

MONITORING AND COMPLAINT MECHANISMS AVAILABLE TO CHILDREN IN CRIMINAL CONFINEMENT FACILITIES IN FRANCE

A research study by DEI-France
Under the coordination of DCI-Belgium
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- **The “Controller General of Places of Deprivation of Liberty”**, especially one of its inspectors
(*Contrôleur Général des Lieux de Privation de Liberté - CGLPL*)
- **The “Defender of Rights” and its deputies “Defender of Children” (Children's ombudsman) and deputy in charge of security ethics**
(*Défenseur des droits – DDD et ses adjoints Défenseur des enfants et adjoint en charge de la déontologie de la sécurité*)

The French administrations in charge of facilities where children are deprived of liberty:

- **The Direction of the Penitentiary Administration** from the French Department of Justice
(*Direction de l'Administration Pénitentiaire – DAP au Ministère de la Justice*)
- **The Direction of the Judicial Youth Protection** from the French Department of Justice
(*Direction de la Protection Judiciaire de la Jeunesse – DPJJ au Ministère de la Justice*)
- **The Inspectorate of the Judicial Youth Protection**
(*Inspection de la Protection Judiciaire de la Jeunesse – IPJJ – au sein de la DPJJ*)
- **The Prison Inspectorate**
(*Inspection des Services Pénitentiaires – ISP – au sein de la DAP*)
- **The Directors and staffs of visited confinement centers for children, EPM, QM, CEF**

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- **The French members of “International Prison Observatory” NGO**
(*Observatoire international des prisons – OIP*)

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- **A Children's Judge**
- **A lawyer specialized in children's rights**
- **A retired IPJJ inspector**
- **An educator working in a closed educational center**
- **An educator working in a Juvenile section within an adult prison**

For respect to the principle of confidentiality adopted in the research, the present thanks are anonymous. Those to whom they are intended will recognize themselves.

May they all be thanked for their appreciated help.

Sophie Graillat

Chairperson of the board of DEI-France

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1 INTRODUCTION

Partner & Researchers

- This research study was conducted by **Johanna Bonneau**, as Legal Research Officer for DEI-France,
- **And Jade Grosjean**, as Intern Legal Researcher for DEI-France.

Under the direction of **Jean-Luc Rongé**, as member of the Board of Directors of DEI-France
And with the help of **Sophie Graillat**, as Chairman of DEI-France.

DEI-France (Défense des Enfants International - France) is the French section of NGO Defence for Children International. Since 1998, it has been promoting and ensuring the application of the United Nations Convention on the Rights of the Child (CRC) in France and by French State, with particular attention to children in conflict with law.

Limitations

The French national study was imposed the following limitations:

Firstly, it was decided by the Coordinator of the project, i.e. DCI-Belgium, that **the focus of the study would concentrate on the existence and functioning of monitoring and complaint mechanisms of places where children are deprived of their liberty**. As a result, conditions of deprivation of liberty *per se* were not given a thorough analysis, although they were indirectly tackled during the documentary research phase and further documented with the interviews of field professionals and the visits of the different facilities. The places where children are deprived of liberty with their detained mother were also excluded of the scope of study.

A strong constraint of this research study was the timetable assigned to the national research teams, namely a **total of 26 days to encompass the six phases of study**, from the kick-off meeting to the writing of the report, including 40 interviews and 3 site-visits. **Although this timetable was actually largely exceeded, this was not sufficient to conduct a thorough analysis.**

In order to adapt the scope of study to feasible objectives, and according to the common methodology adopted for the research, DEI-France suggested to DCI-Belgium that **the French study would confine to the specific question of the criminal confinement of minors by juvenile judiciary**. The French research team considered that it was particularly important to examine these situations of deprivation of liberty, due to the different types and relatively great number of concerned places in France, and also due to the political sensitivity of minors' delinquency these last years.

Consequently, the study **is about** any confinement of a person under 18 for a criminal offense as a result of conviction, warrant, temporary pre-trial measure or sentence adjustment, in a place from which he or her cannot leave at will. This encompasses three types of places of deprivation of liberty:

1. **Juvenile sections within adult prisons** (*quartiers mineurs*, further referred to as "QM")
These detention units are under the authority of the Direction of the Penitentiary Administration (DAP) and under the control of the Prison Inspectorate (ISP: *Inspection des services pénitentiaires*), together with the entire adult facility within which they are placed.
Educators, placed under the authority of the Direction of the Judicial Youth Protection (DPJJ :) and the control of the Inspectorate of the Judicial Youth Protection (IPJJ: *Inspection de la Protection judiciaire de la jeunesse*), are working for the educational and moral rehabilitation of the children.
2. **Specific Children Detention Facilities** (*établissements pénitentiaires pour mineurs*, further referred to as "EPM")

These detention facilities are specifically dedicated to children detainees. They are under the authority of the Direction of the Penitentiary Administration (*DAP: Direction de l'administration pénitentiaire*) and under the control of the Prison Inspectorate (*ISP*).

Children placed within these facilities receive individual educational care from educators placed under the authority of the Direction of the Judicial Youth Protection (*DPJJ*) and the control of the Inspectorate of the Judicial Youth Protection (*IPJJ*).

3. **Closed educational institutions for minors** (*centres éducatifs fermés*, further referred to as CEF)¹

These centers are under the authority of the Direction of the Judicial Youth Protection (*DPJJ*), and under the control of the Inspectorate of the Judicial Youth Protection (*IPJJ*). They can be public or private institutions run by empowered associations. They receive repeat offender children, who are under a judicial criminal measure – probation (*contrôle judiciaire*), probation order (*sursis avec mise à l'épreuve*), work release (*placement à l'extérieur*) or release on parole (*libération conditionnelle*).

Although these institutions do not qualify as detention places and comings and goings of minors outside of the center are possible under supervision of a Staff member, it was decided nonetheless to include these institutions within this research, on several grounds. First of all, the definition of the notion of places of deprivation of liberty, as provided by the Havana Rules and OPCAT² and as used by the Coordinator of the project for the purpose of this study, encompasses detention centers, prisons as well as closed institutions such as educational institutions with the criteria that minors cannot leave at will which is indeed the case for CEF. Further, the Controller General of Places of Deprivation of Liberty exercises its jurisdiction over these facilities as well, as supplementary evidence that CEF are indeed places of deprivation of liberty. Finally, the term “closed” institution refers to judiciary confinement under which serious breaches of the center's internal rules may result in being sent to detention.

Methodology

This study was conducted in six phases from April 29th to June 30th 2014:

1. Kick-off meeting

A kick-off meeting was organized in Brussels in April 29th and 30th, 2014 which gathered the Coordinator of this project – i.e. DCI-Belgium –, international experts, as well as the national Research Officers from the 14 European countries conducting simultaneously the national research studies.

2. Documentary research

This preliminary phase of study was instrumental in scanning the international and national legal framework relevant to the scope of study for France. In this matter, the following sources were compiled and studied:

- Reports to international monitoring bodies: this includes both reports from the French authorities to the competent committees – mainly the CPT, CRC and the CAT – and the observations of these committees to the French Government;
- National resources relevant to the research study encompassing the French legal corpus, reports study, as well as reports of visit from the national monitoring bodies.

¹ [Ordinance of 4 February 1945, Article 33](#)

² Article 11 of the Havana Rules and article 4,2 of the OPCAT state “The deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority.”

3. Mapping of the places of criminal confinement of children in France

At the beginning of the research study, a listing of the different places of criminal confinement was established with the relevant statistics, when available.

This mapping was completed throughout the survey with the information collected during the interviews and site-visits.

As regards CEFs, the list provided in this report is not exhaustive since no official list of CEFs could be found. The DPJJ indicates that as of June 2014, there are 50 CEF throughout the territory, 33 of which are run by the associative sector through centers duly empowered by the DPJJ to care for minors.

4. Interviews of key actors and advisory group

Prior to the site visits, a total of 13 interviews were conducted with 12 different monitoring bodies and actors with a specific expertise in the field of criminal confinement of minors. Representatives from the following institutions or professions were interviewed:

1. **The International Prison Observatory NGO**
(Observatoire international des prisons – OIP)
2. **The Controller General of Places of Deprivation of Liberty**
(Contrôleur Général des Lieux de Privation de Liberté - CGLPL)
3. **A Children's Judge**
4. **The Inspectorate of the Judicial Youth Protection**
(Inspection de la Protection Judiciaire de la Jeunesse – IPJJ)
5. **A lawyer specialized in children's rights**
6. **The Defender of Rights**
(Défenseur des droits – DDD)
7. **The Direction of the Penitentiary Administration**
(Direction de l'Administration Pénitentiaire – DAP)
8. **The Prison Inspectorate**
(Inspection des Services Pénitentiaires – ISP)
9. **A retired IPJJ inspector**
10. **An educator working in a closed educational center**
11. **An educator working in a Juvenile section within an adult prison**
12. **The Direction of the Judicial Youth Protection (DPJJ)**
(Direction de la Protection Judiciaire de la Jeunesse)

The research team was also able to attend a **training organized for lawyers on the specific aspects of Juvenile sentence adjustments** (*aménagements de peine*). This training was organized by the Paris Bar Association and delivered by a fellow lawyer and a Children's Judge acting as a Sentence Enforcement Judge.

5. Site visits and on-site interviews

DEI-France's research study received quite a favorable welcome from the French competent authorities, i.e. the DAP concerning places of detention and the DPJJ as regards CEFs and educators working in detention facilities.

Authorization of visits of confinement facilities for minors were all granted, namely two QMs, one EPM and two CEFs. Because of the limited timetable assigned however, only three out of the five visits authorized could be conducted by the research team. This research study thus does not intend to present a thorough analysis of children criminal confinement throughout the entire French territory. The results presented in the third part of this report do not necessarily apply to all approximately one-hundred children criminal confinement places in France.

As regards the **CEF**, the research team was received by members of the Direction, i.e. the Director and the Head of service – and then presented to the entire Staff during a multidisciplinary working meeting. The visit lasted for four hours and a half. The Territorial Director came specifically to meet with the research team. A quick visit of the facility was authorized as well as individual interviews with the following representatives:

- A nurse
- A teacher
- An educator
- A psychologist
- Three children.

The research team received a warm welcome from the Direction of the **EPM** visited for a day-long visit. The Director of the facility (under the authority of the DAP), the Head of the educational service (under the authority of the DPJJ) as well as the Head of Education (under the Department of Education) received the research team for a preliminary presentation, which was followed by a thorough visit of the facility. During the afternoon, individual interviews with the following representatives were organized by the Direction:

- The Head of the medical unit
- A prison guard
- A teacher
- An educator
- Two children.

The Direction of the **adult prison containing a Juvenile section** visited welcomed the research team for a day-long visit during a preliminary presentation of the facility. A visit of the Juvenile section was then conducted by the deputy director itself. Interviews were then carried with the following representatives:

- The Head of the medical unit
- The Head of Education
- Three educators
- The Penitentiary Head
- One child, since no other minor was willing to participate to the study.

A total of 27 on-site interviews were conducted for the purpose of this research study. All interviews were conducted on an individual basis, without the presence of members of neither the Direction nor prison wardens, except for multidisciplinary working meetings and common interviews of several representatives of a single division for the sole purpose of facilitating the work of the research team.

For confidentiality reasons, names of the sites visited and of the persons interviewed will not be published.

6. Drafting of the national report

The results of the documentary research, interviews with key actors and site-visits were compiled and analyzed in order to write the present report. However, because of the timetable assigned to the national research teams, the few days remaining for the drafting phase was not sufficient to write a thorough study.

2 THE INTERNATIONAL FRAMEWORK

2.1 RELEVANT CONVENTIONS AND STATUS OF RATIFICATION AS REGARDS FRANCE

International instrument	Signature	Ratification	Observations
European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1987)	26 November 1987	9 January 1989	→ First Article : establishes the CPT → 11 visits conducted in France : 1991, 1994 (Martinique), 1994, 1996, 2000, 2002, 2003, 2004 (La Réunion, 2006, 2008 (Guyane), 2010 → Next visit scheduled for 2015
United Nations Convention on the Rights of the Child – CRC (1989)	26 January 1990	7 August 1990	→ Initial report submitted in april 1993 (examination session april 1994) → second report in august 2002 instead of 1997 (examination session june 2004) → third and forth periodic reports together in sept 2007 (examination session may 2009) → fifth report submitted in sept 2012 (examination session is to take place in jan 2016)
Third Optional Protocol to the Convention on the Rights of the Child on a communications procedure (2011)	/	/	It is announced that France might sign the third protocol to CRC on november 20th of 2014
European Social Charter (1961)	18 October 1961	9 March 1973	→ Article 21 : establishes the European Committee of Social Rights, a monitoring procedure based on national reports → Entry into force as regards France : 8 April 1973

International instrument	Signature	Ratification	Observations
Additional Protocol to the European Social Charter Providing for a System of Collective Complaints (1995)	9 November 1995	7 May 1999	→ Entry into force as regards France : 1 st July 1999
United Nations Convention against torture and Other Cruel, Inhuman or Degrading Treatment or Punishment – CAT (1984)	4 February 1985	18 February 1986	→ Article 22 : establishes a Committee entitled to receive communications from individuals who claim to be victims of a violation of the provisions of the Convention → Declaration of acceptance from the French authorities : June 23 1988
Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment – OPCAT (2002)	16 September 2005	11 November 2008	→ Article 2 : establishes the Subcommittee on Prevention of Torture (SPT) → Article 3 : obligation for State Parties to establish its own National Preventive Mechanism (NPM) → Declaration from the French Permanent Mission to the United Nations on the 16 June 2009 designating the CGLPL as the French National Preventive Mechanism → No SPT's visit to France up to now
European Convention for the Protection of Human Rights and Fundamental Freedoms – ECHR (1950)	4 November 1950	3 May 1974	→ Entry into force as regards France : 3 May 1974
United Nations International Covenant on Civil and Political Rights – ICCPR (1966)		4 November 1980 (accession)	
Optional Protocol to the International Covenant on Civil and Political Rights (1966)		17 February 1984 (accession)	→ Article 1 : recognizes the competence of the Human Rights Committee to receive and consider communications from individuals

International instrument	Signature	Ratification	Observations
UPR (Universal Periodic Review) by the Human Rights Council			→ France has been reviewed twice : may 2008 and jan 2013

2.2 RECOMMENDATIONS OF INTERNATIONAL MONITORING AND INSPECTION MECHANISMS OF TREATY BODIES

Due to the lack of time, recommendations of the different treaty bodies relating to children's detention in France are summed up hereafter without any comment or improvement of the most interesting of them.

