



Report of the Defender of Rights to the United Nations Committee on the Rights of the Child

Face au droit, nous sommes tous égaux

Défenseur des droits

RÉPUBLIQUE FRANÇAISE

Editorial

Our term in office as Defender of Rights and Ombudsperson for Children will come to an end in a few days, in time for us to publish our new report on the effective implementation of the United Nations Convention on the Rights of the Child (UNCRC), as part of France's sixth periodic report.

Just as during the previous report in 2015, our objective and independent assessment paints a mixed picture. Whilst it is true that the issue of children's rights has begun to gain prominence over the past five years, the positive progress in terms of public policy that we have recently observed is offset by steps back and the emergence of new concerns over violations of the dignity, physical and moral integrity of many children.

There thus remains much to be done to ensure that all of the rights of all children are fully honoured in our country and that every child is truly considered as a subject of rights who participates fully in society.

This mirrors the words of the 2,200 children aged between 4 and 18 years old whom we consulted in 2019, as part of celebrations marking the 30th anniversary of the UNCRC all over France, with a special focus on children in vulnerable situations.

This is the whole purpose of our institution, which is committed to narrowing the gap between stated rights and actual rights and to tackling the phenomenon of rights not being accessed, which undermines the life courses of too many children, our social contract and ultimately children's confidence in the adult world, in themselves and in their future.

The COVID-19 pandemic has laid bare the extent to which the health crisis and measures taken by the public authorities could adversely affect children's rights, in addition to having compounded and exacerbated the existing difficulties, in terms of violence, poverty, health, social and territorial inequality, and discrimination. There is a real danger that these effects could become entrenched amid the looming economic downturn, jeopardising the signs of progress that we have been able to observe until now – even if most of these should have found concrete expression.

Above all, we have been struck by how many children were given scant or poor consideration by the public authorities both during the lockdown period and the exit measures subsequently taken: when overnight they were thrown into a world of fear, worry for their loved ones, uncertainty and complete upheaval of their familiar routine, and would have been in need of particular support and information, as subjects rather than just objects of rights.

We therefore wish to reiterate what we are repeatedly advocating in reports and decisions: the time has come to ensure that the best interests of children are truly a primary consideration in any decision concerning them – on a personal and collective level alike.

"There appear to be two lives, one serious and respectable, the other indulgently tolerated, less valuable. We say: a future person, a future worker, a future citizen. That children will be, that they will really begin to be serious only in the future." Janusz Korczak

Jacques Toubon, Defender of Rights

Geneviève Avenard, Ombudsperson for Children and Deputy Defender of Rights

Introduction

This document forms the second report of the Defender of Rights to the United Nations Committee on the Rights of the Child, on the implementation of the United Nations Convention on the Rights of the Child (UNCRC), as part of France's sixth periodic report.

Pursuant to the simplified reporting procedure in this regard, this report presents the Defender of Rights' main findings and the resulting questions. These findings are first and foremost based on the complaints that have been brought to the institution's attention by parents, professionals, associations and children, and which, since 2017, have numbered around 3,000 a year.

They are also based on the new system for following up the implementation of the Committee's concluding observations, set up after the previous periodic report and which contains three levels.

The first level involves legal and documentary monitoring across all of the Convention's spheres, by the institution's children's rights correspondents.

The second entails operational monitoring aimed at measuring how effective rights are in practice, on the basis of referrals sent to the Defender of Rights and feedback from its local network, and enhanced by regular dialogue with civil society. The aim here is to delve deeper into the concerns raised in referrals and identify subjects that merit being taken up by the institution on an own-initiative basis, even where there are no related complaints.

The third level of this system involves gathering the child's view, which is considered essential to shed light on the performance of the Defender of Rights' duties, shared with its deputy, the Ombudsperson for Children. Accordingly, an initial consultation of children was held in 2019, as part of celebrations of the 30th anniversary of the UNCRC, entitled "I have rights, hear me out – National consultation of the Defender of Rights with under 18 year olds". This gave 2,200 children, nationwide – so in Mainland and Overseas France – between the ages of 4 and 17 years old, an opportunity to learn more about their rights and to give their views in this respect, thanks to the involvement of some fifty associations. It was primarily geared towards the most vulnerable children, precisely those whom the Defender of Rights' referrals show to be the most marginalised in terms of their rights: children coming under a child protection plan, unaccompanied minors, children living in squats, slums or in social hotels, children in places of detention and children with disabilities. The 276 proposals or testimonies from these children have been gathered in a compendium appended to this report. Wherever possible, this report also includes the findings or proposals made following this consultation (shown in purple).

The first of the findings presented in this report is that the four fundamental principles enshrined in the UNCRC are still not sufficiently fulfilled in France. In particular, the best interests of the child, enshrined in Article 3, still do not represent the principle of interpretation and source of arbitration that they should in light of the convention's provisions, and much less a primary consideration in the decisions that are going to influence the child's life. In spite of the Defender of Rights' recurring recommendations on this subject, training of childhood professionals in the fundamental needs and rights of children is making very slow progress, and the fact that there is no core knowledge set shared between all of the stakeholders is regrettable. On that note, in its previous 2015 report to the Committee on the Rights of the Child, the Defender of Rights had recommended creating a common training fund. This proposal has so far met with no response.

That said, there are steps forward to be commended, such as France's adoption in 2019 of legislation prohibiting corporal punishment on children, or the abolition of juvenile criminal courts.

Since the last periodic report reviewed by the Committee on the Rights of the Child, a series of legislative texts has been enacted such that consideration of children's rights is improving – not least the Act for Schools that build Confidence. Moreover, a range of national strategies has been drawn up in areas concerning children, including the child protection strategy led by a dedicated Minister of State, which represents progress in terms of the interest paid to childhood issues.

These shifts in public policy are recent, however, and their effectiveness – and above all implementation in practice – will have to be assessed over a longer timeframe. For as the Defender of Rights' work clearly shows, actual rights seldom live up to the stated rights.

Accordingly, protection against all forms of violence – family-related violence, violence at school and other forms of institutional violence in particular – is not yet fully guaranteed.

The Defender of Rights is also dismayed to see no provision in the current reform of the Ordinance of 2 February 1945 on juvenile delinquency for setting a minimum age of criminal responsibility.

Childhood poverty has not gone down overall. It has even risen among the most disadvantaged, as the COVID-19 health crisis has unfortunately shown – all those who live in precarious housing, slums, squats or on the street (see Appendix IV).

Similarly, social inequalities have worsened, right from early childhood, as have disparities in access to rights in some French overseas territories, Mayotte and French Guiana in particular, in terms of child protection and implementation of the fundamental rights to education and health.

More broadly, application of the provisions under Article 2 of the UNCRC (requiring the State to take all appropriate measures to combat discrimination) is proving a challenge, as regards access to education, leisure, culture or the risks associated with the development of digital technology.

The Defender of Rights would also like to draw the Committee's attention to certain subjects of particular concern, such as law enforcement's compliance with ethical rules in the presence of children, who may be direct or indirect victims of police interventions, or the rights abuses suffered by French children held in conflict zones in Iraq and Syria.

As such, there is still a long way to go in ensuring that the rights of the child are known, understood and respected by everyone, in all circumstances, promoted by the competent authorities and, ultimately, that they become truly effective for all children.

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A. General measures of implementation

Legislation and direct applicability of the UNCRC: the latter is still very limited and remedies available under the third Optional Protocol are not widely known (CO 8)

1. Although, following on from the supreme courts – the Council of State and Court of Cassation – the Constitutional Council has also just enshrined protection of the best interests of the child as a constitutional requirement,¹ the direct applicability of several of the Convention's provisions is still pending since France's last periodic report. Out of the 54 articles of the Convention, the strength of which lies in the possibility of individuals directly relying on it, only 6² are subject to a consensus between the Council of State and Court of Cassation as to their direct effect. The State contends that lawyers seldom cite the pleas set out in the UNCRC to justify the lack of evaluation of direct effect by the supreme courts.³
2. More than four years after France's ratification of the 3rd Optional Protocol to the Convention on the Rights of the Child on a communications procedure,⁴ the Defender of Rights finds that this judicial remedy has only been used in three cases, one having been ruled inadmissible by the Committee,⁵ three still pending before said Committee.⁶ The reason is undoubtedly that individuals, legal professionals and especially children themselves are unaware of such a possibility. In this regard, the Defender of Rights points out that ratification of this 3rd protocol has not been subject to any communication on the part of the State which, moreover, makes no mention of it in its 2017 and 2018 reports on the follow-up of the Committee on the Rights of the Child's recommendations.⁷

How does the State intend to effectively promote the judicial remedies available through the 3rd Optional Protocol among the professionals concerned and children themselves?

Comprehensive strategies: the need for a comprehensive childhood policy (CO 10)

3. Since 2016, an array of national strategies and plans for prevention and mobilisation has been rolled out on different themes (including support for parenting, combatting poverty, combatting violence against children, child protection and health). However, a policy that considers the whole child and the interdependence of his or her rights is yet to be properly defined and implemented, even if some plans – such as the child protection strategy – do include an interministerial coordination target. For children, all

¹ Decision 2018-768 Preliminary ruling on the issue of constitutionality (QPC) of 21 March 2019

² Art. 1, 3, 7, 9, 12, 16 of the UNCRC

³ http://www.hcfea.fr/IMG/pdf/Rapport_droits_de_l_enfant_HCFEA_2017-3.pdf

⁴ Decree No. 2016-500 of 22 April 2016 bears on publication of the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, adopted in New York on 19 December 2011, signed by France on 20 November 2014. This protocol introduces an individual complaint procedure authorising a child, or one of his or her representatives, to submit individual communications to the Committee, within one year after the exhaustion of domestic remedies.

⁵ CRC/C/77/D/10/2017

⁶ 77/2019, 79/2019, 105/2019

⁷ http://www.hcfea.fr/IMG/pdf/Rapport_droits_de_l_enfant_HCFEA_2017-3.pdf

too often their situation is still addressed through the lens of the “problems” they encounter, responses to which are sector-specific and fragmented. The Defender of Rights finds that the sheer number of such strategies leads to compartmentalised public policymaking and institutional action on child issues, which entrenches a “silo-based” approach to working. Moreover, children are hardly ever consulted during the definition of public policies concerning them, and when they are, their opinion is considered incidental. Budgets allocated to child issues are split between ministerial departments and between the central and local government levels, with major local disparities for such decentralised public policies as child protection. This all means that there is no consolidated overview of the financial resources and requirements for fulfilling children’s rights, which is preventing a meaningful assessment of the impact public policies are having.

What national and local measures does the State intend to take to enhance the clarity and effectiveness of child policy, and how does it intend to guarantee the allocation of adequate resources for conducting public policies in favour of children – ensuring a level playing field across Mainland and Overseas France?

Coordination: the need to clarify the mandate of the coordinating body (CO 11)

4. Within the High Council for Family, Childhood and the Elderly (HCFEA),⁸ a consultative body attached to the Prime Minister, the Specialist Council for Childhood and Adolescence’s missions include “making recommendations on the key public policy objectives”, not least as regards France’s international commitments, including those under the UNCRC. On that note, in 2017,⁹ the Council introduced into its work programme an objective for the regular follow-up of the implementation of the Committee on the Rights of the Child’s recommendations. With that in mind it calls on the Ministry for Solidarity and Health, particularly the General Directorate for Social Cohesion (DGCS), which is tasked with the interministerial coordination of the collection and forwarding to the HCFEA of the necessary information for performing this mission. Despite these efforts, the annual report on the rights of the child still focuses primarily on the themes it has chosen or arising out of a ministerial referral. Notwithstanding the quality of its work and its commendable dedication, the Council for Childhood and Adolescence is thus unable to play a coordinating role regarding the State’s central authorities, or between the central and local government levels – a role with which, incidentally, neither the law nor the decree¹⁰ has expressly vested it.

How does the State intend to improve and harmonise the coordination at interministerial level and between the central and local government levels of policies bearing on the rights of the child?

⁸ Founded by Act No. 2015-1776 of 28 December 2015 on society’s adaptation to ageing and installed on 16 December 2016

⁹ http://www.hcfea.fr/IMG/pdf/Programme_de_travail_HCFEA_2017_Enfance_DEF-docx.pdf

¹⁰ Decree 2016-1441 of 25 October 2016 on the composition and functioning of the High Council for Family, Childhood and the Elderly

Data collection: capitalise on progress made (CO 16)

5. To date, France still does not have a national centralised system for collecting and analysing data broken down across all areas of the Convention, with each administrative authority responsible for collecting data coming under its remit. The Defender of Rights has frequently found a lack of data in some areas concerning children's rights.¹¹ This prevents the State from duly defining, conducting or adapting its public policies.
6. Specifically in terms of child protection, the Act of 16 March 2016 has strengthened the mechanism for forwarding data to the National Child Protection Observatory (ONPE), which is committed to improving knowledge in this area. Data does exist, but it is not subject to sufficient analysis or distributed as well as it could be.
7. The plan for combatting violence against children¹² prioritises the detection of violence, particularly through an annual statistical survey and the publication of consolidated data on family-related child deaths. It could therefore be a means of improving data collection and distribution.
8. Today, the Defender of Rights considers that all of the discussions prior to setting up an effective data collection system on child policy have been held, and calls for this now to be put into effect. Several High-Level State Consultative Councils have held discussions on this subject and produced recommendations with a view to obtaining data that is more clearly focused on children's development and living conditions, in all their dimensions, and respect of their rights (HCFEA), or to setting up an observatory and data portal on child health along with the regular publication of summaries on this subject (High Council for Public Health/HCSF).¹³

What specific measures does the State intend to take to improve its data collection and analysis system so as to help craft a comprehensive child-friendly policy?

Independent monitoring mechanism: the need to strengthen its resources so as to increase its visibility (CO 18)

9. The survey on access to rights,¹⁴ which the Defender of Rights conducted among the general population in 2016, reveals that a mere 2% of respondents had heard of the Defender of Rights and Ombudsperson for Children, as an institution able to protect children in France.
10. Over the past few years, the Defender of Rights has been going to great lengths to promote and communicate among professionals, the general public and children themselves to advance knowledge of the rights of the child and its own visibility, which is paramount to improving access to rights for all children.
11. At the same time, activities to defend children's rights have continued to develop, with the number of referrals processed as an objective indicator – posting a nearly 30% rise between 2015 and 2019. Moreover, the Defender of Rights has taken up several serious

¹¹ Concerning violence against children, child protection, unaccompanied minors, children with disabilities, adoption or children and their legal testimony

¹² Plan to combat violence against children, adopted on 21 November 2019

¹³ Public studies and data with a clearer focus on children, 2018-2019, HCFEA

¹⁴ <https://www.defenseurdesdroits.fr/fr/etudes-et-recherches/2017/05/enquete-sur-laces-aux-droits-volume-4-place-et-defense-des-droits-de>

situations concerning child protection on an own-initiative basis, which has led to general reports being published. Forms of action have also diversified, not least with judicial observations, whether initiated or requested by the courts, on the rise (19 were produced in 2019 compared with 10 in 2018).

12. More generally, the Defender of Rights has upheld and stepped up its ambitions concerning children's rights, with the creation in 2017 of a new system for following up the State's implementation of the Committee's concluding observations, involving the whole of the institution and which includes gathering children's views on the fulfilment of their rights. It should be noted that the number of referrals submitted by children has changed little over the years, the rate holding steady between 10 and 13% since 2016, and that, furthermore, referrals tend to be made by socio-economically advantaged families¹⁵. In addition, the Defender of Rights has made regular efforts to raise its profile in terms of its "rights of the child" mission with respect to Parliament. Between 2016 and 2019, the Defender of Rights and its deputy, the Ombudsperson for Children, were heard some twenty times by rapporteurs of missions, bills or legislative proposals concerning children. As many opinions to Parliament on children's rights have been submitted, informing the final drafting of texts and helping to remove a number of barriers to access to rights. Nevertheless, the Defender of Rights would like to be consulted more often by Government¹⁶ ahead of bills bearing on or affecting the rights of the child.
13. This increase in activity must contend with the institution's unchanging resources and workforce since it was founded, however – despite its extended powers and the steady rise in referrals. The result is that it is increasingly ill-equipped to fulfil its missions – not least as far as its mandate to protect and promote the rights of the child is concerned.

Does the State intend to empower the Defender of Rights with additional resources, to enable it to fully carry out its missions defending and promoting the rights of the child, especially in terms of monitoring the Convention and participation of children?

Dissemination, awareness-raising and training: persisting unfamiliarity with children's rights (CO 20)

14. According to the Defender of Rights' aforementioned survey, 52% of respondents are able to cite at least one children's right, with no prompting, the most commonly mentioned rights being the right to education and the right to be protected from abuse. The survey shows a high correlation between knowledge of one or more children's rights and efforts to speak out where one of them is violated. On average, one in two people try to come forward when they have witnessed a situation where other children's rights are not respected. What is more, the consultation held in 2019 among 2,200 vulnerable children revealed that 7 out of 10 children did not know their rights.
15. The Defender of Rights' promotion, awareness-raising, training and communication activities are therefore vital. It particularly conducts such activities through the JADE programme (which stands for Young Ambassadors of Children's Rights and Equality), which sees some one hundred duly trained civic service volunteers get involved in raising

¹⁵ 10% in 2016 versus 13.4% in 2018

¹⁶ Art. 32 Organic Act No. 2011-333 of 29 March 2011 on the Defender of Rights

the awareness of more than 60,000 children about their rights every year. This programme only covers fifteen or so regions or *départements* as it does not have the resources to extend further.

