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RIGHTS OF THE CHILD IN FRANCE : BACK TO THE WALL

ALTERNATIVE REPORT TO THE UNITED NATIONS
COMMITTEE ON THE RIGHTS OF THE CHILD
IN THE CONTEXT OF EXAMINATION OF FRENCH CASE (JUNE 2009)
(Extracts)

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This report has been written by DEI-France, the french section of NGO Defence for Children International.

The following organizations have contributed and supported it :

AFMJF (French association of youth and family magistrates) for section VIIIIB (children in conflict with law)

ANAFE (National association for help to foreigners at the borders) for section concerning separated children in waiting zones (chapter VIII A 1)

FCPE (Federation of councils of schoolchildren's parents in State Schools) for parts III D (child's opinion), VI A (disabled children) and VII (Education)

FRANCE TERRE D'ASILE (help to asylum seekers) for section VIII A 1 (separated foreign children)

ICEM-pédagogie Freinet (Cooperation Institute for active education- Freinet)
For chapters III D (child's opinion) et VII (Education)

L'OCCE (Central Office for Cooperation at School) for part VII (Education)

ATD Quart Monde France has also brought its point of view on chapter V (Family environment and alternative care)

DEI-France sincerely thanks those who performed the translation of the present extracts, and particularly :

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Jean-Claude WALFISZ

And Emilie MELVIN

DEI-France also apologizes to non Frenchspeaking members of the Committee for having not provided a comprehensive translation of the alternative report. We hope to do better next time !

Jean-Pierre ROSENCZVEIG

Chairman of DEI-France

SUMMARY

This report has been written by DEI-France, with the help and support of other organizations of parents and professionals working for children in different fields,¹ so as to provide the Committee on the Rights of the Child of the United Nations with an **alternative vision** to the French government's official report, handed in September, 2007. Within this report, we analyse **the way in which France has continued to implement its State-party obligations with regards to the Convention on the Rights of the Child** (referred to as "the Convention" from here-on-in) since its last examination by the Committee in 2004, therefore **covering a four-year period**. Thus this report is a contribution—planned for in the Convention itself—for the examination of France's case by the Committee expected in June, 2009.

The report gives a **holistic approach of all the rights** of the child, as intended by the Convention, and is organized according to the Committee guidelines on the content of state periodic reports. It expresses a **critical point of view on the actual situation of all children's rights** in Metropolitan France²—and does not simply provide an analysis of the legislation applied to them as the official report has mostly done. This report does not content itself with denouncing the lack or violation of rights; it remains rather constructive by suggesting recommendations likely to allow a progression towards a better respect of the children's rights detailed in the Convention.

According to the analysis made, while it is true that the situation of the approximately 15 million children in our country is generally quite enviable, **France still has a lot of progress to make compared to other developed countries**. We need only quote the following statistic: two million children, according to European criteria, live under the poverty line. Even worse, **the previous dynamic in the progression of children's rights seems to have stopped** and rights are now frequently blamed for having stripped parents of their responsibilities or of having prevented teachers from doing their jobs. Basically, children's rights are pointed out as responsible for a part of society's current problems. Quite to the contrary, we believe **it is time to truly think about a global policy, complete and coherent, based on children's rights**.

First and foremost, the French State has to **set up the Convention's general measures of implementation** which are necessary to establish a true children's rights strategy, something which has never been truly thought of or organized in this country. We underline here (Part I):

- The full implementation of **the Convention's legal supremacy over national laws** (of all its articles), according to Article 55 of the Constitution.
- Strong efforts in **circulating the Convention to everyone**, from parents to political decision-makers. **The training of all professionals** dealing with children, starting with teachers and professionals dealing in justice.
- **The implementation, orchestrated by an important children's minister or by an interdepartmental delegation attached to the prime minister**, of a perennial global children's policy, based on the needs and best interests of children, as DEI-France has suggested in its document « **Pour une loi d'orientation pour promouvoir le bien-être des**

¹ FCPE, OCCE, ICEM Freinet, France Terre d'Asile, ANAFE and AFMJF

² Here lies one of the alternative reports limitations as we were not able to report on the situation of children in the overseas communities. We however do not forget that there are serious violations of children's rights observed in those territories, some of which have been touched on in the present report.

enfants » (ref 34). It should define the common references guaranteeing children an equal enforcement of their rights in all regions when the central government has delegated certain competencies to the territorial departments.

- A means to **follow, thanks to certain indicators, the progress of the implementation** of this policy, and a way to **strengthen the means of control**. This must begin with the true independence and adapted financial means for national institutions defending human rights (Défenseure des enfants, Commission Nationale Consultative des Droits de l'Homme, Haute Autorité de Lutte contre les Discriminations et pour l'Egalité and the new Contrôleur général des lieux de privation de liberté).

In the spirit of the Convention, France must fully and wholly recognize the child's status and must **guarantee the rights of all human beings aged 0 to 18** under French jurisdiction and do so without discrimination, be they poor, foreign, delinquents or disabled and this no matter their parents' situation. Progresses have been made concerning disabled children (Part VI of the present report), and a lot is expected from certain measures such as the *Revenu de Solidarité Active*, which are to be implemented to fight poverty (Part VI). However, **a certain number of existing and soon-to-exist policies are extremely disturbing, especially the immigration policy and the orientations accepted concerning children's justice**, which tend to stigmatize and discriminate against targeted populations. These unfortunately concern particularly vulnerable groups of children, (Part VIII of this report).

Thus, we will remember:

- The State, in collaboration with the Departments, has to implement **a coherent national policy on reception and protection of separated foreign children**. It must refrain from sending back or detaining children in waiting zones, provide the necessary secured care and psychological help, guarantee legal representation in all cases (ad hoc administrator followed by a legal guardian), allow them to build their professional future and offer them possibilities once they have reached their majority, be it a safe return to their country of origin if such is in conformity with their best interests or, otherwise, integration into the French society.
- The State must **review the hardening of the family reunification policy for migrants** which leads children to enter the country illegally and to be exposed to being deported when they turn 18 even though the rest of their family lives in France.
- During decisions made concerning their, or one of their, foreign parents in an illegal situation, the State must **take into primary consideration the best interests of children**, notably concerning their rights to live with their families, to not be subject to violence and to follow normal schooling., The State must refrain from arresting, detaining and expulsing their parents (or of their whole family) at all costs.
- **The current orientations in terms of minors' penal justice must be greatly modified**. The financial resources regarding educational measures have to be prioritized so that they may be implemented without delay (rather than waiting several months as is the case today). The incitement—or even the imposition on judges, concerning minimum prison penalties—to hand out more and more coercive sentences, which are used for children at an increasingly younger age, and more specifically freedom deprivation sentences, must be reviewed. The deprivation of freedom has never been a means of educating or of favouring integration into society. Furthermore, teenagers in conflict with the law are not yet adults: recidivism is a characteristic of their delinquency; they must be tried by specialized jurisdictions and/or procedures and the “extenuation circumstance of âge”, in accordance with the principle of mitigated criminal responsibility, has to be legally re-established for all minors, no matter their age. Most importantly, the **prevention of their entry into delinquency** depends

essentially on the improvement of the socio-economic conditions in which children live and on the future prospects that society has the ability to offer them. This also comes by teaching children about the law and human and children rights standards from an early age at school.

Obviously, in the present report, we cannot ignore the fate of children, victims of ill-treatment (Part V). **The law of March 5, 2007, relative to the reform on the protection of children at risk or in danger, has resulted in some progresses:** clarification concerning the responsibilities shared between justice and administrative protection, the nomination of a leader (the president of the General Council, the executive authority of each Department) and a better monitoring of children in danger or at risk. It has, however, not improved their protection vis-à-vis institutional ill-treatment as it focuses exclusively on ill-treatment in a family context—which is indeed much more frequent. Even more troubling is that this law is in conflict with another law, voted on the same day, which gives the mayor the competencies in terms of the prevention of delinquency allowing him to solicit the help of social workers to gather information on certain families judged to be "at risk," which is contrary to the principle of professional confidentiality and which presents a risk of a pre-emptive stigmatization of these families. **It is therefore not clear as to whether the protection of children in danger has truly escaped from being exploited in a function of delinquency prevention.** This situation must be clarified in the interest of the families and also of the social workers who accompany these.

This report mostly underlines (Part VII) the **worrying tendencies with regards to education.** In this case, it does not only concern vulnerable children—a couple of thousand separated minors or children in conflict with the law and some 450 000 children provided with educational or financial assistance by the *Aide Sociale à l'Enfance*—but rather **the totality of the 15 million children present in France.** We noticed a certain failure in the democratisation of the schooling system, which, while having succeeded in integrating almost all students since the 1980's, proved to widen the social inequalities instead of diminishing them and not to provide everyone with a chance to succeed. It also fails to give, through mandatory schooling, the necessary baggage all citizens must have and to learn how we must all live together. **The positive measures adopted for a select few children in blighted neighbourhoods do not ensure a true equality in the right to education.** It seems a reform of the whole schooling system would be necessary: from the reception of young children before mandatory schooling begins, while taking into consideration their specific needs, all the way to the level of university education, while also ensuring a process of educational and professional orientation. The previous must be done based on a republican educational system, with methods that favour the active participation of children in their schooling, leading each of them to emancipation and giving them the necessary baggage for their fulfillment in all sections and for their integration into society based on solidarity rather than on competition. Moreover, due to the effect of intended budgetary reductions, **current drifts are occurring towards the separation of education between formal education (minimal) at school and non formal education in educational structures or extracurricular recreation, which contribute some more to the inequality** between children based on the social environments and financial income of their parents. This present report pulls the signal alarm on this particular subject.

These are major challenges but, **an essential precondition would be to finally revolutionize the mentalities as would suggest the Convention: that all adults see within children, from the age of 0 to 18, a person:**

- not only worthy of being listened to from a young age but eager to learn to new things, capable of expressing himself, by using his own means of expression, his point of view based

on what he is experiencing, whose outlook is complementary to that of adults and who can therefore provide solutions to solve existing problems;

- who needs—including, if not especially, during adolescence—adult accompaniment so as to protect him until his full emancipation.

One cannot want to split children— human beings aged 0-18 as the Convention defines it—into two age groups as some tendencies observed in France would have it: young children, vulnerable and potential victims which should be protected, and teenagers, with an increasingly “imposing” physique, considered as problems and sources of delinquency, which should be assimilated to adults, especially when it comes to sanctioning their behaviour.

It is time for society's view of adolescents to radically change—that is to say that the politicians, relayed by the media, must stop presenting youth as a source of problems, must stop legislating based on emotion and without coherence in reaction to events or malfunctionings observed here and there. Quite to the contrary, **they must grant their trust to children and to young people, set up a coherent global policy for children with the children so as to build a united world which today's youth will be able to pass on to their own children in the future.**

Despite the progresses recorded in certain areas, **the harmful orientations underlined in this report have led our country to come up against a brick wall** in the last years which prevent us from progressing towards a better state of child welfare as well as that of society. This wall is named silence, indifference, fear, segregation, confinement, resignation. We must clearly get over, get around or pull down this wall and adopt new approaches, find different strategies to give children the best of what we have and to leave them with a heritage of a world further united.

This is not a responsibility that falls solely on the public powers. If the present report often seems on charge for the government - which holds the responsibility of going through with the engagements made on the French State's behalf towards the international community by ratifying the Convention, we do not forget that we all hold - especially those defending children's rights, such as we - a certain amount of responsibility. **We are also at the foot of this wall.** It is up to us to take up a position, to promote practices meeting children's rights standards and to better defend the positions we have taken until now. Out of respect for children.

The assessment suggested in this report leads us to already formulate, in its conclusion, 20 general recommendations for the next five years.

More than ever, we must convince everyone in France that the Convention, through its appreciation of children in their civil, economic, social, cultural and political rights, traces a real project for society, which allows not only parents to get something out of it but also to reassure society. France is one of those countries, more than others, that have the means to take on this political bet. The rights attributed to children and which are made to directly benefit children are not to be considered dangerous but rather a chance/an opportunity for our societies.

