxes, which are paid by the employer. At the end of their contract period, subject to passing a professional examination, the young people involved will be able to join the civil service in Grade C. It is expected that these arrangements will involve 20,000 young people a year.

10. To ensure that falling levels of unemployment also benefit young people from urban areas where the prospects for employment are particularly difficult, the Government has decided that the Prefects will convene "Solidarity for Jobs" groups in every sensitive urban area to bring together the various participants in employment policy, provide them with leadership and bring all of their capabilities to bear. The 750 sensitive urban areas will benefit from increased resources during 2007.

## Annex V

### INTER-COUNTRY ADOPTION

1. Law No. 2005-744 of 4 July 2005 on the reform of adoption created the French Adoption Agency (AFA). The Agency has its own legal personality under public law, with the status of a public interest grouping (*groupement d'intérêt public*), and operates under State supervision. Opened on 18 May 2006, it took on some of the functions of the Inter-country Adoption Branch created in 1987: providing information and guidance to adoptive parents; and the handling and monitoring of individual cases in all States Parties to the Hague convention, and in other States as far as allowed by its authorization by the Minister for Foreign and European Affairs and its accreditation by the countries concerned.
2. It has two major advantages in acting, and gaining accreditation, overseas. As a French body under the protection of the State, with the General Councils of the *départements* among its members and partners, it can offer weighty guarantees to foreign States. With its own legal personality under public law, it has a legal status as an intermediary for adoption that the Inter-country Adoption Branch, as part of the national civil service, did not and could not have.
3. The Agency exercises its functions through representatives on the staff of each *département* designated by the President of its General Council; and, in children's countries of origin, through specially recruited local representatives
4. Complementing the work of French bodies authorized in relation to adoption under private law, whose umbrella bodies are among its members, the AFA is a new resource that the public authorities have provided in order to make the steps that would-be adoptive parents need to take overseas easier and safer.
5. Another component of this reform is Decree No. 2006-1128 of 8 September 2006, which placed responsibility for the Central Authority for Inter-country Adoption (ACAI) directly with the Ministry for Foreign and European Affairs. This Decree specified the functions of the Authority, which is responsible for "*guiding and coordinating the activities of the services and authorities with competence in relation to inter-country adoption*", and laid down its relations with the Higher Adoption Council (CSA).
6. ACAI consists of two representatives from each of the three Ministries involved (Foreign and European Affairs, Justice and Work, Social Relations and Solidarity) and of two representatives of the *départements* nominated by the *Assemblée des Départements de France* (ADF). It has a secretariat general located within the Ministry's Directorate for French Citizens Abroad and Foreign Citizens in France.
7. The Secretariat General of the Central Authority for Inter-country Adoption (*SGAI*) exercises the functions of ACAI on a delegated basis between its meetings, as well as the functions arising from the Ministry of Foreign and European Affairs' own responsibilities, which are those most closely connected with oversight and "governance" of inter-country adoption.
8. It differs from the Inter-country Adoption Branch, which it succeeded, in not having the operational functions that the Branch fulfilled in certain cases in the preparation and submission of individual applications for adoption. As far as French and international standards are concerned, its functions principally involve regulation and monitoring, along with supervision and providing legal expertise. While in future it will no longer in principle directly deal with

individual dossiers prior to the completion of legal procedures for adoption in foreign countries, the Ministry of Foreign and European Affairs will continue to have clear and definite responsibilities in relation to inter-country adoption. These responsibilities mainly concern the following, in liaison with other ministries concerned:

- respect by France for its obligations under the Hague Convention of 29 May 1993 on Protection of Children and Cooperation in respect of Inter-country Adoption and under the United Nations Convention on the Rights of the Child;
- preparing, providing the secretariat for and implementing the work of the Central Authority for Inter-country Adoption, including its conclusions, recommendations and proposals, as well as statistics on adoption;
- the use of the diplomatic and consular network to collect and update information of all kinds on adoption procedures, conditions for adoption overseas and difficulties encountered by our fellow-countrymen and women;
- State-to-State and central-authority-to-central-authority relations with children's countries of origin and other receiving countries, including the negotiation or renegotiation of bilateral agreements or multilateral instruments;
- the accreditation and monitoring of organizations authorized in relation to adoption under private law and, where necessary, support for their development by grants;
- authorising the AFA state-by-state to operate in countries which are not parties to the Hague Convention;
- taking part in the preparation of French statutory and regulatory standards for inter-country adoption; and
- issuing adoption visas through the consular service.

9. Alongside the Ministries of Justice and Work, Social Relations and Solidarity, the Ministry of Foreign and European Affairs takes part in the formal deliberations of the AFA and plays an active part in its work. It also makes strenuous efforts to lend its full support to the AFA in securing full recognition in States of origin.

## Annex VI

### COMBATING FORCED MARRIAGES

1. Law No. 2006-399 of 4 April 2006 reinforcing the prevention and suppression acts of violence within the couple or against minors has contributed to strengthening efforts to combat forced marriages.

#### **1. Alignment of the legal age for marriage for boys and girls (article 1 of the Law)**

2. The Law has ended a difference between men and women as regards marriage that has existed since 1804, by increasing the minimum legal age for marriage from 15 to 18, as was already the case for men. New article 144 of the Civil Code provides that in future: *“men and women may no longer contract marriage until the age of eighteen”*.

3. The purpose of this alignment of the legal age of marriage for girls with civil majority, as for boys, is not only to restore equality between the sexes as regards marriage: above all, its aim is to make arrangements to combat forced marriages of minors more effective.

4. The drafting of the Law preserves exceptions allowing minors to contract a marriage. They must obtain, first, a dispensation (“for grave reasons”) from the age limit from the Public Prosecutor; and secondly, the consent of their father and mother as provided for in article 148 of the Civil Code. The consent of only one parent is necessary, since *“disagreement between the father and mother shall be taken as consent”*.

5. The parent who has not consented to the marriage of the child while a minor is able to continue to raise objections to the marriage until it has been celebrated.

#### **2. Extension of the time limit for applications for the annulment of marriage (article 6 of the Law)**

6. Another purpose of the Law is to extend the time limit within which the validity of a marriage which has been celebrated without the free consent of one or both spouses can be opposed. article 181 of the Civil Code, under which an application for the annulment of a marriage for a defect in consent can no longer be considered *“when cohabitation has continued for six months after the spouse has regained his or her full freedom or recognized his or her error”* is repealed.

7. New article 181 extends the time limit to five years and provides for the future that: *“an application for the annulment of a marriage for a defect in consent may no longer be considered after the end of a period of five years from the marriage or from the time when the spouse acquired his or her full liberty or when his or her error was recognized by him or her”*, aligning the provisions with the position under the ordinary law relating to actions for annulment (article 1304 of the Civil Code).

8. Finally, for the sake of consistency, the time limit for applications for annulment of the marriage of a minor without the consent of a parent, provided in article 183 of the Civil Code, is also increased from one year to five.

**3. The ability of the public prosecutor to bring an application for annulment in the event of a lack of free consent by one or both spouses (article 5 of the Law).**

9. Action against a marriage contracted without the free consent of one or both spouses can now be taken, not only by the spouses or the spouse whose consent was not free, but also by the Ministry, especially in cases of physical or psychological violence. Before this Law, the Public Prosecutor could bring an application for annulment of a marriage only in the complete absence of consent.

10. Article 180 of the Civil Code, amended by the present Law, also provides that “*coercion of the spouses or of one of them, including by means of fear or reverence felt for a parent or other forebear, shall constitute grounds for annulment of the marriage*”.