16. Despite the Defender of Rights' repeated recommendations, initial training and continuing professional development for all those who work for or with children still do not include dedicated training modules in the rights of the child, particularly the right to express his or her views and be heard.
17. The children consulted in 2019 suggest, in addition to the organisation of awareness-raising campaigns, devoting more lesson time to teaching about the rights of the child and holding more youth debates and initiatives through testimonies so as to talk about the rights of the child at school. They also recommend developing education in the law and rights in early childhood, so as to aid understanding of others, combat discrimination and help everyone to integrate into society.

When and how does the State intend to include the rights of the child in the training curricula of all those working for or with children?

What action is it considering taking to improve knowledge of the UNCRC among the general public and children themselves? Is the State considering assessing the effectiveness of measures taken and the current state of this knowledge?

B. General Principles

Non-discrimination (CO 24)

The risks of discrimination amid the development of digital technology

18. The Defender of Rights is observing the emergence of new concerns amid the digitisation of procedures and the development of new technologies and potentially discriminatory algorithms. The discrimination and rights abuses that can arise in this regard also concern children and are not being sufficiently taken on board by the public authorities.
19. For example, the Defender of Rights received a referral about the implementation of the procedure for allocating higher education places¹⁷ (called Parcoursup), introduced by the Act of 8 March 2018¹⁸ on the academic guidance and success of students. The Ministry of Higher Education has published information bearing on the characteristics and functioning of the national algorithm used in Parcoursup, but this is not the case for the "local algorithms" used within higher education institutions which, pursuant to the principle of the secrecy of jury deliberations, are an exception to the transparency principle concerning the algorithms used by the authorities in individual decision-making. Furthermore, the possibility of using the high school of origin criterion to decide between applicants based on the school they attended can lead to a discriminatory practice if students end up being treated differently and, in some cases, excluded, on such grounds,

¹⁷ Decision 2019-021 of 18 January 2019

¹⁸ Act No. 2018-166 of 8 March 2018

in light of the geographic area where their school is located. Following a recommendation made by the Defender of Rights, the Ministry of Higher Education decided, for 2019, to anonymise applications in some cases, whilst retaining the indication of the college of origin. The Constitutional Council¹⁹ recently adopted the same stance as the Defender of Rights.

What measures is the State intending to take to guarantee compliance with the non-discrimination principle in the allocation procedure via the Parcoursup platform?

Discrimination in terms of the right to leisure and culture

20. Many of the children consulted by the Defender of Rights chose to debate the right to leisure, an interest shared with the children and young people that the JADE ambassadors came across²⁰ and 56% of whom, in 2018, chose to address discrimination in access to sport and leisure.

Discrimination on the basis of disability in playing sport and access to leisure

21. The Defender of Rights is commonly referred cases where a disabled child is not allowed to register or participate in a recreational, sports or cultural activity.²¹ It also finds that there is a shortage of adapted facilities and activities for receiving disabled children in good conditions.²² The report of the National Mission "Play schemes and disability" shows that, in December 2018, the capacity for accommodating disabled children, beneficiaries of the disabled child education allowance (AEEH), on play schemes was a seventh of what would have been necessary.²³ According to the French National Family Benefits Fund (CNAF),²⁴ the attendance level of AEEH child beneficiaries accounts for a tiny 0.28% of total attendance at play schemes.

22. These difficulties are often tied in with a lack of staff training, even though the training programme for sports leaders must include a module on sport for people with disabilities.²⁵ This training is often optional and not uniformly administered, for want of regulatory measures clarifying its content. The same difficulties exist in terms of access to school activities outside of lesson time and extracurricular activities, owing to a lack of funds, fears over the child's safety, lack of qualified staff and alleged incompatibility of the disability with the activities organised.

What regulatory mechanisms does the Government intend to implement to ensure equal access to sport, leisure and culture for all children?

¹⁹ Decision no. 2020-834 Preliminary ruling on the issue of constitutionality (QPC) of 3 April 2020

²⁰ 59,911 children and young people for 2018-2019, Jade Annual Report, 2018-2019, p. 2

²¹ Decision MSP-MLD-MDE-2016-124 of 4 May 2016 on a refusal to register an autistic child in a swimming course and Decision 2018-230 of 12 September 2018 on a mayor's refusal to allow a disabled child to participate in the leisure breaks organised by the municipality

²² DDD report "2005 - 2015: 10 years of action defending the rights of disabled people"

²³ Report of the National Mission "Play schemes and disability", December 2018 <http://www.mission-nationale.fr/wp-content/uploads/2018/12/MISSION-NATIONALE-RAPPORT-FINAL-14-décembre-2018.pdf>

²⁴ CNAF data – AEEH child beneficiaries - 2017

²⁵ Article L211-7 of the French Sports Code

Access to cultural and sports venues is still marred by gender inequalities

23. Despite the existence of public policies aimed at increasing the uptake of sports, cultural and artistic activities among girls, this is still markedly different compared with boys, in terms of choice of speciality, intensity of practice, venue or participation at competitive level – right from a very young age. Community sports facilities are usually designed for sports that appeal more to boys, who make twice as much use than girls of sports halls, skate-parks and other “urban culture” venues.²⁶
24. The same point may be made about community cultural venues open to everyone. From secondary school, when children go from a childcare-based form of leisure (such as play schemes at after-school clubs) to a style of leisure open to the whole community (i.e. that they can do for their own enjoyment), this male-oriented design of cultural venues tends to exclude girls, whose attendance then plummets.²⁷ A gender-based analysis of government expenditure would help pave the way to the creation of cultural and sports venues for girls and boys alike. *The children consulted suggest making access to leisure free for all young people.*

Respect for the views of the child: they do not feel heard (CO 30, a), b)

25. This is the key finding of the children’s consultation that the Defender of Rights held in 2019 with 2,200 children: children do not feel heard, either on an individual or collective level. The vast majority of the 2,200 children consulted were in vulnerable circumstances. 70% of them do not know what their rights are and had never given their views in this respect. All of the children consulted spoke of their need to express their own views and be heard by adults so that the decisions the latter make on their behalf take their needs and best interests as closely into account as possible.

C. Civil rights and freedoms

Right to know and be cared for by parents

Persisting barriers to finding out one’s biological parents (CO 33)

26. Although a good practice guide²⁸ was compiled by the Government in 2016 for the purposes of assisting women considering giving birth confidentially and facilitating the collection of information, no legislative amendment has been made since the Act of 2002.²⁹ Under the right to respect for privacy, the biological mother may object to her identity being revealed, including after her death, which thus deprives her child of any information – even information that does not directly identify the mother.

²⁶ Yves Raibaud, "Une ville faite pour les garçons" [online], CNRS News, published online on 21 March 2014 [consulted on 11 September 2017]. Available at: <https://lejournal.cnrs.fr/billets/une-ville-faite-pour-les-garcons>

²⁷ Intermediate research report "Mixité, Parité, Genre dans les équipements et espaces publics destinés aux loisirs des jeunes", ADES CNRS, 2009-2012, University of Michel de Montaigne Bordeaux 3. <https://tel.archives-ouvertes.fr/tel-01131575/document>

²⁸ http://circulaire.legifrance.gouv.fr/pdf/2016/04/cir_40713.pdf

²⁹ Act No. 2002-93 of 22 January 2002 on access for adopted individuals and wards of the State to information about their biological parents

27. The Defender of Rights does, however, note a shift in the debate towards better consideration of children's right to know where they come from, during the parliamentary discussions on the bioethics bill extending access to assisted reproduction for all women. This bill,³⁰ which could be adopted by the end of 2020, stipulates that individuals conceived through assisted reproduction may, from the age of 18, access non-identifying data about the third-party donor, as well as perhaps his or her identity, subject to the latter having given his or her express consent. The Defender of Rights is in favour of introducing such a mechanism which will give full effect to children's right to know the background to their birth and their family.³¹

Children born through a gestational surrogacy arrangement abroad: guarantee of a right to establishment of a parent-child relationship is proving difficult

28. The European Court of Human Rights (ECHR) has again charged France,³² despite the progress in Court of Cassation case law, on the particular grounds that the possibilities available for establishing a parent-child relationship with regard to the applicants were "hypothetical" and that questions remained over the situation of the children for whom the French courts had delivered a final decision annulling or refusing the registration of birth.

29. Through several judgments, the Court of Cassation has ruled on the issue of registering a child's relationship as regards the biological father and intended parent. Accordingly, it has held that the birth of a child born through a gestational surrogacy arrangement abroad may be registered in France as regards the father, but not as regards the intended mother, since she did not give birth to the child.³³ Choosing a gestational surrogacy arrangement is not incompatible with a decision to adopt, by the partner of the child's father, if the legal conditions for adoption are met and if it is in the child's interests.

30. In a 2019 advisory opinion,³⁴ the ECHR stressed that the lack of recognition of a legal parent-child relationship between the child and the intended parent has a negative impact on several aspects of that child's right to respect for its private life. It gives a reminder that domestic law must provide for mechanisms to enable this, and calls on the French judge to express a view on whether French law satisfies the criteria of effectiveness and expeditiousness as laid down by the Court.

What specific measures is the State considering taking to ensure that children born through a gestational surrogacy arrangement abroad can obtain recognition of a fully legal parent-child relationship?

³⁰ Bioethics bill submitted on Wednesday 24 July 2019, amended by the Senate and forwarded to the Special Commission tasked with considering the bioethics bill. <http://www.assemblee-nationale.fr/15/projets/pl2658.asp>

³¹ Opinion 19-13 of 20 December 2019 on bill no. 63 on bioethics

³² Following the judgments *Mennesson v France* no. 65192/11, Para. 96, ECHR 2014; *Labassee v France*, no. 65941/11, Para. 75, 26 June 2014; *Foulon and Bouvet v France* of 21 July 2016, *Laborie v France* of 19 January 2017

³³ Civ. 1st, 5 July 2017, nos 16-16901, 16-50015, 16-16455, 16-16495, 15-28597 and 16-20052; Also see Civ. 1st, 29 November 2017, no. 16-50061 and 14 March 2018, no.17-50021

³⁴ ECHR, Advisory opinion of 10 April 2019 concerning the recognition in domestic law of a legal parent-child relationship between a child born through a gestational surrogacy arrangement abroad and the intended mother

Privacy protection: concerns over the use of digital technology (CO 37)

31. The GDPR³⁵ has strengthened the protection of children's data by requiring, up to the age of 16, a holder of parental responsibility to consent to the collection and purposes of processing of the child's personal data. France has lowered this age limit to 15 years, and the Act for a Digital Republic of 7 October 2016³⁶ makes provision in Article 40 for a "right to be forgotten" specific to children as well as an expedited procedure for exercising this right and the erasure of problematic data "at the earliest possible opportunity". Although this legislation seems to have taken the specific situation of children into account, the Defender of Rights wonders about how effective this protection measure can truly be for young people given the inadequate information and access arrangements.

How does the State intend to inform children of the "right to be forgotten" and to assess the effectiveness of procedures set up to ensure this is respected?

32. The Defender of Rights wonders how the secure and personalised Digital Health Space,³⁷ which provides each user with access to all of his or her data throughout his or her lifetime, can be reconciled with children's rights, not least as regards access to the medical record and professional secrecy, as guaranteed by the French Civil Code and Public Health Code.
33. The Defender of Rights has been referred cases about children attending sixth-form colleges that have installed a facial recognition-based system for controlling student access. It shares the opinion of the French Data Protection Authority (CNIL),³⁸ that setting up such a system solely for the purposes of ensuring smooth, secure access to sixth-form colleges did not appear necessary or proportionate to achieve these aims, reiterating that biometric data processing is particularly sensitive, especially when it bears on children. The Administrative Court³⁹ annulled the Regional Council's deliberation on plans to trial such a system.
34. The Defender of Rights is concerned about the emerging phenomenon of children, sometimes from a very young age, being exposed by their parents to the Internet or social media. This raises the question of respect for children's privacy, of their image rights and of their consent to the posting of their image. One association reached out to the Defender of Rights about the practice of "unboxing", in which parents film their children unpacking toys. Although the children are not directly paid for these activities, they are sponsored and, the more times the video is viewed, the more income it

³⁵ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data

³⁶ Art. 63 of Act No. 201-1321 of 7 October 2016 for a Digital Republic: <https://www.legifrance.gouv.fr/eli/loi/2016/10/7/ECF11524250L/jo>

³⁷ Creation by the Act on the organisation and reform of our health service from birth, for each user, of a digital health space

³⁸ <https://www.cnil.fr/fr/experimentation-de-la-reconnaissance-faciale-dans-deux-lycees-la-cnil-precise-sa-position>

³⁹ <https://www.dalloz-actualite.fr/flash/annulation-d-un-dispositif-experimental-de-reconnaissance-faciale-dans-deux-lycees#.XonhT0I7nIU>

generates for the family. The Defender of Rights points out⁴⁰ that such income could lead to these activities being compared to work (regular service, income managed by the parents). The current regulations concerning child performers do not appear adapted to govern this type of activity. During a parliamentary hearing, the Defender of Rights expressed its concern over the lack of regulation of these activities practised solely by children. This parliamentary work gave rise to a legislative proposal of 17 December 2019 on regulation of the commercial use of images of children under 16 years of age online, which is currently under parliamentary review.⁴¹

Is the State intending to update the national legislation to protect the activities of children online, especially when these generate income?

35. Regarding unaccompanied minors, the creation of a national biometric file,⁴² which is considered consistent with the Constitution in a Constitutional Council decision dated 26 July 2019,⁴³ is, in the Defender of Rights' view, starkly at odds with a child's best interests and children's equal access to the child protection system. Their personal data is recorded in the age assessment support file and retained for 12 to 18 months. Where individuals are assessed as having reached adulthood by the *départements* in charge of assessing their age and unaccompanied status, their data is systematically transferred to the main file for managing foreign nationals, called *Application de gestion des dossiers des ressortissants étrangers en France* (AGDREF), for their situation to be processed and their right to reside assessed. This may culminate in an expulsion order or immigration detention – even before the judicial authority has ruled on the individual's alleged minor status.

Is the State considering appointing a "guardian" as soon as individuals claiming to be minors come before the child protection services, so as to guarantee the consideration of the best interests of these children – not least in terms of protection of their privacy?

Access to appropriate information: take specific measures to provide genuine protection for the most vulnerable children (CO 39 a)

36. The Act of 20 December 2016⁴⁴ has removed commercials from public television youth programmes, aimed primarily at children under 12 years of age and which now only contain generic messages for goods and services related to child health and development. However, these provisions are limited to public television channels and do not apply to all media, especially those broadcast online and through apps on mobile devices.

⁴⁰ Case currently being examined

⁴¹ Text adopted by the National Assembly: legislative proposal no. 403 of 12 February 2020, under review by the Senate

⁴² Decree no. 2019-57 of 30 January 2019 *on the procedure for assessing the age of individuals claiming to be minors and temporarily or permanently deprived of the protection of their family and authorising the creation of personal data processing concerning said individuals*

⁴³ Decision no. 2019-797 Preliminary ruling on the issue of constitutionality (QPC) of 26 July 2019

⁴⁴ Act No. 2016-1771 of 20 December 2016 on the removal of commercials from public television youth programmes

37. According to the most recent surveys available, 18% of adolescents are overweight and 5.2% obese.⁴⁵ In the last years of both infant and junior school, obesity rates are 4.5 times higher among working-class children than among children whose parents are managers. At 14-15 years of age, 24% of working-class children are overweight and 8% are obese, compared with 12% and 3% of managers' children. The National Health Strategy 2018-2022⁴⁶ underscores the need, over the coming years, to "*limit the influence of food marketing and advertising on children by regulating these and providing a framework for the promotion of brands associated with foods of little nutritional value*". To date, there has been no specific measure putting this goal into practice.

What measures does the State intend to take to effectively protect children from accessing inappropriate content, particularly food marketing or advertising broadcast by various digital media outlets?

D. Violence against children

Torture and other cruel, inhuman or degrading treatment or punishment (CO 41)

38. On 28 February 2019, the ECHR charged France⁴⁷ for subjecting a 12 year-old unaccompanied minor to "degrading treatment", during the several months he spent in the Calais Jungle shantytown, "*in an environment totally unsuited to his status as a child, whether in terms of safety, housing, hygiene or access to food and care, and in unacceptably precarious conditions in view of his young age*". The ECHR issued France with a very firm reminder of the obligation to protect unaccompanied minors, whose situation of extreme vulnerability must take precedence over their foreign national status. The ECHR thus ordered the French authorities to pay compensation for their failings in deploying appropriate and sufficient measures for identifying and protecting minors. To date, the situation of unaccompanied minors remains a concern – there are many of them in camps in particular and they do not benefit from any suitable care arrangement.

What measures does the State intend to take with regard to unaccompanied minors to follow up on the Khan v France judgment and prevent any similar abuse to the one found by the Court?