CPT - 2004 - Reunion (overseas department)³

Detention:

- overcrowding of the juvenile section (29 prisoners for 25 places);
- accusations of recurrent violent acts (notably sexual ones), the prisoners are then scared to go for a walk or to do their activities;
- lack of medical workforce.

CPT - 2006 (metropolitan France)⁴

Detention

- Paris police headquarters: 4 very dirty cells for minors (excrement...);
- remand center of Seysses: shortcomings of the sports management.

Custody

- several allegations about disproportionate use of force during arrest by the ACB (Anti-Criminality Brigade) in Bastia and Toulouse;
- failure to comply with the procedure regulations in several incidents implicating minors;
- disparate situations: parents are not always immediately informed, the audition does not always take place in front of a representative, the audition recording is not automatic, need to remind people about the procedure regarding minors' custody (obligation to record the audition...).

Closed educational Centers (CEF Centres éducatifs fermés)

- need for preventive control of the anti-fire norms;
- CEF of Mont de Marsan: insufficient staff, risk of exhaustion; shortcomings of the medical services: lack of coordination of external intervention, non-compliance with several general principles (medical entrance exam, doctor/patient confidentiality), lack of psychiatric sessions, weak medical presence, lack of adaptation of rooms and inadequate pharmacy management, lack of information about available medical care – need for preventive control of the anti-fire norms.

CPT - 2008 – French Guiana (overseas department)⁵

Detention

- Penitentiary Center of Rémire-Montjoly: austere juvenile section cells, lack of hygiene products, several complaints about access to sports facility.

³ Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)

<http://www.cpt.coe.int/documents/fra/2005-21-inf-fra.pdf>

⁴ <http://www.cpt.coe.int/documents/fra/2007-44-inf-fra.pdf>

⁵ <http://www.cpt.coe.int/documents/fra/2009-32-inf-fra.pdf>

Custody

- questioning of minors without adult representatives;
- irregular audiovisual recording;
- lack of information about minors' specific guarantees.

CPT – 2010 (metropolitan France)⁶

Detention

- Penitentiary center of Le Havre: slow implementation of the experimental educational project, concern over the program of activities;
- the law regarding the placement in solitary confinement for minors sets a maximal duration which is too long;
- the duration of the daily walk is too short (minimum 1 hour).

Custody

- several allegations about excessive use of force, blows, extremely tight handcuffing;
- minors' lack of information about their rights, signing documents without a representative;
- irregular audiovisual recording.

CRC - 2004⁷

Recommendations:

- examine juvenile justice system to ensure that the deprivation of liberty is used as a last resort and that the duration of detention is as short as possible;
- establish a minimum age for criminal responsibility;
- continue efforts of promoting the right of the child to express his or her views and have them duly taken into account (art 12), notably in the framework of judicial proceedings, and inform the legal community about it;
- examine the legislation to make sure that repressive measures are taken with procedural guarantees as well as access to legal aid;
- promote rehabilitation through adequate teaching and an appropriate check system;
- reinforce the importance of family.

Detention

The CRC expresses its concern about

- increase of the prison population;
- deteriorating detention conditions;
- lack of information about the detention conditions for children and about the measures taken to suppress any forms of abuse..

Custody

The CRC is also concerned over the new legislation that favors repressive measures (instead of educational ones) and the excessive prolongation as for the duration of custody.

CRC - 2009⁸

Concerning juvenile justice, CRC is worried about:

- the lack of a comprehensive policy and of lack of resources for juvenile justice;
- the practice which promotes repressive measures (2007 law);
- the number of deprivation-of-liberty sentences
- and the presence of juvenile sections within adult detention centers;

Recommendations:

- enhance the role of the children's ombudsperson (Défenseur des enfants), in particular with respect to its mechanisms of individual complaints;
- find a solution to intolerance and to the stigmatization of children (promote a positive attitude from the police);

⁶ <http://www.cpt.coe.int/documents/fra/2012-13-inf-fra.pdf>

⁷ Committee on the Rights of the Child (CRC),

<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsgnXZ0ChBsrwmcY8%2f%2bFNoDHWyePFK02NmneDLp1MljUn%2fHTMvzmcCH7zkNiMXDc%2bdpletK4LAOP1IVAQi%2fRjlcDu218zU56TkDjh4mCjaGSS>

⁸ <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsgnXZ0ChBsrwmcY8%2f%2bFNoDHWyePFK02NmneDLp1MljUn%2fHTMvzmcCH7zkNiMXDc%2bdpletK4LAOP1IVAQi%2fRjlcDu218zU56TkDjh4mCjaGSS>

- ensure investigation and prosecution in case of allegations about abuse;
- raise awareness of children's rights among the police as well as improve the training of professionals according to international norms;
- develop alternative penalties;
- not treat 16- to 18-year-olds differently;
- establish a minimum age for criminal responsibility.
- ensure that persons below 18 years of age in conflict with the law have access to free legal aid as well as to an independent and effective complaints mechanisms;
- improve training programmes on relevant international standards for all professionals working with the criminal justice system.

Detention

- the CRC notes with concern several allegations about young prisoners having been abused by members of the police force;
- It recommends to implement an effective control system of the way young prisoners are treated.

Custody

- The CRC is also concerned over the increase of the duration of custody.

CAT - 2006 (no specific references to children)⁹

General points

Recommendations:

- integrate a definition of torture in the criminal legislation;
- ratify OPCAT;
- depart from the system of discretionary prosecution so as to ensure impartial and systematic inquiries in all cases where there are reasonable grounds for believing that an act of torture has been committed
- ensure that every public official, or any other person acting in an official capacity, who is guilty of acts of torture should be prosecuted and receive a penalty commensurate with the seriousness of the acts committed.
- direct entitlement to the National Commission on Security Ethics (CNDS : Commission nationale de déontologie de la Sécurité) by any victim of torture or other kinds of abuse by security forces.

Detention

The CAT is concerned over several allegations about abuse by the prison administration staff.

Recommendations:

- Better training of prisons staffs
- solitary confinement must remain rare and of limited duration.

Custody

Recommendations:

- entitlement to counsel from the beginning (not 72 hours);
- reduce the duration of custody;
- avoid resorting to custody.

CAT - 2010 (no specific references to children)¹⁰

Recommendations:

- definition of torture in the criminal legislation;
- incorporate the Istanbul Protocol to the training of the police personnel;
- in case of allegation about torture or abuse: transparent and independent investigation;
- reflection on the effects of criminal law policy (tougher sentences) on the prisons overcrowding;
- better supervision of body search and evolution towards electronic equipment;
- repeal of supervised confinement;
- depart from the system of discretionary prosecution so as to ensure impartial and systematic inquiries in case of torture by the police

⁹ Committee Against Torture (CAT),

<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsuGd5%2bKvluDUd5I6A8IGLwfvv1dVxlZgIUAbd2jDVvqYa17f16sBFFDTBMk4aFBf6MhLOldQJelwelZCEMjzfkVb03z7tDjE0xoeTmcHcYF>

¹⁰ <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsuGd5%2bKvluDUd5I6A8IGLwEzXONWUc6dIK2xT94ZsbEx8wrmU4MFKYFr9kO%2fa4EhZVOE%2bG%2bWqsruZ9P11VsxVMp7vyOfPWnMbeBTPv4Wsem>

- guarantee the independence and integrity of judicial proceedings and of independent monitoring mechanisms + permit direct referral;
- direct referral of the National Commission on Security Ethics (CNDS);
- insure the effective and uninterrupted functioning of the Inspector-General of places of deprivation of liberty and other complementary independent authorities insuring compliance with fundamental rights.

Detention

The CAT regrets there is no improvement in transport service to the detention places.

Recommendations:

- resort to alternative penalties more often;
- take measures to prevent suicide;
- avoid solitary confinement and restrict its duration;
- exercise supervision over the discretionary element of the powers of prison authorities, and the corresponding risk of arbitrary action (particularly on deciding of the different detention regimes). Such supervision should be exercised through regular visits by existing independent supervisory mechanisms,

Custody

Recommendations:

- entitlement to counsel from the beginning (not 72 hours);
- reduce the duration of custody;
- avoid resorting to custody;
- arrangement of security cameras inside police stations.

3 THE NATIONAL FRAMEWORK

3.1 LEGAL AND REGULATORY FRAMEWORK FOR THE DETENTION OF CHILDREN

3.1.1 CRIMINAL LAW AND JUVENILE JUSTICE IN FRANCE

Criminal justice in France is ruled by:

- the Penal Code which examines offenses and sentences. There is no specific infringement for minors who have committed a misdemeanor or a felony;
- the Ordinance Nr 45-174 of February, 2nd 1945 related to juvenile delinquents;
- the Code of Criminal Procedure which determines the rules regarding judicial proceedings of offenses, investigations and examination of a case, arrest, detention pending trial, hearings, the decision of the court and the execution of sentences;
- the Code of Judicial Conduct which tackles the competence of the various jurisdictions.

French law does **not set a minimum age for criminal responsibility**, despite the recommendations expressed by the Committee on the Rights of the Child (CRC). French law considers that the minor who is **capable of discernment** is accountable for his actions in terms of penal law. This principle has been confirmed by the law for orientation and programming for justice nr 2002-1138 of September, 9th 2002 (article 11 adding the article 122-8 to the Code of Criminal Procedure).¹¹

"The mitigation of minors' criminal responsibility according to age – as well as the necessity to search for young offenders' educational and moral recovery through measures which are suitable for their age and their personality and which have been decided by a specialized jurisdiction or taken in accordance with appropriate procedures – has always been acknowledged by the legal framework of the Republic since the beginning of the twentieth century," according to the Constitutional Council.¹²

¹¹ "Minors capable of discernment are liable for their crimes, misdemeanors or offences of which they have been found guilty, in conditions set by a specific law that determines protection, assistance, surveillance, and education measures to which they might be subjected." This law further determines the educational sanctions that can be decided against ten- to eighteen-year-old minors as well as the penalties to which minors from 13 to 18 can be sentenced, taking into account the mitigation of liability to which they are entitled because of their age."

¹² Decision nr 2002-461 DC of August 29th, 2002, nr 26.

The jurisprudence of children's jurisdictions usually judges that the 7- to 8-year-old child has enough discernment to be held liable for his actions.

The Ordinance of February, 2nd 1945 related to juvenile delinquents provides for **the possibility to deprive children of liberty from age 13**, in addition to educational measures and sanctions, depending on the risked sentence. Furthermore, this ordinance plans the conditions of a child's deprivation of liberty by the police or the police force as part of an identity check or a police investigation, the conditions of a child's pre-trial detention, and the custodial sentences that may be decided against him/her.