**4. Ability to delegate interviews with the prospective spouses (article 4 of the Law)**

11. The Law provides flexibility by allowing arrangements for joint or separate interviews with the prospective spouses to be delegated.

12. For marriages in France, article 63 of the Civil Code now authorizes the registrar to delegate the holding of joint or separate interviews to one or more civil servants in the service of the registry of civil status. If one of the prospective spouses lives abroad, the delegation may be made to the diplomatic or consular agent with competence in the country concerned.

13. Similarly, for marriages abroad, article 170 of the Civil Code allows diplomatic and consular agents to delegate the holding of joint or separate interviews to a civil servant or civil servants in the service of the French registry of civil status. If one of the spouses or prospective spouses is resident in a country which is not the country where the marriage is celebrated, holding the interview can be entrusted to the officer of the civil status registry with competence in the country concerned.

## Annex VII

### FEMALE SEXUAL MUTILATION

1. Because of the numbers of African immigrants, female sexual mutilation has been a sensitive and constantly topical subject in France for more than 20 years. These traditional practices are contrary to human dignity and extremely prejudicial to the physical and psychological health of women and girls. For this reason, the Government has taken strenuous steps in two main ways to eradicate them: more effective prosecution and stronger prevention.

**I. Law No. 2006-399 of 4 April 2006 strengthening the prevention and suppression of violence within the couple or against minors has made countermeasures more effective.**

2. Under French law, no legal definition exists of acts of excision, or of sexual mutilation more generally. "Excision cases" were dealt with as misdemeanours until 1983, when the Court of Cassation established that removal of the clitoris was a mutilation, in the sense used in the French Criminal Code, in the case of a Frenchwoman who had mutilated her daughter. This was a case of child abuse, which did not arise from a traditional context. Now, such practices can be prosecuted and punished as criminal offences, as:

- acts of violence having given rise to a permanent mutilation or infirmity, which are crimes punishable by 10 years' imprisonment or a fine of €10,000 (art. 222(9) of the Criminal Code), and by 15 years' imprisonment and a fine of €150,000 when the acts were committed against a young person under the age of 15; or as
- acts of violence constituting involuntary homicide, which is a crime punishable by 15 years' imprisonment (art. 222(7) of the Criminal Code), and by up to 20 years' imprisonment when it involves young people under the age of 15.

3. A criminal case can also be brought on the grounds of acts of violence having caused a temporary incapacity for work lasting more than eight days, in accordance with article 222(12) of the Criminal Code, which provides for a penalty of five years' imprisonment and a fine of €75,000 when committed against a person under the age of 15.

4. Prosecutions are also possible for failure to assist a person in danger: anyone who fails to take immediate action, in the absence of risk to himself or a third party, to prevent a serious crime, or a crime against the person, is subject to five years' imprisonment and a fine of €75,000 (art. 223(6) of the Criminal Code). The same penalties apply to anyone who wilfully refrains from providing to a person in danger assistance that, without risk to himself or a third party, he could provide, either by taking action personally or by seeking help.

5. The purpose of the following amendments, introduced by the Law of 4 April 2006, is to make measures against these practices more effective, without creating for them any specific legal definition.

*a) Extension of the limitation period for criminal proceedings*

6. As is the case already for incest, the limitation period for criminal proceedings has been increased to 20 years from the point at which the victim reaches the age of majority for:

- serious crimes of violence causing permanent mutilation or infirmity committed against minors (art. 222(10) of the Criminal Code); and
- crimes of violence committed against minors causing a temporary interruption of work of more than 8 days (art. 222(12) of the Criminal Code).

*b) Strengthening measures against sexual mutilations committed abroad*

7. The objective of the new article 222(16)(2) added to the Criminal Code is to extend the application of French law punishing these practices to minors with foreign nationality habitually resident in France who are victims of acts of sexual mutilation abroad.