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INTRODUCTION

Regarding the implementation of the International Convention on the Rights of the Child in France and by France, we note a bitter fact: the ideology of the Rights of the Child has not a good press in our country. It is preferable to talk about children's duties rather than about their rights. **The Convention dynamics of the 90's has run out:** media hardly talk about the Convention; politicians rarely refer to it; the CRC promotion is very incomplete, in the field of information as well as of childhood professionals training, even if isolated initiatives do exist. We cannot yet talk about a decline of children's rights but little has improved since the 90's.

Of course, our country has no reason to be ashamed of the general children's lot in France and of its cooperation policy. Children's lot in France is globally enviable compared with what is going on in the world. However, **great poverty strikes one or two million children**, according to adopted references, out of a total of 14 millions; **violence against children is an undeniable reality:** not only physical, sexual or psychological ill-treatment against a number of children but also simply **violence of a daily life for numerous children with hardly any positive prospects.** **Regarding the right of children to be active subjects of their own rights**, starting with a consideration of their opinion about decisions concerning them, some progress has been made but it is **not yet an established right.** Finally, **if we compare the respect of children's rights in France with the situation in other rich countries, France is far from being among the best ones;** it ranks among the last third in several fields, as we will see later.(5)

After 18 years, the New York Convention is still young compared with changes of mentality it implies. We may say that we are still in a phase of "education of States-Parties" towards the respect of children's rights according to the Convention. We should therefore consider with kindness and indulgence the situation in each country, even in the one that proclaimed human rights for the first time in 1789 and was a forerunner in the field of free education and child protection. **It is now time to lucidly and constructively take stock of the implementation of signed commitments: we have to be demanding out of respect for children, particularly for the most vulnerable ones.**

A lot is being daily done on different levels to take care, directly or indirectly, of children's fate in France. Within the private sphere between adults in charge of children as well as in the public field between the State and local authorities or other organizations, numerous are those, physical or moral persons, exerting or having to exert responsibilities in order to take care of children and improve their life conditions. One of the first questions to be asked in an economically developed country, with a loaded and therefore complex history like France, is to **identify those responsibilities before wondering who is accountable for them** - State and parents cannot be the only accountable actors- **and to consider the need to articulate them.** Education means co-education and does not totally belong to families or to the national education system. **This report particularly deals with the implementation of signed commitments by public authorities with the ratification of the Convention** - which involves the central State as well as local authorities to which the State delegated some of its competences as a form of decentralized State. **It also tries to emphasize practices of different private actors having an effect on children's rights.**

We do not share the optimistic view logically emanating from the French State's report, which tends, like any official report, to self justification. **We are worried about the fact that the children's rights topic is being repressed, or even rejected by an audible but questionable ideological approach according to which, in an aging society facing numerous crisis, children are being made responsible for its main problems:** refusing authority, they should be responsible for daily violence, with their delinquency they should be the main source of the society's insecurity. Whatever the reality: this rapped out speech is the one kept by public opinion. Human rights would be liberticidal.

This persisting approach for years has obviously an impact on all political trends and leads to question the very recognition of the child as a person. **In the same way as the new status of women used to be made responsible for all problems of society, the children's status is supposed to prevent adults to exert nowadays their responsibilities. This misrepresenting approach of the Convention's spirit should be fought.** Is it today thinkable to question the man/woman equality? It is also unthinkable to question the Rights of the Child.

Quite obviously **all what has been done over the past four years cannot be considered without France's economic, cultural and political context during this period.** Children benefited from it or bore the brunt of it as stressed by the debate opposing two bills, eventually adopted on the same day, on childhood protection and delinquency prevention. **The influence of institutional debates** (what is the role of the State, of regional councils and of mayors in social policies?), **of economic challenges during this crucial period with high tension on public budgets** and, naturally, **of image of the family, childhood, as well as the idea of public authority's responsibility are therefore to be found in our report.**

How could it be different? Childhood policy is only one aspect of a society, which is developing and building itself.

(5)cf UNICEF Children's poverty in perspective: overall view of children's wellbeing in rich countries *Bilan Innocenti*7 (2007) UNICEF Innocenti research centre (Florence) Ref. 15.

http://www.unicef.ca/portal/Secure/Community/508/WCM/Press/IRC7/rc7_fre.pdf

PART I. GENERAL MEASURES OF IMPLEMENTATION

A detailed analysis of this part I of the French State's report can be found in appendix 1. It would take too long to repeat it here in full. This analysis is also based on two recent documents by DEI-France:

- DEI-France's report drafted in the framework of the United Nations Human Rights Council's Universal Periodic Review (UPR) (Case of France, 2nd session 2008), entitled Children's Rights in France: «The Poor Relation in the Country of Human Rights»? (January 2008): cf. ref 33.
- DEI-France's position statement in favour of «**A Law to Promote Children's Welfare**» (April 2008) that calls for the adoption of a global coherent approach to policies aimed at children, based on their rights under the Convention (cf. ref 34).

To be brief, we will only mention hereafter the most worrying points, while attempting to make constructive recommendations, and we will refer readers to appendix 1 for information on other points (even if they also seem extremely important to us).

In this part I (I C of reference 1), we must first look at the table prepared by the Government on the French context, though it does not clearly explain how the context affects the implementation of the Convention.

The French context

In addition to the differing nature of the aspects of the context that the government has mentioned, we have noted many other developments that are considerably more important when considering children's rights, such as the "bad reputation" of children's rights, childhood perceived as a risk, the importance of themes (insecurity and immigration) that blacklist certain categories of children (delinquents and foreigners), and also a propensity to legislate in an emotional state rather than in the children's interest. We refer you to part IC of appendix 1 and reference 34 for more details.

This approach must be changed, and a proactive method used again to ensure children's welfare, based on the Convention's basic principles. DCI asked the government to make a firm commitment to this by taking advantage of the opportunity provided by the 20th anniversary of the Convention (ref 8).

Integration of the provisions in domestic law

We refer you to part ID1 of appendix 1 for this part, but we should at least recall the following recommendation:

It is no good putting forward the progress of an Act if the implementing decrees of that Act are not published. This is the case of certain provisions of the Child Protection Reform Act of 5 March 2007, one and a half years after it was passed by Parliament. It is also the case of certain sections of the Act on the Equality of Rights and Opportunities, Participation and Citizenship of Handicapped Persons of 11 February 2005, three and a half years after it was passed.

Ratification of international instruments

The State has forgotten in its report that the implementation of the Convention also involves the ratification of the international treaties that make it possible to improve respect for children's rights.³ Please refer to appendix 1 for more details.

Direct applicability of the Convention and enforceability of rights

The reversal of precedent caused by the Court of Cassation's decisions of May 2005 and the following decisions, that DEI-France had been calling for insistently, effectively constitutes major progress as regards the direct applicability of the Convention. However, we cannot be satisfied with the direct applicability of only some articles of the Convention (cf. § B1 of reference 33).

Article 55 of the Constitution which deals with the superiority of international treaties in relation to national laws should be fully applied. The Constitutional Council, when referred to by parliamentarians, the Children's Ombudsman or another independent authority, should be able to disregard the provisions of new laws that are not in conformity with the Convention and its protocols.⁴

In addition, the right of appeal against any decision considered to be contrary to children's rights is more or less guaranteed in France, and the possibility of referring to the Children's Ombudsman is an essential element for ensuring rights are enforced. DEI-France nonetheless considers that a procedure for presenting individual complaints to the Committee should be established within the framework of an optional protocol to the Convention: cf. ref. 7.

During an interview in July 2008 at the Office of the Junior Ministry for European Affairs, DCI-France asked the government to urge the European Union States to encourage the United Nations to draft a protocol to the Convention establishing a procedure for presenting individual complaints to the Committee.

As regards the other aspects of the enforceability of rights, among them legal aid and access to law, please refer to the complete analysis in appendix 1.

National strategy for children and their rights

The promotion of the Convention and the defence of children's rights require a global strategic solution giving prominence to the different values at play as well as the different actors involved, at territorial, national and European levels. We show further on in this report that the French State has not taken the steps necessary to develop a global strategy for children's rights, within which a real policy for children could be drawn up. This analysis led DEI-France to promote **"a law of guidance FOR children's welfare"**. The Committee may refer to the relevant statement in reference 34, which insists on the consideration of **children as a subject of rights in national policies, as the Committee recalled in §5 of the observations it made in 2004**.

³ Does this indicate once again that these treaties are not considered to be binding?

⁴ Both the Children's Ombudsman and the HALDE (High Authority against Discrimination and for Equality) have issued opinions on recent bills (Prevention of Repeated Delinquency and Control of Immigration) that indicate the non-conformity of certain provisions of these bills with the Convention on the Rights of the Child. That did not prevent the provisions being passed by Parliament and ratified by the Constitutional Council.

This document was widely disseminated and submitted to the public authorities (President of the Republic, Prime Minister and Members of Parliament).

DEI-France, during an interview at the Prime Minister's Office, charged the government to take advantage of the opportunity provided by the 20th anniversary of the Convention in 2009 to become involved in major proactive action in favour of children, so as to achieve a global policy based on children's rights under the Convention (ref. 8).

Inter-sectoral co-ordination

a/ As regards the consistency of the various ministries' action, the process described in the government's report seems very insufficient. As developed in § B 1.1 and B 2.1 of appendix 1, neither the **Minister in charge of Family Affairs**, nor the **Inter-Ministerial Delegation for the Family**, nor the **Office of the Junior Minister for Human Rights** are able to ensure such consistency.

DEI-France was obliged to remind the Prime Minister's Office in June 2008 that it was the only competent body for guaranteeing the consistency of a global policy to protect children's rights (ref. 8).

The creation of a Ministry of Children, or at least an Inter-Ministerial Delegation dealing with children's rights and directly attached to the Prime Minister, would be an essential first step for organizing the effective implementation of the Convention.

b/ As regards co-ordination between the Central State and the territorial communities to which the State has delegated powers with respect to children, as well as co-ordination between the State and its decentralized services, it seems necessary to make the following recommendation:

It would be a good idea to define common reference frames guaranteeing all children equal respect for their rights in all fields, whichever authority is competent, in the various territorial regions.

Lastly, apart from the necessary consistency and co-ordination of policies at any given time, such policies should not be called into question with the passing of time or with a change of government.

A strategic view over several years is necessary to give the actors the visibility and serenity that are essential to carry out their action with children in a lasting way.⁵

Collecting data and defining indicators

The government has forgotten in this part I (except partially for the protection of children at risk in paragraph 45) to deal with one of the most important aspects concerning both the implementation of the Convention and monitoring of progress as regards respect for the

⁵ As an example, is it normal that in the month of June 2008, the Reception and Guidance Centre for unaccompanied foreign minors located in Taverny, which is managed by the French Red Cross and financed in the framework of a convention with the State, did not yet know, several days before the end of the convention governing its existence, if that convention was to be renewed or not?

Convention, i.e. the collection of data. The Committee had nonetheless questioned the government on this point, in § 13 of its recommendations, by insisting on the special attention that should be given to the most vulnerable persons. We regret that apart from, it must be said, a particular effort with the creation of the ONED (*Observatoire National de l'Enfance en Danger* - National Observatory for Children at Risk) and the centralized processing of worrying information about minors, introduced by the reform of the protection of children at risk, no statistics are available concerning other particularly vulnerable minors (notably delinquent children and unaccompanied foreign minors). Or, if such statistics do exist, then they are not accessible for everybody (see [appendix 1](#) (SB3) for more details). More generally, no one has dealt with defining children's welfare indicators. To have a clear picture at any given time of respect for children's rights in France and to be able to progress with France's implementation of the Convention, we must begin by defining quantitative and qualitative indicators in the national context for all children, and also in the specific context of each category of children who have been identified as particularly vulnerable.

• For all children

A recent study carried out by the UNICEF Innocenti Centre on children's welfare in rich countries (ref. 15) places France in a relatively bad position in several areas, showing that it can and must do better for its children and respect for their rights. Thus France comes 18th out of 21 as regards educational well-being⁶ and subjective well-being⁷, and 14th out of 21 as regards behaviour and risk-taking.⁸

Under the assessment (quantified and qualitative) of the implementation of the Convention in France, the survey commissioned by UNICEF-France on the occasion of the 19th anniversary of the Convention ([ref. 16](#)) well confirms the poor assessment by young people aged 15 to 18 of society's view of young people, and it shows above all that a very large majority of adults (2/3) and young people (3/4) still know nothing about the Convention.