Detaining a child in a police station

- **the 10- to 13-years-old minor** can be kept by a police officer for a period which does not exceed 12 hours when s/he is suspected of having committed or tried to commit a crime or misdemeanor subjected to at least 5-year imprisonment; this detention may be extended beyond 12 hours after presentation in front of a magistrate of the public prosecutor or the examining magistrate specialized in child protection or a children's judge, unless exceptional circumstances will not permit this presentation¹³;
- **the 13- to 16-years-old minor** can be remanded in custody for a duration which does not exceed 24 hours if s/he is suspected of having committed a crime or a misdemeanor that is punishable by a prison term.¹⁴ The duration of custody cannot be prolonged if the minor is suspected of having committed a misdemeanor punishable by a penalty that represents less than a 5-year imprisonment.¹⁵ It can be extended to another 24-hour period if the risked sentence is superior or equal to a 5-year imprisonment¹⁶;
- **the 16- to 18-years-old minor** can be remanded in custody for a duration of 24 hours which can be extended to another 24-hour period at most, with the District Attorney's written and legitimate consent, if the offence that the person is suspected of having committed or tried to commit is a crime or a misdemeanor punishable by a prison term which is higher or equal to 1 year. Exceptionally, the custody might be subjected to two extra extensions of 24 hours each, **until reaching a 96-hour deprivation of liberty** when there is/are one or several plausible reason(s) for suspecting that one or several adult(s) have taken part, as perpetrators or accomplices, in committing some offences (murder in organized gang, tortures and barbaric acts committed in organized group, crimes and drug trafficking, kidnapping and sequestration in organized group, theft in organized gang, destruction crimes, degradation and deterioration of goods in organized group, criminal association, acts of terrorism, etc.).¹⁷

Placement in Closed educational centers (CEFs)

A 13-to-18 years old child may be placed in a **closed educational center (CEF Centre éducatif fermé)** in which s/he has to stay, in the different following situations:

As an obligation of a judicial supervision before judgment:

- if the risked prison term is superior or equal to 5 years and if s/he has already been subjected to one or several educational measures or to a conviction of an educational sanction or another penalty
- if the risked penalty is superior or equal to 7 years
- or if the risked jail term is superior or equal to 5 years for a crime of deliberate violence, sexual assault or a crime committed with the aggravating circumstance of violence¹⁸;

¹³ Art. 4, I of the order of February 2nd, 1945.

¹⁴ Art. 62-2 of the Code of criminal procedure.

¹⁵ Art. 4-V of the order of February 2nd, 1945.

¹⁶ Art. 63-II of the Code of criminal procedure.

¹⁷ Art. 4-7 of the order of February 2nd, 1945 and art. 706-73 and 706-88 of the Code of criminal procedure.

¹⁸ Art. 10-2-III, 11 and 33 of the order of February 2nd, 1945.

As an obligation of a suspended jail sentence of probation. In this case, if the minor does not respect the conditions of the suspended sentence, i.e. escapes from the CEF, the enactment of the prison term in a penitentiary can be decided¹⁹;

Pre-trial detention

The minor aged 13 to 16 can be remanded in pre-trial detention:

- if s/he risks a criminal sentence (the penalty established by the Penal Code is 10-year imprisonment or more),
- or if s/he deliberately escapes from a house arrest with electronic surveillance
- or if s/he deliberately escapes from obligations of a **judicial supervision**, notably the placement in a **Closed educational center (CEF)** (see conditions above)

The 16 to 18-year-old minor can be remanded in pre-trial detention:

- if s/he risks a criminal sentence (10 years or more)
- or a correctional sentence of a duration superior or equal to 3 years
- if s/he has deliberately shielded himself/herself from obligations of a judicial supervision among which the placement in a CEF
- or s/he has deliberately shielded himself/herself from obligations of a house arrest with electronic surveillance.²⁰

Prison term

Despite multiple changes brought to the ordinance of February 2nd, 1945 these last years, one of its most important principles remains the priority given to educational measures. The decision to deprive a minor of liberty must be justifiable according to the particular circumstances, the minor's personality and the possible repeat offence.

- **under the age of 13**, a minor **cannot be sentenced to a deprivation of freedom**. Only educational measures, which might go as far as placing the child in an open educational institution, may be applied. From age 10, the minor can be punished by educational sanctions (seizing, prohibition to visit certain places or people, civics and citizenship education courses, placement in a boarding school...) ²¹;

- **the minor from age 13 to 16** can be sentenced to a deprivation of liberty which must not be superior to half the sentence risked by adults according to the Penal Code. If the risked penalty is life imprisonment, the duration of imprisonment must not exceed 20 years²²; this is commonly called "l'excuse de minorité".

- **the minor from 16 to 18** in principle benefits from the same "excuse de minorité" applied to 13- to 16-year-old minors, unless the children's court or the juvenile criminal court decides that there is no valid reason for making the young offender benefit from the mitigation of the sentence in the following cases:

1° when the circumstances of the crime and the minor's personality justify it;

2° in case of infringement of a person's life or of a person's physical or mental integrity, committed in legal recidivism state;

3° when offences – such as deliberate violent acts, sexual assault, violent deeds with aggravating circumstances – have been committed in legal recidivism state .

When it is taken by the children's court, the decision not to make the minor benefit from the mitigation of his/her penalty must be clearly justified, except for the offences mentioned in 3° committed repeatedly.

The mitigation of the sentence explained in the first paragraph does not apply to minors who are older than 16 when the offences mentioned in 2° and 3° have been committed a second time. However, the juvenile criminal court may decide otherwise, just like the children's court may do by giving a specifically justifiable ruling.²³

¹⁹ Art. 20-10 and 33 of the order of February 2nd, 1945.

²⁰ Art. 11 of the order of February 2nd, 1945.

²¹ Art. 2 and 15-1 of the order of February 2nd, 1945.

²² Art. 20-2 of the order of February 2nd, 1945.

²³ Art. 20-2 of the order of February 2nd, 1945.

It is important to notice that the above writing of Art. 20-2 of the ordinance of February 2nd, 1945, which applied since 2007, has recently been changed with the penal reform of August 15th 2014. It is now written as follows :

In case the minor is older than 16, the children's court or the juvenile criminal court can exceptionally decide there is no reason to make the young offender benefit from the "excuse de minorité" , as regards to the circumstances of the crime, the minor's personality and his or her situation. This decision can't be made by the children's court without a specifically justifiable ruling.

Remark: the right to counsel

Since the law of April 14th, 2011, any person remanded in custody has the right to request a lawyer's legal aid from the beginning of his/her custody, and must be informed of his/her the right to remain silent. The lawyer may know the reasons for his client's deprivation of liberty but does not have access to the file (minutes, testimonies, etc.).

The presence of a lawyer is not compulsory for minors.²⁴ The latter must request a lawyer's assistance so that they can be counseled during the audition by the police officers.

For the rest of the criminal proceedings (appearance in front of the magistrate, in court, assizes), the minor must be assisted by a lawyer, under the penalty of nullity.²⁵

3.1.2 LEGAL FRAMEWORK FOR THE DETENTION OF CHILDREN

- Circular of May 24th, 2013 relating to minors' detention system (NOR: JUSK1340024C)
- Penitential law nr 2009-1436 of November 24th, 2009
- Ordinance nr 45-174 of February 2nd, 1945 regarding juvenile delinquents
- Decree nr 2013-368 of April 30th, 2013 related to typical internal regulations of prisons
- Law nr 2002-1138 of September 9th, 2002 of orientation and programming for justice (called Perben I law)
- Code of criminal procedure, and its articles A43-2 and A43-3: list of specialized prisons for minors and list of zones for minors, remand centers or penitentiaries
- Circulars of youth judicial protection department– Signing of the circulars from January 1st to March 31st, 2003: "implementation of the programs of closed educational centers: legal framework, educational support and criminal policy" (NOR: JUSF035004C)²⁶
- Law nr 2002-2 of January 2nd, 2002 renewing social and medico-social action
- Law nr 2009-879 of July 21st, 2009 reforming the hospital and related to patients, health and territories
- Decree of September 8th, 2003 relating to the charter of the rights and liberties of the welcomed, mentioned in the L. 311-4 article of the social action and families Code

²⁴ Law nr 2011-392 of April 14th, 2011 relating to custody; art. 4 of the order of February 2nd, 1945: "From the beginning of custody, the minor may request a lawyer's legal aid (...)"

²⁵ Art. 4.1 of the order of February 2nd, 1945 . "The prosecuted minor must be assisted by a lawyer. If the minor or his/her legal representatives cannot choose the lawyer, the juvenile court judge or the examining magistrate have the president of the Bar name a court-appointed lawyer."

²⁶ <http://www.justice.gouv.fr/bulletin-officiel/dpjj89b.htm>

3.2 MAPPING OF CRIMINAL CONFINEMENT FACILITIES FOR CHILDREN IN FRANCE

These statistics have been communicated to DEI-France by the Direction of the Penitentiary Administration and the Direction of the Judicial Youth Protection (see *Appendix 1 and 2*).

A. Detention facilities for children: EPMs and Juvenile sections

Criminal Institutions (as of 1/05/2014)		Total number of detained children	Girls	Boys	Capacity
EPMs (Juvenile specific detention centers)					
1	Lavaur	50	1	49	59
2	Marseille	58		58	59
3	Orvault	40		40	55
4	Porcheville	54		54	60
5	Quiévrechain	50	2	48	60
6	Meyzieu	37	1	36	60
Juvenile Sections within adult local prisons					
1	Angoulême	6		6	7
2	Besançon	3		3	20
3	Bonneville	10		10	18
4	Bordeaux-Gradignan	19		19	23
5	Bourges	3	1	2	4
6	Brest	7		7	10
7	Caen	8		8	10
8	Chaumont	5		5	10
9	Dijon	3		3	11
10	Epinal	4		4	14
11	Fleury-Mérogis	93	6	87	94
12	Grasse	26		26	31
13	Grenoble-Varces	15		15	20

Criminal Institutions (as of 1/05/2014)		Total number of detained children	Girls	Boys	Capacity
14	Limoges	5		5	12
15	Longuenesse	13		13	22
16	Majicavo	9		9	6
17	Mulhouse	16		16	20
19	Nanterre	15		15	18
20	Orléans	2		2	6
21	Pau	7		7	10
22	Reims	6		6	10
23	Rouen	8	1	7	32
24	Strasbourg	20	3	17	38
25	Tours	9		9	10
26	Varennnes-le-Grand	5		5	15
27	Versailles	0		0	0
28	Villeneuve-lès-Maguelone	23		23	20
29	Villepinte	43		43	40
Juvenile Sections within adult penitentiary centers					
1	Avignon-le-Pontet	17		17	20
2	Baie-Mahault	7		7	15
3	Besançon (semi-custodial centre)	1		1	1
4	Borgo	2		2	4
5	Ducos	12		12	17
6	Faa'a Nuutania	6		6	2
7	Fresnes	0		0	0
8	Havre	2		2	15
9	Laon	11		11	15
10	Liancourt	16		16	20
11	Marseille-les-Baumettes	5	5		5

Criminal Institutions (as of 1/05/2014)		Total number of detained children	Girls	Boys	Capacity
12	Maxéville (semi-custodial centre)	0		0	2
13	Metz-Queuleu	10		10	14
14	Moulins-Yzeure	3		3	8
15	Nouméa	15		15	18
16	Perpignan	11		11	12
17	Remire-Montjoly	8		8	21
18	Rennes	3	3		3
19	Saint-Denis (semi-custodial centre)	16		16	40
20	Saint-Pierre	0		0	2
21	Souffelweyersheim (semi-custodial centre)	0			2
Total		817	23	794	1120

Occupancy rate $\geq 100\%$

B. General Information regarding juvenile detention in France

Information	Total	Girls	Boys
Number of detained minors			
As of 01/05/2014	817		
01/01/2014	731		
01/01/2013	724		
01/01/2012	712		
01/01/2011	688		
01/01/2010	669		
01/01/2009	675		
01/01/2008	724		
01/01/2007	727		
01/01/2006	732		
Number of detained minors (for the entire year)			

2013	3683	189	3494
Number of committed minors (placement sous écrou)			
01/01/2014	734	30	704
01/01/2013	729	35	694
01/01/2000	718		
01/01/1990	543		
01/01/1980	791		
Percentage of minors regarding the total number of committed persons			
2014	0,90%		
2013	1,40%		
2000	1,40%		
1990	1,20%		
1980	2,10%		
Average period of committal			
2013	3,0 months		
2012	2,8 months		
2011	2,8 months		
2010	2,7 months		
2009	2,5 months		
Number of female minors hosted in woman detention sections²⁷			
01/01/2014		0	
01/01/2013		0	
Minor releases			
2013	2463		
2012	2503		

²⁷ According to the DAP statistics, since 2012, no female minors has been detained in a woman detention section.

C. Confinement facilities for children: Closed Educational Centers²⁸ (Centres éducatifs fermés - CEF)

CEF					
1	Angoulême	15	Hendaye Txingudi	29	Saint-Brice-sous-Forêt
2	Beauvais	16	L'Hôpital-le-Grand	30	Saint-Paul d'Espis
3	Brignoles	17	La Chapelle-Saint-Mesmin	31	Sainte-Anne
4	Bures-sur-Yvette	18	« La Gautrèche » à la Jubaudière	32	Saint-Denis-le-Thibault
5	Cambrai	19	« La Rouvelière » à Allonnes	33	Sainte-Eulalie
6	Châtillon-sur-Seine	20	Liévin	34	Sainte-Gauburge
7	Combs-la-ville	21	Lusigny-sur-Barse	35	Sainte-Menehould
8	Comteville à Dreux	22	Marseille	36	Saverne
9	Dreux	23	Moissanes	37	Savigny-sur-Orge
10	Epinay-sur-Seine	24	Mont-de-Marsan	38	« Thésis » à Saint-Venant
11	Forbach	25	Montfavet	39	Tonnoy
12	Fragny	26	Mulhouse	40	Valence
13	Gévezé	27	Pionsat	41	Thierville-sur-Meuse
14	Ham	28	Port-Louis		

Minors placed in a CEF	Public Structures	Associative Structures	Total
2013	439	1 038	1 409
From 1st January - 30 April of 2014	261	526	778

Reasons for absence (as regard Public Structures only)

Number of minors regarding absence reasons	Escape	Detention	Hospitalization	Authorization for temporary leave	Total
2013*	154	84	9	82	272
1st January - 30 April of 2014*	76	42	3	15	123

²⁸ As regards CEFs, the list provided in this report is not exhaustive since no official list of CEF could be found. The DPJJ indicates that as of June 2014, there are 50 CEF throughout the territory, 33 of which are run by the associative sector through centers duly empowered by the DPJJ to care for minors.

