

**REPORT OF THE DEFENSEURE DES ENFANTS – CHILDREN’S OMBUDSWOMAN -
TO THE UNITED NATIONS COMMITTEE ON THE RIGHTS OF THE CHILD
ON THE APPLICATION OF THE INTERNATIONAL CONVENTION
ON THE RIGHTS OF THE CHILD**

Summary of the main observations and recommendations

I. Is the very notion of the rights of the child really established in France?

- Whilst significant progress has been made towards raising awareness and ensuring the respect of the International Convention on the rights of the child and the notion of the rights of the child since the creation of the Défenseure des Enfants – Children’s ombudswoman (following the introduction of the law dated 6 March 2000), it may also be said that the Convention, together with the commitments that it represents, is still not particularly well known in France. A survey commissioned by UNICEF in 2007 found that 25% of young people aged between 15 and 18 and 34% of adults aged over 18 have ever heard of the Convention, despite the fact that courses on human and children’s rights have become part of the general school curriculum for all pupils aged 12-13.

Over the course of the first two years of her mandate, the children’s ombudswoman has developed new educational tools to be made available to school institutions and has also arranged for the deployment of 32 Young Ambassadors, in the framework of the voluntary civil service scheme, in 12 «départements», who have been given the task of meeting young children with a view to raising their awareness of the rights of the child.

She considers that France should increase its efforts to ensure that there is greater knowledge of the Convention amongst children themselves, as well as amongst the professionals who are responsible for children. She therefore demands that training on the rights of children be made mandatory for all professionals whose occupation brings them into contact with children and that the resources of the bodies responsible for the promotion of the rights of the child be increased.

- The children’s ombudswoman welcomes the “Court of Cassation’s” (judicial High Court) change of mind regarding the applicability of Articles 3-1 and 12-2 of the International Convention on the rights of the child, in other words their right to be heard in all procedures that affect them, as well as the primacy of their higher interest in all decisions that affect them. In this way, the two highest judicial organisations, namely the Court of Cassation and the State Council

(administrative High Court) henceforward consider these two articles to be directly applicable. However, some areas of divergence still exist between the Court of Cassation and the State Council regarding the direct applicability of certain provisions and there is a pressing need to end these differences of opinion.

- The children's ombudswoman believes that the continuing efforts being made to ensure that the legislation conforms to the Convention must be increased in order to improve the way in which the rights of the child are taken into consideration in the French legal system. To this end, the children's ombudswoman recommends that a parliamentary delegation on the rights of the child should be created in each parliamentary assembly and that an implementation committee should be set up and entrusted with the task of ensuring that the law conforms to the Convention. She also calls for the adoption of a legal provision that makes the opinion of the children's ombudswoman binding on all proposals for laws regarding minors under the age of 18 or their legal guardians.

II. Child protection and the fight against maltreatment

The children's ombudswoman welcomes the fact that a new law reforming child protection was adopted on 5 March 2007, following a large consultation process:

- This law has created «départements»al units for the collection, processing and evaluation of information concerning minors.
- While it is true that good progress is being made with the organisation of these units in most cases, it appears that the partnership between the Aide sociale à l'enfance (ASE – Social assistance for Children), the Protection maternelle et infantile (Maternal and Infantile Protection), the Protection judiciaire de la jeunesse (Youth Judicial Protection) and the Éducation Nationale (National Education system) needs to be further strengthened with a view to improving the modalities used to evaluate dangerous situations through an exchange of views between the various categories of professionals concerned.
- Similarly, there is scope for progress to be made in terms of involving the families, where possible, in the evaluation of the situation, according to adapted modalities, as well as ensuring that dialogue is established with the parents and the child and that they are listened to (preferably at the place where they live). The contents of the evaluation report must also be communicated effectively to the parents, child or teenager concerned.
- The ONED, which manages the 119 child line, centralises all of the information submitted by the «département» units and this should help to create an improved knowledge of the data regarding maltreatment. It will then be necessary to assess whether this provision makes it possible to reduce the number of incidents that were previously not recorded in order to analyse the reasons for any possible increase in the statistics on children in danger.

The children's ombudswoman calls for the publication, without delay, of the decree that has been envisaged for the application of the law to establish the national child protection fund, which should provide compensation for the expenses incurred by the «départements» in implementing this law.