Freedom of the child from all forms of violence

The reality of institutional violence (CO 43)

39. The Acts of 14 March⁴⁸ and 14 April 2016⁴⁹ have strengthened the existing mechanisms for preventing and combatting violence in institutions. Two interministerial plans to

⁴⁵ Report of the French Court of Auditors "La prévention et la prise en charge de l'obésité", November 2019

⁴⁶ Decree no. 2017-1866 of 29 December 2017 defining the National Health Strategy for the 2018-2022 period

⁴⁷ Khan v France case of 28 February 2019

⁴⁸ Act No. 2016-297 of 14 March 2016 on child protection, Art. 4

⁴⁹ Act No. 2016-457 of 14 April 2016 on the notification of the administration by the judicial authority and on protection of minors

prevent and counter violence against children (2017-2019 and 2019-2022⁵⁰) also demonstrate the State's commitment to protecting each child in all places and in all contexts; the most recent one includes violence in institutions.

40. Despite these recent efforts, the Defender of Rights receives referrals about a growing number of situations⁵¹ in which it finds that children suffer institutional violence, especially in the school setting, in social or medico-social settings and in hospitals. It draws attention to the fact that public institutions – through their inappropriate response, lack of action or response or organisational or operational failings – do not afford sufficient consideration to the needs and best interests of children, which can thus lead to actual violence against them. *Some of the children consulted, entrusted to child welfare services, speak of a continuum of violence, beaten by their family, sent to a home where they will also be mistreated, then become victims of bullying at school, since they are placed in a home and are not protected from these forms of violence. They ask for a substantive and tangible right to protection.*
41. Although there have been mechanisms in place for a number of years now for ensuring the quality of care, welfare and respect for the dignity of children accommodated in social and medico-social establishments, they are still having little impact. The administrative inspections or assessments provided for under the law do not provide the necessary guarantees of independence, impartiality and, in the absence of frameworks of reference, quality.⁵² *The children consulted brought this up by suggesting that inspections be carried out over several days within foster families, as they claim to feel manipulated by the families during the child welfare officers' visits, which are not considered to last long enough.*

What measures and resources is the State considering putting in place to guarantee the safety and respect for the rights of children within public institutions?

Treatment of minors during law enforcement operations

42. The Defender of Rights receives regular referrals about situations where law enforcement does not comply with ethical rules in the presence of children, who may be direct or indirect victims of police interventions. In 2018-2019, the question of police operations in the school setting arose particularly against the backdrop of sixth-form college protests. The Defender of Rights has received referrals about law enforcement operations near or within high schools, with some minors claiming to have been injured during these or roughly handled with no respect for their rights. It also took up an own-initiative referral following the online posting of a video concerning the conditions in which high school students were being stopped by police officers near their establishment. The video showed several students kneeling on the ground (some with their hands behind their head, others kneeling opposite a wall, hands behind their back). All of these cases raise the question of respect for the physical and mental integrity of children near or within their school. They also raise the question of respect for children's freedom to protest and call for a review of law enforcement techniques in their presence. The Defender of Rights advocates for the police to consider the best interests of the child when choosing their operational tactics. It also calls for greater vigilance to be shown in

⁵⁰ Plan to combat violence against children, published on 21 November 2019

⁵¹ Annual report on the rights of the child 2019, "Childhood and violence: the part played by public institutions"

⁵² Ibid.

implementing their general obligation regarding the proportionate use of force and in ensuring that the necessary assistance is provided to any casualties.⁵³

What measures does the State intend to take to ensure compliance with the security forces' code of ethical conduct – particularly in the presence of children?

43. On the subject of deportations of irregular foreign nationals by air, the Defender of Rights' attention has been drawn to law enforcement's failure to consider the best interests of children witnessing such measures concerning their parents, who are taken to the aircraft in a horizontal position, handcuffed and with Velcro straps around their legs.

Does the State intend to adopt an instruction on the precautions to take during the enforcement of an expulsion order in the presence of children?

44. The Defender of Rights has been referred several complaints revealing an alarming rise in the number of searches conducted in the presence of children, particularly amid the state of emergency declared in France between 2015 and 2017, following the terror attacks. These referrals report searches conducted in the middle of the night with no precautions having been taken as regards children and impacting the latter's health.⁵⁴

Does the State intend to include a module in police forces' initial training and continuing professional development on the specific measures to take to respect children's rights before and during operations?

Corporal punishment: securing its prohibition in the French Education Code (CO 44)

45. With the promulgation of the Act of 10 July 2019⁵⁵ on the prohibition of ordinary disciplinary violence, France became the 56th country to prohibit ordinary disciplinary violence. Article 371-1 of the French Civil code thus stipulates that parental authority shall be exercised without physical or psychological violence. On the other hand, despite the Defender of Rights' recommendation, the prohibition to use corporal punishment towards children has not been incorporated into the French Education Code or Social Action and Family Code.
46. The Defender of Rights received a referral about the situation of children in an infant school complaining of violent behaviour on the part of their headmistress. Although children and professionals working in the school had spoken out about this on many occasions, the headmistress was only suspended by her supervisory authority after several months, after being placed under judicial supervision. She was taken to court,

⁵³ Decision 2020-131

⁵⁴ Decision No. 2016-069

⁵⁵ Act 2019-74 of 10 July 2019

and in her defence before the Court of Cassation,⁵⁶ cited a teacher's "right to punish" her pupils. At present, only a ministerial instruction provides for the inclusion of the prohibition of violence in schools' rules of procedure.⁵⁷

What provisions does the State intend to lay down to guide professionals in guaranteeing children an education that is free from violence? Does the State intend to incorporate the prohibition of corporal punishment in the French Education Code?

Harmful practices towards intersex children: towards application of a precautionary principle by professionals (CO 48 b)

47. The Defender of Rights notes a relative improvement in practices, where treatment or operations on children presenting a variation in sexual development are no longer routine, especially in the units of the Medico-Surgical reference centre for Rare Developmental and Differentiation Disorders. That said, it is still concerned about the performance of surgical operations even though the condition is not life-threatening. These are apparently carried out with the parents' consent, for therapeutic purposes, to help the child to integrate into the family and avoid giving it a complex and prevent potential stigmatisation. Whilst such aims might appear legitimate in principle, it is important to remember that operations practised on intersex children can be irreversible and take a heavy lifelong toll on their physical and mental health. Early surgery may entail subjecting the child's body to considerable medicalisation, often requiring multiple invasive treatments and/or surgery throughout childhood, depending on the child's growth and puberty.⁵⁸
48. In the context of the revision of the bioethics legislation,⁵⁹ the lawmaker is considering introducing new measures aimed at improving the care provided to intersex children, which should improve the consideration given to their best interests. However, it is regrettable that the precautionary principle is not expressly set out in the text. This would allow for the more systematic possibility of delaying operations, until the children themselves are able to give their informed consent, unless their life is in danger.

What measures does the State intend to take to ensure that the precautionary principle guides the specialist multidisciplinary medical teams in the detailed, balanced and evidence-based assessment of the situation and best interests of the child? How does it intend to train professionals in complying with this precautionary principle?

⁵⁶ Decision of the Defender of Rights 2017-120 (Observations before the Court of Cassation on the right to punish – violence of an infant school headmistress towards her pupils)

⁵⁷ Opinion of the Defender of Rights No. 18-28 of 19 November 2018

⁵⁸ Opinion No.17-04 of 20 February 2017, Defender of Rights

⁵⁹<https://solidarites-sante.gouv.fr/grands-dossiers/bioethique/les-evolutions-proposees-par-le-projet-de-loi/article/loi-de-bioethique-les-etapes-de-la-revision>

E. Family environment and alternative care, a bolstered legal framework that is still not implemented in full

Family environment (CO 50 c)

49. The Act of 14 March 2016 on child protection⁶⁰ has improved and supplemented the mechanisms provided for under the 2007 Act, many of which are still not fully operational, by making the child's needs and rights the cornerstone of the child protection system. A consensus process⁶¹ was carried out in connection with its implementation, on the fundamental needs of children under child protection arrangements, which identified a universal "meta-need": the need for security. The National Child Protection and Prevention Strategy 2019-2022⁶² has bolstered these mechanisms.

Prevention in child protection: measures that are not fully materialising in practice

50. Regarding prevention, the Act of 2007 made provision for a systematic prenatal consultation, which the 2016 Act made optional, only for it to become compulsory again in the National Child Protection and Prevention Strategy 2019-2022. Whilst this latest development is commendable, the erratic nature of such provisions most certainly is not, as it is proving a barrier to a fully effective, meaningful and sustainable prevention policy.
51. Although the Act of 14 March 2016 underlines the existence and role of *Département*-level Child Protection Observatories (ODPE), three years later only three-quarters of *départements* were covered by this crucial mechanism, which is struggling to fulfil its missions.⁶³ Furthermore, only 12 *départements* had taken on board the duties of monitoring the training of professionals now conferred upon them. The National Child Protection and Prevention Strategy is aiming for each *département* to have a fully operational ODPE by 2022.
52. The aforementioned 2016 Act also provides for the preparation, in each *département* and under the auspices of the *département*-level Council President, of an agreement between the heads of the different institutions and associations called to set up prevention measures for children and their families. And yet, by 2018, according to a survey,⁶⁴ this agreement had only been signed in 12% of *départements*.
53. This Act also provides for the nomination of a "child protection medical correspondent" in each *département*, the main stakeholder for coordinating early action between services. The aforementioned survey found that only 56% of *départements* had appointed one.⁶⁵ What is more, although recommended by the

⁶⁰ Act No. 2016-297 of 14 March 2016

⁶¹ Report following the consensus process on fundamental needs, submitted by Dr Marie-Paule Martin-Blachais to Laurence Rossignol, Minister for Families, Children and Women's Rights, 28 February 2017

⁶² https://solidariteessante.gouv.fr/IMG/pdf/dossier_de_presse__strategie_nationale_de_prevention_et_protection_de_l_enfance_vf.pdf

⁶³ ONPE, Assessment on the setup of *Département*-level child protection observatories, News note, January 2019

⁶⁴ Summary of the findings of the survey by the General Directorate for Social Cohesion (DGCS) and National Association of Health and Social Action Directors (ANDASS) on "the assessment of the implementation of the mechanisms set up or strengthened by the Act of 14 March 2016 on child protection", overseen by the National Council on Child Protection (CNPE) among *Département*-level Councils, May 2018

⁶⁵ Ibid.

first interministerial plan on violence against children,⁶⁶ a child protection correspondent does not seem to have been appointed in all hospitals yet because there are no binding provisions in this regard.

54. The Defender of Rights would also like to draw attention to the fact that, in a 4 June 2020 judgment,⁶⁷ the European Court of Human Rights charged France with the protection system's failure to protect a girl who suffered severe abuse at the hands of her parents, which eventually led to her death. The Court cited violation of Article 3 of the European Convention on Human Rights, which prohibits torture and inhuman or degrading treatment or punishment, and requires the State to protect children from abuse, in light of their particular vulnerability. The Court also identified major institutional malfunctioning, which continues to be observed in certain situations submitted to the Defender of Rights, particularly with respect to the silo-based working methods of the various child protection stakeholders, compartmentalised interventions and lack of appropriate consideration of children's views.

Coordination efforts must be stepped up, at national and local level alike (CO 50 b)

55. Through the situations it is referred, the Defender of Rights frequently observes a lack of coordination and communication between the different local child protection stakeholders, as well as a lack of dialogue between the different services, which is detrimental to the continuity of support and care provided to children. And yet provision has been made for various tools and mechanisms particularly to prevent and detect at-risk situations as early as possible and organise coordinated and concerted action for the sake of greater effectiveness (plan for the child, assessment frameworks, summary meetings, etc.). These are proving difficult to put into practice, however, and professionals are struggling to get to grips with them. Compartmentalised public policy-making and approaches in the way child protection institutions work – which lead to interruptions in the children's care and pathways – are one of the main barriers to the fulfilment of children's rights and the primary consideration of their best interests.
56. One of the focuses of the Act of 14 March 2016 concerns the coordination of the different child protection stakeholders, with the creation of a National Council on Child Protection (CNPE)⁶⁸ chaired by the Minister for Solidarity and Health and whose members are representatives of the State, the *départements* and the non-profit sector. Four years later however, this body has not fully succeeded in this regard, owing to its operating structure and lack of allocated resources. The strategy led by the Minister of State for Child Protection underlines the State's role and contains a section on clarifying "governance". The French Government audit, evaluation and inspection office for health, social security and social cohesion (IGAS) has been tasked with supporting the formation of a new body from the merger of existing entities in the field of child protection.⁶⁹
57. With a view to supporting the roll-out, by the *Département*-level Councils, of the new Child Protection and Prevention Strategy published in November 2019, the State is in

⁶⁶ Interministerial plan to prevent and counter violence against children, Ministry for Families and Children, March 2017

⁶⁷ Case, *Innocence en danger and Association Enfance et partage v France*, 4 June 2020, ECHR

⁶⁸ Article 1 of Decree No. 2016-1284 of 29 September 2016 implementing Article L. 112-3 of the French Social Action and Family Code and bearing on the missions, members and operational processes of the National Council on Child Protection

⁶⁹ https://solidarites-sante.gouv.fr/IMG/pdf/191126_-_cp_assemblee_pleniere_du_cnpe.pdf

favour of local tripartite contracts (between the prefect, regional health agency and *département*) bearing on 11 fundamental objectives and 15 optional objectives based on a budget of up to €80m in 2020. Thirty *départements* are expected to sign these by 15 October 2020. The Government's pledge to provide funding and in-kind support, through its departments, for the implementation of its child protection policy at local government level is to be commended, but the level of assistance provided falls short of what is necessary to address the *départements'* systemic lack of funds. There is also a risk that the contractualisation procedure further exacerbates existing disparities between *départements*, and therefore inequalities in terms of children and families accessing their rights.

What types of governance regarding child protection does the State intend to set up, and with what operational means of action?

Family reunification: difficulties in the family reunification procedure (CO 52)

58. The Defender of Rights receives regular referrals about a number of difficulties concerning the issuance of visas by the consular authorities in the context of the family reunification procedure. These difficulties above all have to do with the recognition of legal relationship with the family members that the foreign nationals wish to bring to the country. The Defender of Rights commended the adoption, under the Act of 10 September 2018,⁷⁰ of a new provision establishing the possibility for a protected foreign minor to be joined by the whole of his or her family, i.e. parents and their other dependent unmarried minors. It is nevertheless regrettable that this major legislative reform does not make provision for any other amendment to improve the family reunification procedure, which only takes place after the refugee has been issued a residence permit. In reality, this formality can take a long time, especially when the international protection beneficiaries are children, since they are not required to hold a residence permit.

Children deprived of a family environment: a child protection system in urgent need of reform

59. The Act of 14 March 2016 entrusts child welfare services with the mission of ensuring a stable pathway for the child in their care and of adapting the latter's status over the long term. And yet there is a noted lack of continuity and stability in terms of the care places where many children have been placed. This is the case, for example, of changes in "foster families" which, in many situations, are the result of inadequate anticipation and medium- and long-term planning for the child. These lead to interruptions in care due to the foster carer's retirement. Other referrals uncover evidence of changes in foster families on the grounds of the emotional ties developed between these families and the children entrusted. *This need to encourage placements in "foster families" is highlighted by the children consulted. They propose encouraging placements in foster care, which are more conducive to the child's development, whilst maintaining ties with the biological families whenever possible and if this is what is wanted.*

⁷⁰ Act No. 2018-778 of 10 September 2018 for controlled immigration, an effective right to asylum and successful integration

How are the public authorities intending to combat interruptions in children's placements in foster care and to ensure that foster carers' retirements are better anticipated?

60. In terms of assistance with the upbringing of a child in danger, the Defender of Rights finds that many measures ordered by the Family Court have still not been carried out several months after their notification. Accordingly, in one case where the two-and-a-half-year-old child concerned by the proceedings died, the Defender of Rights' inquiry showed that the assistance measure that should have been set up from the child's return to her parents' home following the end of the placement did not begin until several weeks afterwards. The situation is so serious in some areas, with implementation taking longer than six months, that the French Government audit, evaluation and inspection office for health, social security and social cohesion (IGAS) has been referred the case.

How is the State guaranteeing the swiftest possible implementation of assistance with upbringing measures imposed by the Family Court to protect children in danger?

61. The Act of 14 March 2016 makes provision for the organisation of an interview with any young person under care one year before they reach the age of adulthood in order to assess their pathway and consider how best to support them in preparing for independence. A plan to enter adult life must be drawn up with the young person together with the various institutions and bodies to put together a comprehensive response in line with his or her needs. According to the aforementioned survey,⁷¹ only 50% of *départements* hold this preliminary interview, sometimes when the young person reaches 16 years old, and at others with only six or so months to go until they are due to reach the age of adulthood, which does not allow enough time to support them sufficiently in preparing for independence. The Defender of Rights receives regular referrals of *Département*-level Councils' refusals to continue such support once the young people have reached adulthood. The reasons vary between *départements*, but the general trend is that the young adults end up dropping out of the support scheme.⁷² The children consulted suggest that a new age group between childhood and adulthood, between 18 and 26 years of age, be recognised: young adults. They suggest giving young people in this age group the same rights as children, but with greater independence. They recommend systematically rolling out the young adult contract for children in the care of child welfare services, so that both the State's and the young person's efforts invested in preparing for his or her future, through school, do not come to nothing the moment s/he reaches the age of adulthood.