*c) Scope for waiving professional confidentiality in cases of sexual mutilation*

8. By means of exceptions to article 226(13), the Criminal Code already provided for the waiver of professional confidentiality, and of medical confidentiality in particular, in the case of sexual harm inflicted on a minor, or on any person who is not in a position to protect himself or herself by reason of age or of physical or psychological incapacity. The reason for which it was decided to refer expressly to sexual mutilations in article 226(14) of the Criminal Code was to eliminate any possible ambiguity in the definition of terms and promote the reporting of cases.

**II. A number of initiatives have been taken to improve prevention and information**

9. The booklet, “*Protecting our daughters from excision*” has recently been updated and re-issued in an edition of 10,000. It reflects recent legislative advances with the passing of the Law of 4 April 2006.

10. A legal guide has recently been prepared especially for immigrants of both sexes and their children living in France. It gives clear guidance about the unacceptability of certain practices, including female sexual mutilation. It will be translated into several languages and distributed widely, including:

- on the home pages of the National Agency for the Reception of Aliens and for Migration;
- in information centres on women’s’ and family rights; and
- among associations and via mother and child welfare consultations, town halls etc.

11. In addition, the Ministry for Social Cohesion and Equality gives, and regularly renews, support to associations specializing in prevention. These associations act as partners of the public authorities in dealing with young people and their families, and with the members of the various professions involved. They know about, and take account of, the cultural factors which motivate these mutilations, and understand the aspirations of young women, the weight behind the patriarchal traditions that they are working against, and how they operate in practice. They also see straight talking to the institutions responsible for child protection, women’s’ rights and social aid as very much part of their role.

12. In December 2006, the Ministry of Health organized a national symposium entitled “*Finishing with Sexual Mutilation*”. One of the aims set for this event was to identify what had already been done, and what remained to be done, to prevent the sexual mutilation of children while visiting their countries of origin. Another was to improve arrangements for identifying women and girls who have suffered this type of mutilation and for providing them with support and surgical and psychological care. A plan of action is being prepared with the aim of having arrangements in place by 2010 to prevent any further mutilations of women living in France.

13. Already, action has begun to produce better estimates of the numbers affected by mutilations in France, to understand better the underlying reasons why these practices persist, to find out more about the impact of mutilation and associated complications on women's health and to assess the number of women who may need surgical care.

14. The prevention of any new sexual mutilation of young girls living in France will come about through the financial support provided by the Minister of Health to the associations working on the ground. It will also be supported through the initial training of health professionals involved in providing care to women and girls who, in addition to their preventive role, will be better equipped to provide the right care to those who have suffered mutilation.

### **III. Examples of cases**

15. The first prosecution for involuntary homicide following an excision was in 1979. Others followed in 1984 in the regional courts with jurisdiction over misdemeanours. The first case involving excision dealt with in the Assize Court, reflecting the criminal nature of the act which had by then been established, was in 1988.

16. Prison sentences pronounced in cases of "traditional excision" were suspended in cases dealt with by the French courts until 1991 for the women who had carried them out and until 1993 for parents. In the "C" affair, six little girls from a single family were subjected to excision between 1982 and 1983. The parents were sentenced to five years' suspended imprisonment and two years' probation. The woman who had carried out the excisions was sentenced to five years' imprisonment (judgement of the Assize Court of Paris, 6-8 March 1991).

17. The same woman was again sentenced to five years' imprisonment, one of them unsuspended, for having performed excision on seventeen other little girls in June 1984. One of them, aged three months, did not survive her injuries (judgement of the court of Bobigny, 18-27 March 1993).

18. In 1993, a father and the husband of a woman practising excisions were sentenced to immediate imprisonment, for one and six months respectively.

19. Two cases have been dealt with more recently. In February 1998 a Malian woman was sentenced by the Assize Court of Paris to eight years' imprisonment having been found guilty of practising excision on 48 little girls. On 15 March 2002, the Assize Court of Seine-Saint-Denis sentenced the members of two Malian families who had had excision performed on seven of their daughters at the age of a few months between 1985 and 1989 to substantial suspended terms of imprisonment.