III. Child victims of sexual violence

The law introduced on 17 June 1998 made the audiovisual recording of the witness statement of a child victim of sexual violence compulsory. However, the following points have been noted:

- There is a great disparity in terms of its implementation;
- The creation, in certain «départements», of only reception centres for child victims in a hospital environment;
- A lack of training for those engaged in carrying out investigations, the magistrates or the social/education services.

The law introduced on 5 March 2007 on the criminal procedure states that the audiovisual recording of the child victim is no longer subject to consent being given by the legal representative or the child him or herself:

- The examining magistrates must hear the minor by recording his or her statement and by providing the minor with a court-appointed lawyer;
- However, the failure to respect these provisions does not constitute grounds to invalidate the procedure and this limits its scope.

IV. The placement of children and maintaining links with the family

The children's ombudswoman welcomes the fact that the law of 5 March 2007 on child protection has diversified the ways in which children can be taken into care by reinforcing the possibilities for the one-off or episodic taking into care of a child outside of the family, without this necessarily being the placement of a child in an institution or a family home.

Nevertheless, in cases in which it appears to be necessary to carry out the placement of a child in order to ensure his or her protection, the Ombudswoman still notes that, looking beyond problems related to the disputing of the placement, of which it is sometimes informed – in terms of both the modalities (type of placement, maintenance of links, splitting up of siblings) and the reasons for the child being taken into care – far too often the decisions are poorly, or hardly, explained to the children and to the adolescents and this often leads to them running away or even trying to commit suicide.

The problem of maintaining links is regularly raised in the complaints that are brought to the attention of the children's ombudswoman. Here is an example the type of situation encountered: structures that are responsible for supervising and monitoring the re-establishment of links between the children who have been placed in care and their parents are often too far away or are not able to organise the visits because they are overwhelmed by the sheer volume of requests. She therefore calls for the action and support plan for parents, as well as, where necessary, for siblings and grandparents, to be systematically specified in the "child's plan" that has been envisaged in the law. She also believes that it would be appropriate to further develop the role of the ASE as a point of contact, so that it can work more closely with the parents.

Finally, the children's ombudswoman has also been informed of the issue of maintaining the emotional ties that have been established between the children and the foster families who have looked after them for many years. She has said that she would like the decisions taken to change foster families to be better explained to the

children. Similarly, she believes that the child, should he or she wish to do so, be able to maintain links with a family in which he or she has spent many years and with which emotional ties have been created (cf. the 2006 report on the status of third parties).

V. The rights of the child in the event of the separation of his or her parents

The children's ombudswoman considers the provision introduced by the law of 5 March 2007, which states that a judge in a family court will hear the child in cases in which he or she requests to be heard, to represent notable progress. She focussed her last annual report, which was submitted to the President of the Republic on 20 November 2008, on the theme of "children at the centre of conflict-ridden family separations". This report, which is the fruit of a vast national inquiry and many meetings with magistrates, lawyers, paediatricians, emergency doctors, child psychiatrists, children's aid and national education services, sets out 30 proposals that recommend, in particular, for the following actions to be taken:

- *Systematise parents' information on shared parenting and its practical consequences ;*
- *Include a provision on family mediation in the law so as to encourage parents to jointly prepare an agreement on their life plan for their children and to make judicial family mediation compulsory in the event of disagreement between the parents at the hearing before the family judge;*
- *Include a genuine right of the child, within the law, to maintain regular personal relations and direct contact with both parents, as well as the right for this child to maintain relations with third parties who have shared his or her life;*
- *Adapt the organisation of the judicial system by creating Family-Child sections within the courts, by creating specialised family judges through the provision of specific training, adapted means and resources, the support of psychologist and by organising better coordination between the magistrates who work with minors.*

VI. The right of the child to know his or her origins

The law of 22 January 2002 on access to personal data regarding one's origins represents progress.

However, the right of the child to know about his or her origins is not yet fully recognised. Rather, the biological mother is given the option to register her identity and to authorise its disclosure to the child upon his or her request.

The children's ombudswoman would first of all like to point out the material and procedural difficulties involved in managing the flow of requests submitted to the Conseil National pour l'Accès aux Origines Personnelles (National Council for the Access to Personal data regarding one's Origins - CNAOP), notably in terms of the delays involved in examining the applications, which are currently subject to a 2 year waiting time.

Secondly, the children's ombudswoman would like to point out that whilst the principle of anonymity in medically-assisted conception with third party donors is designed to preserve the relationship between the recipient couple and the baby to be born, it may well seem to be disputable in terms of the right of the child to know his or her origins.