⁷¹ Summary of the findings of the survey by the General Directorate for Social Cohesion (DGCS) and National Association of Health and Social Action Directors (ANDASS) on "the assessment of the implementation of the mechanisms set up or strengthened by the Act of 14 March 2016 on child protection", overseen by the National Council on Child Protection (CNPE) among *Département*-level Councils, May 2018

⁷² According to the Directorate for Research, Studies, Evaluation and Statistics (Drees), young adults accounted for 11.5% of youth in the care of child welfare services in 2013, 11.2% in 2015, and less than 10% in 2017

How is the State going to ensure continuity in the support that départements lend to young adults, both in terms of upbringing and funding?

F. Disability, basic health and welfare

Disability: efforts expected in access to schooling for children with disabilities

62. In view of France's periodic report on the implementation of the CRPD, in 2020 the Defender of Rights submitted details on the situation of children with disabilities (see *Appendix II*). Violation of the principle of non-discrimination towards children with disabilities is the most common one observed by the Defender of Rights. It overwhelmingly concerns schooling and access to leisure. Reasonable adjustments that should be put in place to include these children are not sufficiently carried out. This results in erratic, and in some cases partial, schooling, as well as denied access to play schemes and an inability to come up with solutions that are tailored to the children's needs. There is a glaring lack of training for professionals, teachers, youth leaders and supervisors. A range of ambitious initiatives – the Autism Strategy 2018-2022 among them – as well as the measures taken in 2019 in favour of inclusive schools, are aimed at improving respect for the rights of children with disabilities. They nevertheless require funding and human resources that are proving difficult to unlock.

How does the State intend to step up its efforts to enable children with disabilities to enjoy the same possibilities as other children in society, with respect for their specific situation?

Health and health services (CO 62 a and 64)

63. The National Health Strategy 2018-2022⁷³ makes provision for special attention to be paid to the specific situation of children and adolescents, particularly early and suitable treatment of diseases and risk prevention, which is a positive step forward. The Government has, moreover, endeavoured to develop tools to enhance knowledge of the health determinants of children and adolescents.⁷⁴ Various difficulties remain, however.

Maternal and child welfare protection must be sustained

64. The shortage of human and financial resources and disparities between the various *départements*, particularly in terms of maternal and child welfare protection (PMI), are preventing this national strategy from being fully put into practice. Overall, the health activities of PMI have decreased, especially where vulnerable groups are

⁷³ Decree No. 2017-1866 of 29 December 2017 defining the National Health Strategy for the 2018-2022 period

⁷⁴ Introduction of the new health record on 1 April 2018 (new vaccine recommendations providing for an extension in the obligations, introduction of a new growth curve developed by the institute dedicated to biomedical research and human health (INSERM) and prevention messages); Act No. 2019-180 of 8 March 2019 aimed at improving healthcare for childhood cancers through research, support for family caregivers, training of professionals and the right to be forgotten

concerned, with consultations down by nearly 45% between 1995 and 2016.⁷⁵ And yet it is paramount that PMI remain a universal public service, accessible to all families, both as regards its public health missions and medico-social activities. The parliamentary report published in 2019⁷⁶ draws attention to the “major crisis gripping PMI” and urges a “rescue plan” for it.

How does the State intend to respond to the parliamentary report laying bare the major crisis gripping PMI and with what means?

Failure to comply with hospitalised children’s rights

65. As the Defender of Rights observed in 2015, the failure to comply with the requirement of information for hospitalised children, and nursing staff’s refusals to allow “parental presence”, are still persisting today.
66. The presence of children on adult wards, owing to a lack of legal definition of an age limit in the legislation, is commonly observed. In this regard, the various pieces of legislation governing the reception of children and adolescents on dedicated wards take variable “age limits” into account, which means that practices vary depending on the health facility. The Defender of Rights has been referred several cases concerning 13- or 14-year old children who are hospitalised on adult psychiatry wards, with the most commonly cited explanation to justify such care arrangements being the lack of places on specialist wards. This finding is corroborated by senators⁷⁷ who advise continuing to reopen child psychiatry hospital beds in areas of the country where this appears necessary (25% of hospitalised psychiatry patients are children⁷⁸), so that appropriate provision can be made for crisis situations and continuity of care ensured.
67. Furthermore, the situation regarding child psychiatry in France is alarming, not least because of the shortages of qualified staff or under-staffing, lack of beds and funding. Children require specific care arrangements, which must include appropriate provision as early as possible from infancy right through to young adulthood.⁷⁹

What measures does the State intend to take to address the lack of dedicated places for children within health facilities, particularly in psychiatric care?

68. Despite progress in terms of considering child patients as a whole person whose best interests must be respected, in reality healthcare professionals do not always respect the child’s right to participate in medical decisions concerning them, depending on their degree of maturity, since consent is not required when admitting a child.⁸⁰ The law does not set an age limit and employs vague notions such as “maturity” or “ability

⁷⁵ Report of 14 June 2019 on the implementation of PMI missions “Pour sauver la PMI, agissons maintenant !” - <https://solidarites-sante.gouv.fr/IMG/pdf/2018-102r-pmi.pdf>

⁷⁶ Ibid.

⁷⁷ Information report on the situation of child psychiatry in France, dated 4 April 2017

⁷⁸ 2016 medical demography atlas, published by the French National Medical Council

⁷⁹ Information report on the situation of child psychiatry in France, dated 4 April 2017

⁸⁰ Article L.1111-4 of the Public Health Code

to express one's opinion".⁸¹ Most of the time, only the consent of the holders of parental responsibility is obtained, particularly in psychiatric care, as the healthcare professionals believe that they are not required to consult with the children.⁸²

The barriers to healthcare for children under child protection schemes

69. Through its different complaints⁸³ the Defender of Rights is continuing to observe difficulties in monitoring the health of such children, both upon entering the scheme (assessment, medical history, etc.) and during the placement. Child protection officers tend not to address this issue as they consider it to be the responsibility of healthcare professionals.⁸⁴ The lack of any common policy, compartmentalised approach between stakeholders and disparate professional practices all point to a lack of coordination between the healthcare services and those responsible for monitoring upbringing.
70. Moreover, unlawful healthcare refusals issued to children on account of their status as beneficiaries of universal health protection (Puma) are persisting: 66% of child welfare services (ASE) and 59% of judicial youth protection services (PJJ) admit that certain healthcare professionals are reluctant to treat child Puma beneficiaries.⁸⁵ Those children consulted who are under the care of child welfare services highlight a number of problems related to healthcare (including unsuitable diet, treatment refusals, refusals to allow hospital accompaniment, especially with undocumented children, no vaccinations and late doctor's appointments) and say that they are not equal when it comes to access to healthcare. They suggest not waiting until universal health cover is available to receive the necessary care free of charge, gaining easier access to free medication and being able to consult counsellors where necessary. They recommend making the process simpler and quicker and giving them the right to access their medical records. The child protection services are responsible for monitoring the health of children in their care, and this is a subject that has recently been paid specific attention through the "100% reimbursed" care pathway for children in the care of child welfare services (ASE).⁸⁶ The same applies as regards systematic access to additional universal health cover for children leaving the ASE system.

What tangible outcome has there been following the roll-out of the care pathway for children monitored by child welfare services (ASE)?

⁸¹ "Les droits fondamentaux des mineurs en établissement de santé mentale", Chief Inspector of Places of Deprivation of Liberty (CGLPL), November 2017.

⁸² Summary report "Child and Adolescent Mental Health in Europe", European ENOC network, September 2018

⁸³ Framework decision no. 2017-235 of 24 July 2017

⁸⁴ "L'accès à la santé des enfants confiés au dispositif de la protection de l'enfance", Séverine Euillet, Juliette Halifax, Pierre Moisset & Nadège Séverac, March 2016

⁸⁵ Ibid.

⁸⁶ <https://www.gouvernement.fr/protection-de-l-enfance-la-feuille-de-route-du-gouvernement>, Janvier 2019

Adolescent health: sexual health education is neither fully operational nor effective (CO 66)

71. According to the 2015 survey conducted by the High Council for Gender Equality (HCE) among 3,000 public and private schools,⁸⁷ 25% of respondent schools said they did not carry out sexual health education initiatives. Only 55% of schools who did had included them in subject syllabuses and 64% had not linked these lessons with measures aimed at promoting gender equality. Moreover, classes organised with students on the subject took an overly “health-based” approach to and “heteronormative” view of sexuality. Teaching aids are unsuitable, particularly for the young target group who need a specifically tailored message and method.⁸⁸ And yet, sexual health education helps children to learn about respecting sexual orientations and gender identities and plays a part in combatting gender-based or homophobic prejudices, which can lead to situations of bullying. A 2018 circular⁸⁹ partially addressed these failings, particularly as regards gender equality and sexuality. The new 2019-2022 plan to combat violence against children provides for an assessment of the public sexual health education policy from 2020 to study its impact and, where necessary, improve its content and roll-out in practice.

What is the State’s assessment of the implementation of its public sexual health education policy and its impact on a clearer identification of sexual violence, especially by children themselves?

Standard of living (CO 70)

Make ending child poverty a national priority

72. Although poverty rates among the general population have improved slightly, these are still very high among children and the determining and aggravating factors contributing to child poverty remain unchanged: single-parent or large families, one parent out of work. 300,000 children live in overcrowded housing.⁹⁰ In addition, there are cases of extreme poverty in France characterised by rough-sleeping, living in shantytowns or camps. Often, these situations remain below the radar for want of dedicated and regular census measures. That said, data sources that do exist show that these situations are rising sharply and that the populations in hardship are changing, with poor families with children making up a growing share. On 1 July 2018, out of the 16,090 people in the census of the Interministerial Directorate for Accommodation and Access to Housing (DIHAL) conducted across 497 shantytowns, 4,186 were children, which is around 26% of the population census across the 308 sites for which the information was provided.
73. Duly noting the shortcomings of the 2012-2017 plan, the recent Strategy for Preventing and Combatting Poverty 2018-2022 – initially dedicated to children, before being focused back on the population as a whole – nevertheless, and for the first time, contains a number of measures aimed at tackling childhood poverty from

⁸⁷ High Council for Gender Equality, report on sexual health education, "Répondre aux attentes des jeunes, construire une société d'égalité femmes-hommes", report no. 2016-06-13-SAN-021, 13 June 2016

⁸⁸ Ibid.

⁸⁹ Circular No. 2018-111 of 12 September 2018

⁹⁰ Report of October 2018 on the National Strategy for Preventing and Combatting Poverty

the earliest possible age. It seeks to guarantee children's fundamental rights on a day-to-day basis and, to that end, bears on the forms of extreme poverty affecting children sleeping rough or living in shantytowns, accommodation or overcrowded housing.⁹¹ This strategy relies on a contractual process with the *Département*-level Councils which, in return for committing to ambitious pledges, will be given more resources. That said, details concerning the assessment of this strategy are few to date. A year after its adoption,⁹² on the subject of mixed outreach teams, the State has a contractual agreement with 17 *départements*, in which 50 such teams have been set up to assist and guide families in situations of extreme hardship towards accommodation, healthcare and education and to prevent begging. This would seem to bear on 6,000 children.⁹³ Regarding access to food, in the third quarter of 2019, 37,000 children attending 400 schools had access to school breakfasts, whereas the goal was to serve these to 200,000 children.

What tools does the State have available for assessing this strategy and what is its intended timeframe for carrying out this assessment?

From being poorly housed to evictions: undignified living conditions

74. The Defender of Rights often receives referrals of repeated evictions of families accommodated in precarious housing. Because the State does not sufficiently anticipate these evacuation operations, the problem is merely being shifted to another site in a way that leaves the occupants in even more precarious circumstances by subjecting them to forced "*nomadism*". Several court decisions have afforded greater consideration to the situation of these particularly vulnerable people and to the best interests of the child, thereby following the lead of the European Court of Human Rights,⁹⁴ but these favourable decisions where occupants are concerned are still too "residual" to meaningfully bring an end to evictions, with no appropriate accompanying measures. The Defender of Rights draws attention to a 2012 circular which provides for a social diagnostic study particularly identifying the number of children and if they are in school,⁹⁵ in order to guarantee respect for their fundamental right to education.

⁹¹ The report of October 2018 on the National Strategy for Preventing and Combatting Poverty provides for the following measures: organisation of mixed outreach teams between State departments and child welfare services to identify and assist families with children sleeping rough, the framework of reference for receiving children in accommodation, measures aimed at tackling overcrowding, particularly in rented council housing, measures aimed at preventing unprepared exits from child welfare schemes, which are a major cause of young people reaching the age of adulthood suddenly losing their rights and a roof over their heads,⁹¹ measures aimed at fostering equal opportunities from the earliest age – parenting support, opening of social centres, €1 meals in canteens.

⁹² https://solidarites-sante.gouv.fr/IMG/pdf/dicom_conference_acteurs_pauvrete_2019_bilan.pdf

⁹³ <https://www.gouvernement.fr/conseil-des-ministres/2019-09-11/le-plan-pauvrete-un-an-apres>

⁹⁴ *Yordanova and others v Bulgaria*, no. 25446/06, 24 April 2012 and *ECHR, Winterstein v France*, no. 27013/07, 25 November 2013); *Case Hirtu and others v France*, no. 24720/13, 14 May 2020

⁹⁵ *Ibid*, p. 32

75. Even though legal provision has been made for unconditional reception within an emergency accommodation structure,⁹⁶ in practice this principle is seldom applied not least because of the French Council of State's restrictive case law, which means that emergency accommodation is reserved solely to individuals with a right to reside or in a particularly vulnerable situation. The Defender of Rights is repeatedly pointing out that checking whether the residents have a legal right to stay is not a relevant response to tackling the saturation of this system. What is more, prioritisation criteria are increasingly being employed to deal with this lack of places. These criteria differ from one *département* to the next and change over time. Some *départements* may, for example, reserve access to this system to families with a child aged between 1 and 3 years old. Such practices raise significant concerns as they imply that the need to be given shelter is different depending on a child's age. Lastly, the Defender of Rights feels generally concerned about the rising number of families or young single mothers sleeping rough, particularly with newborn infants, because the emergency accommodation schemes have reached saturation point, forcing them on to the streets.
76. Accommodation in hotels is increasingly being used as a solution, particularly in large urban areas, to supplement and even make up for deficiencies in the schemes dedicated to receiving foreign nationals – asylum seekers especially. The number of overnight stays doubled between 2012 and 2017⁹⁷ with 44% of families spending more than 2 years in hotels – a figure which rises as high as 5 years for 11%.⁹⁸ In addition to the often dire housing conditions (overcrowding, unhealthy conditions, etc.), this short-term response is detrimental to the integration of the families concerned as they are not being adequately supported to enable them to access their rights. A recent survey for the Defender of Rights conducted among adolescents living in hotels in the Parisian region and Tours⁹⁹ show just how restrictive hotel accommodation is for them and how much it deprives them of regarding all aspects of day-to-day life. Constantly being moved from place to place and not being within easy reach of services and facilities prevents them from settling into an area and are likely to interrupt schooling.¹⁰⁰ Living conditions in hotels make it difficult for young people to find their place in the home, deprive them of privacy and mean they are caught in the crossfire of family tensions caused by the many challenges they have to juggle (administrative procedures, budgeting, responsibility for younger siblings, etc.).
77. The children consulted compare the number of empty homes against the number of families and children living on the streets. They suggest that these homes be allocated to these families so that a child is no longer left to sleep alone on the street, which puts them in danger and has negative repercussions on their learning.*

⁹⁶ Article L.345-2-2 of the Social Action and Family Code

⁹⁷ Data from the Annual Performance Report of the Operational Programme Budget (BOP) 177 "Hébergement, parcours vers le logement et insertion des personnes vulnérables", 2017

⁹⁸ Source: Hotel Booking and Accommodation Unit (PHRH) at the Paris emergency community outreach service (Samu social).

⁹⁹ Homeless adolescents. Growing up in a family in a hotel room. Studies and findings of the Defender of Rights, February 2019.

¹⁰⁰ In a decision (no. 2017-091 of 17 March 2017) on a mayor's refusal to enrol children in school because their place of residence is outside the municipality where the school requested in located, the Defender of Rights concludes on discrimination on the basis of place of residence and the particular economic vulnerability of the complainants

What does the State think of the children's suggestion to allocate empty housing to families with children sleeping rough?

G. Education, leisure and cultural activities

Discrimination in access to education is persisting (CO 72 b)

78. The Defender of Rights still receives frequent referrals of municipal teams' discriminatory refusals to enrol children in junior school, based on the particularly vulnerable economic situation of the children and their families, their origin and/or their housing (unstable address, unlawful camping, parents are irregular migrants or no parents in the area). The Defender of Rights commends the provision introduced into Act No. 2019-791 of 26 July 2019 for Schools that build Confidence, which allows the local education authorities to overrule a mayor's refusal where it is unjustified. It is nevertheless concerned about the persisting barriers for some of the most vulnerable categories of children, especially in accessing school activities outside of lesson time, which come exclusively under the municipal remit. *The children consulted suggest, first of all, establishing a simpler and more uniform list of requisite documents for school registration, to enable children living in precarious housing and social hotels to access school more easily and, second, developing youth work mediation to support children arriving in the area.*
79. Furthermore, the Defender of Rights' attention has been drawn to the rise in so-called *ad hoc* schooling schemes, set up outside public educational institutions (premises belonging to the town hall or police, a fire station, etc.) which raises the question of equal treatment, the inclusion of all children in public schooling and equal access to schooling. The same applies for children received in educational centres for the schooling of newly arrived non-French speaking children from homeless families and travellers (CASNAV), which are being rolled out unevenly across local education authorities and leading to unequal schooling conditions and long allocation times that sometimes put the pupils concerned at an unfair disadvantage.¹⁰¹
80. Access to the right to education also implies access to the school canteen, an optional public service for infant and junior schools, but compulsory in secondary schools.¹⁰² Access to canteens is often hampered by discriminatory measures along the lines of reserving access for children with working parents, restricting canteen access to underprivileged children, not implementing the requirement to reasonably adapt layouts for children with disabilities or applying different prices for certain disabled children or on account of their state of health.

