

Report on the Family and the Rights of Children

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After a year of work and travel to various countries, listening to and discussing all points of view, a 30 member multi party commission of the French National Assembly recently submitted its report on the evolution of the family and the need to adapt family law to changes in the family and the rights of children.

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

The commission believes that laws should set standards to "enable individuals to grow on the basis of stable, certain and comprehensible criteria." Laws should not simply validate changing mores.

Articles 3, 7, 9, 18, and 21 of the New York U.N. Convention on the Rights of the Child (1989) set out the rights of children. The commission stresses that "The child now has rights and the aspirations of adults can no longer be systematically placed ahead of respect for these rights." The commission deems it essential to enshrine article 3 - "*In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.*" - into French law to help guide judges, individuals and other institutions.

Children represent the future of society. They should "not suffer as a result of situations imposed on them by adults. The interests of the child must outweigh the exercise of freedom by adults... whatever life choices are made by the parents." The legislator is not obligated to adopt the most permissive foreign legislation.

Marriage, adoption and medically assisted reproduction are inseparable. "Countries that have made marriage accessible to same-sex couples have all authorized adoption by such couples and developed systems of assisted conception – even surrogate gestation – to enable such couples to have children."

French law allows for three forms of organization for couples: common law, civil unions (PACS) and marriage, each with its own set of proportionate rights and obligations. Because of its higher level of commitment, permanence and judicial support for children (in divorce), marriage offers the greatest protection and benefits for children and society. "Marriage is thus not only the contractual recognition of a couple's love. It is a demanding framework with rights and obligations designed to welcome the child and provide for his or her harmonious development." Thus, marriage is the only structure reserved strictly for heterosexual couples. The commission renews its support for this tiered system and recommends that the various rights and obligations of each type of union be clearly explained to couples when they register for a common law certificate, a PACS, marry or have a child.

Because of the filiative nature of marriage (the fact of being the child of certain parents), it is essential that the male-female nature of marriage be preserved. This "corresponds to a biological reality – the infertility of same-sex couples – and to the vital need to construct an identity for the child necessarily resulting from the union of a man and a woman."

"The Convention (CRC) thus stresses that the primary aim of adoption is to provide a child with a family and not a family with a child" and "given the original trauma he or she experienced, an adopted child

requires the kind of legal and emotional security that only married parents can offer." Furthermore, same sex parenting introduces an additional discontinuity for the adopted child, "*the loss of similarity between the original couple and the adoptive couple that raises the child*". Favoring equality for adults would bring about a greater discrimination between children. For both adoption and medically assisted reproduction, the report rejects the notion of a right to a child.

Adoption either replaces previous filial links (plenary adoption) or potentially multiplies them (simple adoption). The report expresses concern about how to limit the "proliferation of bonds of filiation for the child" created as adults change partners over time as this "would provide confusing points of reference for the children." With same sex parents, a child would find himself with two fathers or two mothers. Opening up adoption in these circumstances would open the door to circumventing existing restrictions in assisted reproduction (see below), lead to abuse and jeopardize children's filiative rights.

The commission was presented with research on children raised by same sex couples concluding "that there were no negative effects on children. These studies' scientific basis and the representativeness of the population samples studied were widely criticized and disputed at the hearings... the lack of objectivity in this area is blatant." The commission endorses the statement of an expert witness on adoption: "*while there is absolutely no reason to doubt the emotional and childrearing qualities of homosexual parents, at the same time we do not yet know all the effects on the formation of the adopted child's psychological identity. As long as doubt persists, however slight, is it not in the child's best interests to apply the precautionary principle to adoption, as to other areas?*"

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

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

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

The report rejects claims of discrimination in the case of assisted reproduction as "the difference between the situation of a heterosexual couple and that of a same-sex couple with respect to procreation" is so obvious. It notes that allowing such would "thus create discrimination between female homosexual couples and male homosexual couples, except where the latter were able to use a surrogate mother" (see above).

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