% of minors regarding absence reasons	Escape	Detention	Hospitalization	Authorization for temporary leave	Total
2013*	35%	19%	2%	19%	62%
1st January - 30 April of 2014*	29%	16%	1%	6%	47%

Minors present in a CEF	Public Structures	Associative Structures	Total
As of 31/12/2013	121	310	431
As of 30/04/2014	157	348	505

Reasons for absence (as regard Public Structures only)

Number of minors regarding absence reasons	Escape	Detention	Hospitalization	Authorization for temporary leave	Total
As of 31/12/2013*	23	13	2	17	51
As of 30/04/2014*	32	24	1	9	54
% of young people regarding absence reasons	Escape	Detention	Hospitalization	Authorization for temporary leave	Total
As of 31/12/2013*	19%	11%	2%	14%	42%
As of 30/04/2014*	20%	15%	1%	6%	34%

* One single child may have several absence reasons

3.3 NATIONAL MONITORING MECHANISMS

3.3.1 THE NATIONAL PREVENTIVE MECHANISM UNDER OPCAT: THE CONTROLLER GENERAL OF PLACES OF DEPRIVATION OF LIBERTY (CONTROLEUR GENERAL DES LIEUX DE PRIVATION DE LIBERTE - CGLPL)

Legal basis

The CGLPL has been established by the Law of 30 October 2007²⁹ and its powers have been reinforced with the recent Law of 26 May 2014³⁰. Its functions and procedural framework are further specified with the Internal Rules³¹ and the Ethics Rules³². The CGLPL has been designated as the **French National Preventive Mechanism** by declaration from the French Permanent Mission to the United Nations on the 16th of June, 2009³³.

Mandate

This independent public body is in charge of **the respect of fundamental rights of persons deprived of liberty** during their deprivation of liberty period as well as during their transfer³⁴.

Law of 30 October 2007 Article 1: *"The Controller General of Places of Deprivation of Liberty, independent public body, is in charge, without prejudice to the prerogatives given by law to the Judiciary or any court, to control conditions of management and convey of people who are deprived of liberty, in order to check enforcement of their fundamental rights. In his duties, he doesn't receive instructions from any authority".*

The CGLPL has three main tasks:

- To ensure **rights inherent to human dignity are indeed enforced**;
- To ensure the **right balance between the respect of the fundamental rights** of people deprived of liberty and **public order and security**;
- To **prevent violations of fundamental rights** towards people deprived of their liberty.

It is entitled to visit **every place of deprivation of liberty**, throughout the French territory. This includes:

- **Detention facilities:** local prisons for pre-trial and short-term detention (*maisons d'arrêt*), detention centers (*centres de détention*), penitentiary centers (*centres pénitentiaires*), prisons for the most dangerous detainees (*maisons centrales*), Juvenile Detention Facilities (*Etablissements pénitentiaires pour mineurs – EPM*), semi-imprisonment center (*centres de semi-liberté*), centers for alternative sentencing (*centres pour peine aménagée*), as well as the national observation center (*centre national d'observation*);
- **Health facilities** (psychiatric centre...)
- **Facilities under the joint authority of the Department of Health and the Department of Justice**
- **Administrative detention centers** for illegal immigrants
- **Waiting zones** for undocumented foreigners or foreigners who do not meet the required conditions to enter the French territory
- Police custody **cells**, Customs detention cells and Court cells
- **Closed educational centers** for young offenders (*Centres éducatifs fermés - CEF*)
- **Vehicles** for transfer.

This represents more than 5,000 facilities.

Composition

²⁹ [Law establishing the CGLPL of 30 October 2007 \(2007-1545\)](#) and [Decree relating to the CGLPL of 12 march 2008 \(2008-246\)](#)

³⁰ [Law of 26 may 2014 \(2014-528\)](#)

³¹ [Internal rules of the CGLPL](#)

³² [Ethical principles of the CGLPL](#)

³³ [Communication from France regarding the designation of the NPM](#)

³⁴ [Law establishing the CGLPL of 30 october 2007, Article 1](#)

The CGLPL is appointed by presidential decree for a period of **six years**, non-renewable³⁵, based on his expertise and professional knowledge. Under Article 13 of the Constitution, the power of appointment of the President of the Republic shall be exercised after public consultation with the relevant standing committee in each parliamentary assembly and may be barred with at least 3/5th negative votes³⁶.

Its mission and independence are guaranteed by **functional immunity**, an **irrevocable appointment**, the **absence of instruction from other authorities**, and **incompatibility** of his functions with any other duties or elected mandates.

To fulfill his mission, the CGLPL is supported by a team of 48 staff members with diverse backgrounds:

- A general secretary
- **16 full-time controllers** (magistrate, civil servant, hospital worker, military man, officer non-holder of public law)
- **20 part-time controllers** whose main professional activity allows them to share their expertise with the CGLPL
- 5 persons in charge of investigations
- 4 assistants in charge of administrative work

Inspectors are recruited for their **skills and knowledge** on the CGLPL's area of expertise. They are placed under the authority of the CGLPL and are bound by the same ethics rules, i.e. professional secrecy and an absolute commitment to impartiality. The Finance Law establishes the maximum number of employments for the CGLPL; part-time inspectors are paid through a fixed compensation³⁷.

Powers

The CGLPL may, at any time, visit any site falling under its jurisdiction. Visits can be **scheduled** or **unexpected**. The authorities of the site visited cannot object to its visit, except for serious, compelling reasons connected with national defense, public security, natural catastrophes or serious disturbances and provided that they produce relevant justification.

Inspectors can have **access to all information or documents** and can **interview any person necessary for the performance of their task**, while respecting confidentiality rules. **Secrecy rules cannot be opposed** to it except if the disclosure may attempt to the secret of national defense, to the State's safety, to the investigation secret or to the professional secret between the lawyer and his client. If a piece of information is not communicated, a **formal demand notice** can be sent.

Information under medical confidentiality can be communicated, with the detainee's agreement, to a controller holding a medical degree. This **agreement is not necessary if the person is a minor** or a vulnerable victim of privations, ill treatment, or violence (physical, sexual, psychological).

Follow up

Following each visit, the CGLPL drafts a **report of observations and recommendations** about the organization and the conditions of deprivation of liberty in the site visited. He **communicates it to the different Departments** and Ministers, who can send responses which will be annexed to the report before it is **published**. The respect of the adversarial principle may delay the publication of the report.

In specific situations, the CGLPL has reinforced powers:

- If it observes a **serious infringement of the fundamental rights** of a person in custody, he shall promptly notify the competent authorities of his observations, shall give them a period within which to respond and, at the end of this period, shall determine whether the infringement notified has ceased. If it deems necessary, it shall then publish the contents of its observations and the responses received (*recommandations en urgence*). These emergency powers have been used four times during the CGLPL's first six-year exercise; two of these recommendations related to the confinement of minors, once in two CEFs and recently in a QM.

³⁵ [Law establishing the CGLPL of 30 october 2007, Article 2](#)

³⁶ [French Constitution of 4 october 1958, Article 13](#)

³⁷ [Order of 13 November 2008](#)

- If it becomes aware of **facts suggesting the existence of a criminal offence**, it shall promptly bring it to the attention of the public prosecutor, in accordance with Article 40 of the code of criminal procedure.
- If it observes **facts that might lead to disciplinary proceedings**, he shall promptly bring its observations to the attention of the authorities or persons having disciplinary powers.

Within its field of competence, it is entitled to **issue opinions, make recommendations to the public authorities and propose to the Government any amendment to applicable legislative and regulatory provisions.**

Each year, the CGLPL drafts an **annual activity report**. It is communicated to the President of the Republic and to the Parliament and made public.

3.3.2 ADMINISTRATIVE INSPECTORATES

3.3.2.1 THE GENERAL INSPECTORATE OF JUDICIAL SERVICES (INSPECTION GÉNÉRALE DES SERVICES JUDICIAIRES – IGSJ)

Legal basis

The IGSJ was recently reorganized with the **Decree of 29 December 2010**³⁸.

Mandate

The IGSJ provides a **permanent mission of inspection** on **all directorships and services run by the Department of Justice**, judicial courts, legal entity of public or private law, whose activities are related to Department's. Inspections are made to appraise the activity, functioning and performance of these various actors.

Further, the IGSJ coordinates both the **IPJJ's and ISP's missions** (see below). Its function is to guarantee the **independence of the inspectors' observations, analysis and recommendations**, but also to standardize their methodology and to ensure their respect of deontological rules.

The IGSJ can only be mandated by the **Department of Justice**.

Powers

The IGSJ has various missions:

- the control of functioning inspection: the methodology is like an audit
- administrative investigation: inspectors observe and analyze suspicious behaviors from Staff members which may lead to disciplinary investigations
- the gathering of pieces of information to appraise the consequences of a reform relating to Justice
- permanent internal audit of accounts of all directions and services belonging to the Department of Justice
- International and European missions: methodology support and partnership

The IGSJ is in charge of **drawing up the annual program of visits** of its services, for the ISP as well as for the IPJJ, in association with the DAP and the DPJJ. The annual agenda is then approved by the department of Justice.

The IGSJ can **appoint an inspector from the IPJJ or ISP** to bring technical support to one of its missions. It can also conduct **missions in common** with the ISP or IPJJ.

Follow up

A **follow-up** procedure is performed after a mission and an **annual report** sums up the activities of the year and the main recommendations.

Complaints

Individuals, including children, are not entitled to refer their matter to the IGSJ.

³⁸ [Decree of 29 December 2010 relating to the awarding and the organization of IGSJ's missions](#)

3.3.2.2 PRISON INSPECTORATE (INSPECTION DES SERVICES PÉNITENTIAIRES - ISP)

Legal basis

Under Article D229 of the **Criminal Code of Procedure**, places of detention are placed under the control of the *ISP*³⁹. An administrative instruction and the methodological guide relating to *ISP* give further details relating to its organization and jurisdiction.

The *ISP* is the **monitoring body placed under the Prison Administration** (*Direction de l'Administration pénitentiaire – DAP*)⁴⁰. However, since 2008, the *ISP* has also been **placed under the authority of the IGSJ**⁴¹. The *ISP* is thus a service belonging to the *DAP* and its missions are part of the general mission of the *IGSJ*. This double authority has been implemented in order to ensure a greater level of independence to the *ISP* and its inspectors (see above under “*IGSJ*”).

Mandate

The *ISP* is in charge of the **general monitoring of detention facilities**.

Criminal Code of Procedure, Article D229: “Without prejudice to the judicial monitoring of the authorities set out in articles D176 et seq., and of the Detention Assessment Board's control, detention facilities are subject to the general monitoring of the *ISP*...”

The aim of the monitoring is to make sure that rules are correctly applied. The primary focus of the *ISP*'s inspection is to survey how **the site is functioning and how the regulation is being enforced**, but not how fundamental rights are respected.

The *ISP* can inspect all places under the authority of the *DAP* throughout the French territory, encompassing:

- 190 **detention facilities**
- 95 placement services in **open institutions**

The *ISP* does not have any self-referral powers and thus is not authorized to launch an inspection on its own initiative. It can **be assigned on specific missions only by its hierarchy, i.e. the Department of Justice, the Prison Administration Director or the IGSJ General Inspector**.

Each year, an **annual program of visits** (see above under “*IGSJ*”) established with the Head of the *ISP*, determines which sites to visit, except for cases of incident which cannot be planned in advance, by definition.

Composition

As mentioned above, the *ISP* is under the authority of both the *IGSJ* and the *DAP*. To guarantee its independence, the **Head of *ISP* is a deputy general inspector of the judicial services** appointed by the Minister of Justice.

The *ISP* has a total of 21 **persons**. Its **central level** is made up of 13 Staff members including, a deputy chief, 9 inspectors and 3 administrative assistants. Its **interregional level** is divided in 7 sections, with 1 inspector for each section.

Inspectors are appointed on the basis of their specific professional background (magistrate, prison officer, prison director, etc.), ensuring they have the necessary expertise to conduct inspection missions.

³⁹ [Criminal Code of Procedure, Article D229](#)

⁴⁰ [Order of 9 July 2008 establishing the organization in sub-directorates the *DAP*, Article 7](#)

⁴¹ [Decree of 29 December 2010 relating to the awarding and the organization of *IGSJ*'s missions](#)

Powers

Three types of missions can be accomplished:

- **Functioning audits** to assess how the regulation is being complied with within the visited site;
- **Administrative investigations:** following an incident, to investigate a specific dysfunction within the visited site and analyze the extent to which this malfunction can be linked to an incorrect application of regulations.
- **Thematic missions.**

Functioning audits are conducted at the **interregional level**. Administrative investigations, thematic surveys and certain functioning audits are performed at the **central level**.