¹⁰¹ Study on the schooling of newly arrived non-French speaking children from homeless families and travellers, Defender of Rights, National Higher Institute for Training and Research on Special Needs Education (INSHEA), 2019

¹⁰² Report "A right to the school canteen for all, best interests of the child, equal rights and non-discrimination", 18 June 2019

What tangible measures is the State considering implementing to bring a permanent end to discriminatory refusals concerning access to education?

What measures is the State intending to implement to make the place where the children attend school a decisive criterion with respect to emergency accommodation?

How does the State intend to guarantee access to school canteens for all children?

Equal opportunities and success at school: working towards an end to school segregation? (CO 72 a) and c)

81. Social category and territorial origin are key factors in the interruption of school pathways. According to the 2018 Programme for International Student Assessment (PISA) survey,¹⁰³ France is one of the OECD countries with the strongest link between socio-economic status and academic performance. The Government has taken some measures to address these difficulties. For example, since the start of the 2017/2018 academic year,¹⁰⁴ the number of first year junior school classes in priority education networks (REP+) has gradually been doubled to tackle the difficulties underprivileged children encounter at school. The Act for Schools that build Confidence has lowered the age of compulsory school to three years old, the aim being to foster language learning and make up for certain inequalities, but this must come hand-in-hand with greater adaptation of infant schools to the youngest children, with special attention being paid to children with disabilities.
82. The Defender of Rights also points out that the national procedure for the automated allocation of high school places (called Affelnet) – the transparency of which is encouraged by the definition of precise place allocation criteria by local education authorities – does not contribute effectively to combatting school segregation and a lack of social diversity. Moreover, Affelnet is based on the choice of students and their families, and the lack of information and self-censorship practised by underprivileged families are conducive to the development of inequalities.¹⁰⁵ *This finding is consistent with the view of the children consulted, who suggest setting up a parliamentary fact-finding mission on the causes of exclusion from the right to public education of underprivileged children, in a bid to fill this gap in terms of knowledge and reliable public data. They also call for an overhaul of the guidance system with more alternatives, especially in the event of early school leaving.*

How does the State intend to continue its efforts to assess the most recent systems established to address France's poor showing in terms of equal opportunities and school segregation?

Has the high school place allocation procedure been revised in terms of social and school diversity?

¹⁰³ PISA survey, 2018

¹⁰⁴ Circular no. 2017-090 of 3 May 2017

¹⁰⁵ Annual report on the rights of the child, 2016, Defender of Rights "Fundamental right to education: a school for all, a right for each child", p.74

Bullying at school: the State is strongly rallying to the cause but there are persisting difficulties (CO 72 e)

83. The Defender of Rights receives regular referrals of instances of bullying at school,¹⁰⁶ which show that although this phenomenon is very common across children's lives, educational staff struggle to identify it and often bring an unsuitable, inadequate or delayed response.¹⁰⁷ In recent years, the ministerial departments have developed a range of tools for countering bullying and aids for dealing with it, but some schools do not make use of these. In some study programmes, or for students with disabilities, bullying can be commonplace. All too often, the situation of the child victim does not get better. School heads are, furthermore, reluctant to initiate the protocols provided for by the National Education ministry (organising interviews, implementing appropriate protection measures and monitoring the situation) when criminal complaints have been lodged, even though the two procedures are completely separate and can co-exist.
84. The Act of 3 August 2018,¹⁰⁸ which makes group harassment online a punishable offence, the recent Act for Schools that Build Confidence¹⁰⁹ – which introduced a provision into the French Education Code whereby no pupil may be bullied by other pupils¹¹⁰ – and the adoption of a new plan against bullying at school, announced in August 2019, all demonstrate the public authorities' commitment to cracking down on this phenomenon. But to be effective, these measures must come hand-in-hand with better training for the professionals concerned, the organisation of assessments of the measures rolled out to prevent and manage situations of bullying, awareness-raising among pupils and adequate human and financial resources. *Some of the children consulted say that they are bullied at school because of their status as children placed in alternative care. They suggest organising classroom sessions to help the other students realise how fortunate they are to live with their parents and to explain to them what it is like to be in alternative care and, above all, that children placed in alternative care should not be viewed as young offenders.*

What is the State's assessment of the application of measures aimed at combatting bullying at school and particularly the various protocols available to school heads?

Is the State considering developing its Student Ambassador programme against bullying to help lead an effective fight against this phenomenon?

H. Special protection measures

Asylum-seeking, unaccompanied migrant children and refugee children

Address the detention of migrant children (CO 74 a)

¹⁰⁶ Decision 2017-076

¹⁰⁷ Decision 2020-109

¹⁰⁸ Act No. 2018-703 of 3 August 2018 strengthening the fight against sexual and gender-based violence

¹⁰⁹ Act No. 2019-791 of 26 July 2019 for Schools that Build Confidence

¹¹⁰ Article L.511-3-1 of the French Education Code

85. In 2016, France adopted new legislation¹¹¹ on the detention of foreign nationals pending the execution of a deportation or expulsion order. This now regulates detention of children accompanied by their family, as well as holding in a waiting area, but these options remain possible. Over the past few years, the Defender of Rights has regularly observed sometimes very young children being held in waiting areas when their parents, identified as such, are on French soil and asking for them to join them. The judicial authorities refuse to entrust the children to child welfare services or their parents, which leads to them being detained for an extended period of time, sometimes for 20 days, which is the maximum statutory time-limit.
86. Regarding immigration detention, the new exemption introduced in the final paragraph of Article L.551-1 of the Code for Entry and Residence of Foreigners and Right of Asylum has led to the more systematic placement of children in detention.¹¹²
87. Moreover, in November 2016, the lawmaker extended the scope available to prefects for using immigration detention premises, where conditions are even more unfavourable for families. After a sharp drop in the number of children placed in detention with their family between 2012 and 2016, a consistently high number of children enduring detention is now being observed: 301 in 2017 (which is nearly as much as the numbers in 2012, 2013, 2014 and 2015 put together) then 208 in 2018 and 270 in 2019 – these figures apply to Mainland France only. The situation in Mayotte is particularly alarming, as 1,221 children were in detention there in 2018.¹¹³ Alongside this rise, the detention time is also getting longer.
88. Accordingly, in one of the situations referred to the Defender of Rights, the parents and their children were arrested in the early morning and taken to a detention area under police escort, after a few hours at the police station. They then spent the night at the centre before being removed the next morning and taken to the airport, again under police escort. Far from encouraging alternatives to the detention of children, the measures France is taking in practice are ultimately depriving more and more children of their freedom.
89. In early 2020, the Defender of Rights noted with concern the rise in referrals it was receiving about the placement in detention of young people claiming to be unaccompanied minors, whose age had not been assessed on the grounds that consultation of the “Visabio”¹¹⁴ or “Eurodac”¹¹⁵ files identified previous evidence that they were allegedly of adult age.

What measures does the State intend to take to put paid to the detention of children solely on the grounds of their migrant status?

¹¹¹ Act No. 2016-274 of 7 March 2016

¹¹² Article creating a new exemption whereby, on the grounds of apparently protecting the child, the authorities can place the latter in detention in order to facilitate the execution of the removal measure; said exemption has led to the more systematic placement of children in detention

¹¹³ No 2019 data available for Mayotte

¹¹⁴ The automated processing of personal data, VISABIO, involves the recording of fingerprints of foreign nationals applying for a visa

¹¹⁵ Large-scale information system containing the fingerprints of asylum and subsidiary protection applicants and illegal immigrants on EU territory

Medical examinations to determine age: a practice to be prohibited (CO 74 b)

90. The Defender of Rights continues to despair at the finding that, under the pretext of better regulating this system, the Act of 14 March 2016 has provided for the possibility of conducting “bone x-rays for determining age”. The vagueness of the new Article 388 of the French Civil Code, whilst considered in keeping with the Constitution,¹¹⁶ means that courts are continuing to reach different decisions. This is particularly the case regarding the variable and sometimes restrictive interpretation of the term “valid identity documents”, with some courts deeming a civil status document without a photograph to be inadmissible even where it has been authenticated. And yet assessment of these notions is crucial since the uptake of bone tests to determine age is conditional upon it. In practice, some courts immediately order such an examination, irrespective of the validity of the civil status document furnished, while other courts only make exceptional use of these examinations. The performance of such tests, their interpretation and the places where they are performed vary considerably nationwide. It is vital, if the Government does not wish to permanently abolish the principle of conducting bone x-rays, which would be preferable, to harmonise medical practices, require a second interpretation of results by doctors who are specially trained in this area and to strictly prohibit their performance outside of a Forensic Medicine Unit. It should also be remembered that the child must consent to the examination and their refusal cannot be construed as a confession of adult age.

Insofar as the State were to refuse to abolish the practice of bone x-rays, what measures would it consider adopting to regulate and harmonise their implementation?

Living and reception conditions of refugee children: consider them first and foremost as children and not as migrants (CO 76)

91. The Defender of Rights laments a clear deterioration in the living and reception conditions of refugee children, considered to be in transit, particularly in the camps of Calais, Ouistreham, Paris and Grande-Synthe. These children are bearing the full brunt of the security-focused migrant management policy, with no appropriate protection policies having been developed in their regard.

92. With respect to unaccompanied minors applying for protection, the complaints processed and various other reports reveal highly disparate practices: individuals claiming to be unaccompanied minors are denied an assessment of their age without justification, whether or not they have an identity document, while others are given a meeting to assess their situation, but not shelter, and the waiting times sometimes stretch for several weeks and even months in cases. Some *départements* to which the Ministry of Justice’s national distribution unit refers children call into question the assessment previously made. This strips the assessment of its purpose: to serve as a social support tool. Furthermore, while a young person’s age is being determined – which may take months and even more than a year in some cases – seldom do the children benefit from any schooling. Where their status as a child is finally recognised, they are then often steered towards short, vocational programmes at odds with what

¹¹⁶ Decision no. 2019-778 DC of 21 March 2019

they may wish to do. Some are not schooled as their age on arriving in France is considered too close to adult age. The children consulted suggest formally establishing a "presumption of minority" for unaccompanied minors as well as providing the subsequent emergency care until their child status is officially recognised or otherwise (by the dedicated services). They also ask that the procedure for obtaining French nationality be simplified.

93. The Defender of Rights also observes, through several referrals, that temporary emergency reception or care under child protection schemes following a judicial decision are carried out under particularly precarious conditions, in substandard hotel accommodation, with little in the way of subsistence costs. Supervision in the way of upbringing is often scant, if it exists at all, which can take a distressing toll on the children accommodated not least because mental health problems are neither detected nor addressed. In recent years, a number of unaccompanied minors entrusted to the child welfare services have even died, either during the assessment process or while under care.
94. In June 2019, the Defender of Rights took up on an own-initiative basis the case of a 16-year-old Guinean boy who died after being entrusted to the child protection services and placed in a hotel. The Defender of Rights is also concerned about the creation of various schemes for sustainable care provision to unaccompanied minors with excessively low day prices.

What measures does the State intend to take to obtain a reliable collection of data concerning the number of individuals claiming to be unaccompanied minors assessed each year by the départements?

How is the State intending to ensure oversight of the quality of care arrangements in facilities receiving unaccompanied minors?

Children in armed conflict: the situation of children detained in Iraqi-Syrian conflict areas (CO 78)

95. A series of mechanisms have been introduced in recent years in response to the terror threat, including the roll-out of a national plan to prevent radicalisation, dated 23 February 2018. Various pieces of legislation have been enacted in connection, among which¹¹⁷ Act No. 2017-1510 of 30 October 2017 strengthening domestic security and counter-terrorism. Moreover, the public authorities have shown concern regarding the reception of children returning from Iraq and Syria, particularly by adopting a number of interministerial instructions and circulars.¹¹⁸
96. The Defender of Rights nevertheless remains very worried about the situation of children still living in Iraqi-Syrian conflict areas. Since the end of 2017, it has received various complaints bearing on the situation of French children, sometimes of a very

¹¹⁷ Act No. 2014-1353 of 13 November 2014 strengthening the counter-terrorism provisions; Act No. 2015-912 of 24 July 2015 on intelligence; Act No. 2016-731 of 3 June 2016 strengthening the fight against organised crime, terrorism and their financing, and improving the effectiveness and guarantees of the criminal procedure

¹¹⁸For example, circular of 8 June 2018 on monitoring of children returning from areas where terror groups operate (particularly the Iraqi-Syrian area) (No. NOR: JUS01816044 C); interministerial instruction of 23 February 2018 on the reception of children returning from areas where terror groups operate, revising the instruction of 23 March 2017

young age, detained with their mothers in camps controlled by the Syrian Democratic Forces in northern Syria. These children are neither safe nor given any counselling, despite the traumas they have endured, or education. Several of them have died from hypothermia or pneumonia. The Defender of Rights has urged France to adopt all effective measures for halting such violations of the rights and best interests of these children. When repatriation of the children is organised, the Defender of Rights considers¹¹⁹ that the Government should act as far ahead of their return as possible in assessing the scope for reception by the wider family living on French soil. *The children consulted recommend applying the rights under the UNCRC where these children are concerned, and give a reminder that the latter are not responsible for the situation they are in.*

How does the State intend to work towards respect for the rights and specific needs of French children in Iraqi-Syrian conflict areas, beginning with their right to life, survival and development?

Sale, trafficking and abduction: disparate protection measures (CO 80 a) and d)

97. Children, who can fall victim to trafficking and exploitation in all its forms – sexual exploitation included – particularly when they are unaccompanied and of foreign nationality, are struggling to receive the protection to which they are entitled as children in danger. The Group of Experts on Action against Trafficking in Human Beings (GRETA)¹²⁰ urges the French authorities to step up their efforts to prevent trafficking of children and to ensure that unaccompanied minors benefit from proper care arrangements protecting them from new exposure to the risks of trafficking. Furthermore, it is deeply critical of the French system's shortcomings in the processes to identify and assist child victims of trafficking.
98. In the autumn of 2019, the Interministerial Mission for the Protection of Women against Violence and Action against Human Trafficking (MIPROF) adopted its second national plan against trafficking in human beings, three years after the first ended. 3 out of the total 45 measures specifically concern children. This plan makes provision for a broad-scale roll-out of the pilot scheme providing specific protection to child victims of trafficking, the reception arrangements of which will be diversified in a bid to tailor them to each victim's individual needs. However, the Defender of Rights has not been aware of any qualitative or quantitative assessment of this scheme, carried out in Paris, which involves distancing child victims from networks and entrusting them to distant centres and *départements*. This scheme is incidentally used primarily to assist Nigerian girls who are victims of trafficking for prostitution purposes, sidelining the child victims of criminal exploitation who are usually viewed as young offenders rather than child victims.

What measures does the State intend to take to improve identification and protection of child victims of exploitation networks, particularly criminal exploitation networks?

What funding is being dedicated to the implementation of child-related measures under the 2nd plan against trafficking in human beings?

¹¹⁹ Decision 2019-129

¹²⁰ On 6 July 2017, the Group of Experts on Action against Trafficking in Human Beings published a Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by France

Administration of juvenile justice

Juvenile justice system: a reform that does not go far enough (CO 82 a), b), c)

99. Measures have been taken to change the previous tendency to align the juvenile justice system with the adult system, including abolition of juvenile criminal courts, relaxation of rules concerning the provisional execution of prison terms, obligatory assistance by a lawyer for any child placed in custody and stricter regulation of the regime bearing on voluntary interviews (*auditions libres*) of child suspects.
100. Act No. 2019-222 of 23 March 2019 on the 2018-2022 programming and reform for justice authorised the Government to legislate by Ordinance to reform the juvenile justice system and develop a specific code. Ordinance No. 2019-950 on the legislative part of the Juvenile Justice Code was published on 11 September 2019 and is due to come into force on 31 March 2021. The Defender of Rights is in favour of a reform of the Ordinance of 2 February 1945 on juvenile offenders, which needs to be simplified following the myriad revisions to which it has been subject. It finds it regrettable, however, that such an important reform is being undertaken by Ordinance.
101. The Defender of Rights is dismayed that this reform is not bringing France into line with its international obligations, since it does not make provision for a minimum age of criminal responsibility. It regrets that the primacy of education principle is still subject to significant derogations, particularly with respect to the 16-18 year-old age group. On that note, it recommends that the mitigating circumstance of minority apply to all 13-18 year olds without exception. Similarly, it recommends making the medical examination for any 13-18 year old placed in custody a requirement. Finally, it calls for the necessary human and material resources to be unlocked for putting this reform properly into practice, so that it amounts to more than just rhetoric.