She therefore demands:

- That efforts be made to improve the functioning of the "Conseil National pour l'Accès aux Origines Personnelles"¹ (CNAOP) so as to reduce the waiting time for the examination of the applications;
- That, at the Estates General on bioethics, which is due to take place in the first half of 2009 with a view to preparing for the revision of the law, which is scheduled for 2010), the right for a mother to give birth anonymously be changed into the right for a mother to give birth in all discretion, thereby abolishing the element of anonymity and enabling the child to gain knowledge of his or her origins and perhaps also of being recognised by the father, without challenging the impossibility of establishing the maternal filiation;
- That finally, a balance should be established in the framework of medically-assisted conceptions, between the child's access to information about his or her personal origins and the maintenance of the prohibition on legal action being taken to establish filiation or to claim maintenance payments from the donor.

VII. Adopted children

The Committee has called for the creation of a body to monitor inter-country adoptions in accordance with the 1993 Hague Convention

- o Today, 8 adoptions out of 10 concern children from other countries
- o The law of 22 January 2002 reformed the adoption authorisation bodies (OAA) and established guidelines for their mission
- o The law of 15 July 2005 created the French Adoption Agency (AFA) and developed better support for adoption throughout all of its phases (it is still too early to evaluate it). However, the division of the roles between the AFA and the OAA is somewhat blurred.

Inter-country adoptions:

Some figures:

- o Inter-country adoptions following an individual approach: 37.9 %
- o adoptions via the AFA: 19 %
- o adoptions via the OAA: 41.8 %
- o adoptions with countries that are party to the Hague Convention: 38 %
- o adoptions with countries not signatories of the Hague Convention: 62 %

The children's ombudswoman notes that whilst France is demonstrating its will to provide greater support and greater guarantees for individual applications

¹ National Council in charge of providing information on personal origins (who is the mother) of the child

for adoptions abroad, it still does not prohibit them (37.9%) and this would appear to be an increasingly French phenomenon.

The scandal created in November 2007 by the “Arche de Zoé” Association, which tried to move children from Darfur to France and to place them in foster families, some of whom thought that this would lead to adoption, shows that the information made available to applicants for adoption requires firm guidelines so as to avoid any form of deviation that may be harmful to children and to guarantee full respect for international and national law.

The children’s ombudswoman believes that it is necessary to **strengthen the role of the central Authority**, which is the guarantor of the regulation on international adoptions and their ethics, and is accountable for this before the States of origin.

Similarly, the conditions for the approval procedure for adopting families should be reformed and harmonised at a national level: 25,000 families receive approval and 4,000 children are adopted per year.

National adoption:

New momentum could be given to the adoption of French children through a series of measures, notably the **possibility of making greater use of the simple adoption procedure**. It is therefore necessary **to reinforce the right of the child to be informed, represented and heard at the time when agreement needs to be reached on his or her adoption.**

In the summer of 2008, the government announced a proposal for the reform of the adoption system. One notable objective of this reform would be to **facilitate the adoption of children currently placed in foster families or in institutions**. The judicial abandonment procedure would thus be reviewed; the social workers would be required, during the first year of the child’s placement in care, to submit a report in the eventuality of the child being abandoned by his or her parents; the public prosecutor’s office could then submit a request for a declaration of abandonment to the court.

It is the view of the children’s ombudswoman **that such a reform would require, first and foremost, the introduction of specific measures to support the evaluation of abandonment situations**, aimed at professionals in the social and judiciary field, so as to standardise practices and to **take all of the precautions that are necessary in this area, especially since there is also a need to address the important issue of maintaining contact with the child’s family of origin.**

Similarly, a national information unit should be created for children who have already been taken into the State’s care, so as to increase matching possibilities across the whole of the country.

VIII. Children living in precarious circumstances or poverty

The children's ombudswoman recognises that the substantial provision of funding is helping to reduce the number of families with children living in poverty and the level of their poverty: nevertheless, nearly **2 million children can be considered to be poor.**

The housing situation remains a major cause for concern for the most vulnerable families:

- There is a housing shortfall of 800,000 in France, 500,000 of which concern modest households
- 25% of families with children live in overcrowded homes. Single-parent and large families (at least 4 children) are particularly exposed to this type of situation.
- The number of unfit housing units in France is between 400,000 and 600,000 and almost 10% are inhabited by families, almost 4% of which are large families.
- 14,000 are in institutions that house families.
- Hotel rooms are often used to provide accommodation for homeless families, particularly for asylum seekers, without there being a solution in terms of them being taken into care by the state.