Inspectors base their analysis on documents that are communicated to them as well as on the spot checks.

The *ISP* can be associated to a mission with the *IGSJ*s in two situations:

- a **common mission with the IGSJ** planned in the annual agenda
- **ad hoc mission with the IGSJ** to share its specific expertise on detention facilities

Follow up

Each visit ends with a **non-public report, drafted by the interregional inspector in charge of the visit and then validated at the central level**. Inspectors have to identify **malfunctions** and formulate **recommendations** (usually between 60 to 100 recommendations). The report is eventually sent to the Director of the site as well as to the *DAP*.

A **follow-up procedure is organized six months later** with the director of the place concerned and the interregional direction, through an exchange of correspondence.

3.3.2.3 INSPECTORATE OF THE JUDICIAL YOUTH PROTECTION (INSPECTION DE LA PROTECTION JUDICIAIRE DE LA JEUNESSE - IPJJ)

Legal basis

Under Article 7 of the **Order of 9 July 2008** organizing the *Directorate of the Judicial Youth Protection (DPJJ)* in sub-directorates⁴², the *IPJJ* is the **monitoring body placed under the authority of the DPJJ**.

Since the 2008 reform and in the same way as the *ISP*, the *IPJJ* has been placed as well **under the authority of the IGSJ**⁴³ and is part of the general mission of the *IGSJ*, in order to ensure a greater degree of **independence** to the *IPJJ* (see above under "*IGSJ*").

Mandate

The *IPJJ* is in charge, **within the DPJJ**, of **monitoring administrative, educational and financial aspects** of all structures falling within the area of competence of the *PJJ*.

Order of 9 July 2008 organizing the DPJJ in sub-directorates, Article 7: *Without prejudice to the general prerogatives of inspection of the IGSJ and to its powers of coordination, the IPJJ ensures the structures' inspections relating to the PJJ, whatever their statute, in administrative, educational and financial areas.*

It evaluates to what extent and how **facilities and services, as well as their directorships**, comply with the regulation in force.

The *IPJJ* can visit **every facility or service within the area of competence of the PJJ**, including **public structures and entitled associative structures**. In *QMs* and *EPMs*, the *IPJJ* exercises its monitoring powers only on educational services.

⁴² [Order of 9 July 2008 establishing the organization in sub-directorates the DPJJ, article 7](#)

⁴³ [Decree of 29 December 2010 relating to the awarding and the organization of IGSJ's missions](#)

Each year, the annual **program of visits** is established in coordination with the *IPJJ*'s chief to determine places to visit (see above under "*IGSJ*").

Apart from those programmed missions, the *IPJJ* is not entitled to intervene on its own initiative. It is **commissioned on an inspection assignment, through its superiors in the hierarchy, by:**

- The **Department of Justice**
- The **PJJ Director** who sends a letter of assignment in order to define the scope of the mission
- The **IGSJ** who can appoint an *IPJJ* inspector in order to benefit from its specific expertise.

Composition

As said above, the *IPJJ* is under the authority of both the *IGSJ* and the *DPJJ*. Appointed by the Justice Minister, the head of the *IPJJ* is a general inspector of judicial services; this appointment guarantees the *IPJJ*'s independence from its Directorate.

The *IPJJ* is made up of **11 persons**: the Director of the *IPJJ*, 9 inspectors and an administrative assistant. All inspectors come from the *PJJ* or are magistrates.

Powers

The *IPJJ* can be commissioned on various types of missions:

- Programmed missions
 - o **Audits of functioning**: this is a classical inspection mission
 - o **Follow-up visits**: this is dedicated to monitoring how recommendations formulated on a previous visit have been implemented
 - o **Thematic missions**.
- Ad hoc missions
 - o **Audits of functioning following a serious incident or malfunction**
 - o **Administrative investigations** are dedicated to investigating the specific conduct of a Staff member.

During the time period of their mission, inspectors have full access to the inspected site: they can **go to the place at any moment** of both night and day. They conduct **interviews** with children as well as with all levels of hierarchy – from maintenance Staff to youth workers, up to the direction.

IPJJ can be involved in *IGSJ*'s missions in two situations:

- a **common mission with the IGSJ** programmed in the annual program of visits
- **ad hoc request from the IGSJ asking to benefit from the IPJJ's** expertise in one of its mission

Follow up

Each visit ends with a **non-public report, drafted by inspectors in charge of the visit**. Inspectors have to identify **misfunctions** and formulate **recommendations**. Then, the *IPJJ* is mandated for **follow-up visits**.

The *DPJJ* is in charge of the **report's distribution**. It is, in the least, sent to the different levels of the *PJJ*, the direction of the visited site, and the presidents of Courts. The *IPJJ* chooses not to communicate the report to Staff members of the structure concerned: its reports indeed contain excerpts from the interviews conducted during the inspection visit which could be traced back to their authors, infringe on the principle of confidentiality, and thus jeopardize the work of the Inspectorate.

3.3.2.4 THE PREFECT AND SUBPREFECT

The inspection's power of the Prefect and Subprefect is established by **Article D229 of the Criminal Code of Procedure**⁴⁴. He chairs the Assessment Board (Conseil d'évaluation: see below 3.3.8) of each prison under his jurisdiction (art. D234 of Criminal Code of Procedure and Circular of 23/01/2012 relative au Conseil d'évaluation, NOR JUSK 1140027C).

⁴⁴ [French Criminal Code of Procedure, Article D229](#)

3.3.3 JUDICIAL MONITORING

Legal basis

Judicial authorities have a power of control over detention facilities, as stated in **Articles D176 to D179 of the Criminal Code of Procedure**⁴⁵.

Within the judicial body, this function is dedicated to the **Sentence Enforcement Judge**, the President of Investigation Chamber of the Court of Appeal, the Investigating Judge, **the Children's Judge**, as well as the Public prosecutor.

Mandate and follow up powers

The Sentence Enforcement **Judge checks the conditions in which convicted detainees serve their sentence**. If needed, he addresses his observations to the competent authorities quoted below. He also has an obligation to address to the Department of Justice an annual report on the terms and conditions of sentences.

The **Children's Judge, in his criminal** prerogatives, also acts as a Sentence Enforcement Judge as well as an Investigating Judge over children in his jurisdiction⁴⁶. In this framework, he has the **power to meet** with accused children within his jurisdiction as well as to **check the conditions of detention of children**. After his visit, he gives his observations to the competent authorities if it appears necessary.

The **President of Investigative Chamber of the Court of Appeal** checks the situation of indicted persons remanded in custody. He addresses his observations to the competent president of the Investigative Chamber of the Court of Appeal when the accused person falls out of his jurisdiction. The **Investigating Judge** has the power to meet with accused persons.

The **First Chairman and the Attorney General** have an obligation to report to the Department of Justice on an annual basis on the functioning and services of penitentiary facilities and staff members within their jurisdiction.

3.3.4 PARLIAMENTARY INSPECTIONS

Legal basis

Parliamentarians from the French Parliament or members of the European Parliament are allowed to visit places of detention according to the **Criminal Code of Procedure, Article 719**⁴⁷. The Circular of 25 July 2011 relating to prison's visits by parliamentarians⁴⁸ gives further details as to the proceedings of these visits.

Article 35 of the Ordinance of 2 February 1945 relating to juvenile delinquency⁴⁹ specifies the possibility to visit places receiving delinquent children.

Mandate

They are authorized to exercise their power of visit over **arrest cells, reception centers for illegal immigrants, prisons, as well as facilities for those seeking permanent residence or asylum**. French parliamentarians can also visit **every public or private places receiving delinquent children** in their department.

⁴⁵ [French Criminal Code of Procedure, Articles D176 to D179](#)

⁴⁶ Since a decision from the Constitutional Court of 8 July 2011, the Children's Judge who has investigated a case may not chair the Children's Tribunal which will be responsible of judging the same case anymore. This two-hatted function was indeed deemed contrary to the principle of impartiality. [Article L.251-3 of the Code of Judicial Organization](#) now expressly provides for this prohibition.

⁴⁷ [French Criminal Code of Procedure, Article 719](#)

⁴⁸ [Circular of 25 July 2011 relating to prison's visits by parliamentarians](#)

⁴⁹ [Ordinance of 2 February 1945 relating to childhood delinquent, Article 35](#)

Powers

Parliamentarians can decide to conduct these visits **at any time**. They are allowed to visit **the premises** but not to meet detainees unless they have a visit permit.

The visit is **individual**, meaning that they cannot come with a third person, such as a journalist for example. During the visit, they are attended by staff members.

Follow up

Parliamentarians don't have any obligation to draft nor publish a report after the visit. In practice, these visits are often used to feed their communication materials.

3.3.5 THE ASSESSMENT BOARD (CONSEIL D'ÉVALUATION)

Legal basis

The Assessment Board is established by **Article 5 of the Prison Law of 24 November 2009**⁵⁰. Rules relative to its functioning can be found under Article D234 to D238 of the French Criminal Code of Procedure⁵¹.

Mandate

The mission of this body is to **evaluate the functioning conditions** of the institution and to **propose measures** to improve these conditions.

The Assessment Board is implemented in **every prison** and meets at least once a year.

Composition

The **Chairman** of the Assessment Board is the **prefect of the Department**: the president of the Court of first instance and the Public prosecutor serve as vice-chairman.

The Assessment Board is made up of various **entities with competencies relating to the detention site** : the president of the General Council (local authority of the department), the president of Regional Council, the mayors, the president and State Counsels of other jurisdictions, the Sentence Enforcement Judge checks the conditions of detention, the Children's Judge, the dean of investigating judges competent, school inspector, the Director General of the regional health agency, the commander of the departmental police force, the departmental director of public security, the president of the Bar association, a representative of each association working in the prison, a representative of prison visitors, a chaplain of each religion intervening within the prison.

It may be noticed that all these local authorities are chosen outside the line of management of the prison so that to guarantee the independence of their missions, debates and conclusions.

Powers

Members of the Assessment Board can be **designated to visit the place** as frequently as necessary. The Assessment Board can **interview any person** deemed necessary as well as representatives of the worker's organization.

Members can **request that any information or documents** deemed helpful for their mission be communicated to them, including rules of procedure and reports from specialized monitoring bodies.

Follow up

Following each of these meetings, the Assessment Board drafts **minutes** which are **sent to the AP Interregional Director** who then forwards them to the **Department of Justice**.

⁵⁰ [Law of 24 November 2009 penitentiary, Article 5](#)

⁵¹ [French Criminal Code of Procedure, Article D234 to D238](#)

3.4 COMPLAINT MECHANISMS AVAILABLE TO CHILDREN IN CRIMINAL CONFINEMENT FACILITIES

The French system is characterized by its great diversity, with a wide range of complaint mechanisms, diverse both in nature (independent, judicial, administrative, and international) and statuses (internal and external).

In this great diversity, there is no specificity, however, for children complaints. Except for the expertise of the Defender of Children (*Défenseur des enfants*), under the Defender of Rights (*Défenseur des droits*, referred to as “DDD”), complaint mechanisms apply indistinctly to adults and children as well.

Most often, those complaint mechanisms are directly linked to monitoring authorities, hence giving the possibility to those bodies to exercise their monitoring power through individual cases. The reverse holds true as well: a detainee may seize the opportunity of a visit by a monitoring body to report a violation of its rights. This link between monitoring and complaint mechanisms can multiply possibilities for violations of rights to be brought to light. This is particularly important given the number of children and facilities concerned (see above under 3.2 “Mapping”).

The effectiveness of these complaint mechanisms is, by law at least, ensured by two important obligations incumbent on the Administration – namely **providing detainees with clear legal information** including information regarding their right of access to complaint mechanisms, and **respecting the confidentiality of protected correspondence**.

As for the obligation to provide clear legal information, the various provisions from which this obligation derives⁵² specify that it has to be provided upon arrival and during detention, orally and in writing through a detainee’s handbook, in a language understood by the detainee and via the most appropriate means; it shall encompass information relating to the detention regime, detainees’ rights and duties, as well as complaint mechanisms available in detention. **There are no specific provisions, however, regarding adequate legal information for children.**

In order to protect detainees from risks of obstruction and/or reprisals when exercising their rights to complain, correspondence with those competent authorities expressly stated in the law is protected with confidentiality⁵³; violation of this confidentiality is a criminal offense punishable by a three-year prison sentence and 45.000-euro fine⁵⁴.

3.4.1 INDEPENDENT AUTHORITIES

3.4.1.1 THE DEFENDER OF RIGHTS (DÉFENSEUR DES DROITS – DDD)

Created by Article 71-1 of the constitutional amendment of 23 July 2008⁵⁵, the Defender of Rights is a **constitutional independent authority**. It merged and succeeded to four previous independent administrative authorities: the Mediator of the French Republic (State ombudsman), the Defender of Children, the CNDS (*Commission nationale de déontologie et de sécurité*, regarding complaints against law enforcement agencies) and the HALDE (*Haute autorité de lutte contre les discriminations et pour l’égalité*, regarding complaints against any discrimination). The organic Law of 29 March 2011⁵⁶ entrusted the Defender of Rights with the missions previously handled individually by those four authorities.