An increasing number of children in detention

102. The Defender of Rights is concerned about the growing number of children in prison, which has risen from 680 detained minors in 2015 to 894 on 1 July 2019, 710 of whom were in pre-trial detention. This rise has prompted the Minister of Justice to seek the opinion of the French National Consultative Commission on Human Rights (CNCDH), which has established “*an alarming assessment of the deprivation of children’s liberty*”.¹²¹ The Defender of Rights stresses the need to look for alternatives to imprisonment and to strengthen community options, especially since the rights of imprisoned children are not always respected, not least as regards their right to education and healthcare. It is worried about the inadequate judicial youth protection (PJJ) resources and lack of places in children’s homes, juvenile detention centres (CEFs) and centres for marginalised or struggling juvenile repeat offenders (CERs). The State’s pledge to create 20 new CEFs must be backed up by enough resources to improve the quality of care provision whilst strengthening the PJJ community options. *These findings chime with the concerns expressed by the children consulted, who think that children should not be sent to prison for minor offences – only for repeat offences, more serious crimes, murder, terrorism or sexual violence. They believe that sentences should be proportionate to the crime committed and that alternative measures should be given precedence, such as community service. They would like to see young people and adults alike become more aware of the conditions of detention so that they come to the realisation that locking children up is not the best solution for them.*

¹²¹ Opinion on the deprivation of children’s liberty, CNCDH, 27 March 2018

What measures does the State intend to take to reduce detention of children, and in doing so encourage the implementation of alternative options?

I. Overseas: the situation specifically in Mayotte and French Guiana

Exacerbated difficulties accessing health (CO 62 c)

103. Healthcare services for children are under strain and structurally weakened by the shortage of qualified staff and health facilities. The situation regarding maternal and child welfare protection is alarming, owing to the combined effects of too little public investment and a lack of national coordination. This is having a disastrous effect on antenatal monitoring and the health of overseas children. In the Overseas *départements* (not including Mayotte), the child mortality rate is around twice the national average.¹²² In Mayotte, the maternity ward at Mamoudzou Hospital is particularly overstretched with the increasing number of births, up by 45% between 2013 and 2016. Wards on Reunion Island are reaching breaking point too in their mobilisation via the medical evacuation procedure (medevac),¹²³ a significant part of which concerns children whose parents are irregular migrants in Mayotte with no temporary residence permit or *laissez-passer*. Furthermore, the lack of prevention and assessment tools and of reception schemes, as well as negative socio-cultural perceptions of disability, are also marginalising children with disabilities in Overseas France, who are not being sufficiently referred to specialist structures.¹²⁴

What specific mechanisms does the State intend to put into practice to improve the reception of children from Mayotte in the context of long hospitalisation periods on Reunion Island, as well as the maintenance of family ties in the context of medical evacuation procedures?

104. Adolescents are particularly vulnerable in the way they are more exposed to at-risk behaviours, mental problems and various violations of their sexual and reproductive health. Addictions (drugs, alcohol, eating disorders) and dangerous driving are more common than in Mainland France, with violence and accidents responsible for a third of deaths in the under 25s (compared with 7% at national level).¹²⁵ The suicide rate among French Guyanese Amerindians is twenty times higher than the Mainland average, with three-quarters of suicides concerning under 20 year olds. The western and southern regions of French Guiana are sorely lacking in emergency tools and dedicated child psychiatry facilities that could provide support for young people grappling with severe mental health issues. A crisis unit has recently been opened by the French Guiana

¹²² CNCDH, How effective are human rights in practice in Overseas France? Year 2017, 2018, p. 263.

¹²³ Defender of Rights, Rights of the Child in 2017. As seen through the United Nations Convention on the Rights of the Child, 2018, p. 56.

¹²⁴ Defender of Rights, Overseas France and the challenges of access to rights. Equality issues in the public services and non-discrimination. Call for evidence among Overseas residents, 2019

¹²⁵ CNCDH, How effective are human rights in practice in Overseas France? Year 2017, 2018, p. 263

prefecture to try and curb this suicide trend.¹²⁶ Among girls in particular, there is a higher rate of sexual violence on reaching puberty, unwanted or early pregnancies, as well as a higher risk of death during childbirth. There is also a much higher elective abortion rate among girls in these territories, which is evidence of their difficulties accessing contraception, even though emergency contraception is free and can be given to underage girls without a prescription.

How effective are the measures set up to address suicide among young Amerindians in French Guiana?

What measures does the Government intend to take to improve access to contraception and sexual health education for French Overseas youth?

Major failings persist in the child protection system

105. The child protection system must contend with a double challenge concerning children who cannot be kept in or are deprived of their family environment. The maintenance of ties between a child and its family following a placement order is particularly at risk in French Guiana owing to the distance from the family home and lack of community youth support facilities and places for visits between children and their families, whether supervised or in a neutral setting.¹²⁷ Moreover, foster families are overwhelmed by the number of children they have to take in (7 or 8 and sometimes more than 10) and they are not given the proper support they need since the child welfare services simply do not have the requisite capacity. The Defender of Rights has drawn the public authorities' attention to placement measures that have not been followed through for want of enough places in care facilities, as well as to suspicions of sexual abuse and maltreatment within foster families. The situation of unaccompanied minors is also alarming in Mayotte and French Guiana in light of the deficiencies plaguing the child protection systems.¹²⁸ More specifically as regards Mayotte,¹²⁹ the Defender of Rights has repeatedly warned the authorities about the myriad shortcomings of the child protection system. Although it was previously possible to consider that the concerns associated with the child protection system stemmed, to an extent, from the lack of resources earmarked in this regard, today this argument is no longer completely justified as the State has allocated more funding to the *département*. And yet problems persist because of the inadequate numbers, skills and training of staff assigned to looking after the children. The situation of one child found in Mayotte, picked up by child welfare services and for whom no civil status declaration had been made for nearly two years, starkly illustrates the failings in the child protection system.¹³⁰

106. On another note, the Defender of Rights is concerned about the recent rise in family separations following the removal of foreign nationals from French territory. In French Guiana, which does not have an immigration detention centre with accreditation to receive families, the detention of one lone parent led to the placement of the child in the care of child welfare services. The Defender of Rights alerted the prefectural authorities

¹²⁶ We have recently received the first pieces of information from the prefecture of French Guiana via the Defender of Rights' delegate in French Guiana.

¹²⁷ Defender of Rights, Access to rights and public services in French Guiana: Report of the Defender of Rights' visit in October 2016, 2016. Defender of Rights, Mayotte: situation on the rights and protection of children, Mission of the Defender of Rights, 2015.

¹²⁸ Defender of Rights, Report to the United Nations Committee on the Rights of the Child, 2015.

¹²⁹ See report of the DDD "établir Mayotte dans ces droits" (February 2020)

¹³⁰ See Decision 2019-295

to the matter, stressing that it was their responsibility to make sure that the parent's deportation did not result in a break-up of the family unit or, where applicable, in the child being placed in child protection over the long-term.

What measures does the State intend to take to guarantee the effective implementation of child protection, in French Guiana and Mayotte in particular, and that children are properly protected in practice against violence – especially when they do not remain in their family environment?

107. Regarding migration policy, the Defender of Rights remains concerned about persisting practices – despite its recommendations – whereby children are arbitrarily associated with unrelated adults so as to be placed in immigration detention and expelled from the territory. These mainly involve Comorian children arriving in Mayotte by makeshift boats. In the judgment *Moustahi v France*, delivered on 23 June 2020 and bearing on the situation of very young Comorian children travelling alone, on a makeshift boat, between the Comoros and Mayotte, the European Court of Human Rights found that France had violated several articles of the European Convention on Human Rights (Articles 3, 5, 8, 13 and 4 of Protocol No. 4). Moreover, given the expeditious expulsion practices, foreign children often find themselves separated from their parents who have been removed, and having to cope with particularly difficult survival conditions (alone and in substandard housing for example) as well as a higher risk of sexual exploitation or trafficking.

Discrimination in access to the fundamental right to education

108. Schooling for children and action to combat early school leaving are ongoing challenges for these territories. In French Guiana, over and above the shortage of schools and poor schooling conditions, the geographic remoteness of some municipalities and lack of nearby secondary schools and sixth-form colleges are a significant barrier to adolescents accessing education.¹³¹ The school drop-out rate among young Amerindians is huge, as they would rather abandon their schooling than their family setting. The quality of reception is sometimes problematic in boarding schools or host families.¹³² Although funding programmes have been set up since 2015 to build new boarding schools, secondary schools and sixth-form colleges, no building work has yet commenced to date.¹³³ In Mayotte, the gap between the reception capacities and the number of children to be schooled means that a class rotation system has been put in place. What is more, the curriculum is not tailored to the multilingual and multicultural situation of French Guiana or Mayotte. Many children are thus either illiterate or struggle with writing difficulties. The local education authorities of French Guiana and Mayotte hold little appeal for teaching staff, and as such face major challenges in terms of their

¹³¹ One mission, conducted jointly by the Directorate for the Environment, Spatial Planning and Housing in French Guiana (DEAL) and the *Département*-level Fire and Rescue Service (SDIS), concluded that many junior schools, the upkeep for which the municipal teams were responsible, were in alarming states of disrepair. The most hazardous schools have since been brought up to standard by the municipalities (water leaks and circuit-breakers repaired, etc.)

¹³² Defender of Rights, *Access to rights and public services in French Guiana: Report of the Defender of Rights' visit in October 2016*, 2016

¹³³ In 2015, the Investments for the Future Programme (PIA) was set up to finance the construction of new boarding schools. Funded as part of the emergency plan for French Guiana, the construction of Saint Georges school complex is at the tendering stage. Building work on Maripasoula sixth-form college will be financed in the same way, and is scheduled for completion in 2022.

recruitment and stability. They end up with no other choice but to rely heavily on contractual workers.

109. The results of the call for evidence overseas, launched by the Defender of Rights in 2018, also lift the lid on discrimination suffered by foreign children who are deprived of schooling, due to unjustified administrative requests during registration or the lack of places in schools.¹³⁴ The Defender of Rights' attention has particularly been drawn to discriminatory refusals to register children for school in Mayotte, most of whom hark from the Comoros.¹³⁵ The same goes for children living in host families or slums, who are massively denied the right to register for school by municipal teams which require the families to furnish a long list of supporting documents – over and above the statutory requirements. In these territories, foreign children may be victims in the sometimes very tense relations with local communities. Accordingly, in Mayotte, the most vulnerable and poorest children have been exposed to appalling violence, during operations known locally as “*décasage*”, which Mayotte nationals organised to illegally evict Comorian residents in 2016.¹³⁶ These residents have thus been forced to move out of their homes, some of which have been burned to the ground, and children have been forcibly removed from their schools. *The children consulted in Mayotte threw the right to education into sharp focus, stressing that all children should be able to go to school and the need to build enough schools across the territory.*

How does the State intend to ensure access to education for young people from remote municipalities in French Guiana and that the fundamental right of access to education for all children, without discrimination, is fully effective in practice in Mayotte?

¹³⁴ Defender of Rights, Overseas France and the challenges of access to rights. Equality issues in the public services and non-discrimination. Call for evidence among Overseas residents, 2019

¹³⁵ Defender of Rights, “établir Mayotte dans ces droits”, 11 February 2020

¹³⁶ Defender of Rights, Rights of the Child in 2017. As seen through the United Nations Convention on the Rights of the Child, 2018

Appendix I – List of questions that the Defender of Rights suggests that the Committee on the Rights of the Child put to France

General measures of application

1. How does the State intend to effectively promote the judicial remedies available through the 3rd Optional Protocol among the professionals concerned and children themselves?
2. What national and local measures does the State intend to take to enhance the clarity and effectiveness of child policy, and how does it intend to guarantee the allocation of adequate resources for conducting public policies in favour of children – ensuring a level playing field across Mainland and Overseas France?
3. How does the State intend to improve and harmonise the coordination at interministerial level and between the central and local government levels of policies bearing on the rights of the child?
4. What specific measures does the State intend to take to improve its data collection and analysis system so as to help craft a comprehensive child-friendly policy?
5. Does the State intend to empower the Defender of Rights with additional resources, to enable it to fully carry out its missions defending and promoting the rights of the child, especially in terms of monitoring the Convention and participation of children?
6. When and how does the State intend to include the rights of the child in the training curricula of all those working for or with children?
7. What action is it considering taking to improve knowledge of the UNCRC among the general public and children themselves? Is the State considering assessing the effectiveness of measures taken and the current state of this knowledge?

General Principles

8. What measures is the State intending to take to guarantee compliance with the non-discrimination principle in the allocation procedure via the Parcoursup platform?
9. What regulatory mechanisms does the Government intend to implement to ensure equal access to sport, leisure and culture for all children?

Civil rights and freedoms

10. What specific measures is the State considering taking to ensure that children born through a gestational surrogacy arrangement abroad can obtain recognition of a fully legal parent-child relationship?
11. How does the State intend to inform children of the "right to be forgotten" and to assess the effectiveness of procedures set up to ensure this is respected?
12. Is the State intending to update the national legislation to protect the activities of children online, especially when these generate income?

13. Is the State considering appointing a "guardian" as soon as individuals claiming to be minors come before the child protection services, so as to guarantee the consideration of the best interests of these children – not least in terms of protection of their privacy?
14. What measures does the State intend to take to effectively protect children from accessing inappropriate content, particularly food marketing or advertising broadcast by various digital media outlets?

Violence against children

15. What measures does the State intend to take with regard to unaccompanied minors to follow up on the Khan v France judgment and prevent any similar abuse to the one found by the Court?
16. What measures and resources is the State considering putting in place to guarantee the safety and respect for the rights of children within public institutions?
17. What measures does the State intend to take to ensure compliance with the security forces' code of ethical conduct – particularly in the presence of children?
18. Does the State intend to adopt an instruction on the precautions to take during the enforcement of an expulsion order in the presence of children?
19. Does the State intend to include a module in police forces' initial training and continuing professional development on the specific measures to take to respect children's rights before and during operations?
20. What provisions does the State intend to lay down to guide professionals in guaranteeing children an education that is free from violence? Does the State intend to incorporate the prohibition of corporal punishment in the French Education Code?
21. What measures does the State intend to take to ensure that the precautionary principle guides the specialist multidisciplinary medical teams in the detailed, balanced and evidence-based assessment of the situation and best interests of the child? How does it intend to train professionals in complying with this precautionary principle?

Family environment and alternative care

22. What types of governance regarding child protection does the State intend to set up, and with what operational means of action?
23. How are the public authorities intending to combat interruptions in children's placements in foster care and to ensure that foster carers' retirements are better anticipated?
24. How is the State guaranteeing the swiftest possible implementation of assistance with upbringing measures imposed by the Family Court to protect children in danger?
25. How is the State going to ensure continuity in the support that *départements* lend to young adults, both in terms of upbringing and funding?

Disability, basic health and welfare

26. How does the State intend to step up its efforts to enable children with disabilities to enjoy the same possibilities as other children in society, with respect for their specific situation?

27. How does the State intend to respond to the parliamentary report laying bare the major crisis gripping PMI and with what means?
28. What measures does the State intend to take to address the lack of dedicated places for children within health facilities, particularly in psychiatric care?
29. What tangible outcome has there been following the roll-out of the care pathway for children monitored by child welfare services (ASE)?
30. What is the State's assessment of the implementation of its public sexual health education policy and its impact on a clearer identification of sexual violence, especially by children themselves?
31. What tools does the State have available for assessing this strategy and what is its intended timeframe for carrying out this assessment?
32. What does the State think of the children's suggestion to allocate empty housing to families with children sleeping rough?

Education, leisure and cultural activities

33. What tangible measures is the State considering implementing to bring a permanent end to discriminatory refusals concerning access to education?
34. What measures is the State intending to implement to make the place where the children attend school a decisive criterion with respect to emergency accommodation?
35. How does the State intend to guarantee access to school canteens for all children?
36. How does the State intend to assess the most recent systems established to address France's poor showing in terms of equal opportunities and school segregation?
37. Has the sixth-form college place allocation procedure been revised in terms of school diversity?
38. What is the State's assessment of the application of measures aimed at combatting bullying at school and particularly the various protocols available to school heads?
39. Is the State considering developing its Student Ambassador programme against bullying to help lead an effective fight against this phenomenon?

Special protection measures

40. What measures does the State intend to take to put paid to the detention of children solely on the grounds of their migrant status?
41. Insofar as the State were to refuse to abolish the practice of bone x-rays, what measures would it consider adopting to regulate and harmonise their implementation?
42. What measures does the State intend to take to obtain a reliable collection of data concerning the number of individuals claiming to be unaccompanied minors assessed each year by the *départements*?
43. How is the State intending to ensure oversight of the quality of care arrangements in facilities receiving unaccompanied minors?
44. How does the State intend to work towards respect for the rights and special needs of French children in Iraqi-Syrian conflict areas, beginning with their right to life, survival and development?
45. What measures does the State intend to take to improve identification and protection of child victims of exploitation networks, particularly criminal exploitation networks?
46. What funding is being dedicated to the implementation of child-related measures under the 2nd plan against trafficking in human beings?

47. What measures does France intend to take to reduce detention of children, and in doing so encourage the implementation of alternative options?