20. Up to the present, prosecutions have mainly taken place in cases referred to the authorities by French professionals in a child protection context.

21. Questions of sexual mutilation are also taken into account in decisions on refugee status (in December 2001, refugee status was granted to a Malian couple and a Somali woman who were refusing to submit their daughters to excision) and, in litigation concerning aliens, (on 12 June 1996, the Administrative Court of Lyons overturned an order for the expulsion of a Guinean woman because of her fear that her children would be subjected to excision in the event of her return, the Court concluding that excision was "cruel, inhuman and degrading treatment" in the sense of article 3 of the European Convention on Human Rights).

## Annex VIII

### THE ENFORCEABLE RIGHT TO HOUSING

#### I. The “DALO” Law - content and procedures

1. Law No. 2007-290 of 5 March 2007 establishing the enforceable right to housing (*le droit au logement opposable* (“DALO”)) and dealing with various measures favouring social cohesion is a considerable advance in housing policy.
2. The right to housing is enshrined in French positive law as a “fundamental right” by the Law of 6 July 1989 on landlords and tenants and as a “duty of solidarity for the whole nation” (Law of 31 May 1990 for the implementation of the right to housing).
3. The Law of 5 March 2007 goes further by making the right to housing compulsory in the case of certain categories of people in difficulty. It offers these people the ability to make a consensual application to a political authority designated by the Law as responsible for implementing the right to housing. If this approach is unsuccessful, there is a right of recourse to the courts.
4. The right to decent and independent housing is guaranteed by the State to every person resident on French territory permanently (as defined under criteria which are to be set by Decree by the *Conseil d'État*) and lawfully, who is not able to secure or such housing by his or her own efforts.
5. The right is exercised through a consensual application to a mediation committee, which can then refer the case to the Prefect, and then through a non-consensual application to an administrative judge

#### II. Consensual applications to the mediation committee

6. A reference to the mediation committee can take two forms: an application for housing or an application for shelter.
7. Provided that it meets the conditions set in regulations for access to social housing (lawful and permanent residence on French territory, and consistency with resource thresholds), a reference of this kind can be made in two separate cases.
8. In one case, a reference can be made if the applicant has been given no offer by the end of an “abnormally long waiting period” defined in each *département* by an order of the Prefect.
9. In the other, the committee can consider a case before the expiry of the waiting period when the applicant is within one of the categories of special priority need defined by the Law. These categories consist of those who are:
  - homeless;
  - threatened with eviction without rehousing;
  - sheltered or housed temporarily in transitional accommodation;
  - housed in accommodation which is unfit for habitation, unhealthy or dangerous; or

- housed in accommodation which is manifestly overcrowded or is not “decent” housing, if they have in their care at least one child who is a minor, or if they have a disability or have in their care a person with a disability.

10. The committee designates the applicants which it recognizes as being in priority need and to whom accommodation should be allocated urgently, basing its decision on evidence provided by the applicant, by the various bodies which have already been involved in the application (landlords, associations, social services etc), and on the evidence from any prior consensual application. The decision is notified to the Prefect and the applicant.

11. The committee can also propose that the applicant should be accommodated in some form of shelter, if such a solution seems better suited to the applicant’s circumstances.

12. Decisions by the committee to reject applications may be appealed before the administrative court.

### **III. Applications for admission to an establishment offering shelter**

13. This second type of consensual application is one of the main innovations made by the Law of 5 March 2007. It is not subject to a waiting period and is open to any person who has not received any suitable offer following an application for admission to a shelter establishment, a transitional establishment or transitional housing, a “*foyer*” offering socially supported accommodation or a hostel for those in social need.

14. The committee sends the Prefect the list of those for whom admission to one of these establishments must be arranged.