⁵² [Prison Act of 24 November 2009, Article 23](#)
[Standard Internal Rules for Prisons, Preamble](#)
[Criminal Code of Procedure, Article D258-1](#)

⁵³ [Criminal Code of Procedure, Article D262](#); [Prison Act of 24 November 2009, Article 40](#); [Standard Internal Rules for Prisons, Article 35](#)

⁵⁴ [Criminal Code, Article 432-9](#)

⁵⁵ [Constitution, Article 71-1](#)

⁵⁶ [Organic Law of 29 March 2011](#)

The institution's independence is guaranteed by various provisions: appointment by the President of the Republic and submitted to the veto of the Parliament⁵⁷, a six-year term of office non-renewable and irrevocable, functional immunity from prosecution in order to exercise his functions without any fear of judicial pressure, as well as strict incompatibility rules and prohibition to hold other offices.⁵⁸

Cases can be referred to the Defender of Rights (DDD) in four instances:

1. When a user considers that the **functioning of a public service** has infringed upon its rights and freedoms
2. In cases relating to the **defense and promotion of the best interests and rights of the child**
3. When a natural person alleges he/she has been **discriminated against**, either directly or indirectly ;
4. In cases relating to **infringement of ethics rules by those engaged in security activities**.

These different sectors have been assigned to **three deputies** with common powers and bound by the same ethics rules, placed under the authority of the Defender:

- Defender of children,, in charge of the defense and promotion of children's rights
- in charge of security ethics;
- in charge of the fight against discrimination and the promotion of equality

In regards to the scope of the present study, i.e. children placed in criminal facilities, both the Defender of children and the Deputy in charge of security ethics can exercise their competence.

In order to process individual complaints, the institution has been given **investigatory power** (requests for explanations, right of communication of information, documents, and evidence, power to conduct a hearing, right to inspect or audit on site, power to make a formal demand) as well as a **wide range of intervention** (information and guidance, amicable settlements, formal recommendations, observations in justice, requests for disciplinary proceedings, transmission of information to administrative or judicial authorities, injunctive relief and public release of special reports, ability to make proposals for legislative or regulatory reform...).

Complaints can be referred to the DDD through **direct referral** by the person concerned including **minors**, but also by the **legal beneficiaries** of a person whose rights and freedoms have been infringed upon, by **members of the National Assembly and the Senate**, as well as elected **French representatives at the European Parliament**; by the European Mediator; by **foreign counterparts of the Defender of Rights**, and, in certain cases, particularly for children, by **associations**. The DDD may also decide to intervene on his own initiative, through its **self-referral powers**.

Children can directly refer their case to the DDD, without having to go through an intermediary; legal representatives and competent authorities will be informed of this referral, except in the case it's not the best interests of the child.

The DDD has **discretionary powers in deciding to instruct the complaint or not, but he has to justify his decision**.

Referrals to the DDD are **free of charge** and accessible through mail, online form on the DDD's website or appointment with one of the volunteer delegates of the DDD (art. 37 of the Organic Law of 29 March 2011), available throughout the territory. Where appropriate, they have to be preceded by a preliminary request to the competent public service incriminated; this condition does not apply to the subject-matter of this study, i.e. claims relating to children's rights and security ethics.

Filing a claim with the DDD **neither interrupts nor suspends the period of limitation** for civil or criminal proceedings or administrative and judicial appeals.

⁵⁷ [Constitution, Article 13 paragraph 5](#)

⁵⁸ See § 4.5 for some discussion about the appointment procedure in terms of independence of the executive.

3.4.1.2 (CONTRÔLEUR GÉNÉRAL DES LIEUX DE PRIVATION DE LIBERTÉ - CGLPL)

The CGLPL can receive complaints directly from persons deprived of their liberty, their parents and relatives, their lawyer, as well as staff members or any person intervening in the facility of deprivation of liberty.

Legal entities – i.e. NGO or any other organization with the purpose of protecting fundamental rights – are also authorized to file claims.

Government members – Prime Minister, Ministers – **members of the Parliament** as well as the **Defender of Rights** are entitled to refer a case to the CGLPL.

The CGLPL is endowed with **self-referral powers**, allowing him to exercise his jurisdiction on a case on his own initiative.

Complaints can be referred to the CGLPL **via mail or on the occasion of one of its visits**, by requesting an interview with the CGLPL's visiting team. At the start of a visit, notices are put up to indicate the presence of the controllers within the site.

This interview, as well as the correspondence between the CGLPL and the person deprived of liberty, is **protected with confidentiality**. This protection, originally deriving from article 21-1 of the OPCAT⁵⁹, has recently been enshrined into French law with the reform of the CGLPL⁶⁰: new article 4 of the Prison Act of 24 November 2009 reinforces this protection by now providing that violation of this confidentiality is a criminal offense punishable by a three-year prison sentence and 45.000-euro fine⁶¹. A specific **offence of obstruction** (*délit d'entrave*) has also been recently created, upon recommendation of the Controller itself, **considering the reality and recurrence of reprisals**, as a needed reinforcement of the institution and a condition of its effectiveness.

3.4.2 ADMINISTRATIVE MECHANISMS

3.4.2.1 OUT-OF-COURT PETITION TO AN ADMINISTRATIVE AUTHORITY (*RECOURS ADMINISTRATIF*)

Detainees have a right of access to the Prison Director. They are entitled to present **requests or complaints to the Prison Director, who grants an audience provided that there are sufficient grounds**⁶². Every decision proceeding from the Prison Director can be contested before the author of the decision itself (*recours gracieux*).

Detainees also have the right to apply to a **higher administrative authority** to review a contested administrative decision (*recours hiérarchique*). Depending on the decision-making authority – whereas it is the Prison Director or the Interregional Director – the detainee will apply to its immediate superior – respectively to the Interregional Director or to the Minister of Justice⁶³. Generally speaking, this petition is optional; when relating to disciplinary sanctions however, it is a prerequisite step before launching a judicial appeal before the administrative court⁶⁴.

⁵⁹ OPCAT, Article 21 :

1. No authority or official shall order, apply, permit or tolerate any sanction against any person or organization for having communicated to the national preventive mechanism any information, whether true or false, and no such person or organization shall be otherwise prejudiced in any way.

2. Confidential information collected by the national preventive mechanism shall be privileged. No personal data shall be published without the express consent of the person concerned.

⁶⁰ [Law of 26 May 2014 modifying the Law of 30 October 2007 creating the CGLPL, Article 10](#)

⁶¹ [Criminal Code, Article 432-9](#)

⁶² [Standard Internal Rules for Prisons, Article 34](#)

⁶³ [Standard Internal Rules for Prisons, Article 34](#)

⁶⁴ [Code of Criminal Procedure, Article R.57-7-32](#)

These two types of out-of-court petitions **do not have any suspensive effect on the execution** of the contested decision.

However, **administrative petitions can extend the time limits awarded to launch a judicial appeal**. Provided that the petition is presented before the expiry of a two-month period after the initial contested decision was duly notified, the two-month time limit period to apply before the administrative judge will start from the date of the notification of the administrative decision. This latter decision may be explicit (written answer from the requested authority) or implicit (failure to reply after the expiry of a two-month period which amounts to an implicit dismissal decision).

Those petitions do not require the respect of any formal conditions. It is highly recommended to keep written evidence of this complaint, however, in order to be able to justify that the proceedings were brought within the time limits.

3.4.2.2 REQUEST FOR AN AUDIENCE WITH AN INSPECTION PUBLIC OFFICER

Detainees may request an **audience with inspection public officers**⁶⁵. Article 34 of the Standard Internal Rules for Prisons provides that Staff members shall not attend this audience, with no other specifications however as to the procedure that has to be followed to conduct this audience nor as to the extent of powers awarded to the inspectors.

Although this provision gives detainees a right of access to inspection officers, **this does not constitute a formal referral procedure**. Inspection services can only be assigned on an inspection mission by their hierarchy (Minister of Justice, General Judicial Services Inspection and their respective Directions) and not directly by detainees. Moreover, both the Prison Inspection and the Judicial Youth Protection Inspection do not hold any self-referral powers. Hence, such request for an audience **merely gives detainees the right to draw their situation to the attention of the inspection, with no guarantees however as to the outcome**; it is up to those inspection services to then refer the case to their hierarchy which is free to initiate a formal referral from this information.

In practice, however, allegations of violations of rights reported by detainees or relayed by their relatives or other authorities (such as the DDD or the CGLPL) are **instructed through their Interregional Directions**. The competent interregional director will investigate the alleged violation of rights, request the director of the facility involved for a written feedback and send a report back to its central inspection administration. However, those reports are often in favor of the administration. **Where warranted, this will eventually trigger a formal commissioning on an inspection assignment through the hierarchy line.**

Both inspection services receive numerous individual mails and phone calls at their central level. As regards the ISP, this can be encouraged by the fact that correspondence with the Head of Prison Inspection services is also covered by the protection of correspondence⁶⁶. **Both inspection services, however, observe that they are rarely requested by children directly**, with this idea that they probably do not appear as a privileged interlocutor to this specific public whereas judges for children may be more likely to receive their confidence.

⁶⁵ [Standard Internal Rules for Prisons, Article 34](#)

⁶⁶ [Prison Act of 24 November 2009, Article 40](#)
[Criminal Code of Procedure, Article D262](#)

3.4.3 CONTACTS WITH DIPLOMATIC AND CONSULAR OFFICERS

A specific access to diplomatic and consular officers of their nationality is granted to foreign detainees⁶⁷. **These officers can establish contact with the detainee concerned through correspondence or visit permits** granted by the Prison Administration, in accordance with the applicable regulation.

Diplomatic and consular officers are not included in the list of authorities with which detainees have the right to correspond under sealed cover.

This right of access is granted to foreign detainees provided that their State reciprocally recognizes the same rights to French citizens detained on their soil.

3.4.4 JUDICIAL MECHANISMS

3.4.4.1 REQUEST FOR AN AUDIENCE WITH A MAGISTRATE

Detainees may request an audience with a magistrate entitled with visiting powers, at which Staff members shall not be present⁶⁸.

Magistrates thus hold both visiting and complaint powers. Magistrate's visits may give detainees the occasion to ask for an individual audience with the judge; court hearings may also offer the opportunity to report illegal conditions of detention and if need be initiate a visit.

In practice however, visiting powers from magistrates are only scarcely used, for lack of time and means allocated compelling them to focus on their core competencies.

3.4.4.2 JUDICIAL REVIEW BEFORE THE ADMINISTRATIVE JUDGE

Detainees have a right to refer their matter before the administrative judge, via different appeal procedures:

- **Appeal for annulment** of the contested decision on the grounds of *ultra vires* (*recours en excès de pouvoir*). Regulatory acts as well as individual decisions are subject to appeal, internal measures (*mesures d'ordre intérieur*) however cannot be appealed. Although, for a long time, most decisions taken by the Prison Administration were considered by the judge to fall within this latter category, its scope has then constantly been reduced in order to comply with the ECHR right to an effective remedy⁶⁹. The detainee has a two-month time limit to launch such an appeal for annulment after the contested decision has been published (regulatory acts) or notified (individual decisions)⁷⁰.
- **Liability claim** in order to receive compensation for damages caused by misconduct or an illegal decision from the Prison Administration.
- **Emergency interim proceedings**⁷¹ asking to suspend the execution of a contested decision (*référé-suspension*), to end a serious and obvious violation of a fundamental freedom (*référé-liberté*) or to take specific measures to remedy a prejudicial situation (*référé-mesures utiles*). The applicant has to demonstrate urgency, with different degrees of emergency for each type of action.
- **Other interim proceedings** requesting an expert to identify facts that may result in an appeal before the administrative judge (*référé-constat*), asking the judge to order an expertise or investigative measure (*référé-instruction*) or appealing to obtain from the Administration an interim

⁶⁷ [Criminal Procedure Code, Article D264](#)

⁶⁸ [Standard Internal Rules for Prisons, Article 34](#)

⁶⁹ Confinement in a disciplinary cell, for example, has been considered to be a decision adversely affecting the detainee, and thus not falling within the internal measure category not subject to appeal. [Conseil d'Etat, Assemblée, 17 February 1995, n°97754, Marie](#)

⁷⁰ [Code of Administrative Justice, Article 421-1](#)

⁷¹ [Code of Administrative Justice, Article L. 521-1 to L. 521-3](#)

payment on the amount of compensation due (*référé-provision*). In this case, there is no need to justify urgency.

3.4.4.3 INDIVIDUAL APPLICATION BEFORE THE EUROPEAN COURT OF HUMAN RIGHTS – ECHR

Under Article 34 of the European Convention, **individuals can directly bring a case before the Court**⁷². Among the various admissibility criteria, the ECHR states that:

- claims of violation must concern rights set forth in the Convention or Protocols to which the State is a contracting party
- all domestic remedies must have been exhausted prior to referring the case to the Court
- applications must be lodged with the Court within a period of six months from the date on which the final decision was taken.