Overseas: the situation specifically in Mayotte and French Guiana

48. What specific mechanisms does the State intend to put into practice to improve the reception of children from Mayotte in the context of long hospitalisation periods on Reunion Island, as well as the maintenance of family ties in the context of medical evacuation procedures?
49. How effective are the measures set up to address suicide among young Amerindians in French Guiana?
50. What measures does the Government intend to take to improve access to contraception and sexual health education for French overseas youth?
51. What measures does the State intend to take to guarantee the effective implementation of child protection, in French Guiana and Mayotte in particular, and that children are properly protected in practice against violence – especially when they do not remain in their family environment?
52. How does the State intend to ensure access to education for young people from remote municipalities in French Guiana and that the fundamental right of access to education for all children, without discrimination, is fully effective in practice in Mayotte?

Appendix II – Description of the Defender of Rights’ national consultation among under 18 year olds

Background to the children’s consultation

In 2017, the Defender of Rights set up an independent system for following up the State’s implementation of the concluding observations of the United Nations Committee on the Rights of the Child, dating back to January 2016. There are three levels to this system: legal, documentary and operational monitoring on the basis of the Defender of Rights’ referrals, enhanced by closer dialogue with the associations and collection of the children’s views.

This third level thus entails gathering the opinions and views of children on the implementation of their rights, in an appropriate manner and as widely as possible, with special attention being paid to the most vulnerable children who are, as such, even more marginalised from the participation processes set up at various levels.

This approach is in keeping with the recommendations of the United Nations Committee on the Rights of the Child, which acknowledges that independent institutions have a decisive role to play in the expression and consideration of children’s views in all areas concerning them, in individual and collective terms alike. Furthermore, the Committee encourages States at regular intervals to directly involve children in the periodic reporting process.

In 2019, the process to get children participating in the system set up by the Defender of Rights was launched, coinciding with the 30th anniversary of the United Nations Convention on the Rights of the Child. This process is nevertheless meant to be structural and expected to continue beyond 2019.

About the children’s consultation

More than 2,200 children aged between 4 and 18 years old were consulted throughout France, including in the overseas territories (Mayotte and Reunion Island in particular). Thanks to the support of nearly 50 associations, the most marginalised children in terms of their rights could be consulted (children under child protection; unaccompanied minors; children living in squats, slums or in social hotels; children from low socio-economic backgrounds; children in places of detention and young activists).

When this consultation was launched, the Defender of Rights set up a young Consultative Committee bringing together 11 young activists, either within its institution (two JADE ambassadors, *Parlons jeunes* scheme), or within partner associations, with a view to tailoring a consultation process as closely as possible to the young people’s needs, grounded in the young people’s own expertise.

Specifications were outlined for associations and the Defender of Rights supported them in preparing consultation workshops with children. The purposes of these workshops were as follows: raise the children’s awareness of their rights; provide them with the appropriate and necessary information in light of their needs; create a community of good practices around the children’s participation with considerate and respectful workshops; and enable all children to submit proposals to the Defender of Rights for improving the effective implementation of their rights in France.

The 2,200 children consulted submitted 276 proposals or recommendations, in writing or in the form of graphics, visual or musical content. Some children also spoke personally about their own situation and experience. The 276 proposals and recommendations written by the children have been compiled without any changes in a publication entitled "I have rights, hear me out", which the Defender of Rights

is proud to submit to the Committee on the Rights of the Child. The videos can be viewed at the dedicated website: <https://entendsmoi.defenseurdesdroits.fr/>.

Appendix III – Excerpt on children with disabilities from the Defender of Rights’ report on the implementation of the Convention on the Rights of Persons with Disabilities (CRPD) – July 2020

Article 7: Children with disabilities

According to the Convention, States shall take “all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children”. Whilst recognising that significant progress has been achieved in recent years in several areas, the Defender of Rights nevertheless finds that full access to their rights remains a challenge for children with disabilities.

Comparative analysis by the Defender of Rights on the implementation of the UNCRC and CRPD

Pursuant to Organic Act No. 2011-333 of 29 March 2011, the Defender of Rights is tasked with defending and promoting the best interests and rights of the child. In 2019, the Defender of Rights received 3,016 complaints in this regard, 17.2% of which concerned disability and health. Through its missions, it conducts ongoing monitoring of the application of the United Nations Convention on the Rights of the Child (UNCRC), and every year, to coincide with World Children’s Day on 20 November, it publishes a thematic report assessing the situation of children’s rights in France, particularly where disabled children are concerned, which it presents to the President of the Republic and Presidents of the National Assembly and Senate. As an independent review mechanism, in February 2015 it submitted a report to the Committee on the Rights of the Child assessing the implementation of the UNCRC in France. In February 2016, the Committee on the Rights of the Child presented France with its concluding observations on the State’s fifth periodic report. Alongside the positive points highlighted, the Committee also drew attention to shortcomings and areas requiring improvement in the Convention’s implementation, and outlined several recommendations on children with disabilities, the follow-up of which is reviewed, under the relevant articles, in this report: allocation of adequate resources; right to education; access to leisure activities; data collection.

Policies regarding children with neurodevelopmental disorders

France was slow to recognise and consider autism as a neurodevelopmental disorder, even though this disability reportedly concerns somewhere between 91,500 and 106,000 young people under 20 years old. Three specific plans were rolled out one after the other from 2005 to 2017, which are described in the State’s initial report. The report of the French Government audit, evaluation and inspection office for health, social security and social cohesion (IGAS) on the 3rd plan finds that the choice of specific plans is relevant, but no guarantee of effectiveness – and can even hamper the inclusion of autism spectrum disorders (ASDs) in the general category of neurodevelopmental disorders. This is also complicated by the bottlenecks and failings of the health service as a whole and general disability policies. The IGAS does not consider that the expected catch-up in terms of bringing public policies up-to-date has yet been achieved at the end of this 3rd plan. Accordingly, the detection and diagnosis system regarding children is still unsatisfactory, with very long timeframes in some cases. Moreover, “families’ care pathways are still far from smooth, amid a fragmented educational, health, social and medico-social landscape”. Classes for children with special needs (UEM), which provide schooling

within mainstream settings – an innovation of the 3rd plan – have met with families’ approval, but concentrate on the 3-6 year-old age group. Continuing professional development is encouraging a change in practices, but initial training is inadequate. The Defender of Rights shares the IGAS’ observations and recommendations. Through the many referrals it receives on adults and children, it notes frequent violations of rights. In 2016-2017, some 40% of referrals on the rights of children with disabilities concerned the rights of autistic children, the vast majority of whom were over 12 years of age.

Published on 6 April 2018, the national strategy for autism within neurodevelopmental disorders 2018-2022, which takes over from the 3rd autism plan, reports, in the same as its predecessor, the almost complete absence of epidemiological data in France on autism, which undermines any public policy, including in terms of its human and financial resources, for meaningful progress over the long-term. This is grounded in the following commitments: - place science back at the heart of the public autism policy particularly by establishing reliable databases for research; - take early action with children presenting developmental differences in order to limit the impact behavioural disorders can have on a serious pre-existing disability, by shortening diagnosis times; - catch up the delay in schooling by welcoming all autistic children in infant school, guaranteeing each child a smooth pathway through school in line with their individual needs, from primary school through to sixth-form college, training and providing classroom assistance to teachers accommodating autistic children and guaranteeing access to higher education for any young people wishing to continue their studies. Monitoring of this strategy’s implementation is entrusted to an interministerial delegate for the national strategy for autism within neurodevelopmental disorders, who is particularly tasked with making sure the strategy is taken on board in cross-government policies, coordinating its roll-out at local level and guaranteeing regular access to the expertise and experience of users, professionals and scientists. These measures are heading in the right direction, but their application in practice is taking time and it appears too early yet to be able to gauge their effectiveness and determine whether they are adequate to meet families’ expectations. It would already be worth highlighting: - the creation of an early intervention allowance enabling the financing of a coordinated care pathway with no out-of-pocket expenses for families; - and the setup of 27 early diagnosis and intervention platforms which have identified some 500 children with needs in this regard.

Compartmentalised policy-making with respect to disability and child protection

In its 2015 annual report on the rights of the child, *Disability and child protection: rights for invisible children*, the Defender of Rights highlighted the particularly alarming situation regarding children with disabilities in the care of child protection services. Even though these 70,000 children, by the Defender of Rights’ estimations, should logically benefit from twofold protection, the reverse is actually true, because, at the intersection of separate public policies, they have fallen victim to compartmentalised institutional approaches, with an accumulation of schemes, different stakeholders and disparate professional cultures. Beset by inadequate coordination, the simultaneous measures taken in their regard risk becoming ineffectual and even disrupting the care of these doubly vulnerable children, to the detriment of a shared overview of their needs. The resulting violations of the rights of the child reflect the priority issues for a necessary reform. The Defender of Rights is therefore delighted that the National Child Protection and Prevention Strategy 2020-2022, unveiled in October 2019, underscores the commitment to create appropriate intervention mechanisms for addressing the combined issues of child protection and disability and, with that in mind, to: - develop respite solutions for parents coping with personal disabilities or those of their children; - strengthen units for the collection of information of concern (CRIP), particularly based on the framework of the French National Authority for Health (with the appointment of a disability correspondent in each CRIP unit); - guarantee access to schooling and appropriate school support for the children concerned (with mobilisation of the tools of the public service for inclusive schools for children with disabilities); - harness all of the

tools and mechanisms for prioritising access to housing and access to rights. This strategy must be carried out in connection with the other strategies implemented in France, such as the national strategy for parenting support, national strategy for autism and neurodevelopmental disorders and the public service for inclusive schools. The Defender of Rights nevertheless stresses the urgent need to put these commitments into practice.

Maltreatment of children with disabilities

The real extent of child abuse is poorly known, and certainly vastly under-estimated and -reported by doctors, since barely 5% of reports come from the medical sector. This is because there are various barriers preventing healthcare professionals from reporting, and even considering the possibility of maltreatment. In 2014, the French National Authority for Health (HAS) published a recommendation and a memo to raise doctors' awareness in terms of identifying and responding appropriately to a suspected case of child abuse. Despite the growing awareness and development of tools to prevent and combat maltreatment, the Defender of Rights is frequently referred situations in which it identifies physical and psychological violence, especially at school.

However, here again, when it comes to child abuse, the specific circumstances of disabilities are not taken on board, as confirmed by the *Plan to combat violence against children*, published in November 2019. And yet, according to the World Health Organisation (WHO), children with disabilities are nearly four times more likely to experience violence than non-disabled children; children with mental or intellectual impairments are the most vulnerable, with 4.6 times the risk of sexual violence than their non-disabled peersⁱ. Stigma, discrimination and ignorance about disability, as well as a lack of social support for those who care for them, are all factors placing children with disabilities at a greater risk of violence. Placing them in institutions also increases their vulnerability. In these settings and elsewhere, children with communication impairments are less able to speak out about abusive experiences.

Regarding action against bullying at school, the finding is the same: whilst the State is to be commended for the resources and initiatives it is harnessing in this respectⁱⁱ, none of these programmes specifically factors in disability. And yet research has shown that children with disabilities are often more exposed to bullying, which makes this even more concerning.

The Defender of Rights' annual report, published on 20 November 2019 and entitled *Childhood and violence: the part played by public institutions*, describes the violence suffered by children within public institutions. It makes the particular point that institutions are struggling to adapt to the specific circumstances of each child. This means that children with disabilities still too often face discrimination and are denied access to certain rights, goods or services.

The worrying situation of children overseas

In its Concluding Observations on the Fifth Periodic Report of France (23 February 2016 - CRC/C/FRA/CO/5), the Committee on the Rights of the Child notes with concern the situation in Overseas France. The Defender of Rights hears about this situation through its delegates, and refers to it in its annual reports on the implementation of the UNCRC. The situation is particularly critical in Mayotte and French Guiana. In Mayotte, the fact that some children and families do not speak French and the educational, health and medico-social sectors are under-equipped is compounded by the local negative perceptions of disability. This all results in late diagnosis, long processing times for files at the local centre for people with disabilities (MDPH) and a shortage of reception schemes.

The percentage of disabled children in primary education is less in Overseas France than in Mainland France, with the exception of Guadeloupe (2.4% of all children registered in Guadeloupe, 2.2% in French Guiana and on Reunion Island and 1.8% in Martinique, versus 2.4% for the national average), and they are less likely to attend mainstream classes: 6 out of 10 pupils on Reunion Island and in Martinique, less than 1 in 2 in Guadeloupe, 1 in 6 in French Guiana and 1 in 8 in Mayotte, compared with 7 out of 10 for the whole of Franceⁱⁱⁱ. French Guiana is lacking in specialist facilities and reception centres. Local units for an inclusive education (ULIS) and specialist home-based care and education services (SESSAD) have been set up in recent years, but these are still sorely lacking for disabled children aged 16 and over, with waiting lists of more than 200 children. Moreover, ULIS units are tending to become classes where children with significant learning difficulties, but no disability for all that, are being referred. In Mayotte, the national education authorities are woefully under-equipped to keep pace with the strong demographic growth.

Article 24: Education

As indicated in the State's report, it cannot be denied that disabled children's access to schooling and education has steadily improved in recent years in France. But this positive finding overall is nevertheless tempered by the persisting difficulties encountered by some disabled pupils. The Defender of Rights receives a great many complaints about violations of disabled children's rights to benefit from inclusive education, owing to failures to adapt their schooling accordingly where applicable, and more generally to receive responses in line with their needs^{iv}. These findings are corroborated by a recent parliamentary inquiry committee on the inclusion of disabled pupils^v.

The right to education for all

Equal access to education, guaranteed by the French Constitution, is reiterated in the French Education Code in the following terms: "the right to education is guaranteed for all". Since 1975, the Framework Act for Persons with Disabilities had recognised the educational obligation as regards children and adolescents with disabilities. But it was the Act of 11 February 2005 which gave a meaningful boost to the schooling of disabled children in mainstream settings by particularly providing that all disabled children and adolescents are legally entitled to register in the nearest school or educational institution to their home – which is considered to be their reference institution. This means that each primary and secondary school and sixth-form college is expected to accommodate, without discrimination, disabled pupils, where necessary within adapted setups, when this means of schooling meets their needs. This goal was underscored first in the Framework Act of 8 July 2013 planning the reform of the schooling system which, in the Education Code, enshrines the principle that the public national education service ensure inclusive schooling for all children, with no discrimination whatsoever. Then, more recently, in Act No. 2019-791 of 26 July 2019 for Schools that build Confidence, which lays down various measures for "improving inclusive schooling".

The efforts in favour of inclusive schools are evident in the statistics. At the beginning of the 2005-2006 academic year, 151,500 children and adolescents with disabilities were enrolled in mainstream school settings. By the beginning of the 2019-2020 school year, 360,000 of them were enrolled in public and private national education institutions. At the same time, the number of children being schooled in medico-social institutions has remained relatively stable at around 70,000. That said, as acknowledged in the State report, several thousand children, especially those with multiple disabilities, are not given any schooling, or only on a part-time basis at any rate. In this regard it must be noted that their exact number remains unknown to date since there is no information system for monitoring the referral decisions made by MDPHs (=> see Art. 31).

For the 2017-2022 five-year term, the Government has committed to creating an additional 250 local units for an inclusive education (ULIS) in sixth-form colleges, doubling the number of external educational units within schools (UEE) and creating 180 educational units in infant school for autism (UEMA) and 45 elementary education units for “autism spectrum disorders” (ASDs). But according to a parliamentary report this still falls short of actual requirements. The aforementioned recent report by the IGAS, IGEN and IGAENR calculates that, based on the scenario of a 7% annual rise in ULIS pupils between 2018 and 2022, instead of 50 additional openings each year, “240 ULIS a year on average” will be required – which is nearly five times more than what the Government has planned. Moreover, these units are increasingly having to deal with situations of severe disabilities, not least because of the waiting lists for schooling in specialist medico-social institutions.

Gaps in terms of human assistance for pupils with disabilities

The number of teaching assistants supporting disabled pupils has been rising constantly over recent years in step with the ever-growing needs. According to the Ministry of National Education, 200,000 children are currently being supported by assistants for children with disabilities (AESH), compared with 26,000 in 2006. Over the 2018-2019 academic year, 10,900 new AESH jobs were created, including 6,400 assistants as part of the continued plan to convert assisted contracts into AESH and an additional 4,500 recruitments of AESH directly by institutions. For 2019-2020, the Finance Act has made provision for the funding of 12,400 new AESH jobs, including 6,400 more assistants as part of the continued plan to convert assisted contracts into AESH and an additional 6,000 AESH positions financed over 2019 (1,500 recruited at the end of 2018 and 4,500 recruited in 2019); the Government has pledged to directly create 22,500 AESH positions by 2022-2023.

According to a parliamentary report^{vi}, in addition to the increase in the number of recognised situations of disability, the growth in uptake of human assistance is down to two factors: - on the one hand, the growing number of disabled pupils who are continuing into secondary education. With respect to mainstream schooling, this has increased by 66% (to 160,000 pupils in 2015 from 96,300 in 2004) in primary education and by 217% (so threefold) in secondary education (up to 118,935 students in 2015 from 37,442 in 2004); - on the other hand, human assistance sometimes makes up for deficiencies in institutional responses to the goals of inclusive schooling. According to a joint report by the general inspectorates for social affairs (IGAS), national education (IGEN) and administration of national education and research (IGAENR)^{vii}, “this assistance has become the main solution to fostering inclusion of pupils with disabilities. Schooling in mainstream classes is thus made possible primarily thanks to the human assistance lent to nearly three-quarters of primary pupils and over 40% of secondary students”. This finding is cause for concern as the principle of inclusive schools also requires schools to adapt (by training teaching staff and adjusting day-to-day schooling for example). Human assistance should not be the only response forthcoming in terms of including disabled pupils.