### **IV. The role of the Prefect on referral by the committee of mediation**

15. When informed by the mediation committee of the cases of persons judged to be priorities either for the allocation of housing or for admission to a shelter establishment, the Prefect is obliged to act.

16. The Prefect refers those applying for housing to a social landlord which has appropriate accommodation available and sets a deadline for the allocation of housing. Charges for this allocation fall on the Prefect’s budget. If the landlord obstructs the allocation, the Prefect has full power to order it, and may, if need be, make the allocation himself directly. The Prefect can also fulfil his obligation by proposing certain types of approved private accommodation, as well as social housing.

17. Finally, the Prefect must offer places in a suitable establishment to applicants for shelter judged by the mediation committee to be in priority need.

### **V. Recourse to the administrative court**

18. Although consensual applications were already provided for in part when the former legislation was in force, the ability to have recourse to the courts is the real innovation in the Law establishing the enforceable right to housing.

19. The ability to apply to the administrative court is yet to take effect, and will be brought into force in two phases.

20. Those entitled to invoke the mediation committee without a waiting period (those applying for admission to shelter establishments and applicants for housing who come within the various categories mentioned in the Law), and who have been recognized by the committee as being in priority need, will be able to apply to the administrative court from 1 December 2008, if no offer suited to their needs and capacities has been made to them before the expiry of a period following the committee's decision; the length of that period will be set by decree.

21. From 1 January 2012, applicants for housing whose applications have taken longer than the "*abnormally long*" waiting period and who have been declared to be in priority need by the committee will be able to apply to the administrative court.

22. A single judge must rule on the application within two months. If that judge determines that no suitable offer has been made, he must order that the applicant be housed by the State, and may accompany the ruling with a fine, payable to the regional funds for urban development, which draw their resources from the penalties paid by *communes* which fail to meet their social housing quota.

## Annex IX

### THE FUNCTION OF ADOLESCENTS' CENTRES

1. Adolescence is a particularly delicate time in the formation of personality. It is characterized by the various maturing processes (physical, sexual, emotional, intellectual and related to the sense of self) which lie between childhood and youth. It is also the time when we learn about the relationship in which we stand to different kinds of "space": in the family, in relationships and in life as a citizen.
2. Adolescents' centres are there to meet the needs of adolescents and those around them and to support the reshaping of individual personality during a period of particular vulnerability. Because they have an outlook on the city, adolescents' centres help those who have a tendency to remain outside traditional frameworks for personal contact to find access to them.
3. An adolescents' centre is a place for providing shelter and care. It is focused on the health needs of adolescents. It accommodates adolescents and their families with a very wide range of needs and requirements, from major psychological problems to educational and social guidance. It helps adolescents to identify how their health needs can be met. It establishes, and provides a formative influence on, a network of the professionals dealing with adolescents in each *département*. It is a central source of information and advice for everyone, and a centre for epidemiological research.
4. The principle is to take comprehensive responsibility for adolescents who are in major difficulty, based on a holistic response to needs, whether health-related, social or behavioural, so as to arrive at a project which jointly engages the institutions and services concerned while also securing the participation of the young people themselves.
5. The adolescents' centre provides a framework, which is stable and in which best practice is shared, where the professionals involved can create a common philosophy as a basis for taking comprehensive responsibility for adolescents, starting from each professional's own skills and insight and the respective roles of the institutions that they come from. This process of synthesis may lead to coordinated arrangements to address the complex circumstances of young people in major difficulty, to defining an individually-tailored action plan and to providing support in following it through; equally, it may lead to encounters and cross-fertilisation between professionals with different viewpoints, working on generic problem areas for adolescents in difficulty, allowing the adolescents' centre to become a place for exchange of information and, in time, for the provision of resource material and the exchange of best practice.
6. Only 20% of adolescents experience difficulties in establishing themselves socially or undergo significant psychological suffering. One nevertheless cannot help being struck by the growth, or at least the marked visibility, of violence by adolescents, manifested primarily against themselves, and, more intermittently, against their surroundings. Physical illness, and frequent visits to the doctor, are very often only the signs of pervasive suffering on the part of the adolescent, and cries for help calling not just for reference to psychiatric support, but rather for a genuine programme of multidisciplinary action.
7. It is young people aged between 12 and 21 who encounter personal or family difficulties of a social, educational, medical or legal kind that the adolescent's centres are there to deal with. They have difficulty in understanding and expressing their problems, and do not ask for help on their own initiative. The symptoms that they show may be educational (stalled progress at