The law that makes the provision of housing compulsory (the DALO law), which was introduced on 5 March 2007, represents significant progress:

- It enables persons who are homeless or who are threatened with eviction without the possibility of being re-housed, or who are in emergency housing on a continuous basis or are temporarily housed, or are housed in dwellings that are unfit for habitation, unhealthy or dangerous, or are housed in overcrowded or dirty dwellings, **to oblige the State to find them housing on the condition that they have at least one minor or person with a disability in their family.**
- Since 1st December 2008, anyone who has not been re-housed for longer than 6 months after they have received permission to be re-housed may appeal to the courts and the State may be required to pay a penalty.

A proposal for a law to mobilise efforts to provide housing and to fight against exclusion is currently being discussed in Parliament.

The purpose of this new provision will only be fulfilled if considerable efforts are made to build housing that is made available to low-income families at an affordable rent and if **the requirement to provide 20% of social housing in towns with a population of more than 3,500 is respected.**

IX. The children of travellers and the children of Roma people

The notion of minority groups essentially covers two populations present in France: on the one hand travellers, who generally have French nationality, some of whom carry out itinerant professions (fairgrounds, circuses ...) and on the hand Roma people, who have foreign nationality, some of whom are migrants and others who

have settled or are in the process of settling in France. These two populations have many children.

The children's ombudswoman notes that, in spite of the recommendations of the National Consultative Committee for Travellers and of its President, Senator Pierre Heartier, and the efforts made by certain «départements»s and municipalities, **these populations far too often encounter serious problems in terms of their children's education and the fact that they live in highly precarious housing conditions.**

Travellers:

- Travellers are denied access to social benefits related to housing right because caravans are not considered to be housing;
- In 2007, the law introduced in 2004 to oblige municipalities to provide parking areas had only been applied in 15% of municipalities;
- The parking areas for travellers are very often only short stay, temporary areas, whilst they are actually expecting long term facilities. Therefore, they are often obliged to park and to stay in precarious conditions and this only serves to make them want to take to the road more often, to the detriment of their children's stable education;
- Although there is still a huge lack of parking and residential facilities, the law of 5 March 2007 gives the mayors the right to expel families who park outside the provided areas;
- The obligation to send children to primary school is just about respected, whilst very few children of travellers continue their education in a secondary level school.

The Roma people:

The majority of the Roma originate from central or eastern Europe. According to whether their country belongs to the Schengen area, these families are either granted free movement or have to provide proof of having the right to reside in France and that they have the resources to do so:

- They live in highly precarious situations and are often expelled by the police;
- Although the majority of families want their children to get an education, their education is often disrupted and certain municipalities even refuse to grant them access to schooling, even though this is compulsory (from 6 to 16 years of age);
- There is often a complete lack of social and educational support from the child social assistance services, except for the emergency provision of housing or food.

X. Access to care services for the most disadvantaged persons and the taking into care of children and adolescents on medical and psychological grounds

Access to care services for the most disadvantaged persons

The universal illness cover (CMU) was created in 1999 for all persons regularly residing in France for more than three months and it covers more than 40% of those aged under 20.

The complementary CMU, which is for persons on a very low income, is not used on a systematic basis (lack of information, scarce preventive use of care): 13% of persons who belong to a single-parent family do not have complementary cover.

The NGOs deplore the requirement to have a registered address (especially for patients who have been housed on a precarious basis or are homeless) and the complexity of the procedures involved, since these are major obstacles to access to care services for the most disadvantaged persons. They also very much regret the fact that certain specialists refuse to provide treatment to holders of CMU and the AME (State medical aid cover).

Access to healthcare services for the children of undocumented migrants

The State medical aid cover (AME) was introduced by the 2001 law for persons whose situation has not been regularised. A condition was introduced for the granting of the AME, namely that the applicant has to have been resident in France for an uninterrupted period of three months.

In its decision dated 16 June 2006, the State Council decided, notably on the basis of article 3.1 of the International Convention on the Rights of the Child, that children could not be excluded from medical aid.