DEI-France urges the State, within a global solution to children's welfare as proposed in [reference 34](#), to obtain quantitative and qualitative indicators on children's welfare and respect for their rights, as in the UNICEF study on children's welfare in rich countries ([ref. 15](#)), but in a national context.

• For the most vulnerable:

Please refer to [appendix 1](#) § B.3 for an assessment of the situation concerning the collection of data on respect for delinquent children and unaccompanied foreign children's rights, as well as for the proposal on indicators, in particular the indicators obtained following the European study on violence affecting children in conflict with the law ([ref. 14](#)), in which DCI-France participated in 2007 and 2008.

Attribution of resources (in particular article 4)

The State has forgotten this aspect of the general enforcement measures in its report. It was however emphasized by the Committee in §11 of the recommendations it made in 2004. Please refer to [appendix 1](#) (I B 4) for developments.

⁶ Which includes school results and also the continuation of studies and integration in working life.

⁷ Self-assessment of his/her health condition, his/her liking for school and his/her general well-being

⁸ Which include behaviour affecting health, and also risk-taking and experience of violence.

Role of Parliament

Reference will be made to § B 1.2 of annex 1. A reminder need only be given here of the following essential recommendation:

More thorough and systematic monitoring – in particular examining new legislation from the perspective of children's rights – could be carried out if parliamentary delegations dealing with children's rights and established by National Assembly vote on 13 February 2003 were confirmed by a vote in the Senate, something that has yet to happen.

Role of independent institutions defending human rights and children's rights in particular

As well as the two independent institutions rightly cited by the government in its report – the Défenseur des enfants (Ombudsman for Children) and the CNCDH (Commission Nationale Consultative des Droits de l'Homme – National Consultative Committee on Human Rights), mention should also be made of HALDE (Haute Autorité de Lutte contre les Discriminations et pour l'Egalité – Anti-discrimination and Equal Opportunities Commission) and of the Contrôleur des lieux privés de liberté (Civil Liberties Commissioner), a post created by legislation dated 30 October 2007 and responsible, among other tasks, for monitoring children's detention conditions.

For the checks and balances afforded by these institutions to be effective, three currently unfulfilled conditions must be met (see annex 1 § B 1.3 and 1.4): **good representation of or cooperation with civil society and relevant NGOs, complete independence** and, in particular, **effective consideration of their views and recommendations**⁹:

This requires the appointment of office bearers to these bodies to be guaranteed as wholly independent. It also requires an increase in their powers by obliging the government to take note of their advice, as an essentially consultative role for them is no longer sufficient.

Collaborating with NGOs and civil society and consulting the views of families and children

The government omits to tackle this crucial matter too, contrary to the recommendations of the Committee in its general observation n°5 (ref 5): cf. final point made in § A of annex 1. The consultation initiative involving children embarked on by the Défenseur des enfants (ombudsman for Children) on the occasion of the 20th anniversary of the Convention deserves praise. It would have been to the ministry of education's credit if, as DEI-France had suggested, it had launched this initiative (ref 10), given that schooling affects virtually every child.¹⁰

The children's parliament too, however limited the experience it offers of learning about democratic representation, has not been developed over the past four years: only one of its

⁹ It is debatable whether these institutions can really be said to exert any control over implementing the terms of the Convention, if their advice and recommendations are not binding and if the government continues to ignore them, as has in major part been the case with recent legislation to deter re-offending (10 August 2007), to manage immigration (20 November 2007) and to extend detention for reasons of security (25 February 2008).

¹⁰ DEI-France would even go so far as to suggest in its letter that a delegation of children could, at the end of the major consultation exercise, present the results to the Committee on the occasion of its 51st session.

proposals has been incorporated into national legislation, as against four in the period 1996-2000.

We can only remind the government that major efforts must be made not only to consult NGOs, childhood professionals, families and children, but also to take due note of their points of view and to establish a genuine collaborative process involving all relevant forces within the country.

International cooperation

Reference will be made here to § I D 2 of annex 1.

Raising everyone's awareness of the Convention

We would refute the claims put forward in sections § 113 to 115 of the government's report that the principles and provisions of the Convention are "increasingly better understood" (see results of the UNICEF survey referred to above under ref 16); on the contrary, fewer adults are aware of the existence of the Convention than ten years ago - 34 % as against 40 % - and only 25 % of 15-18 year olds.

More serious still is the public's limited awareness of children's rights: **their right to be heard, their right to participate and their right to their own civil liberties, which, if not denied, are at least ignored.** Thus, in the survey above, the proportion of adults who considered that children's views were listened to and taken account of too much rose from 12% to 19% between 1999 and 2007. As shown in reference 33-(Part C), **the fundamental debate over the new status conferred on the child by the Convention has not yet been resolved in France.** A single reading at a marriage ceremony of Article 371.1 of the civil code¹¹ - significantly amended by legislation dated 4 March 2002 - is not enough to encourage parents to involve children in decisions affecting them. Recent awareness-raising initiatives targeting all sections of the population, and particularly children, have been prompted (cf. annex 1) by the Défenseur des enfants (Ombudsman for Children), UNICEF, which signed the Convention on 21 February 2006 with the education ministry, and by associations such as "Les Francas", APCEJ and DEI-France, which organise Convention-related conferences, activities and training on their own initiative or at the request of teachers and educationists.

DEI-France hereby reiterates its recommendations (cf. reference 33) that a genuine policy to raise awareness of the rights of the child and aimed at all should be adopted. Such a policy could include:

- **Human rights and the rights of the child to be taught, but especially experienced in practice, at school¹²**
- **Information to be circulated to future parents on parental responsibility and the responsibility of the state to assist and support them in their task where necessary (cf. Part VB of this report)**

¹¹ Art 371.1: "Parental authority is a range of rights and obligations with the interests of the child as their ultimate aim. The father and mother possess this authority until the child reaches his majority or is otherwise released from it. This authority is to protect the child's welfare, health and moral wellbeing, to ensure his education and to enable his development, whilst giving the child the respect due to him as an individual. **The parents involve the child in decisions affecting him, in accordance with his age and degree of maturity.**"

¹² In addition to education on human rights, general legal training would seem necessary: cf. proposals in chapter VII.

Training for those involved in implementing children's rights

In sections § 116 to 123 of its report, the government confirms that the measures it contains respond to **the Committee's recommendations of 2004 (§7 and 15)**. Details of objectives relating to this issue – some progress, notably for magistrates, but considerable numbers of targets still missed – are set out in annex 1, Part E. A great deal still remains to be done and all that is required here is a reminder of the proposals put forward by DEI-France at the time of the Universal Periodic Review (cf. ref. 33 Part C 2):

Compulsory initial and continuing education and training must be introduced for childhood professionals, civil servants, politicians and others, and must cover issues surrounding responsibilities shared with families and commitments towards children and their families made by local and national government and assumed by professionals in their role as representatives of the state. In addition:

- To enhance positive local experiences for children's wellbeing
- To develop interdisciplinary university research linked to the rights of the child

Circulating reports on the status of children's rights

Contrary to what is stated in its report, the government is not committed to widely circulating the recommendations of the Committee. As with the government's 2007 report, the recommendations are not posted on the website of the ministry responsible for family affairs (proof being a test carried out on 6 September 2008). The recommendations are not more accessible, despite claims made on the website of the Défenseur des enfants (ombudsman for children). Some effort, albeit minimal, is demonstrated on the website of the human rights secretariat (cf. annex 1 § E). The fact remains that the Committee's observations are being circulated by only a few NGOs such as DEI-France and UNICEF-France.

Section § 62 of the Committee's recommendations in 2004 remains topical: the Committee invited the government to use circulation of the recommendations to stimulate debate with NGOs and the Défenseur des enfants (ombudsman for children), and thereby raise awareness of the Convention at all levels of government administration and among the public at large.

The government must undertake to circulate its report and the Committee's recommendations in full and effectively via relevant government websites, as must the Ombudsman for children via his website. The CRC for its part ought to publish the recommendations in the national press in a summarised format that would be accessible to the general public including children.

Cooperating with the Committee and following up on its observations

As the Committee reminded the government in section § 5 of its 2004 observations, its first steps in implementing the Convention consist of **cooperating with international bodies monitoring the rights of the child and human rights more generally, responding to their approaches and following up on their observations**. While the UPR process seems to have signalled an awakening on the part of the French public authorities, the rights of the child have unfortunately remained on the sidelines of the UPR debate and therefore the recommendations made in reference 33 require underlining here.

*The French government must finally give the rights of the child their full weight within the context of human rights as a whole. It must make the process of submitting regular reports to the CRC, as well as to other bodies signed up to international human rights, an opportunity to identify what the real challenges are and to make progress towards establishing the rights of the child through genuine debate involving local authorities, independent human rights and children's rights institutions and NGOs, as well as civil society, families and children themselves. The government must also make a concerted effort to follow up positively on the Committee's observations. This task could be entrusted to an appropriate interministerial delegation, or possibly the Ombudsman for children. As was the case at the presentation before the Council for Human Rights following the UPR, the head of the delegation should at the French hearing be in a position to give solemn and concrete undertakings with, if possible, a timetable for implementation that could be monitored by inspection agencies and NGOs to assess progress.*¹³

Conclusion of Part I

An **essential prerequisite** for implementing the rights of the child as recognised by the terms of the Convention is undoubtedly the adoption of the "general measures of implementation" contained in Part I. The incomplete and sometimes confused adoption process as outlined in the government's report raises several questions about France's current willingness and ability to respect its undertakings with regard to the Convention, and to make the welfare of children a national priority. France must make a genuine effort regarding all of the following points¹⁴: affirm the legally binding nature of the Convention, discuss and consider a global strategy, define an implementation and monitoring process, gather data and specify monitoring indicators, demonstrate comprehensive understanding of *all* rights, allocate resources and, most especially, promote the Convention and train those involved in its implementation. The recommendations set out here, if acted on, could contribute to this effort.

¹³ DEI-France questioned the President of the Republic on two occasions on what he intended to do to follow up on the Committee's recommendations in 2004, but to no avail.

¹⁴ France also distinguished itself by a lack of overall understanding of and political interest in the rights of the child at the Conference on the Rights of the Child organised by the Council of Europe in Stockholm from 8 to 10 September 2008: unlike other European countries, not only was no top-ranking French civil servant present, but the speech given by the Secretary of State for Family Affairs, who took part on behalf of France and on behalf of the presidency of the European Union, appeared to be off-topic, being almost exclusively devoted to family policies. The minister did not circulate the content of the speech in France despite the fact it contributed to the Council of Europe Plan on the Rights of the Child for 2009-2011. Nor indeed did the minister sign up to the call made during the conference for the abolition of corporal punishment.

Cf. <http://jprosen.blog.lemonde.fr/n°267> 14 September 2008

Part VII: EDUCATION, LEISURE, RECREATIONAL AND CULTURAL ACTIVITIES (Articles 28, 29 and 31)

The explanations below are intentionally in summary form; the entire text of this part can be found at annex 14.

While chapter VIII discusses the most vulnerable category of children (isolated foreign juveniles, juvenile delinquents etc) this chapter deals with **all children in France, almost 15 million children in total**. One is therefore surprised to learn that the government report only devotes 5 pages to this subject. No doubt the government considers that it is complying in the appropriate way with the Convention in this respect.

Also, the government report merely states the main principles - the development of the personality, and equality of opportunity - which are the basis of the French educational system, without making any attempt to assess whether any of the developments noted and the decisions that have been taken are really making any progress towards achievement of these principles.

It is appropriate to mention that education in France is based on a principle of equality of opportunity, in accordance with Article 28 §1 of the Convention. While there are a certain number of "positive discrimination" measures ("ambition to succeed" networks or a personalized programme for a successful education) aimed at helping the most disadvantaged, **children nevertheless at the moment do not have an equal opportunity to access knowledge and to prepare for work and becoming a member of society.**

VII A. Equal access to education, including training and vocational guidance (Article.28)

The problems of access to school education will be discussed in this part. The problems relating to the effective creation of equal opportunity and achievement for all will be examined in VII B.

The debate on pre-primary school (before compulsory schooling from the age of 6)

Pre-primary schools, even though not compulsory, are required to take all children, whose parents request they do so, from the age of 3. However in some communes, children of 3 years of age do not attend school because there are no places for them.