Despite this steady improvement, a number of situations examined by the Defender of Rights show that the requirements in terms of assisting disabled pupils in mainstream settings are simply not being met, for want of enough assistants, such that, in some cases, the continuation of their schooling could be severely compromised. The Defender of Rights thus observes recurring difficulties, at the start of each new academic year, in recruiting skilled staff to positions that hold little appeal (part-time and low pay for example). There was yet again a noticeable shortage of assistants at the start of the 2019-2020 academic year despite the adoption, under the Act of 26 July 2019 for Schools that build Confidence, of a series of measures aimed at securing the status of AESH staff and shoring up their duties (duration of initial contract, continuing professional development, role played by AESH staff in implementing educational adjustments and adaptations, lead support mission of the AESH) and the roll-out of local inclusive assistance units (PIAL) with the purpose of “coordinating the human assistance resources within schools” in and out of lesson time.

Gaps in terms of adjusting schooling and exam conditions

Although, overall, the Defender of Rights applauds the existence of a relatively well-designed, comprehensive and precise system for restoring equal opportunities for disabled pupils, through the referrals it receives it does nevertheless identify difficulties in the implementation of these adjustments, usually owing to the teaching staff's inadequate understanding of disability. In 2018, in a dozen or so decisions and a number of settlement agreements, the Defender of Rights gave a reminder of the prohibition on any discrimination based on a child's disability and of the various stakeholders' obligation to make reasonable adjustments, through a case-by-case assessment of the child's special needs. The Defender of Rights particularly issued recommendations to one vocational sixth-form college head (Decision No. 2018-035 of 26 February 2018), heads of private schools under contract with the State and Catholic education diocesan directors (Decision Nos 2018-046 of 26 February 2018 and 2018-228 of 10 December 2018) as well as one head of an apprenticeship centre (Decision No. 2018-231 of 12 September 2018).

Furthermore, the Defender of Rights observes a gap between the adjustments granted in the context of the school day and those granted in the context of exams. In that regard, it particularly receives referrals about difficulties encountered by children with a neurodevelopmental disorder (learning difficulties, behavioural problems or autism for example), for whom a care and support plan has been drawn up based around their individual needs (PAP), and who are denied adjustments of exam conditions on the grounds that they have not been referred by a MDPH centre. And yet, by law, a child meeting the definition of a child with disabilities (which is the case for children with a neurodevelopmental disorder), but for whom a schooling plan has not been drawn up based around individual needs (PPS), cannot be excluded from the exam adjustment scheme.

What is more, the complexity of the exam adjustment procedure, which is sometimes late-coming because parents were not sufficiently informed, means that it is not always possible to organise the adjustments and appeal meaningfully against arbitrary adjustment refusals before the exams take place. The Defender of Rights recommends systematic assessments (i.e. without requiring an express request from families) of the needs to adjust exam conditions for children with disabilities, who also have a justified need for adjustments in their day-to-day schooling.

The referrals sent to the Defender of Rights also very often lay bare a lack of training and support for educational professionals and of awareness-raising among exam organisers and examiners (markers) about the general philosophy behind this scheme, which is not aimed at giving an advantage but at restoring equality, and gives rise to suspicion towards the disabled student.

Access to higher education

As the State report points out, access to higher education for children with disabilities has improved steadily since the Act of 11 February 2005. Since the start of the 2006-2007 academic year, it has increased by an average 13.5% every year. According to a 2015 study by the Ministry of Labour's Directorate for Research, Studies and Statistics (DARES), 49% of people with disabilities have no qualifications, or have only attained the school leaving certificate at age 16, compared with 28% of the general population, and 25% have A levels, a vocational diploma or higher under their belt, compared with 49% of the total population. The increase in numbers is above all evident at university, mainly at undergraduate (bachelor) level, since few students with disabilities continue as far as a Master's degree.

This progress must not deflect attention from persisting difficulties, however. As highlighted by the Ombudsperson for National Education and Higher Education in her 2017 report, more than for non-

disabled students, the gulf between school and university can prove to be an unsurpassable divide for students with disabilities, who must contend with all sorts of obstacles. They are denied adjustments to examination arrangements (for example use of a word processor with the spell check enabled for a student with learning difficulties) and, at university, no longer benefit from the teaching assistance they were given in secondary school (even though Article L. 917-1 of the French Education Code makes provision for the possible recruitment of AESH staff to support students for whom assistance has been considered necessary by the Commission for the Rights and Independence of Persons with Disabilities/CDAPH).

Furthermore, consideration of the specific circumstances of people with disabilities, in terms of the difficulties they may face in the academic guidance process, requires constant vigilance, as shown by the setup of the pre-registration procedure for initial training places in higher education (Parcoursup), established by Act No. 2018-166 of 8 March 2018 on the academic guidance and success of students (Ore Act). After associations alerted it to the discriminatory consequences of this new system for people with disabilities, the Defender of Rights took up this issue at its own initiative and outlined recommendations for the Government on the adjustments to be made to this procedure in view of its renewal (Decision No. 2018-323 of 21 December 2018).

Article 30: Participation in cultural life, recreation, leisure and sport

According to Article 30, States shall take all appropriate measures to enable persons with disabilities to enjoy, on an equal basis with others, access to cultural life, recreation, leisure and sport. And yet, despite the existing legal framework, these rights are not always fully operational in practice.

Access of children with disabilities to leisure activities

The difficulties children with disabilities encounter in accessing, along with other children, leisure activities outside of lesson time and in an extracurricular context have been a central concern for the Defender of Rights for a number of years now. In 2012 it had already adopted a general recommendation (Decision MLD 2012-167 of 30 November 2012) advocating the adoption of a regulatory framework. In 2013, it launched a call for evidence: 65% of children (out of 1,146 respondents) could not access these activities. In 2016, the Defender of Rights and Ministry of National Education produced an information brochure for the attention of local elected officials: *School activities outside of lesson time that children with disabilities can access*.

Despite the measures that the State has taken, mentioned in its initial report, the many complaints sent to the Defender of Rights reveal that families are still frequently denied access to play schemes. The main reasons cited are as follows: - inadequate resources to pay for an individual assistant to support the child; - fears over the safety of the disabled child and the group; - no qualified staff to supervise these children; - the child's disability is incompatible with the activities organised. In many of its decisions, the Defender of Rights underscores the discriminatory nature of these denials, particularly given the duty incumbent upon care structures to make reasonable adjustments.

In 2018, the French National Family Benefits Fund (CNAF) initiated the setup of a "National mission for access to play schemes for children with disabilities", under the high patronage of the Defender of Rights. A survey conducted in this context shows that although 58% and 63% of parents would like their disabled child to attend school activities outside of lesson time and holiday play schemes respectively, this wish is only granted in 19 and 22% of cases. These 3-11 year-old children represent 1.9% of their age group, but only 0.28% of attendance at 33,000 after-school and extracurricular play schemes. Submitted to the Government in December 2018, the mission's report gives a reminder of the legal framework governing disabled children's access to leisure, pursuant to the UNCRC and CRPD,

and outlines twenty or so proposals for action. Although it seems that the Government has now acknowledged this priority issue, the national mission's recommendations still need putting into practice.

Recommendations

Children with disabilities

1. Set up statistical tools for collecting reliable data, broken down at least by gender, age group and type of disability, and regularly updated in terms of the number of disabled children (in Mainland France, Overseas France or received outside France) and their situation regarding how effective their rights genuinely are in practice, particularly concerning access to schooling, leisure activities and appropriate medico-social support;
2. Implement, without undue delay, the measures set out in the new National Strategy for Autism within Neurodevelopmental Disorders 2018-2022 and the National Child Protection and Prevention Strategy 2020-2022 and guarantee the necessary human and financial means for meeting the targets;
3. Adopt a cross-cutting approach to public policies for the benefit of disabled children in order to provide responses in line with the needs of all children, irrespective of their disability;
4. Take on board the situation of disabled children in studies, public policies, plans and programmes designed to combat violence against children.

Education

1. Set up statistical tools for collecting reliable data which is regularly updated in terms of the number of disabled children in school and their schooling arrangements, ensuring that all children meeting the definition of a child with disabilities – including those not subject to recognition or referral by the local centre for people with disabilities (MDPH) – are considered;
2. Set up indicators for the real-time monitoring of the implementation of MDPH schooling decisions;
3. Continue with the efforts being invested in achieving fully inclusive schools and, with that in mind:
 - a) Train teachers, educational professionals, assistants and other stakeholders so as to remove the barriers, associated, in particular, with a stereotypical perception of disability, to an inclusive education;
 - b) Guarantee effective adjustments to day-to-day schooling in practice, based on the individual needs of each disabled pupil and student;
 - c) Take legislative and regulatory measures to end discrimination with regard to disabled pupils, especially children with learning difficulties, expressed in the form of denied exam adjustments in keeping with adjustments of their day-to-day schooling;
 - d) Guarantee access to schooling and appropriate assistance for all children with disabilities and, with that in mind, scale up the creation of external educational units within schools (UEE), particularly for pupils with multiple disabilities;

4. Enable children with disabilities to access appropriate assistance in line with their needs, by taking the appropriate measures to:
 - a) Legally clarify the mandate of the Commission for the Rights and Independence of Persons with Disabilities (CDAPH) in terms of assessing the need for assistance in all areas of the child's life;
 - b) Remove the structural barriers associated with the many different assistants, the disparity in their statuses and the multiple funding providers, depending on the area of the child's life in question.
5. Ensure that students with disabilities can, throughout their studies, access the adjustments and assistance they need to continue their studies on an equal footing with other students, in the subjects of their choice, with particular care being paid to higher education institutions' compliance with the provisions of Article L. 917-1 of the French Education Code.

Participation in cultural life, recreation, leisure and sport

1. Enable children with disabilities to access leisure activities on an equal footing with other children, by taking immediate action to:
 - a) Give full effect to the recommendations of the report released by the national mission for access to play schemes for children with disabilities;
 - b) Clarify the legal framework for accommodating children with disabilities within school activities outside lesson time and extracurricular activities, particularly in terms of providing for assistance needs, in a bid to harmonise practices and end the various disparities between local areas.

ⁱ The review encompasses 17 studies providing data about 18,374 disabled children living in high-income countries including France:

http://www.who.int/mediacentre/news/notes/2012/child_disabilities_violence_20120712/en/

ⁱⁱ To address situations of bullying, the Ministry of National Education operates the website "Non au harcèlement" (No to bullying), which provides a range of tools for professionals to implement preventive measures. This website also showcases school and institutional initiatives, including the teaching aids produced. A free helpline has also been set up by the Ministry: "30 20".

ⁱⁱⁱ *Géographie de l'École*, 2017 edition, 2015 figures.

^{iv} Defender of Rights Opinion No. 19-06 of 10 April 2019 to the French National Assembly's committee of inquiry on the inclusion of disabled students in public schools and universities, 14 years after the Act of 11 February 2005

^v National Assembly Report No. 2178 drawn up on behalf of the committee of inquiry on the inclusion of disabled students in public schools and universities, 14 years after the Act of 11 February 2005 - 18 July 2019

^{vi} Report drawn up on behalf of the cultural affairs and education committee on the legislative proposal on the inclusion of students with disabilities, recorded at the Office of the President of the National Assembly on 3 October 2018.

^{vii} Report entitled *Évaluation de l'aide humaine pour les élèves en situation de handicap*, June 2018.

Appendix IV - Impact of managing the health crisis (COVID-19) on the rights of the child

Between 16 March and 1 June 2020, the Defender of Rights received **127 referrals** bearing on the rights of the child in connection with the health crisis, out of a total 1,424 referrals.

The right to be heard

The Defender of Rights received a referral about judges' scope for making unilateral decisions without consulting the other parties, pursuant to Ordinance No. 2020-304 of 25 March 2020 adapting the judicial rules applicable to courts ruling on non-criminal matters. In a decision issued on 10 April, the Council of State approved the provisions of this Ordinance whilst stressing that they did "not prevent a child capable of discernment from expressing his or her view beforehand". In an interview on the radio station France Inter on 19 April, Geneviève Avenard, the Ombudsperson for Children and Deputy Defender of Rights, explained that the March 2020 Ordinance brought with it major restrictions to children's rights, and that it was paramount to safeguard their right to be heard: "It is paramount, in cases where the Family Court is considering making a decision without consulting the other parties, that the child's views can specifically be gathered."

Denied entry to supermarkets

The Defender of Rights has learned of a number of situations in which children accompanying their parents have been denied entry to supermarkets. At a time when there are many single-parent families, such denied admissions either make it impossible to access essential goods or undermine the best interests of the child by requiring them to wait at the store entrance. The Defender of Rights has taken action among the leading supermarket chains (their local branches and their headquarters), with the Government and through the press in a statement dated 8 April to end such practices, by asking that store managers be given instructions clarifying that denying children entry to shops does not form part of the restrictive measures adopted in the context of the health emergency. These practices undermine human rights, particularly the rights of single parents and the best interests of their children. After receiving dozens of individual complaints and a number of reports over the 'phone, the Defender of Rights and its delegates have managed to get the vast majority of the shops concerned to stop these discriminatory practices.

What is more, alerted by the Defender of Rights, the Minister of State for Gender Equality and Action against Discrimination has implemented a complaints system with a dedicated email address for receiving reports from single parents denied entrance to shops and for taking action.

Continuity of the public child protection service

Département-level services and centres for child protection have struggled to ensure the continuity of their missions with respect to the 340,000 children entrusted to their care. The Defender of Rights has drawn the Government's attention to the need to anticipate, as early as possible, the repercussions of the lockdown on children and adolescents, by providing national follow-up and the coordination of services, supporting parents and providing them with such tools as dedicated helplines and resource platforms.

Victims of violence below the radar

In a 20 March 2020 statement, the Defender of Rights and Ombudsperson for Children called for collective responsibility and urged any worrying situation where a child is concerned to be reported to the emergency numbers.

Protection of unaccompanied minors

The Defender of Rights has drawn the local authorities' and Government's attention to the situation and provision of shelter to unaccompanied minors who, in a certain number of *départements*, find that a reception service is quite simply closed, and are therefore treated as adult foreign nationals. The Defender of Rights maintained that the provision of shelter for young people assessed as being of adult age by the *département* until the end of the lockdown should continue. The Defender of Rights has asked the prefectures to provide facilities or buildings that can provide temporary emergency accommodation for young people in dignified and adequate conditions. Paris' State Prosecutor replied on 10 April that a continuity plan was being rolled out in Paris.

Detained children

More than 80% of the 800 detained children are in pre-trial detention and, with no visits or schooling permitted, are therefore in a situation of complete isolation. The Defender of Rights has repeatedly voiced its concerns regarding such situations, and called for alternatives to imprisonment to be found.

Difficulties associated with the re-opening of schools

The Defender of Rights and its deputy, the Ombudsperson for Children, have alerted the Minister of National Education to several situations concerning the marginalisation in certain schools or in separate groups of children whose parents are in the medical profession; as well as the overly alarmist tone of certain instructions issued by schools to parents and children during the lockdown exit period. They also drew the attention of the Minister of State for Child Protection to the urgent need for guidelines encouraging the return to school of children under child protection arrangements, given their particular vulnerability in terms of schooling; these were not issued until just before schools reopened and thus left children, parents and child protection services in a state of uncertainty for an unnecessarily long time.

Even before the schools reopened, the Defender of Rights publicly observed the limits of leaving the choice of whether or not to send children back to school with their parents. Not only was there no mention in official public statements of the attention that should be given to the views of the children themselves, but it notes that the ambiguity of the term "choice" undermines the children's right to education. This implies that everyone is free to do as they wish. The reality is that compulsory schooling should apply, under conditions that are organised and adjusted by the authorities, so as to safeguard health; that a certain flexibility should be shown and families who do not send their children back to school should not be penalised; but that the principle is indeed that returning to school is the only way to guarantee the right to education without discrimination. In that respect, it should be noted that, on 26 April, the French Paediatric Society and the various societies for the paediatric specialities adopted a firm stance in favour of children returning to their school – including those suffering from a chronic disorder.

Difficulties exercising visiting rights

The institution has been reached out to about parents' difficulties accessing their visiting rights ordered by the Family Court in meeting spaces, with no guidelines on the Government's part concerning the arrangements for re-opening such spaces. Some of the nearly 300 parent-child meeting places in France accommodate families in public places (a school or social centre, for example) while others use

their own premises (private premises). Decree No. 2020-548 of 11 May 2020, setting out the general measures necessary for tackling the COVID-19 epidemic in the context of the health emergency, did authorise some public venues, social centres among them, to reopen to the public, but it did not clearly establish whether meeting spaces were also allowed to reopen. This uncertainty reportedly also led to the issuing of different instructions on the part of federations and family benefits funds (CAFs) nationwide. The Defender of Rights has alerted the Minister of Justice to these difficulties and asked to be kept informed of the timeframes within which the relevant decree is due to be published as well as the conditions for drawing up precise instructions on this issue.

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