The particular case of Mayotte, where there are serious problems regarding access to care services for children. The CMU and the AME do not exist in this Overseas Collectivity. Furthermore, civil status related problems mean that French national Mahorais whose civil status is yet to be revised are being denied access to services. (cf.: The children's ombudswoman's Report on Mayotte, 2008).

The taking into care of children and adolescents on medical and psychological grounds

Close to 15% of adolescents aged between 11 and 18 display worrying signs of mental distress (suicide attempts, early and widespread alcoholism, daily use of cannabis, self-harming, cyber-dependency,...), which represents a figure of almost 900,000 adolescents.

Responding to this situation, the children's ombudswoman observed in her 2007 annual report that the provision of child psychiatry is totally insufficient and that there is a high degree of regional heterogeneity. Several «départements» either lack a sufficient number of, or do not have any, full time hospital beds for child psychiatry cases and children under 16 are hospitalised in facilities for adults or in neighbouring «départements».

The medical-psychological centres that are responsible for organising and coordinating all of the actions outside of the hospital and whose function it is to ensure that outpatient consultations and follow up appointments take place, as well

as preventive actions, are in a state of serious crisis: their appointment waiting times are excessively long (4 to 7 months) and very often their opening hours are ill-suited to the availability of adolescents (they close at 17.00 or 17.30 during the week and at the weekend). Furthermore, it would appear that both parents and children suffer from a serious lack of information and support throughout their efforts to access these services.

The professionals who have contact with children would not appear to have sufficient training in child psychology and the identification of critical situations.

As an addition to the measures already taken as part of the “Young Person’s Health Plan”, which was introduced by the Health Minister in February 2008 (dedicated facilities for young people and mobile equipment), children’s ombudswoman calls for:

- A national plan to resolve the crisis currently being faced by the medical-psychological centres (CMP) ;
- Hospital beds for child psychiatry cases in the «départements» that do not have them and a range of follow-up systems for outpatient care;
- The awareness-raising and provision of information to professionals and to parents (a national “parents” line) on how to spot signs of distress;
- Measures for schoolchildren (between the ages of 11 and 15) who are not covered by the youth health plan;
- A ban on the advertisement of alcoholic beverages on the internet, since this is the most frequently used form of media for children and adolescents.

XI. Children with disabilities

Some 250,000 children have a disability and between 60,000 to 100,000 of them suffer from a form of autism or developmental disorder.

The children’s ombudswoman believes that significant progress has been made through the introduction of the law of 11 February 2005, which set out the principle of enrolling children with disabilities in the school that is closest to them.

The President of the French Republic has committed himself to establishing an enforceable right to school education for children with disabilities.

On 30 March 2007, France ratified the UN Convention on the rights of persons with disabilities, dated 13 December 2006, without ratifying the optional additional protocol.

Significant progress has been made: more than 90% of children with disabilities now receive a school education, which represents almost a doubling of the number of school places over a five year period.

However, a large number of the children with disabilities who go to school only do so on a part time or even extremely partial basis (3 hours per week).

As a result of the law, general usage is now made of school assistants (AVS) to help the children with disabilities in their everyday school life. However, the

precariousness of their statute, their lack of sufficient vocational training and the fact that they are sometimes replaced by long-term job-seekers who have not been trained to carry out these tasks (there are problems in terms of their training, as well as the precarious nature of their status) means that the provision of this assistance is still uncertain.

In the complaints received by the children's ombudswoman, parents often say that they feel that it is **a real obstacle course** to find solutions that are really adapted to the needs of their disabled child.

The «départements» Centres for persons with disabilities, which are overwhelmed by administrative tasks, often do not have the means and resources required to cope with their mission to provide reception facilities, information, support and advice for persons with disabilities and their family.

Other difficulties are also encountered:

- **Problems in terms of the number and availability of referring teachers** placed under the authority of the school's inspectorate, who have been entrusted with the mission of providing information to the families, as well as convening meetings of the educational monitoring team and passing on the assessments to the parents and to the multi-disciplinary team (they are responsible for 100-300 children according to the «départements» in which they work).
- **Lack of training and appropriate educational facilities for the reception of children with disabilities (particularly in schools that have social integration classes (CLIS) or educational integration units (UPI).**
- Little progress in the necessary complementarity between the specialised (education/medical) sector and the National Education Authorities and the **decree on the cooperation and complementarity between schools and institutions in the education/medical sector has still not been published.**
- There continues to be a substantial lack of resources available to the specialised sector to assume responsibility for autistic children or children with multiple disabilities and **this is forcing people to seek assistance from foreign institutions, notably in the French-speaking part of Belgium (this is currently the case for 3,000 autistic children).**