Children from the age of 2 have been accepted by schools where places have been available, **but ever more severe budgetary constraints appeared to make "the nursery school" an adjustment variable; something which represents a threat to the schooling of those aged 2 and possibly those of 3 years of age.** (You can refer to annex 15 for a more detailed analysis of this point). The percentage of children of the age of 2-3 years attending school has continued to fall since 2000 (35% in 2000, 26% in 2004) and the Auditor General's Department noted in its 2008 Social Security report¹⁵ that the percentage of those children aged 2-3 attending school fell by 27% between 2003 and 2007 (by almost 30% in State Schools) which would provide to-

¹⁵ The Auditor General's Social Security report of 2008. Chapter X: the assistance for the care of young children.

<http://www.ccomptes.fr/frCC/documents/RELFSS/Aides-garde-jeunes-enfants.pdf>

day a figure of less than 20%. These percentage figures vary significantly depending on the commune and the *département*.¹⁶

While there is a need to debate the conditions for taking children from the age of 2 which have regard for the child's development, **a great deal of research has shown the beneficial consequences of pre-primary schooling for children and for their future successful development** (you can refer to reference 36).

It appears to us therefore inadvisable at the moment to do away with the possibility of schooling at the age of 2 and even to consider in the long run reducing the period of pre-primary schooling.

Reference 35 includes, as part of a method for nurturing young children that combines the educational dimension, a certain number of specific proposals.

Access for everyone to free compulsory education (Article 28 al 1 a)

It should be noted that consistent progress has been made in respect of access for disabled children to ordinary school facilities as evidenced by S VI A. However for this category of children there are still the problems, especially in respect of the accessibility of premises, of defining the personalised schooling plans and the provision of the human and financial resources by the central Education Department.

It can also be noted:

- refusal of State primary school registration in some communes of children whose parents are unable to provide evidence of a fixed place of residence (hotel, emergency accommodation, squatters and Roma people);
- the difficulties in caring for all children in fitting conditions, especially in Guyana.

You can refer to annex 16 which provides specific cases and some detail about these situations.

Mention may also be made of the worrying constraints imposed on the rights of all children to be able to access ancillary services that are equally essential, such as school catering facilities or the day nursery facilities before or after classes (access which is generally reserved to children in situations where one of the two parents, and sometimes both parents, are working). This constitutes firstly a form of discrimination amongst the children and secondly may present in the case of the children from the poorest families an added risk to their health (the school canteen meal being the only balanced meal of the day).

Access to guidance and counselling facilities in school and vocational training (Article 28 al 1d)

Guidance and counselling in school has meant that many children have had up to now to repeat a year at school (shown to be clearly inefficient in a lot of research that has revealed the negative effects on the academic future of children who have gone through repeating a year). In some areas of deprivation, 15-20% of the pupils of some schools experienced this. **The decision as announced and made in this connection by the Minister to give up the idea of repeating a year is a step in the right direction. This decision, we think, could not have been based on merely budgetary economic reasons and the educational system is now concerned with the problem of how to help those children continue to develop despite their failings.**

¹⁶ According to the above source, in the *département* of Seine-Saint-Denis, the percentage of those children attending school at the age of two fell from 22% in 1999 to 8% in 2006. When the school session resumed in 2005, 5,000 children were waiting for a nursery school place, and 3,000 of these children were over 3 years of age. On the 30th June 2005, 645 children over three years of age were at day nursery, as there were no places at the nursery school.

The "Equal Opportunity" Act of 2006 actually put forward a proposal for the introduction of a guidance and counselling process at an early stage. This was to be aimed at helping those children who found school challenging to enjoy an active life by learning a trade or skill. **This was an idea that seemed good at first but is, upon reflection, not such a good idea:** the educational systems that provide guidance to children at a very early stage of their school career are those which produce the least effective results (see the research undertaken by PISA).

Also, the individual guidance interview, suggested in the government report in paragraph 517, only applies to children in the 4th and 3rd year of the ZEP (Zone d'éducation prioritaire - Educational Priority Area). Every child should have the opportunity to have an individual interview with a guidance counsellor.

You should note that girls and boys do not receive equal treatment when it comes to guidance; while girls do better at junior secondary schools and in senior secondary school, fewer of them study science subjects and take part in excellence training.

The guidance provided at the end of the 3rd form (end of high school) also presents some serious problems to many children who find that they are doing subjects which they have not opted to do. The practice of "collecting in choices", while it appears to be of some advantage to children who are going on to general secondary education, continues to wreak havoc amongst those children who want to have vocational guidance. Moving on to schools some distance away in the case of many children including those who are struggling with schoolwork, frequently results in these children dropping out of school or quickly becoming "failures".

Finally, the local authorities, especially the Regions have been put in charge of responsibilities relating to vocational training. It appears that in this area of activity they are paying little attention to or not much attention to the provision of information, to the expression and the collective organisation of the young up until they have reached a mature age.

Access to higher education (Article 28 al 1C)

Access to excellence education and training for a few of the young people in areas of deprivation which is based on agreements between "écoles supérieures" (higher education establishments) and schools in these areas is a bit of a "red herring". In effect, at the current moment in time, school education in these schools does not allow, as you will see in the following paragraph, every child in areas of deprivation to have access to the minimum background knowledge they require for work and life in general. For those who are able to enter higher education, the problems relating to the financing this type of education drastically restrict the number of options available.

Providing finance for the young in order to allow them to pursue their preferred course of studies, whatever may be their families' means, has to be given some serious consideration as the scholarship system is not enough to give everyone equal access to higher education.

Preventing absenteeism and dropping out from school (Article 28 al 1 e)

The State forgets to deal with this point in its report; but a lot of measures have been introduced to tackle school absenteeism since 2004. **While some of the measures have been a step in the right direction (requirement for schools to alert parents immediately¹⁷), it could however be seen that there was a tendency towards a link between absenteeism and delinquency. Parents are therefore seen as being the people responsible for the absenteeism of their child and injunctive proceedings, even penalties, are provided for by**

¹⁷ Some schools inform families by SMS: they do not have to have contact with the families, they do not know whether the SMS has been received, to whom it has been sent and under what circumstances....but the school is able to clear itself.

the law relating to the prevention of delinquency of the 5th March 2007 (the mayor of the commune can now issue a summons for the parents to appear before the "Conseils des droits et des devoirs des familles (Council for the rights and duties of families) and even go so far as to ask that the child-raising allowance be cancelled).

Even more of a problem is the fact that in some education authorities or some schools, **there is an increase in the number of exclusions as a result of discipline problems**. It is not rare therefore to find adolescents, who have already been excluded from 2 schools, taken out of the school system after the 3rd period of exclusion. Although some schools do not actually exclude pupils from the school itself a system of excluding them from classes is widely practised.

Steps have to be taken to avoid pupils dropping out from school ("sectioned" exclusion, exclusion statistics by school, suspension and the assessment of "relief classes").

In conclusion, getting each child to enjoy coming to school, getting the child to see its purpose and to recognise the interest he or she has in going there, would all prevent these problems.

School discipline (Article 28 al 2)

Unfortunately in this regard you can see in 2006 there was a **significant backward step taken which annulled several areas of progress reported in the July 2000 circular¹⁸** which was beginning slowly to be implemented, despite many of the school staff being reluctant about it.

- The composition of the discipline councils was reviewed so that school staff had the more predominant representation at the cost of reducing the parents' and pupils' representation.
- Collective punishment systems were restored
- The confusion between work assessment and the punishing of behaviour reappeared along with marks for the contribution made by pupils to school life (note de vie scolaire) which you can imagine contained a subjective element¹⁹.

DEI-France has requested that the July 2000 circular on disciplinary procedures be looked at again in order to avoid the schools becoming an area where people have no civil rights.

VII B - Aims of education (including the quality of education, Article 29)

The differences between the common foundation courses of compulsory school education and the 2008 curriculum

The Education Framework Act of April 2005 states that the main task of the French educational system is to help all children make the most of school, to ensure as much as possible that there is equality of opportunity and to help young people get into a job. In July 2006, a legal instrument provided for "the common knowledge and skills foundation" which now appears in the Education Code.

¹⁸ This circular was designed to end the disciplinary measures that did not comply with the provisions contained in the law in general and which made the school an "area where people had no rights", and to encourage internal school rules to be set up and updated on a regular basis with the participation of children, parents and staff in the school.

¹⁹ See the arguments put forward by the FCPE (Federation of councils of schoolchildren's parents in State Schools) of the Val d'Oise: http://fcpe95.com/spip.php?article_352

While in the text, the common foundation programme implies a certain desire to acquire knowledge and skills, the various circulars and above all the latest 2008 curricula do not allow every child to acquire this. In fact the curricula and the circulars concentrate on "reading - writing- addition", thus ignoring cross-disciplinarity and inter-disciplinarity in favour of the excessive accumulation of knowledge. **This centring on "reading - writing- addition" is being done on a qualitative but also a quantitative basis as the total amount of time assigned to other subjects areas under the banner of "humanist culture" is in decline, with two hours of teaching per week in the primary school being taken away.** Some practical teaching, in particular artistic and cultural, is being done by external agencies and handed over to local "partners". The cultural divide between children will widen even more (see VII C).

Equality of opportunity at the junior secondary school (collège): an illusion

Here we do not propose to discuss the term "equality of opportunity", used by the Convention, nor even the idea of achievement or success as stressed by the French educational system, even though some people see these notions as being a brake on achieving true equality of rights²⁰.

We will note only the fact that **equality of opportunity is scarcely recognised and that success of each child is far from being achieved: the educational system is currently reproducing (even by accentuating them) the pre-existing social inequalities.** At junior secondary school level, 84% of pupils who are really struggling with schoolwork are from disadvantaged backgrounds and the school and vocational guidance system tends to discriminate to a large extent between socio-professional categories and residential areas.

Positive discrimination which might tend not to act in the interests of those pupils who are struggling with schoolwork.

The resources for the "ambition to succeed" networks comprising schools containing pupils who find school particularly challenging are on the increase. However, the number of schools in the networks has fallen since 2005, leaving a large number of schools, junior secondary schools (collèges) and senior secondary schools (lycées) at a disadvantage. Only the best pupils in those schools included in the "ambition to succeed" networks will go into higher education. An amendment to the "carte scolaire"²¹ will make it possible for some families to change schools but for the majority of families in the lower income neighbourhoods, the short distance that their home is to the school is still the most important consideration, even a requirement: because of means of transport, cost of the mid-day meal, etc.

Since the start of the school year in 2008, the length of time spent on teaching has not been the same in the case of everyone. Two hours teaching time has been dropped from primary education and has been offered up by the teacher to provide learning support to families who have children who find school challenging. These two hours have been added on to the 24 hours of teaching; this overload of schoolwork works to the disadvantage of the cultural and sports activities undertaken during this period by the other children. Extra

²⁰ The notion of "opportunity" or success suggests that we would be satisfied with the situation where inequality is acceptable by justifying it, not on the grounds of social background but on the grounds of merit, that we would be satisfied with a world in which the notion of success implies competition with winners and losers, a notion which does not provide the best mechanism for creating social cohesion; not the best way to co-exist peacefully and ensuring that everyone is accorded equal dignity.

²¹ Up until the start of the 2007 school session, pupils were assigned to schools and collèges (junior secondary schools) on the basis of a system which divided up the school catchment areas on a geographic basis. This has been amended in order to allow parents to send their child to other schools.

remedial-type courses during the school holidays have also been suggested for pupils who are struggling with schoolwork in the last two years of primary school.

In the case of lower achieving pupils, a personalised programme for a successful education (PPRE) may also be implemented. However the PPREs, like the support periods and the remedial courses, have a clear impact on the pupils involved in as much as these pupils appear to everyone to have been singled out as being "pupils who are struggling with their schoolwork".

At the collège (junior secondary school) level there is available for young pupils a part-time vocational induction training system; this is called the DIMA. During the school session each year the pupils receive part-time training. **In actual fact, this option is on offer to youngsters who are very much struggling with their schoolwork and who will leave the school system at the age of 16. All these measures are discriminatory and underline the inequality within the school system.**

Supporting children's growth and development (article 29 a)

If school should, as outlined in Article 29, Paragraph a, support the development of children's personalities and abilities, one condition is that children should enjoy going to school and **feel emotionally secure there.**

More generally, techniques exist to help create this security for children by means of a welcome and transition period in the morning when they can to put their family or personal worries to one side and ready themselves for learning. It would be interesting to develop these welcome periods.

