

Children's Right to Identity in France

Factsheet submitted to the UN Committee on the Rights of the Child

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This brief focuses on three key identity concerns that have been repeatedly addressed by the Committee on the Rights of the Child since 1994,¹ and nevertheless continue to occur as follows:

Naissances sous X (anonymous births)

- A pregnant woman can decide to give birth under X, *i.e.* anonymously, in a hospital and must inform the medical team of the health institution of her choice. The child will then be entrusted to child welfare for possible adoption. However, the mother can reconsider her choice and recover her child within two months.²
- No identity document can be requested and no investigation can be conducted. Thus, the mother keeps the secret of her admission.³ The medical team can provide information about financial aid that is available that can help her care for the child. Only at her request, can psychosocial support be offered.
- The child may request, upon reaching the age of majority, to know his or her mother either from the National Council for Access to Personal Origins (CNAOP) or from the President of the General Council. If the mother gives her consent, the secrecy of parentage may be lifted.⁴
- The current practice does not include pro-active efforts to raise awareness among mothers (and fathers) about the importance of the right of the child to know his or her origins, especially at birth. Moreover, the child's identity can only be fully re-established with the consent of the mother or upon her death.
- **This seems contrary to the State's obligation to speedily re-establish missing elements of the child's identity, related to his or her family. France should consider investing resources to support confidential hospital births rather than anonymous practices.**

Adoption

- It is not clear what is in place in terms of identity preservation in the context of current practices. France should consider an evaluation of all States of origin, focused on assessing whether laws, policies and practices fully respect Articles 7 and 8 of the CRC and continue co-operation only with those that do.
- In terms of restoration of identity for all adoptees, to date, the Central Adoption Authority and the country's accredited adoption bodies provide limited support. There is a need for a State-funded centre dedicated to supporting adoptees in search for their origins, including family reunification.⁵
- In November 2022,⁶ the Minister for Europe and Foreign Affairs, the Minister of Justice (*Garde des Sceaux*) and the Secretary of State to the Prime Minister in charge of children, decided to refer the matter of illegal intercountry adoptions to the General Inspectorate of Foreign Affairs, the General Inspectorate of Justice and the General Inspectorate of Social Affairs for an investigation. The aim is to identify illegal practices that have taken place in the past to prevent their reoccurrence, and to respond to the demands of adopted persons and civil society. The results of this work are expected in six months. The scope of the investigation and composition of those tasked with examining past practices has not been publicly announced. **It is however hoped that the investigation will cover a broad number of States of origin, include adoption experts as well as the voices of lived experiences.**
- Moreover, **independent of this investigation, there needs to be a clear framework for accessing remedies whenever illicit adoptions have occurred, including the lifting of the statute of limitations.**

Assisted reproductive technologies (ART), including surrogacy

- Historically, the use of anonymous gametes was permitted in France, contrary to the identity rights of children. The 2021 Bioethics Law⁷ had the potential to remedy in part this gap by initially promising to prohibit the use of anonymous gametes under the new regime.

- However, as noted by donor conceived persons / bioethics lawyer,⁸ the application of this 2021 Bioethics Law, as announced end August 2022, has significant limitations, including:

- Imposing, until an unspecified date, the priority allocation of gametes and embryos from donations made before 1 September 2022. This means that anonymous donations will continue for an indefinite period;

- Children will not have access to any information about the donor, including his medical history. This limits appropriate medical follow-up and prevention measures;

- Children will not have access to know if they have potential siblings;

- The Law does not establish a mechanism to systematically contact people, who donated before 1 September 2022, in order to find out whether they would agree to the new regime, which would have allowed for the rapid creation of a new stock of known gametes and embryos, etc.

- While surrogacy is prohibited in France, a number of decisions by the European Court of Human Rights have requested that the State recognise the parentage of the surrogate-born child with the intending parent(s). In addition to such recognition, **it does not seem that France has made any proactive efforts to ensure that the child's origins are fully captured** (*e.g.* details about the use of any gametes, embryos and/or surrogate mother). Moreover, **it does not seem that France has implemented any proactive measures to assess whether a sale of children is occurring in surrogacy arrangements, with appropriate penalties being imposed.**

¹ Committee on the Rights of the Child. Concluding observations of the Committee on the Rights of the Child: France. CRC/C/15/Add.20. 25 April 1994. Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2FC%2F15%2FAdd.20&Lang=en.

² République française / Direction de l'information légale et administrative (Premier ministre) (11 February 2022). Accouchement sous X. Available at: <https://www.service-public.fr/particuliers/vosdroits/F3136>.

³ *Ibid.*

⁴ *Ibid.*

⁵ For example, see: Afstammingscentrum (Belgium). Available at: <http://www.afstammingscentrum.be>.

⁶ Secrétariat d'État chargé de l'enfance (8 November 2022). Le gouvernement lance une mission d'inspection sur les pratiques illicites dans l'adoption internationale en France. Available at: <https://enfance.gouv.fr/le-gouvernement-lance-une-mission-dinspection-sur-les-pratiques-illicites-dans-ladoption>.

⁷ Loi du 2 août 2021 relative à la bioéthique. Available at: <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000043884384>.

⁸ Association Origines (8 November 2022). Lettre de démission de la CAPADD. Available at: <https://associationorigines.com/2022/11/08/lettre-de-demission-de-la-capadd/>.