XII. The protection of children against the effects of violence and pornography in the media

The laws introduced in June and July 2004 with a view to instilling trust in the digital economy have served to clarify the application of the law to the internet:

- Principle according to which responsibility does not lie with the service providers
- The website hosts are not obliged to monitor the contents
- The editors, including bloggers, are liable for contents. However, the majority of editors are located abroad and are beyond the reach of French law

Protection and educational measures for minors have been taken by the public authorities to address the risks related to internet usage:

- Parental control
- Mobile operators' commitment to the charter on multimedia contents
- The law of 5 March 2007 on crime prevention, which reinforces the prohibition on allowing minors access to pornography and the requirement to report incidents of this type should they occur.

Current problems:

- The proliferation of personal blogs makes it impossible to monitor all contents.
- The issue of the protection of personal data has still not been resolved. The CNIL is currently carrying out a major awareness-raising campaign on this very issue. The Ombudswoman is working in partnership with this other independent authority and a collaboration agreement has been signed between the two institutions.
- There is no coordination between the different existing structures: there is a need to establish a single, independent body to be responsible for the protection of children across all forms of media.
- There is no common legal instrument to facilitate cooperation between the States.

France has implemented a fairly wide-reaching and repressive legislative provision to combat internet-based child pornography.

- The law of 5 March 2007 on crime prevention introduced the criminal offence of making sexual propositions to a minor under the age of 15 over the internet and the act of simply looking at images of child pornography.
- A website has been created by the government so that internet surfers may report suspicious sexual images involving children.
- A range of legislative provisions has been introduced to reinforce the previous laws and to facilitate efforts made to take legal action and to support children when they give testimony regarding prostitution or acts of sexual violence that have occurred within the family or have been carried out by third parties.

XIII. Foreign minors

The situation of foreign minors (MEI) is the second largest topic discussed in the complaints received by the children's ombudswoman following problems related to family separations.

One major issue is the payment of family allowance for certain foreign children whose parents are legal residents in the country:

The payment of family allowance is subject to the presentation of the medical certificate issued by the ANAEM at the end of the procedure to reunite families or to the production of the prefectural declaration stating that the child entered France at the very latest at the same time as one of his or her parents in cases in which the parent is a holder of a "private or family life" resident's permit.

It is difficult to obtain this declaration from the prefecture. Indeed, the ministry for immigration and integration is due to issue a circular to the prefects in order to create a standard prefectural declaration.

In September 2008, the HALDE stated that the refusal to pay social benefits to foreign children who are not able to prove that they entered France legally was discriminatory and that the only proof that should be required is that their parents have a legal right to reside in the country.

The HALDE recommended that the health ministry should modify the provisions of the social security code, since they are contrary to the European Convention on Human Rights and the International Convention on the Rights of the Child.

The particular situation of foreign children who have been taken from abroad under Kafala by people living in France.

The February 2001 law on inter-country adoption bans the adoption of children whose personal status prohibits adoption.

These children may not benefit from provisions designed to reunite families and this gives rise to difficulties related to accessing social security or obtaining a document authorising movement outside of the territory.

There is therefore a need to establish cooperation agreements with the countries of origin, based on the model of the agreement signed between France and Algeria in December 1998 (authorisation to reunite a family once checks have been carried to establish that this is in the child's interest).

The family reunification procedure for statutory refugees and the family reunification procedure for persons who hold a residence permit:

- **Family reunification for persons who have obtained statutory refugee status:**
 - The so-called "sponsored family" procedure is implemented by the ministry for immigration.
 - There is no time limit for this procedure and appeals are not allowed. It can take as long as 5 years before long-term residency visas are issued for children. Problems are encountered with regard to the checking of civil status documentation, there are insufficient staff resources in the consular offices, the administrative practices are not coherent, it is necessary to make multiple applications for documents ...
 - The OFPRA does not have a single interface.

The family reunification procedure for persons holding a residency permit:

The validity period of the family reunification agreement granted by a prefecture in France requires a visa application to be made within 6 months.

The processing of the files by the consulates often highlights the existence of standard letters that contain somewhat vague arguments and there are many doubts raised regarding the civil status documentation.