If we want to create the best environment for learning we also need to respect children's biological rhythms both at home and at school. We will refer to the work of Professor Hubert Montagner²².

From this point of view, the decision to increase "support time" during the afternoon or evenings after school is misleading and worse, the decision to move to a 4-day school week for primary schools from September 2008 will lead only to a worsening of the divide between children from disadvantaged backgrounds and others, as explained in annex 17.

DEI-France advises that the allocation of school hours over the day, week and year should be re-examined. We recommend school weeks of 5 short days from Monday to Friday, alternating with holidays in a cycle of 7 weeks school, 2 weeks holiday, and shorter summer holidays. The children's interests should take precedence over those of the tourism industry, which currently determine the dates of school holidays.

Another necessary condition for effective child development: **health education, including hygiene awareness when at school (problems with dirty toilets raised by children or the issue of heavy school bags which have negative effects on their health should be taken seriously).** We can refer to these points as raised in studies carried out by the FCPE .

Educating children on human rights, the rights of the child, the law and citizenship (Article 29 b)

There has been a significant decline: **in 2008, citizenship education was reduced to civil and moral instruction which had disappeared from primary school timetables more than 50 years ago.** The passive accumulation of knowledge, acquired during lessons, cannot replace a daily

²² H. Montagner : L'arbre enfant (2007)

practice of citizenship via children's active and responsible participation in different times of their school life, in democratic debate situations with collective rules for living and working together. **Examples of schools using so-called new methods of education (e.g. Freinet's methods), which fully correspond to the aims expressed by the Committee in General Observation 1, are unfortunately not promoted by the ministry, in the name of each teacher's educational freedom.**

The national ministry of education however did show some willing by signing a convention with UNICEF France in 2007 so that children would become more aware of the rights of the child. There are **plans to display the full text of the Convention in all classrooms.**

It would be beneficial to check the reality of this and see how it is used by teachers.

Elsewhere, although the State report rightly mentions in Paragraph 525 the role that should be played by the Committees on Health and Citizenship Education in secondary establishments ("CESC" in schools and colleges), we can confirm that only a few of them are actually active and they generally focus on action to prevent addictive behaviour.

Although this trend is discussed in chapter IV F on the protection of private life, it is worth noting that school, which should essentially teach and establish a respect of civil rights and freedoms, is not exempt from the current fashion of "recording everything" (biometric recognition for school meals, CCTV cameras in the buildings, databases etc). While data-computerisation is now an unavoidable part of school management, the ultimate aims and other control methods for this data are rarely clear and there are significant concerns that it may be used for purposes other than the child's best interests. On 26 June 2008 the French data protection authority (CNIL)²³ rejected the use of equipment using digital fingerprints for controlling school access and monitoring pupil attendance²⁴.

From the point of view of citizenship education, it seems essential that, from primary school, **education about the law, as part of the knowledge that all future citizens should have, should be included in the timetable. This is not to mention the need to complete a civic education with a legal education.** A proposal on these points was written for the national ministry of education²⁵. This is outlined in annex 19.

Respecting the children's cultural values and those of the host country at school (Article 29 c)

In some areas there are teachers who have more than 20 nationalities in their schools and who have recognised the absolute necessity of valuing contributions from those different cultures and including parents in school life because this facilitates, in the long-term, the children and families' acceptance of French values which all are asked to respect. Despite this, these practices are still not prioritised by nor promoted by the state. **They still rely on the personal initiative of the teacher or school heads.**

Preparing children for the responsibilities of life in society with a spirit of understanding and tolerance ("living together")

This is a subject of major concern: **how to teach "living together" at school when, increasingly, segregation at school exists between children from disadvantaged backgrounds and those who are wealthier?** The division which existed until 2007 did not guarantee social

²³ Commission Nationale Informatique et Libertés

²⁴ <http://www.cnil.fr/index.php?id=2342>

²⁵ See reference 10

mixing but its relaxation seems to have strengthened segregation even more. **If rules for social diversity are not imposed on head teachers** this trend will only increase.

But, above all, state schools' budgetary restrictions and the return to focussing on the basic competencies of "reading, writing and arithmetic" in the 2008 timetables, in summary **the timetabled incapacity of state school to entirely fulfil its educational role, risks turning away those pupils from wealthy backgrounds who still believe in the need for social diversity.**

There is an urgent need to rethink a school where all children, mixed together, could learn daily about the foundations of social solidarity. DEI-France calls on the state to be inspired by adapting the Finnish educational model²⁶ to France. Thirty years ago in Finland they reopened the debate on the aims of compulsory schooling and restructuring it in the interests of children and society as a whole ([ref 10](#)).

Teacher training

The quality of education provided by the school clearly depends on the quality of the teacher training. And yet the IUFM, university institutes for teacher training, are set to disappear. If the university level required for becoming a teacher is increased (from Baccalaureate + 3 years to Baccalaureate + 5 years), **the specific training, pedagogy, technique and child psychology will disappear.** How will young teachers practice teaching methods that are loyal to the concept of education as set out in the Convention as well as the aims of education as given in paragraph 1 of article 29?

VII C. The right to free time, hobbies and cultural and artistic activities (article 31)

1 Holidays

The State is right to emphasise the progress made on providing access to holidays for those who never have the chance to take them. Similarly, we can mention the following initiative:

A draft law on granting annual aid to enable children to go on holiday was tabled at the start of August 2008 at the French national assembly. This followed a request supported for 2 years by a collection of 58 organisations, including several groups from state education, for all children and teenagers to go on holiday. The proposal foresees the provision of a minimum annual sum of €200, depending on income.

DEI-France supports this draft law on access to holidays.

2 Free time

Firstly we must not forget that Article 31 of the Convention discusses **the child's right to free time.** The abovementioned works by Professor Montagner, examining the need to respect children's sleep/wake rhythms, **make it necessary for the State to run campaigns raising family awareness on the importance of sleep.**

²⁶ "Education in Finland: the secrets of a remarkable success" by Paul Robert, principal of the Nelson Mandela college in Clarensac dans le Gard, download (in French) from:
<http://www.meirieu.com/ECHANGES/robertfinlande.pdf>

In addition, the fact that struggling pupils are denied, with their parent's agreement, parts of their autumn and spring holidays for school support sessions seems does not seem like a **good idea**: these children, like all others, need a minimum period to recuperate after several weeks of school work. Various studies have shown that **a cycle of 7 weeks of school and 2 weeks of holiday would be appropriate.**

3 Access to group activities during free time

The children of illegal immigrant parents, often born and living on French territory are, even now, the most frequently excluded from attending free time activities. This can be because their parents are not able to complete the requested administrative applications or refuse to complete them, or because they are staying with another member of their family and are not usually resident in that area. Furthermore, recently, the conditions of modern life have increased the number of this type of situation, which are often linked to periods of break up and moving out.

4 Local educational projects: the necessity of coeducation

Here we refer to Paragraph VI C which indicates the difficulties encountered in implementing free time activities due to the joining of the **old "childhood contracts"** (for providing a service for children younger than 6) and **"free time contracts"** (for giving children of between 6 to 18 years of age access to school and extracurricular activities and holidays) drawn up between the French child benefit office (Caisse d'allocations familiales) and towns or groups of towns.

But it is important to note the interest generated by the creation of a local (or regional) educational project involving the different educational partners - schools, families, associations, local authorities - which makes coeducation a reality by coordinating the organisation of educational activities in the children's best interests.

5 Combining school and informal education: careful!

The proportion of so called free-time not taken up by school grew throughout the 20th century in France. Correspondingly we have seen school time in France decrease continuously. From September 2008 it will be reduced even more for primary school children: by two hours a week.

It could therefore be said that the situation in France is characterised by a new, shared "educational mission" between schools on the one hand and extracurricular, cultural, social and free-time organisations aimed at children and young people on the other.

School is given the task of teaching and confirming knowledge that is less diverse and less wide-ranging, but still "required". On the other hand, informal education is left to provide children with fundamental experiences in emotional and social education but also to provide, almost exclusively, major cultural knowledge. This situation, widespread today, is harmful for many children and a source of significant inequality between them.

Cultural organisations (conservatoires, music or dance schools) continue to "attract" (by a dissuasive pricing policy, choice of lessons) children that are generally "comfortable with learning", frequently coming from the upper or upper middle classes and **accompanied by their parents to these activities.**

Even though, in many towns, measures providing fee-incentives for children from modest backgrounds to participate exist, the absence of parents to accompany them is probably the greatest source of discrimination and division between children.

In most towns and particularly in the suburbs, educational and social attitudes have developed to not admit those children who are not accompanied by their parents on their first visit or later.

Historically, extracurricular educational establishments subscribed to a long tradition of "popular education", the ultimate aim being to provide efficient organisations for giving all children and their families' access to education and culture.

However, over the years, **these organisations seem to have oriented themselves more towards producing "services" adapted to better integrated and more demanding families who usually have stable jobs and regular incomes.**

This trend is worrying as it seems that whether children do or do not have access to extracurricular organisations, activities, cultural, free-time or social activities, this has a significant impact in terms of sociability, good integration and also for their future at school.

Another source of inequality in access to informal educational organisations and spaces comes from their uneven geographical distribution which puts certain areas at a significant disadvantage (rural, suburban and some city areas).

Generally, France no longer seems to have a robust policy for developing educational and extracurricular spaces and even less for creating new types of organisation.

This is regrettable as the evolution of parenthood and family now places an even greater importance on the need to accompany children on an educational, social and cultural programme outside their normal environment.

Today in France it is very important to guide the institutional decision makers' attention towards the support, creation and development of new services and accompaniment of children and their parents during their free time, to respond, without shutting them in schools, to the new needs of social and educational accompaniment.

While French schools have undoubtedly succeeded at what could be called the "popularisation" of secondary education, by welcoming all people, it has still not fully succeeded in making it democratic. Educational policy remains unequal. Moreover, school successes and failures are linked to the pupils' social origins. Children from poor areas are, and will be, increasingly schooled in the same establishments - social diversity in educational spaces is being compromised.

In particular, 2008 saw a regression in France's ambition to provide education for all. Compulsory schooling with new programmes and various measures does not provide everyone with the opportunity to acquire the essential skills for life on a personal, professional and citizenship level.

While everyone's attention is focused on the fight against failure - in the sense that it is the pupil who is seen as a failure - could it not be considered that schools themselves are failing in their aim to provide "equal chances" and in their mission to provide everyone with the necessary skills?

It is therefore high time that we take full measure of the extent of schools' unsuitability for their pupils and also the aims defined in Article 29 of the Convention and set out in General Observation no 1.

It will affect the future of nearly 15 million children and our society as a whole.

PART VIII : SPECIAL PROTECTION MEASURES

VIII A. Children in situations of emergency:

VIII A.1 Refugee children (art. 22)

Please Refer to the alternative report on separated foreign children from France Terre d'Asile

VIII B. Children in conflict with the law (Articles 37 a) to d) 39 and 40)

Refer to Appendix 22 for a detailed analysis of juvenile justice in France, which has been organized based on the plan suggested by the Committee. There is nothing really to underline regarding the presentation made in the report for France, which essentially presents the status of legislation on this subject, if only to say that it is already obsolete, as this legislation is permanently being reworked: the Ordinance of February 2, 1945 that governs juvenile justice was modified at least 5 times between 2002 and 2007, and a "reformulation" has been announced for 2009. But there is a need, against the backdrop of the Committee's 2004 observations (§58 and 59), to analyse these legislative developments by putting them back into a political context in order to explain - without justifying - them and by holding them up against the relevant statistics, the realities on the ground, and the experiences of professionals who implement this legislation.

VIII B 1. Administration of juvenile justice (Art. 40)

During the reference period of July 2004 to June 2008, a major concern drove the political debate: the continuous desire to fight juvenile delinquency.