The Court worked on providing for easy access with a standardized application form to fill in and send by post as well as no fees for proceedings⁷³. Although the assistance of a lawyer is not indispensable at the start of proceedings, it will be required once the Court has given notice of the case to the respondent Government for their observations as well as during hearings, allowing exception⁷⁴.

3.4.5 INTERNATIONAL MECHANISMS

3.4.5.1 COMMUNICATIONS BEFORE THE UN COMMITTEE AGAINST TORTURE – CAT

Under article 22 of the Convention against torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Committee is **entitled to receive communications from individuals who claim to be victims of a violation of the provisions of the Convention**.

This however presupposes express acceptance from the State Party concerned to the competence of the Committee to receive individual communications. France has made such a declaration of acceptance on June 23rd, 1988⁷⁵.

Individual communications are admissible provided that **the same matter has not been or is not being examined under another procedure of international investigation or settlement** and that **all available domestic remedies have been exhausted prior to referring the case to the Committee**, allowing exceptions.

3.4.5.2 COMMUNICATION TO THE UN HUMAN RIGHTS COMMITTEE – HRC

The United Nations Human Rights Committee may consider **individual communications alleging violations of the rights set forth in the International Covenant on Civil and Political Rights (ICCPR)** by State parties, providing that the State concerned has duly ratified the First Optional Protocol to the ICCPR.

France has ratified the ICCPR on November 4th, 1980 and the First Optional Protocol on February 17th, 1984.

⁷² [ECHR, Article 34](#)

⁷³ [Rules of Court, Rule 47](#)

⁷⁴ [Rules of Court, Rule 36](#)

⁷⁵ "23 June 1988: The Government of France declares [. . .] that it recognizes the competence of the Committee against Torture to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the Convention. The Government of France declares [. . .] that it recognizes the competence of the Committee against Torture to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a State Party of the provisions of the Convention." ([Declarations made under articles 21 and 22, France](#)).

3.4.5.3 NO POSSIBILITY OF COMMUNICATION TO THE UN COMMITTEE ON THE RIGHTS OF THE CHILD – CRC

The Optional Protocol n°3 to the Convention on the Rights of the Child on a communications procedure gives competence to the Committee on the Rights of the Child to **receive and consider individual communications** alleging violations of the Convention and its Protocols.

It recently entered into force on April 14th, 2014, thus allowing this individual complaint procedure to become operative. To the day of the present study (June 2014) 11 states parties have ratified it – Albania, Belgium, Bolivia, Costa Rica, Gabon, Germany, Montenegro, Portugal, Slovakia, Spain and Thailand. **France has not signed nor ratified this instrument: the individual communications mechanism thus does not apply to it.**

This situation is however changing as the French government has announced it would sign the optional protocol n°3 to the CRC on November 20th 2014.

3.4.6 RIGHT TO CORRESPOND WITH COMPETENT AUTHORITIES

As stated above, **correspondence with certain competent authorities is protected with confidentiality**: letters to these authorities are sent under sealed cover, they do not have to specify the identity of their sender, and Staff members who violate this confidentiality commit an offense and may incur a penalty.

Article D262 of the Code of Criminal Procedures expressly provides for those authorities benefiting from this protection, both judicial and administrative authorities as well as French and international bodies⁷⁶.

Although this right of correspondence does not always amount to a full-fledged right of complaint, this protection can participate to a better reporting of human rights violations, provided however that detainees are fully informed of this right.

This brings us to our next point of analysis, which is to verify to what extent what is enshrined in the law is indeed implemented in practice.

⁷⁶ This protection covers correspondence with the President of the Republic, the Prime Minister and members of the Government, Presidents of the National Assembly and the Senate, the Vice-President of the Council of State (*Conseil d'Etat*), parliamentarians, the President of the Court of Justice of the Republic, the Defender of Rights and his deputies, the President of the National Commission for Data Protection and Freedom (CNIL), the President of the Commission for Access to Administrative Documents (CADA), Presidents of Administrative Courts of Appeals and Tribunals, Judicial Magistrates in office, the Director of the Minister of Justice's advisers, Directors of the Ministry of Justice, the Head of General Inspection of Social Affairs, the General Inspector of Judicial Services, the Head of Prison Inspection, prefects and sub-prefects, the Mayor of the city concerned, Interregional Directors of the Prison services administration and of the Judicial Youth Protection services, Directors of the Rehabilitation and Probation services, the President of the Evaluation Council from the detention place concerned, Public Health Medical Inspectors, Directors of Health Institutions, the President and members of the International Criminal Court, the President and members of International Criminal Tribunals, members of the European Parliament, the President and members of the European Court of Human Rights, the President and members of the European Committee for the Prevention of Torture, the President and members of the General Court of the European Union, the President and members of European Court of Justice, the President and members of the United Nations Committee against Torture, the President and members of the United Nations Human Rights Committee, the President and members of the Human Rights Council Advisory Committee, the President and members of the Human Rights Council, the General Secretary of the Council of Europe.

Under article 4 of the Prison Act of 24 November 2009, the French CGLPL is covered by this confidentiality protection.

4 FROM THEORY TO PRACTICE: ANALYSIS

4.1 A QUASI-TOTAL ABSENCE OF A CHILD-SENSITIVE APPROACH

Interviews and visits of places of criminal confinement showed that the French system lacks a child-sensitive approach.

First of all, **the newcomer's package distributed to every child detainees usually contains only few child-sensitive documents.** It does include the internal rules specific to the child facility or unit, sometimes written with specific efforts to be comprehensible to minors. However, the Newcomer Detention Guide published by the Prison Central Administration, is given out indistinctly to detainees both under and over 18: no specific version of this handbook has been drafted (*see Appendix 3*). Interviewed children mentioned however that the newcomer's documentation has been read and explained to them by a Staff member upon their arrival. In one of the sites visited, internal rules were also presented in the form of a short child-friendly video that the children had edited themselves. However these specific efforts were rarely enough for them to fully comprehend what was being said as many mentioned that they found the information quite complex and did not open their handbook afterwards.

Except for those bodies specifically dedicated to a child public, **other monitoring bodies are implementing their missions without specific, children-sensitive procedures and tools.** Their frames of reference are standardized for all types of facilities falling under their area of competence. Within these, only few points of control are relating to children's rights or specific situation and needs.

The recruitment of Staff members within these different children facilities is not systematically made on consideration of the specific public that they receive. Although at the phase of their launching EPMs did hire prison officers with a specific experience or training in children detainees, this mode of recruitment does not prevail anymore. Certain young teachers or Youth educators mentioned that they were posted in a juvenile facility right after the end of their training, when such difficult positions would require solid experience. Most staff members encountered, however, showed a very proactive and caring attitude towards the children placed under their care.

This lack of specific training also affects the law profession: only few lawyers are specialized in children's rights, and even less in juvenile law. Children's Law is not recognized by the National Bar Council (*Conseil National des Barreaux – CNB*) as a full specialization and is tackled in the traineeship of future lawyers as part of the general courses in Family Law, without any specific approach.

These are far from being trivial questions when taking into account not only the age of the public concerned, but also the very particular background from which most of them come from. Interviews with both Staff members and children showed how this specific public very often has experienced **destructured families with absent fathers and mothers lacking authority over their teenagers, early school drop-out often leading to illiteracy, as well as loss of confidence in the judicial institution.** **Prevalence of isolated foreign minors** within these criminal facilities is also another factor needing extra efforts of accessibility to ensure that these monitoring and complaint mechanisms are presented in various languages. The fact that children are usually **sentenced to short-term confinement** was also pointed out as an additional challenge (although this is not contested on principle): Staff members are only given very little time to work with these children, including on their access to law.

4.2 AN INSUFFICIENT ACCESS TO LAW AND JUSTICE

This insufficient access to law and justice stems from different factors.

There is **no clear, thorough and systematic billsticking of the monitoring and complaint mechanisms available in detention**. At best, some bulletin boards mention names of lawyers within the jurisdiction of the children facility. Adequate information would require at least information on those different bodies, with a short, comprehensible presentation of their respective competence, full postal address for sending a complaint letter, as well as a mention of the specific confidentiality protection these correspondences are entitled to.

Further, these mechanisms are sometimes **little known by Staff members so that they are not in a position to advise children**. Some Staff members said they were okay with advising, or at least informing, children on which authority to send a complaint to, and even with giving practical help in writing such a letter. Others, on the contrary, believe their duty of confidentiality (*devoir de reserve*) towards the Administration forbids such information. Certain Staff members reminded that their core competencies did not include information of children on their rights, thus handing over the matter to other members of the multidisciplinary team; most of them believe this task falls under the area of competence of the PJJ while educators felt they are not sufficiently trained for this.

In some places, specific **sessions of information on rights and justice** (*points d'accès au droit*) are organized by law professionals intervening within the detention facility on a regular basis. Children, however, do not usually use this mechanism.

4.3 THE POSSIBILITIES OF COLLABORATION BETWEEN COMPETENT AUTHORITIES

The great diversity of authorities which make up for the French system of monitoring and complaint may question as to its effectiveness. The more actors, the more challenging the interaction between the actors involved as well as the information of users may seem.

However, all actors interviewed were unanimous in saying that **this plural system is a condition to its effectiveness**, whereas a unicameral system, on the contrary, would lack guarantees of independence.

In practice, a system of collaboration between these competent authorities is organized, sometimes formally, and on an informal basis as well, and works more or less well.

Example of this formal collaboration is the **Convention signed between the CGLPL and the DDD** on November 2011⁷⁷. The aim of this Convention is to organize the allocation of jurisdiction between the two independent authorities, by stating that the CGLPL has jurisdiction over complaints incriminating the State, relating to the organization and functioning of a place of deprivation of liberty, or to the care, transfer and fundamental rights of a person deprived of liberty, whereas the DDD exercises its competence over individual claims relating to administrative malfunction, violations of Children's best interests and rights, discrimination as well as relating to a breach of ethics security. The Convention also specifies how the two bodies shall refer a case falling outside of their respective competence. In practice however, claimants often refer their matter to both the DDD and the CGLPL, as if to multiply chances of reaching the competent authority. This Convention did not suffice to put an end to the confusion of powers that exists between the two bodies. The DDD indeed deplores poor information from the CGLPL as to the 4.000 requests the latter receives every year, some of which fall under its own competence.

Another example of collaboration between monitoring bodies can be seen in the **common inspection missions organized with the IGSJ, the IPJJ and the ISP**, whether planned in the annual program of visits or organized on an ad hoc basis. These common missions allow for a mutualization of powers as well as for a sharing of the ISP and the IPJJ respective expertise in Detention and Judicial Youth Protection regulations.

⁷⁷ [Convention between the DDD and the CGLPL, 8 November 2011](#)

Ad hoc collaboration between monitoring bodies has also proven to have quite effective results. Such collaboration between the CGLPL and the IPJJ was indeed instrumental in solving situations at a standstill. This was the case for example this last April 2014, when the CGLPL did a follow-up visit of a CEF it had previously controlled in 2009 and in which it had had strong suspicions of ill-treatment of children from an educator. Noticing that the educator in question was still working in the center five years later and that its recommendations had thus not been followed, the CGLPL alerted the DPJJ in order to initiate an inspection visit through the IPJJ. This was the case as well in another CEF where the Director had been suspected of ill-treatment by the IPJJ inspectors. However, this person received strong support from its hierarchy, so that the IPJJ's recommendation of removal had not been followed. By chance, the CGLPL visited this site as well, and having the same suspicious, it requested from the IPJJ its inspection report which confirmed the situation and eventually led to the Director's departure. Another illustration can be seen in the opening of an inspection mission in coordination between the ISP and the IPJJ, subsequently to the CGLPL's publication of an emergency recommendation relating to the QM of Villeneuve-lès-Maguelone.

4.4 DIFFERENT MANDATE, DEGREES AND METHODS OF MONITORING

The exercise of monitoring may be quite different from one body to another, depending on the mandate, methods, and degrees of control.

Choice of places to be visited

The **CGLPL is free to choose** places it intends to visit, and to perform such visits unexpectedly or with prior notice.

Since its implementation, the *CGLPL* has performed 805 visits. In practice, **80% of its visits were unexpected**, with the remaining 20% which were scheduled. As regards visits of CEFs, 90% were unexpected. Over the 179 visits of **prisons, half of them were unexpected and half of them were scheduled**. Since 2008, each of the 6 *EPMs* has been visited at least once, and 46 out of the 50 *CEFs* have been controlled. In 2013, there were 29 visits of prisons but none in an *EPM*, and 12 visits of *CEFs*.

The ISP can conduct a visit only upon assignment from its hierarchy. Nevertheless, as this was mentioned above, information relayed by detainees or other authorities can result in the launching of an inspection mission from the *DAP* or the Department of Justice.

The *ISP* is competent over the 190 detention facilities and **each year, half of them are subject to a functioning audit. Only a few of its assignments, however, are relating to minors** in detention.

Staff members said that they are **informed of the coming of an ISP inspection in their facility**.