When a visa application is rejected, the applicants do not know that if they do not hear anything from the appeals committee against the decision to refuse a French entry visa for more than 2 months, then this means that the appeal has been turned down. Consequently it is not possible to appeal to the State Council within the allocated time limit of a maximum of two months.

The law of 21 November 2007 created new conditions for family reunification: resources, the requirement to undertake training in the event that the persons involved do not have sufficient knowledge of the French language and the values of the republic (cf. the Ombudswoman's opinion on this matter).

The use of genetic testing to determine filiation in cases in which doubts exist regarding the authenticity of civil status has been validated by the constitutional court, subject to the judge's supervision.

Unaccompanied foreign minors

The protection of the rights of unaccompanied foreign minors has not made a great deal of progress, even though the law of 5 March 2007 on child protection does ensure that they are covered by child protection up to the age of 18 and even up to 21 under certain circumstances.

There are no firm figures regarding the number and the influx of unaccompanied foreign minors, although it is estimated that there are between 4,000 and 5,000 of them every year.

Observations:

- Currently minors aged over 13 are not separated from the adults in the holding areas (although a legal provision is being prepared);
- Minors under the age of 13 are placed in a hotel at Roissy airport;
- It would appear that some minors are sent back to their country of origin without even having the chance to meet the authorised associations in the holding area: consequently the State Procurator is not able to appoint a guardian in charge of trusteeship (ad hoc official AAH) if he or she has not even been informed of the unaccompanied foreign minor's arrival;
- The status of the ad hoc officials has been enhanced by the rewarding of a higher salary in July 2008.

For foreign minors who arrive overland:

- **There is the unresolved problem of the unreliability of bone testing to determine the real age of minors**, despite the opinions given by the most senior ethical and medical authorities.

- **The government established a reception and care facility in Paris in 2002:** it would appear that a proposal for a regional platform is currently being set up in the Île-de-France.

The children's ombudswoman organised a **seminar on the subject of unaccompanied foreign minors in June 2008**, which put forward 25 recommendations to harmonise professional practices and to improve the way in which unaccompanied foreign minors are taken into care, around 5 priorities: *better respect of the right to information for minors who arrive by air, notably during their stay in the holding area; immediate protection of minors who arrive overland and their taking into care in an emergency facility (along the lines of the facility in Paris or the facility run by the "Jeunes errants" Association in Marseille), followed by an adapted administrative and judicial procedure to look after their interests; an evaluation of the minor's legal minority using a procedure that respects legal, ethical and deontological principles, only in cases in which the civil status of the minor cannot be legally determined; equal rights with other young people of the same age, notably with regard to access to education and vocational training, legal aid and obtaining a young person's contract; the construction of a life project with the young person and all of the associations and institutions concerned, in accordance with the recommendations of the Council of Europe.*

Unaccompanied Rumanian minors:

- **There are problems regarding the renewal of the bilateral agreement concluded in 2002 concerning unaccompanied Rumanian minors:** the new agreement that has been submitted to parliament would not appear to offer the same level of protection to minors since it does not include the systematic submission of each case to the family judge and it allows for the minors to be taken back to Rumania.

Foreign minors whose family's situation has not been regularised

Observations:

- **The higher interests of the child are not taken into account when the family is expelled from the country:** conditions surrounding the inquiry concerning the parents, the children's education.
- **The administrative detention centres (CRA)** are not suitable for children, even though family areas have been created in some of them: children who experience separation from their school and everyday environment show signs of serious mental distress. In October 2007, the Rennes Court of Appeal ruled that the detention of a Moldavian couple and their three week old baby constituted inhuman treatment and that the living conditions were abnormal for a very young child. The children's ombudswoman demands that detention should only be used under exceptional circumstances and that instead parents and their children should be kept under house arrest or, where this is not possible, should be placed in some form of residence throughout the administrative procedure.

- **The very particular situation of the CRA in Mayotte** (cf.: the children's ombudswoman's report on Mayotte)

XIV. Children in situations of conflict with the law

The detention of minors:

At the date of 1 March 2008, 785 minors were incarcerated, 56.5% of whom were under temporary detention. More than 3,500 minors find themselves spending some time in prison each year, normally for fairly short periods.

The opening of 37 Closed Education Centres (CEF) since 2003 has helped, for a time, to reduce the number of incarcerations.

Seven specialised detention centres for minors (one is currently being built), each with a capacity of 60, will gradually replace the former detention areas reserved for minors in adult prisons (a total of 420 places in the long-term).