- This issue was presented as a worsening situation and a source of major insecurity: this basic hypothesis can be questioned, as scientific observations have started to show a decrease in delinquency since 2002, if not since 2000.
- The proposed explanation for this worsening observed in the 1990s was based on the fact that judges and professionals who work with childhood delinquency are considered to be inefficient or even lax (or even because the Ordinance of February 2, 1945 that sets out the principles of criminal law for minors is no longer suitable): in fact - and even if the financial and human resources put at the disposal of the juvenile justice system have undergone a net increase - **there is still a long way to go: these professionals simply do not have the means to fully apply the law: it is common, for example, for several months to go by before an educational measure can be put in place²⁷ due to the lack of space and human resources when incarceration is possible the same**

²⁷ See Report No. 505 of the parliamentary commission on the execution of decisions of the criminal justice system chaired by Jean-Luc Warsmann, December 2007.
<http://www.assemblee-nationale.fr/13/pdf/rap-info/i0505.pdf>

evening. For DEI-France, an educational measure handed down by a judge must be implemented the same day.

Erroneous assertions and confusions have found their way into this political discourse:

- This discourse refers to delinquency prevention when really what is being referred to is the prevention of delinquency recidivism.
- During the debate, it was put forward that adolescents from 16 to 18 years old should no longer be considered children, as was the case in 1945, but should instead be considered as adults.
- Repression was presented as the primary means to prevent recidivism, or to prevent the start of delinquency.
- The need for a speedy response from the criminal system - which no one questions - was even confused with the need for speedy sentencing for children, which is contrary to the educational work that is necessary for children.
- The political discourse also fails to grasp the scope of the treatment of children who commit minor offences despite the role that the judicial response can have in the educability of minors and in preventing the potential occurrence of more dangerous acts.²⁸

The concern of the State is obvious: it seeks to fully concentrate the legal forces available on the response to youth delinquency (a major electoral theme) in the context of the public financial crisis that has led to a realignment of the State in its governing powers - particularly in terms of police and the legal system - and out of the desire to pass on costly social welfare and prevention initiatives to local organizations.

All of this leads to very worrying directions taken in the administration of juvenile justice:

a/ The favoured approach is on developing a repressive apparatus, and actions to truly prevent delinquency from the start are cast aside. Public authorities have locked themselves into a reactive strategy (against the apparent delinquency of youth), when they should be pro-active in developing prevention strategies: family policies (identifying the parents who are responsible and supporting them); social policies (providing children with decent living conditions, which is a result of better responses to the problems of housing and resources); policies of integration (particularly for immigrant families who are ghettoized); policies to promote the citizenship of children and young people (affirmation of and help in the exercise of their rights) by employing legal education (see [Appendix 19](#)). Prevention occurs by establishing a dialogue between society and its youth and by providing young people with adequate living conditions, hope and justice.

Public authorities must be reminded of General Comment No. 10 of the Committee, which stresses the need to attack the primary causes of delinquency (poverty, negligence, abuse or absence of social ties, socio-economic injustice, and discrimination) and which stresses the importance of values and basic rights in schools.

b/ Financial outlays are currently concentrated on managing cases in "coercive" institutions - CEFs (closed educational centres) and EPMs (specialised penal institution for minors) - to

²⁸ See M-M Bernard: "Une compétence particulière du juge de proximité: le traitement de la délinquance juvénile contraventionnelle" in the *Journal du droit des jeunes-RAJS*, No. 274 (April 2008), p. 8, (ref. 27).

the detriment of what is called an "open milieu." This has led to the fear of an opening towards more imprisonment and raises the legitimate criticism from professionals, for whom these kinds of coercive and unmonitored tactics become purely superficial if extensive work on children themselves and their family environments are not part of this process. Similarly, it should be pointed out that the creation of BEXs (offices of sentence enforcement) under the authority of public prosecutors in order to better monitor the different measures handed down by the court (such as binding educational measures) involves mobilizing resources (for court clerks, child-care workers and space) that have not been made available.

c/ With each set of modifications to the 1945 Ordinance, **the specific issue of juvenile justice has tended to become blurred, the time allowed to juvenile justice has decreased (faster sentencing rather than taking time for educational measures to restore the child), and youth criminal law has tended to become aligned with that for persons of full age.** Refer to [Appendix 22](#) for more details, but note the main following points:

Criminal youth law has focused more on retribution (with regard to acts) and less and less on education in order to rehabilitate the person. With the enactment of minimum sentences, judges have tended to automatically hand down sentences, which runs contrary to the principle of the best interest of the child, which requires a case-by-case response. Since 2007, the trend has been to resort to incarceration, and many fear the future effects of enacting these "minimum sentences" and of removing the legal mitigating circumstance of age ("excuse atténuante de minorité" which extenuates criminal responsibility with maximum penalties twice less for children than for adults) introduced in the Act of August 10, 2007. **In this context, the wave of suicides carried out by minors that was observed in 2008 was surely not anticipated to the extent required, and the involvement of youth court judges should not absolve policymakers of their responsibilities when they do not offer positive prospects for young people in crisis.**

The Constitutional Council, which in August 2002 had established the principles of the primacy of educative action, of the specialization of procedures that apply to minors, and of the mitigation of criminal liability - even if it has not given in to uncompromising repression - has nevertheless entrenched the *commande sociale* with a more stringent line of repression by declaring that the new measures introduced in the Act of August 10, 2007 did not run contrary to this reasoning.

Moreover, new legislation now allows youth court judges to be sidestepped: **this means that 60% of criminal responses are now handed down by the public prosecutor.** The concepts of *flagrant délit* and *composition pénale* are now possible for minors. The arena for protecting freedoms has therefore shifted.

We must also pay particular attention to the **problem of resorting to judicial proceedings that are decided by the public prosecutor.** While the Committee should be pleased with its recommendations on diversion taken in its General Comment No. 10, it should nevertheless be noted that these kinds of judicial proceedings were designed for persons of full age and then applied to minors. They have become a major problem. The relevance of the response is currently not assessed for children, which increases the risk of inconsistency. The possibility for a minor (who is considered legally incapable) to negotiate a sentence with the public prosecutor as part of the *composition pénale* (even with the assistance of a lawyer) is completely inappropriate considering the minor's need for education (which excludes a sufficient level of autonomy to negotiate a sentence) as well as the relationship of inequitable strength between the public prosecutor and the minor, and the registration of the event in the criminal record.

In accordance with the recommendations of General Comment No. 10, diversion responses for children must be assessed, clarified by a regulatory instrument, be put into a framework of measures, and made consistent with the judicial response.

Moreover, there is a need more than ever for defence before the public prosecutor. DEI-France calls for the legalization of the intervention of lawyers before the public prosecutor and the public prosecutor's delegates and asks that the financial means be made available for this initiative.

d/ More seriously, the major trend is to consider repeat offenders (who by definition are really young delinquents in the sociological sense of the term), particularly those who are older than 16 years, as persons of full age and to punish them as such. The authorities expect a quick eradication of major personal or societal problems. This approach reveals a misunderstanding of the reality of youth delinquency and the causes of this delinquency.²⁹

Nevertheless, the public authorities seem to deem this plan insufficient despite the fact that it has dramatically reduced the gap between justice for minors and adults by way of legal reforms (5 during the 2002-2007 legislative term).

In June 2008, a commission headed by Professor Varinard was set up to "reform" the 1945 Ordinance. In the Minister's mind, this "reform" of criminal law with regard to minors amounts to an actual re-writing of underage criminal law and thus calls for special vigilance.

a/ The eventual objective is for juvenile judges - and for the Judicial Youth Protection Service (PJJ) by 2011 - to no longer concern themselves with at-risk children but only with delinquent children. The Ministry of Justice promoted an unsuccessful experiment (September 2007) to separate the two current functions of juvenile judges which date back to 1958. Based on this failure, the expected next step is a legislative injunction.

DEI-France - along with others such the French Association of Youth and Family Judges and Magistrates (AFMJF) - condemns this trend which disregards the realities of at-risk childhoods...of delinquency. Its intent is to overturn the important 1958 decision which directed juvenile judges not to wait for a juvenile to commit a crime to come to his aid but rather, as in a family, to protect before restraining.

b/ It is also expected that the Varinard Commission will propose a minimum age - 10 years old? - to legalize proceedings against minors, whereas currently it is incumbent to verify - as it is for adults - that the perpetrator understood his actions at the time of the crime. It is also feared that the age at which a penalty can be imposed - currently 13 years of age - may be simultaneously lowered to 10 years. It is appropriate to discuss this idea of a minimum age of criminal responsibility as called for by Article 40 of the Convention (see table below).

c/ There are indications that a new tribunal composed of a regular judge and two juvenile judges will be created for 16 to 18 year olds: what law will it apply? To avoid the wrath of the Constitutional Council (2002 decision), lowering the legal age of majority is out of the question but what will remain of the distinct characteristics of penal law regarding minors?

²⁹ See petition, "LES ADOS NE SONT PAS DES ADULTES" from June 2007.

http://tempsreel.nouvelobs.com/actualites/societe/20070625.OBS3649/les_adolescents_ne_sontpas_des_adultes.html

France has not set a minimum age under which a child cannot be held as a delinquent, prosecuted and required to appear before a judge.

The Court of Cassation and the Penal Code have confirmed the tradition of the great principles of penal law: an offender, regardless of age, must at the time of the offence or crime have the ability to understand the wrong and have intent to commit the act. The ability to discern right and wrong is generally thought to be acquired around the age of 7 to 8 years old. However, one particular judgment found that a 14 year old did not have this ability, independently of psychiatric problems found in the case. Without understanding there cannot be a conviction, at the most the juvenile judge can set protection measures.

The plan is to fix a minimum age as recommended by the Committee according to Article 40 §3. a/. The age is being debated: 10, 12 or 13 years old. A decision is expected before the end of 2008. The real question, however, concerns which measures (educational measures, educational sanctions or penalties) are possible at what age. In fact, we feel this perspective is in agreement with the interpretation of "penal responsibility" originating from international jurisprudence and particularly from the European Council. It is generally understood to mean the possibility of incurring penalties, particularly those depriving one of liberty.

DEI rejects penalties before the age of 13, the age at which a child can exercise certain important civil rights. A necessary coherence depends on this. It is to be feared that in asking for a minimum penal responsibility age, in the French sense this means the possibility of being prosecuted, the State may set this minimum very low (10 years old, possibly less) in order to apply penal reparation sanctions starting at this age. In the current context, it is likely that within a few years, there may be real penalties applied starting at the age of 10.

VIII. B. 2. Treatment of children deprived of liberty, including any form of detention, imprisonment or placement in custodial settings (art. 37 b), c) and d))

It can no longer truly be said that depriving delinquent children of liberty is a last resort as demanded by paragraph b of Article 37 and noted in the Committee's General Comment no. 10: The hard-line stance and legislative arrangements recently adopted will inevitably lead to penalties being imposed on minors and particularly to an increase of the privation of liberty.

In addition to often being circumvented - 60% of the penal response, as we have observed, is brought by the public prosecutor's office - juvenile judges are increasingly forced to hand down prison sentences with the new minimum penalties in cases of recidivism and must justify their decisions to re-establish the benefit of using age as an extenuating circumstance for those over 16 years old.

As of July 1, 2008, the number of incarcerated minors was 793 or 1.2% of the detained population. This number has remained relatively stable since 2002. However, it is feared that the effect of the measures described above has yet to be felt.

Moreover, if Closed Educational Centers (CEFs) are counted as places one is deprived of liberty, then the total number of children incarcerated must be increased by about 300.

In other words, today there are roughly 1100 minors held in detention facilities at any given time **whereas** 4100 live there over the course of one year. We are back to the numbers of the 1980s.

In any case, it is obvious that repressive measures which under the law are supposed to be exceptional are already anything but (there are 25,000 prison sentences – including 6000 that are not suspended – over 75,000 measures and sanctions pronounced in 2006: cf table in annex 22)

Imprisonment in CEFs poses a legal question which must be examined within the framework of paragraph b of Article 37.

These facilities were presented to public opinion via the media as closed facilities...without being so³⁰. The first runaways in 2003 puzzled the media. Henceforth, the measures to stop exits were reinforced (bars, cameras, guards, etc.)

In any case, it is clear, to answer the Constitutional Council's concern, that these structures cannot be truly closed if they purport to have an educational purpose.