school), medical (suicide attempts or eating disorders), behavioural (addictions, acts of delinquency, withdrawal or breakdown of relations with the family unit).

8. The aim is to help the adolescent change his or her poor self-image and negative view of others, and to preserve or re-establish outward links of a family, behavioural, educational or health-related kind, as the case requires. What is involved is providing support for the reshaping of individual personality during a period of particular vulnerability.

9. Many health problems crystallize around adolescence. Questions about the care that the adolescent needs to take of himself or herself, whether physically or psychologically arise from traffic accidents, from the consumption of substances, legal or illegal, from depression and suicide attempts, from attitudes to food, from body-image, from eating disorders and from sexuality.

10. Adolescents give expression to psychological disturbances of more or less serious kinds through their bodies. This applies to rejection of physical changes, problems with relationships (conflicts with one's immediate circle), or emotional or sexual problems, and with suffering linked to physical and sexual abuse, depression and suicide, via rejection of school, violence, bullying and extortion, drugs etc.

11. Psychosocial disturbances must be seen as the principal ways in which physical suffering is expressed (sic). They are closely linked with specific factors in vulnerability, such as lack of self-confidence and the need to feel a sense of belonging to a social group.

12. Early abdication of responsibility, lack of role models and the brittleness implicit in narcissism lead to multiple breakdown in relationships.

13. It is at adolescence that one first finds momentum beginning to build towards the major psychiatric illnesses (schizophrenia, mood and personality disorders etc), which are known to manifest themselves in an atypical fashion at the outset, and to require the earliest possible diagnosis and intervention.

14. The goal is to articulate the regressive attitudes that adolescents express (risk-taking, suicide attempts, substance abuse, sleep and eating disorders and other disturbances in disorders in body rhythms etc) and put them into language allowing them to be understood and analysed and developed into a form in which they are capable of communication in family and social relations.

15. Adolescents need a frame of reference. They need protection from suffering which is too extreme, and to be enabled to understand their violence, to prevent its expression in an explosive form and to transform it into creative energy.

16. Although the mission of the adolescents' centre revolves around prevention and the protection of young people, the aim is not to prevent young people from taking risks altogether, but rather to allow them to encounter adults whose function is clearly defined and who are able to give them guidance and support. This process sometimes, but not always, takes the form of clinical care.

17. The adolescents' centre cannot and should not take the place of the people with whom adolescents are already involved. It takes an approach based on filling gaps in provision, and as

far as possible on recreating a sense of direction in the young person's life journey and the creation of a network bringing together the various people who deal with him or her.

18. The aim is to pay careful attention to the adolescents' difficulties, to create a climate of confidence and to provide them with the basis for making choices and decisions that are likely to protect their health while respecting the freedom which is so close to the adolescent's heart.