The police custody system ensures that minors have different rights to those accorded to adults, but the custody facilities located in the police stations do not conform to legislation (they are completely closed and do not have visual surveillance equipment).

The possibility of reducing a fixed sentence is still very limited and the day parole system is practically never used for minors.

Many young people who are incarcerated suffer from serious psychiatric and psychological distress: three detained minors committed suicide in 2008 and many young detainees attempt to commit suicide (40 times more than young people who are at liberty).

The most recent laws passed in 2007 and 2008 suggest that the number of incarcerated minors may increase further (the creation of new offences, increase in the length of sentences).

Indeed, the law of 10 August 2007 set minimum sentences and also removed the possibility of using minority as an attenuating circumstance for minors, aged between 16 and 18 who are repeat offenders for the second time, having committed certain offences. This category of minors will now be judged as adults, although the judge may re-introduce minority as an attenuating circumstance, on the condition of providing reasons for this decision².

A general inspector of facilities in which people are deprived of their liberty (CGLPL) was established by the law introduced in October 2007 and was appointed in May 2008: a collaboration agreement between the children's ombudswoman and the CGLPL has been signed by the two institutions.

² Law n° 2007-1198 of 10 August 2007 on re-offending amongst adults and minors

The provision of educational services in the open environment for young offenders suffers from a serious lack of human and material means and resources, which leads to delays, ranging from a few weeks to a few months, and this, in turn, limits the efforts aimed at the prevention of re-offending.

The government has announced its intention to reform the 1945 legislation regulating the justice system for minors and has set up a committee of experts (called the “Varinard” Committee), which has been asked to make proposals.

The children’s ombudswoman has submitted a series of proposals³ to this committee and has emphasised the need to limit the prosecution of acts committed by minors, to have a special justice system that is adapted to minors, to accord exception status to the incarceration of a minor and to always provide minors with specific educational support, as well as the need to provide more coherent and diversified responses to juvenile delinquency through solutions that are not exclusively penal in nature.

She has also called for the **creation of a minors’ code to bring together all of the texts on the taking into care of children with regard to prevention, protection and repression.**

Following the publication of the report, although she welcomed a series of proposals that had taken into account the suggestions she had made, the children’s ombudswoman still expressed three major reservations in an opinion issued on 8 December:

- With regard to setting the threshold for criminal responsibility at 12 years of age, France would find itself with one of the lowest thresholds set by European countries, most of whom have opted for the age of 14 or 15.
- With regard to the appearance of adolescents, both repeat offenders or those who are already being detained, before a correctional court composed of 2 non-specialist judges and one children’s judge who has been given the new title of “minors’ judge”, then France would be moving away from the principle of the specialisation of the justice system for minors.
- With regard to incarceration on committal of a first offence and without any educational measures having been taken for minors aged 12 who have committed a crime, the children’s ombudswoman has welcomed the statement made by the Prime Minister following the presentation of the report, in which he declared that he is against the incarceration of children aged 12.

XV. Registration of information regarding minors

The children’s ombudswoman notes that minors may find themselves being placed on one or several registers, sometimes without their knowledge or their parents’ knowledge, which means that they are not able to exercise their rights in this area.

³ See the Hearing granted to the Défenseure des enfants by the Varinard Committee, which has been entrusted with the task of formulating proposals to reform the edict issued in February 1945 on child delinquency, at www.defenseurdesenfants.fr/auditions.php

- Minors may be placed on various registers for different reasons: STIC (processing of recorded offences), FNAEG (genetic testing) JUDEX (Police), FIJAISV (violent sex offenders), ELOI (foreigners who are the subject of an expulsion order), EDVIRSP (information regarding public security – currently being set up).

In her opinion on the EDVIRSP, the children's ombudswoman expressed her opposition to the recording of information regarding the private life of the minor, his or her family or circle of family and friends and his or her geographical or ethnic origin on minors' registers that may be used for non-judicial purposes and are based on a single event.

She called for the purpose of each register that contains information regarding minors to be clearly justified and to be subject to certain restrictions in terms of the status of the persons who decide to record the information and the persons who have access to the information, and demanded that the period of time for which the information is kept and the modalities according to which it can be deleted be made clear.

With regard to the right to information, access and opposition to the information kept on these registers, she also called for both parents and minors to be given the effective right to information regarding the data kept on the registers, as well the right to access the information with a view to expressing their possible opposition or to correct it.