However, in a State that respects the rule of law, the rules of privation of liberty must be clarified with respect to the CEFs. DEI-France's position is that only a committal order issued by a liberty and custody judge or a jurisdiction has the right to deprive a minor of his liberty to come and go, and only the Prisons Department has the right to detain someone for delinquency. The Ministry of Justice shares this opinion as shown by a 2003 note to Mr. Alvaro Gil-Robles, the European Commissioner for Human Rights. It states that it directed that these enclosed facilities...in fact not be so. Assurances must be obtained that this directive is respected within the 30 CEFs in existence as of October 1, 2008.

DEI-France calls for an evaluation process to be developed outside of the Ministry of Justice to corroborate that these CEFs are indeed education rather than detention facilities.

With regard to living conditions of children deprived of liberty (Article 37 c)

As shown in annex 22, the creation of the new Juvenile Detention Facilities (établissements pénitentiaires pour mineurs (EPM)) can only bring improvements, as compared to other detention facilities for minors, to young prisoners' living conditions with respect to separation from adults, the quality of the facilities and the offer of schooling. However, the suicide at the Meyzieu EPM which took place shortly after its opening as well as the revolts at other EPMs reveal a deficiency between the planned objectives and the resources in actual use from an educational and health standpoint. Although this does not justify asking for the closure of these facilities, we cannot consider these EPMs as a real system improvement **until an evaluation and investigation of their operation have been initiated to account for the failures noted after these dramatic events.**

In addition, these establishments are far from towns and do not promote the maintenance of bonds between children and their families nor prepare them for their release.

At the very least, it would be appropriate to develop a transport and escort policy for families to get to their children's detention centres.

³⁰ Even, Alvaro Gil-Roblès, the Commissioner for Human Rights, thought he was visiting a new prison for minors while at a CEF.

EPMs are not supposed to replace the current 59 juvenile wards (quartiers mineurs) within adult prisons. Conditions within these wards remain a problem even if some of the most outdated have been closed.

The choice of which children will be sent to EPMs is also an issue. As indicated in annex 22, to follow the directives, it is likely that **the most "hardened" detainees will remain in the juvenile wards of standard penitentiary establishments. DEI-France condemns this position.**

The presence of PJJ educators in prisons was decided upon in 2002 and came into effect in 2004, despite the resistance of some social workers. This presence has made for some difficulties as this effort must be coordinated with the role of probation officers and of course security objectives, but it is nowadays unavoidable and **contributes to maintaining the link between the youth and his milieu and coherence to the handling of his case beyond incarceration.**

Another positive note is **the 2007 decree that formalized the standards of reference on the detention of minors.** A coordination of efforts (adequate training and staffing, taking into account the psychological, social and health aspects of the juvenile, etc.) within each facility that detains minors (the 7 EPMs; the 59 centres for detained minors) is hoped for.

However, despite these efforts, it must be noted that the European study entitled **"Violence against Children in Conflict with the Law: A Study on Indicators and Data Collection in Belgium, England and Wales, France and the Netherlands"**, conducted in 2007 and 2008 by three national chapters of Defence for Children International, including DEI-France and the Howard League, has underscored the lack of a universally accessible, transparent data collection process on violence against children in conflict with the law (in custody, CEF, EPM and other places of detention). The study proposed some common indicators, both quantitative (such as the number of self-inflicted lesions or the frequency of family contact) and qualitative (such as the existence of an independent inspection system) to analyze and better contend with this violence.

DEI calls for the Ministry of Justice to use the indicators highlighted in its work and to take the lead in the transparent collection of data to better ascertain the living conditions of children in detention. The 2008 wave of suicides in French prisons for minors concerns all parties involved in the penal justice system and demonstrates the imperative necessity of such a step³¹.

We should finally note that, since 1 January 2005 and by virtue of the law of August 2004, the juvenile court judge has become a fully-fledged judge responsible for the execution of sentences. It is this judge's responsibility not only to modulate sentence execution through the use of semi-imprisonment or release on parole with or without electronic tracker, but also to control the conditions of child incarceration. **The law's basic thrust is good**, but once again there are insufficient resources to enable effective control and to individualise sentence execution (for example, there are no places available for semi-imprisonment).

The nomination, in June 2008 – seven months after the law creating the position was adopted – of the first Inspector-General of institutions involving deprivation of liberty meets long-held NGO

³¹ A 16-year-old committed suicide at the correction house in Metz on 6th October 2008; a young detainee, also 16 years old, tried to kill himself in Strasbourg on 9th October. In the end, he passed away in hospital on 14th October. With the suicide of another minor at the EPM in Meyzieu in February 2008, this brings the number of minors who have committed suicide whilst in prison to three in the first 10 months of 2008. Some sources give the figure of 72 suicide attempts by imprisoned minors in 2007.

expectations on this subject, even if, once again, that officer does not appear to have been given adequate resources to carry out his mission.

VIII. B. 3. Sentences handed down to minors, in particular the prohibition of the death penalty and of life imprisonment (Art. 37a)

a) In the case of both adults and minors, capital punishment is impossible in France (this has been the case since 1972 for minors and since 1981 for adults). Its prohibition was written into the Constitution by means of the law of 23 February 2007.³²

See Annex 22 for the evolution of the number of imprisonments of minors, on an annual basis.

b) On the other hand, we must bear in mind (although many are ignorant of the fact) that **French law does not rule out sentencing to life imprisonment a minor who was aged over 16 at the time the offence was committed.**

Obviously this needs to relate to a criminal matter, especially an assassination, that is to say premeditated murder. In principle, the statutory extenuating circumstance of minority means that young persons aged between 16 years and 17 years and 364 days at the time of the offence risk a sentence of 20 years if found guilty, but the Assize Court has the authority to waive this provision if the offender's behaviour and psychological makeup suggests that he or she is more mature than indicated by the actual age.

The new provisions arising out of the law of 10 August 2007 automatically withdraw this statutory extenuating circumstance of minority in the case of repeat offenders, except where the judge specifically restores it by virtue of a special decision, which in each case must set out the reasons why the decision was reached.

The conclusion is that **nothing in French law prevents a minor from being sentenced to life imprisonment.**

There needs to be fundamental opposition to a provision that seeks to withdraw, as often as is possible, the benefit of the statutory extenuating circumstance of minority for persons aged 16-18 years when they are repeat offenders. The very reason why irreparable or grave acts might be committed is because the person is a child and immature; certainly he or she needs to be punished, but the child's personality needs to be taken into account, not denied. By trying to reconcile everything, our law capitulates on the essential point, namely that **a child is not an adult.**

c) Finally, we should note that a law of 25 February 2008³³ now authorises "preventive detention," that is to say incarceration in a socio-medical-legal centre, once their sentence has been served, of persons condemned to a gaol sentence of 15 years or more for crimes of assassination or murder, torture or barbarous acts, rape, kidnapping or sequestration of a minor, or for these same serious crimes committed on an adult, if these persons are judged by an expert commission to be still dangerous following completion of their sentence. **Persons convicted for crimes committed when they were minors are also subject to the provisions of this law. Thus, life imprisonment is possible for a crime committed when the offender was a minor, even if a sentence of life imprisonment has not been imposed.**

³² Article 66-1 of the Constitution provides that "No-one shall be sentenced to the death penalty."

³³ Law no. 2008-174 of 25 February 2008 relating to preventive detention and the declaration of criminal irresponsibility due to mental disorder.

This law, which is open to very serious criticism on human rights grounds alone, is doubly so from the point of view of the rights of the child.

VIII.B.4. Physical and psychological recovery and social rehabilitation (Art. 39)

The process perhaps begins by understanding the sentence imposed on the minor. In 2007 the authorities were keen to promote the role of sentence execution offices (BEX), whose job, subject to the authority of the public prosecutor's department, was to ensure that persons convicted and victims were seen immediately so they could be told what the decision meant and so that initial arrangements (notably meetings) could be made for educational measures (probation, community service or compensation) to be implemented. But over and above the injunction to create these BEX, the various jurisdictions need to be provided with the additional resources required for this relatively demanding approach. **This is very far from being the case at present. The current situation is merely window-dressing. DEI-France calls for the resources required for this approach to be made available.**

Faced with increased juvenile delinquency, its increasing insensitivity, the development of asocial attitudes and revolt, together with the psychological and physical degradation of many young people, new educational approaches emerged in the early 2000s and several tendencies can now be seen.

One tendency favours action over counselling - that is to say, it seeks to have young persons make good the damage that they have caused by means of acts. This approach seeks to encourage young persons to be conscious of what they have done and to be aware - and be seen by others - when the debt to society has been paid. Compensation comes into the process at a very early stage: it can be "decided" by the public prosecutor's department or by the judge at the pre-sentencing stage if the minor is at least ten years of age, although these days it can even be decided by the mayor or school principal. This approach is not open to criticism to the extent that it results in "restoration" of the individual at the same time (depending on the case) as possible compensation for damage caused. However it needs to be subject to safety nets in criminal matters, including the separation of judicial from executive power (which is not the case where the mayor or, in general, the school principal are concerned), the right to defence, the right to apply to the courts and, more generally, all the guarantees required for the rights of the child to be respected.

The second tendency is to include an educational element within the constraint itself in order to guarantee better follow-up, given that many young people reject educational intervention, whose meaningfulness they reject, including when it is ordered by a judge. What is occurring, therefore, is an increase in the number of juveniles being placed in institutions under judicial supervision, and of instances of probation, etc. It needs to be acknowledged that some young people are so damaged that in order to protect them some authority needs to be imposed on them. Such an approach is not suitable for all children, however: in the overwhelming majority of cases an educational approach more based on dialogue is entirely possible.

These days, educational centres are presenting themselves as closed institutions, while prisons aspire to be educational institutions. There is a major risk of confusion in the eyes of young people, if not of the general public. Education implies freedom; detention centres cannot have great educational ambitions.

The third tendency involves parental mobilisation. It is becoming increasingly clear that nothing, or next to nothing, can be done for juvenile delinquents without parental involvement. This is true, but the natural tendency is to blame parents who fail and to create coercive mechanisms

aimed at them (such as the loss of family benefit payments, prosecution,³⁴ parenting courses, etc). These mechanisms, to which the law frequently has recourse, have no effect on the social body.

The fourth tendency is towards better recognition of the victims of this delinquency, in the knowledge that children are often the victims of other children. But paying too much attention to victims (especially when they are minors) risks overlooking the rights of the offenders - who are also sometimes minors.

The "right to oblivion" is fading. Although we cannot go into details here, the guarantees previously provided through provisions relating to police records, enabling minors not to be burdened for too long by the weight of their past, are fading due to the proliferation of police and judicial records such as the National Computer File of Genetic Fingerprints (known as FNAEG), which respond to drastic public order considerations and can be conserved up to 40 years. In her 2005 report, the head of the Independent Authority for the Protection and Promotion of Children's Rights ("Défenseure des enfants") had already noted the risks for children of this type of file. The initial version of the EDVIGE database (as provided for in the June 2008 decree) envisaged records being kept on minors aged as young as 13 who were considered **as likely to disturb the peace** - thus, not necessarily delinquents. This was already an attack on freedom, but in addition no procedure was provided for destroying this data. Faced with considerable pressure following the publication of this text, the Government has had to promise to introduce data erasure, in principle at the age of 21, in the revised decree.

Fundamentally, and beyond traditional political divides, politicians are convinced that a firm response to juvenile delinquency is required through the use of containment measures, whereas the battle against delinquency in the very young needs to be fought through the establishment of social linkages and the recognition of personal skills and rights.

Tolerance levels are dropping and approaches are becoming increasingly repressive. The evolution of our law is a sign of this, with the attendant risk that it will no longer be in strict accordance with the Convention.

The approach taken since 6 June 2004, the date on which the Committee on the Rights of the Child passed its observations to France, is not reassuring. The tendency noted at the time has been accentuated and has now totally taken hold. To give just one example, the EDVIGE database project (see above) epitomises the climate of distrust that exists towards some French young people and reveals a state of mind that seeks to denigrate those young persons. The development of liberty-reducing database compilation is also a consequence of the absence of real delinquency prevention. The refusal to foster development conditions to avert the slide into delinquency has ended up targeting - on totally arbitrary criteria - those who might potentially be dangerous. This approach is unacceptable. Despite strong reservations and requests to withdraw its text, the Government has not abandoned its idea.