Annex X

**MINORS WHO OFFEND: ACTIVITIES OF CHILDREN'S JUDGES  
AND THE CHILDREN'S COURTS**

	2005	Change 2005/04 on %
<b>Minors who offend dealt with by children's judges</b>	<b>82,556</b>	<b>+1.9</b>
Under 13	3,474	-4.8
13-14	16,130	-0.1
15-16	39,678	+4.1
17	23,274	+0.8
<b>Pre-sentencing measures</b>	<b>29,915</b>	<b>+10.2</b>
Social reports, behavioural reports, expert opinion	7,686	+0.9
Placement, bail, reparation	17,581	+14.5
Pre-trial supervision	3,537	+9.7
Remanded in custody	1,111	+18.4
<b>Minors tried</b>	<b>73,161</b>	<b>-2.7</b>
In private session	39,332	-4.2
In the children's court	33,829	-0.8
<i>Of which tried for crimes (serious crimes)</i>	479	-5.5
<b>Final measures and penalties ordered</b>	<b>82,333</b>	<b>-4.4</b>
Case dismissed	8,585	-10.7
Reprimand referral to parents, no measure/penalty ordered	32,624	-3.4
Probation, judicial supervision, placement, reparation	9,683	+0.6
Tutelary measure	1,319	+74.0
Community service, suspended community service	3,873	+1.2
Fine or suspended fine	5,440	-18.8
Suspended imprisonment	5,152	-3.9
Suspended imprisonment with probation	9,453	-4.0
Imprisonment	6,204	-6.4

Source: *Sous-Direction de la Statistique, des Études et de la Documentation* (Sub-directorate for Statistics, Studies and Documentation), Table showing trends in the children's courts, Key figures for the Justice System 2006.

-----

<sup>i</sup> The title given to the Roundtable is that on the UNESCO website, which differs from that given in the French original of the present document.

<sup>ii</sup> Presumably referring to cases where the husband has attained his majority but the wife remains a minor.

<sup>iii</sup> Juge de proximité, a new category of judge created in 2003 with the power to deal with minor civil and criminal matters.

<sup>iv</sup> A federated association founded in 1866 for the furtherance of education

<sup>v</sup> An association founded in 1944 promoting personal development of the young through youth clubs

<sup>vi</sup> An occasional daycare facility designed for children aged 0-6 with at least one non-working parent

- vii “*Intégration républicaine*” is defined in a Law of November 2003 as “knowledge of French language and the principles that constitute the French Republic”
- viii A binding right for those who meet basic qualifications including need and lawful residence on French territory, and who fall within certain priority categories, to be housed by a social housing provider
- ix “Optional” in the sense that the individual chooses this arrangement out of preference for compensation paid at a higher rate but for a shorter period
- x An occasional daycare facility designed for children aged 0-6 with at least one non-working parent
- xi The “*branche famille*” of the Social Services, consisting of a network of local offices run by the national and local Family Allowances Funds for the payment of social benefits and allowances to families
- xii *La maison départementale des personnes handicapées*, a centre in each département responsible for providing care, information, support and advice and for raising public awareness of disablement
- xiii A national foundation for the welfare of children and the elderly in hospital.
- xiv *Dispositifs relais*: classes and workshops provided in another location for pupils who seriously and persistently reject school and the learning process.
- xv *Mission générale d’inclusion*: a taskforce operating under the aegis of the Ministry of Education responsible for preventing the exclusion of pupils from education and for supporting children who have completed compulsory school education without gaining qualifications.
- xvi The public prosecutor has certain powers and functions, in addition to handling criminal prosecutions, including providing the court in civil cases with objective advice on the requirements of the law and how they should apply in particular cases. Here, the prosecutor, and his office at para 549, appear to be operating in this civil role and not as prosecutor.
- xvii *L’agence nationale de l’accueil des étrangers et des migrations*, a State entity providing certain services in relation to the reception of foreigners lawfully present in France and to outward migrants from France.
- xviii A co-ordinating body set up by French NGOs for overseas development.
- xix See note i above.
- xx *Aménagement de peine*, allowing for a penalty to be modified after it is pronounced to reflect a range of circumstances including good behaviour.
- xxi The national railway company.
- xxii The public transport authority for Paris and the surrounding area.
- xxiii *Loi ordinaire* – a law made by the Parliament in the exercise of a function reserved to it under the Constitution.
- xxiv French Constitution as translated on the National Assembly website.