More than ever, DEI-France calls on the authorities (State and territorial jurisdictions) to establish national and local observatories, which need to be fully independent, enabling all interested parties (whether they be political, professional, associations, etc) and observers (such as the media) to have access to reliable and shared information on which to commence political discussion on the response to juvenile delinquency, along the lines of what has recently been decided for children at risk through the law of 5 March 2007.

³⁴ Article 227-17 of the criminal code. Each year some 130-140 parents are prosecuted. Ten or so are convicted, generally being sentenced to suspended prison sentences.

CONCLUSION

A secondary preoccupation

Basically, the French State gives the impression to put up with the Convention – and the Rights of the Child – rather than benefiting from it or making all children benefit from it.

The periodic report to the Committee, far from being the opportunity of a dialectical debate with local authorities, NGO networks, independent human rights or children's rights institutions and the whole of the civil society, families and children, is conceived as an obligation updated every five years in some offices of specific ministries. Seriously criticized in 2004 for its delay to present its report, the State presented it this year punctually.

We thus remain surprised that France, a country that officially expresses its attachment to human rights, does not seem motivated to set up a real children's rights strategy inspired by the Convention, and this almost twenty years after its ratification. The Committee's recommendations are not distributed; NGO's demands towards politicians remain without answers. The highest responsible persons of the State did not even bother to respond to organisations questioning about follow up of the Committee's Observations and Recommendations from June 2004. Real progress could have been emphasized on that occasion. No strategy is being set up to conceive and impulse an overall, lasting and estimated policy towards children. Public powers (services of the State and local authorities) sometimes hold one other responsible for the care of vulnerable children (like isolated foreign minors).

All seems to indicate that the respect by the State of its international commitments resulting from the ratification of the Convention is not a major preoccupation but rather a recurrent concern.

Undeniable progress but only in the field of childhood protection

We note with concern that the innovating spirit of the Convention has not yet been integrated. Progress has been noticed during the last period regarding only the protection of children victims of ill-treatments, carelessness or risks resulting from new technologies. We of course do not intend to deny the importance of this progress; a lot of time has been needed before our country could recognise and react to the reality of different forms of ill treatments inflicted to children.

However too much time is still needed –even if an awareness seems to become clear– before we realize that some basic rights remain denied in practice, for instance regarding schooling rights of handicapped children. Even worse, hard life conditions are neglected for too many children with regard to a decent housing, hygiene, a balanced food, the access to medical care, to leisure and sometimes family protection when parents are taken up by economic, social or personal difficulties.

Moreover, the society is far from being really interested in the right of children to participate in decisions concerning them. The historical progress made with the law of March 5th, 2007 conferring on children with discernment the right to be heard by their judge and be informed

about matters concerning them and being shared by professionals is not even emphasized as such by those who voted for it.

At the same time, they would like us to believe, particularly with worrying penal justice orientations, that some young ones are like adults who do not need any more protection and an educative accompaniment, but only sanctions. This approach is entirely contrary to the spirit of the Convention.

Other children's rights, like those of foreigners, are also ignored because they are openly in conflict with the present announced immigration policy. Out of security objectives grounds, a considerable number of children born or arrived very young in France as well as their parents are being daily deeply made unsecured.

The school system has also reached a deadlock. It does not succeed in concretizing its equality principles since it more and more increases social inequalities regarding training and schooling. Because of recurrent budget reductions and reorganisations not meeting the needs and the best interests of all children, it is apparently renouncing its ambition as an education and emancipation system for all, a melting pot for a Republic showing unification and solidarity.

Generally speaking, some children and particularly teenagers are being considered as a source of present and future difficulties and problems. Mistrust prevails over trust. And instead of facing the deep causes leading some young ones to school failure, despair and risky behaviours or even delinquency, early screening and surveillance of children and parents are being set up on so-called medical or psychological criteria. As recent examples of it, we may quote the tendency to believe that predictive signs of parents' educative difficulties and minors' delinquency can be pinpointed as soon as during the fourth month of pregnancy and the first years of a baby's life, the extended filing particularly in schools or the EDVIDGE file system. By undermining parents and children's trust in public services, these devices will eventually make children their main victims.

A lack of coherence, sometimes even a nonsense in the perception of children's rights

A lack of coherence regarding policies in the field of children's rights is illustrated by the signing of the European Council's appeal for a repealing of corporal punishments inflicted on children by the Secretary of State in charge of family matters on September 10th, 2008 in Stockholm. No publicity has been made about the signing of this appeal, when this politician returned to France: out of negligence or out of fear to offend those who believe that an authority "in the old way" is today an essential step to be promoted towards children?

The predicted burial of Françoise Dolto's thought as well as of numerous researchers and professionals according to whom "the child is a person" leads in the same direction. For a large part of French public opinion and politicians, the Rights of the Child's ideology would prove to be the main basic cause of the educative confusion and even of social unrest facing the country, as well as of its difficulties to maintain a pacified and positive relationship with a large part of its youth. However most recent studies point out that more than ever young ones show a solid confidence and respect towards adults, particularly towards their parents.

Contrary to insidious speeches distilled towards a public opinion with less ambiguous causes of worry, DEI-France and its partners keep thinking that a real strategy for the Rights of the Child is a strong democratic challenge for the country. Only when the law and its institutions will be considered as beneficial by children and teenagers that those will respect the adults' authority and keep their confidence towards them. A society cannot be governed by fear but by a common will to live together.

This is the reason why DEI-France deliberately suggests to reverse the prevailing logic by founding an orientation law "in order to promote children's wellbeing" based on the spirit and the letter of the Convention.

In order to restart and forward this dynamics, we have to get out of the deadlock in which the Rights of the Child have been - deliberately or not- shut away.

France has its back to wall

France has no choice. If it wishes to keep presenting itself as the homeland of human rights, it should immediately take on children's rights - from their rights to protection to their rights to participation- in order to basically and lastingly recreate and reinforce numerous social links which are progressively weakening. The Convention offers a major democratic project, which can be agreed by everyone whatever their differences and specificities. France has collectively nothing to loose. But it presently remains unadventurous. Its leaders and in a lesser way its citizens - parents, professionals, etc. - seem more or less convinced that the restoration of authoritarian principles and methods is a way to face the complexity of modern education, if not a goal in itself. Out of intellectual laziness and political cowardice, our country takes the risk of missing a historical opportunity for itself and its children and of wasting the chance to be once again a reference.

Resulting from the content of this report, as militants for the Rights of the Child, we feel the responsibility to put forward proposals. We therefore retain twenty concrete recommendations that are to be found as follows.

20 recommendations for the next five years

1. Starting a large national public debate in order to promote a proactive approach of children's wellbeing and draw all consequences:

- on legal level, by asking the Constitutional Council to check whether any new bill is in accordance, regarding the Convention on the Rights of the Child, with the **article 55 of the Constitution** asserting the supremacy of international treaties towards national laws in order, to prevent legal conflicts;
- on institutional level, with the effective creation of **parliamentary delegations for the Rights of the Child, of a youth ministry** or at least a reinforced family interministerial delegation which should also be open to childhood ;
- on legislative level, with a **general law on children's wellbeing** ; an analysis of all bills and law proposals regarding their impact on children's life conditions;
- regarding the actual implementation and the estimate of policies, with a **rapid publication of application decrees** of adopted laws, an estimate of their real impact on children with the assistance of **indicators, data collection** and information exchanges on childhood and family topics;
- regarding control, by reinforcing the **independence of human and children's rights institutions and by making their views compelling.**

2. Using "November 20th" as a real event for a shared reflection between public authorities and civil society on the state of children's rights in France, by particularly:

- **reporting on the state of implementation** of the UNO experts commission (CRC) **recommendations**
- starting a **comprehensive publication of these recommendations.**

3. Reinforcing the assistance, accompaniment and support steps to parentality, taking into consideration present family specificities:

- a **better information of parents regarding implications of parental responsibility and assistance of the State and local authorities** in this respect;
- approaching parents and children with difficulties by **setting up social services in places attended by these families, particularly in all primary schools** (see also proposal 9) as well as a promotion of a positive image of social action;
- in this respect, a **rapid clarification of the terms of the social worker's professional secret following the two contradictory laws of March 5th, 2007** (one relating to childhood protection, the other to prevention of delinquency) in order to keep social workers credibility;
- steps for a better access to the rights, including information on rights but also information about how to use these rights towards jurisdictions.
- the implementation of the French government commitment in Stockholm on September 10th, 2008 to promote the end of corporal punishment.

4. **Specifying procedural conditions resulting from the necessary search for the child's best interests**, in the different fields where it is referred to, in contradiction, for example, with other child's rights or parents' rights (a general observation of the Committee would be welcome on this topic).
5. **Reinforcing the fight against all discriminations** by:
 - giving financial means and developing a necessary interministerial partnership so that no handicapped child should still be taken away from schools or trainings;
 - imposing on Communes to submit to their obligations towards gipsy children and families;
 - taking into consideration the views of the HALDE regarding discrimination of foreign families (social security, minimum solidarity income);
 - reinforcing means of the HALDE equality promotion department.
6. **Developing individual and collective expression capacity of children in all places they attend:**
 - by promoting family democracy workshops;
 - by developing in schools with the participation of children the elaboration of rules and discipline;
 - by supporting associations participating in this education, also in a non formal way, for children during their leisure time, particularly the popular education movements (present reduction and restriction of financial means should stop).
7. **Assuring all children of the right to a double established family line:**
 - by particularly guaranteeing the right to the respect and to the knowledge of his history;
 - by assuring a clear assertion of responsibilities of different family members towards the child (clarification of stepparents and grandparents responsibilities).
8. **Submitting the development of any new "preventive" filing or spotting system to a comprehensive checking regarding the right to privacy, the right to oblivion and the children's liberty.** We should start with repealing the EDVIGE file decree.
9. **Carrying on with reinforcing missions and increasing staff of school services dealing with health promotion for pupils** and organizing a unified health promotion unit for children under 16 including mother and child protection services.
10. **Developing specific statistics about suicidal behaviours of children under 18** taking into consideration the diversity of causes - which are not all of a medical order. Regarding the accompaniment of teenagers exposed to different causes and forms of discontent, **carrying on with the development of "teenagers houses" in all French regions** by using existing local resources.
11. **Establishing planned objectives in the field of poverty reduction** and renouncing the exclusion of some particularly poor foreign families from the benefit of the active solidarity minimum income (RSA).

12. **Developing a public reception service adapted to the needs of young children and of their parents and stopping the decrease of 2-3 years old children attendance by state public schools**
13. **Rethinking state school system so that it better meets republican education objectives** by giving all children an equal opportunity and by teaching them to live together. **Cancelling immediately new directions in the field of school time planning and school programs 2008**, which represent an unprecedented decline.
14. **Stopping the present division of the extra familial education field** - tending to increase inequalities- between formal education entrusted to schools and non formal education entrusted to associations and **carrying out a genuine coeducation** of all actors- families, local authorities, state departments, child benefit services, pre-school and leisure centres- **thanks to common local educative projects** allowing a free reception of children in public spaces, which are not excessively controlled.
15. **Doing justice to children who are victims or witnesses of criminal actions** by organizing an attentive listening to them and not only a procedure hearing. We should also **promote a coordination of judicial interventions within jurisdictions**.
16. **Keeping a specific penal legislation for persons under 18** , based on the preoccupation to promote the right to children education, starting with:
 - **offering state financial means** for the policy favouring educative measures
 - forbidding any penalty before the age of 13**
 - coming back to a **legal** mitigating circumstance of age ("excuse atténuante de minorité") for all until the age of 18
 - carrying out a **relevance estimate of alternative measures** by the competent prosecution for minors
 - providing ourselves with necessary guidelines and data for a follow up of violence towards children within a conflict with the law.
17. **Offering an appropriate response to isolated foreign children by treating them before all as children** and not only as foreigners (see the whole of concrete proposals suggested in the report).
18. **Reinforcing public policies of access to culture and appropriate information means for the youngest**. We should already do our best to avoid the development of harmful media for children (for instance, television channels for babies).
19. **Carrying out an exhaustive report about the lot of children in overseas territories**
20. **In the field of international cooperation:**
 - make public the terms of France's cooperation policy for the promotion of children's rights in the world;
 - care for a transnational adoption policy taking into consideration children's rights to live in their own family;
 - promote a reflection on European level on children's status.

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