The *IPJJ* is mandated in the same ways as the *ISP*, through the hierarchy line. In practice, the **Department of Justice has never mandated the IPJJ** because it gives prior mandates to the *IGSJ*. The *IGSJ* has also the possibility to mandate the *IPJJ* but most of the time, it will appoint an *IPJJ* inspector on its own mission, when needed. As a result, **nearly all assignments come from the DPJJ**.

In 2013, the *IPJJ* performed **20 inspections** including 2 follow-up missions, 2 administrative investigations and one joint mission with the *ISP*. From April 2011 to December 2012, 14 *CEFs* have been inspected and 2 of them have received a follow-up mission.

Inspectors and CEF Staff members deplore the fact that **inspections start too late after an incident has been reported**. This could be explained because the staff members thought they can handle it, or because staff members asked for an inspection to their hierarchy but nothing is made. Staff members also mentioned being **aware of the visit of an IPJJ inspection**.

The **annual program** of visits for *IGSJ*, the *IPJJ* and the *ISP* is established **in order to diversify the services inspected and ensure a certain geographical and hierarchical variety**. There is at least **one joint mission** with *ISP* and *IPJJ* programed each year.

Judges hardly ever use their power to visit detention facilities. This can be explained by a lack of time due to a heavy workload but also by a state of mind by which certain judges consider such monitoring duty of secondary importance in the exercise of their functions. When performed, judicial monitoring is usually conducted **upon incident or during periodical meetings**. Judges are indeed included in the Assessment Board (*Conseil d'évaluation*) which takes place on a yearly basis as well as in the monthly Sentence Board (*Commission d'application des peines*) which purpose is not specifically to observe conditions of detention but may give the opportunity to a visit. It can be deplored that the judicial monitoring in France lacks regularity or happens when an incident has already occurred.

Parliamentarian visits are not only rare but also very often criticized as being used for political motives.

Different mandates

The CGLPL has the power to control a place in order to ensure that **fundamental rights are effectively enforced**. It conducts its visits with in mind the question of checking how the person deprived of its liberty is being treated.

Administrative inspections have a mandate to see that applicable **regulations are indeed complied with**. Their inspection missions have to answer the question of knowing how the site is working.

Although the focuses of monitoring are different in their nature, they can be very much complementary in practice. Points of control relating to the enforcement of applicable regulations very often have a direct link with the effective respect of fundamental rights.

This reasoning has its limits, however, since **regulations and administrative practices can sometimes result in the violation of fundamental rights**. Illustration of this can be seen in the thorough body searches which were conducted on a systematic basis, before the CGLPL's condemnation of this practice led to the Circular of 14 April 2011 and the use of searches register.

Various degrees of monitoring

The CGLPL **controls places of deprivation of liberty**; administrative inspections perform **functioning audits** and **administrative investigations**, while judges and parliamentarians have a **power of visit**. Monitoring performed by the CGLPL or administrative inspections tend to be precise with a list of standardized points of control, whereas judiciary and parliamentary visits are more general and not looking for details.

Further, these different bodies do not hold the same powers. Inspectors of the *IPJJ* are **entitled to enter within the structure at will and have to be ensured an easy access to the premises as well as to all necessary documents**.

Parliamentarians, on the contrary, are not allowed to be accompanied by a third person; they cannot conduct interviews and are not obliged to draft a report of visit.

The CGLPL's powers have recently been extended in order have an easier **access to medical documents**, since these documents can be crucial in order to detect malfunctions resulting in torture, inhuman or degrading treatment or punishment. Some of the professional interviewed were however dubious as to the effectiveness in practice of such power since medical confidentiality and the fear of disciplinary measures for those breaking it weighs heavily on health professionals and has often been opposed to monitoring bodies.

Use of frames of references

The CGLPL has developed a frame of reference to conduct its monitoring visits. **No specific adaptation of this document has been developed for children confinement facilities**. In practice, controllers do verify points of control specific to children's rights. For example, in police custody cells, separation from adults, recording of interrogations and specific training of Staff will be checked.

The *ISP* has also developed a frame of reference to perform its inspection but once again, no specific efforts have been made regarding **children's rights**.

The *IPJJ* has a **specific frame of reference for CEFs established on a risk-based approach** (see *Appendix 4*). The aim is to identify risks thanks to the points of monitoring. Some of them are relating

to fundamental rights but they need to be further developed. The *IPJJ* also drafted an “**Indicators of malfunctions in CEF**” tool and distributed it to all its services.

Mission time

The duration of the *CGLPL*'s missions **depends on the structure visited**. Visits of **places of detention** last about **5 days** and visits of **CEF** last about **3.25 days**.

The *IPJJ*'s missions last **4 months** on average and are made by **2 inspectors**. At the beginning of an inspection mission, inspectors are on the spot 3 or 4 days a week. The time invested is necessary to win the trust within the visited site, to study documents in details, and to conduct all necessary interviews.

In case of serious incidents, the *IPJJ* can also be assigned on a **flash inspection which compels it to draft a report within 15 days**. This duration is deemed to be insufficient to truly identify malfunctions at the core of the reported incident.

Functioning audits made by the ISP's interregional level are conducted by **a sole inspector** and last on average for **a week**. Missions conducted at the central level are performed by **2 inspectors** during **2 weeks** on average. These shorter durations, with the present number of inspectors within the team, allow to visit every structure at least once every two years.

Interviews

The controllers of the *CGLPL* interview **some minors, the direction of each service (AP, PJJ, National Education, and Health services), some staff members and labor organizations**. The duration of their visits do not allow to meet with more people. Some Staff members deplored that only their Head of service was interviewed while certain members of the educational staff felt they were not heard although their direct contact with children several hours a day gives them a valuable point of view.

During its inspections, the inspectors of the *IPJJ* interview **every staff members (national education, educators, cooks, directors, etc.)**. They can also interview former staff members, try to meet all **hierarchical levels** as well as exterior actors such as judges or associations intervening within the facility. As much as possible, they interview **minors**. When needed, they can ask for a second interview. In each inspection mission, they perform from **40 to 60 interviews on the spot**. Staff members of the CEF visited for the purpose of this study indeed confirmed that inspectors interviewed everybody during their inspections even former staff members.

ISP inspectors interview some **judicial authorities**, the **direction and staff** members of each service in charge of the detainees: AP, PJJ, National education, Health.

Every person interviewed during this research study who had been subject to a monitoring interview said **to have felt at-ease to answer to the questions they were being asked** and confirmed that **these visits are not perceived as being intrusive but rather as an opportunity to see an evolution in their conditions of work**.

4.5 THE QUESTION OF INDEPENDENCE

Independent monitoring authorities such as the CGLPL and the DDD have been created with certain guarantees of independence: a specific procedure of appointment of the head of the institution, irrevocable and non-renewable mandate for a limited period of time, as well as functional immunity and incompatibility of these functions with other offices (see above). But, it can be deplored that the procedure of appointment of these authorities is submitted to the veto of 3/5 of Members of the Parliament and do not follow the recommendations of the Council of Europe who suggest the appointment be approved by of 3/5 of the MP.

In practice, the reality of the independence of such institutions goes beyond these specific provisions and may vary according to the personality of the Head of the institution. **The way he embodies his functions and exercises his powers can indeed affect the institution's strike force**. During the time frame of this study, both the *CGLPL* and the *DDD* were under a procedure of appointment of a

new Head, due to the termination of the Controller's six-year mandate and to the death of the Defender of Rights. **It is yet to be seen how these changes of Heads will affect these Institutions' effective power and independence**⁷⁸.

Internal administrative inspectorates were initially intended to fall outside the scope of the present study, because of a lack of independence. "In-house" bodies are indeed usually considered to serve the interests of their Administration and, as such, not to qualify as independent monitoring mechanisms. The French monitoring system however seemed to call for an exception, which is why it was decided to cover both the ISP and the IPJJ in this national study. The various interviews that were conducted confirmed that **French Inspectorate bodies actively contribute to the monitoring system, with their own assets as well as with their limits**. In 2009, both the DAP and the DPJJ have been reorganized and the ISP and IPJJ attached to the IGSJ. Although they still fall under the authority of their respective Directorate, this double hierarchy is said to have brought a higher degree of independence. Further, as this was developed above, collaboration between independent authorities and administrative inspectorate bodies can occur and the action of Inspectorate bodies has sometimes even contributed to the settlement of intricate situations. Finally, Administrative Inspection is all the more inescapable in France since Staff members have this sort of automatic reaction to refer firstly, and sometimes only, to their superior authority to report incidents (see below *4.7 Limits as to the implementation of powers*). One task assigned to these Inspection bodies, however, seems quite incompatible with the mandate of an inspection authority with certain guarantees of independence: this is the drafting of the Department of Justice's response reports to the CGLPL.

4.6 REPRISALS AND OBSTRUCTIONS

Reprisals

Considering that children are deprived of liberty, it can be feared that they would be reluctant or afraid to complain. During our visits however, **none of the interviewed children mentioned the existence of any pressure that would have prevented them from using these complaint mechanisms**.

This has to be put in perspective as almost all of them responded that they did not know these complaint mechanisms and thus never resorted to them. Moreover, these children often have a complex relationship of distrust with the judicial institution: **many mentioned that they would not complain to these authorities as a matter of principle**, whether it is to independent authorities or to police officers in case of attacks from fellow detainees, because they do not want to be seen as a telltale. One of them also mentioned that he voluntarily refrained from complaining after another minor violently attacked him because his young attacker had psychiatric disorders and had been condemned to a long sentence of imprisonment which he did not wish to lengthen with an additional criminal procedure.

Obstructions

The CGLPL, the IPJJ and the ISP say that they are **well received** during their inspection. They feel that their visits are usually viewed in a favorable light as an opportunity for Staff members to describe their working conditions and for the Heads of facilities to see an evolution in the means allocated. The persons met, from management to staff members, indeed confirmed that **they collaborate easily and do not perceive these visits as being intrusive** but that it is rather normal that the way they enforce the rules and respect fundamental rights is being controlled. Some however mentioned that these visits had raised high hopes of evolution that had not been met in the end.

Although this is true for most inspections, **some specific cases of obstruction** do exist. The IPJJ mentioned few occurrences of "accidental" disappearance of documents, precisely relating to the period during which an incident had occurred. In a community CEF, a Staff member has been dismissed following his collaboration to an inspection. A recent recommendation in urgency from the

⁷⁸ By Order of 17 July 2014, a new Controller General of Places of Deprivation of Liberty and a new Defender of Rights were appointed. The Prime Minister solicited the Council of State regarding the question of the possible renewal of the mandate of the three Deputies of the Defender of Rights. In its legal opinion (confidential), the Council of State considered that the organic law establishing the DDD does not allow such renewal, since the mandate of the three deputies ends with the mandate of the Defender who has appointed them. As a consequence, three new deputies will be designated.

CGLPL also denounced the fact that documents were not communicated to the controllers as they ask to⁷⁹.

To prevent from these obstructions, the recent law which expands the powers of the CGLPL creates the **offense of obstruction** (*délit d'entrave*) punished with a 15.000-euro fine. The objective is not to actually use this mechanism but rather to have a deterrent power in case of obstruction of its missions.

4.7 LIMITS AS TO THE IMPLEMENTATION OF POWERS

Dependence on financial and human resources

Monitoring and complaint bodies **develop their action within the limits of the resources** that are granted to them. For example, in 2013, the CGLPL was granted a 4.2 million-euro overall budget, including 3.2 million Euros for its Staff budget and 1 million Euros for its operating budget. This represents a 4%-decrease since 2012 and some of its resources were frozen.

These constraints oblige to **adapt certain methodologies of work**. The IPJJ made the choice to conduct inspections with teams of two inspectors during 3 to 4 week-missions. The ISP chose to work principally on single-inspector missions (missions conducted at the central level involve at least two inspectors) for a week-long inspection mission. The IPJJ thus totalizes around 20 missions throughout 2013, for a total of 230 reports per year for the ISP (170 reports following an on-site visit and 60 follow-up missions).

The hierarchical automatic reaction

Almost all **Staff member interviewed mentioned as an automatic reaction, referring to their superior authority**, and not resorting to independent complaint bodies. In practice, when confronted to a problem, the director of the relevant department (teaching, education PJJ, AP or medical Heads) or the Head of the structure is first, and sometimes even the only authority referred to. Some of them did not know of the existence or possibility to complain to bodies other than within their hierarchy line.

This hierarchical automatic reaction can lead to serious malfunctions. For example, in a structure encountering serious difficulties, both the direction and Staff members referred to the territorial direction to ask for specific relief. Their request, however, was obstructed at the territorial level. After a long time had elapsed and the structure was left without news, someone eventually decided to make the situation public through the press. It is only after this publication that an inspection was finally launched, after several months had already passed, when most Staff members were seriously affected and about ¾ of them had already decided to leave the structure.

Most Staff members, however, mentioned being willing to or having indeed **guided a minor to ask for specific legal help to a lawyer, a point of access to law or an independent monitoring body**.

Difficulties in the follow-up of recommendations

Although final reports are rich in recommendations, there is a problem of **lack of binding powers**. In practice, these reports do not force the Head of the structure to follow the recommendations.

A system of follow-up does exist but its efficiency is limited. The CGLPL and administrative inspections can make a follow-up visit. These follow-up visits usually occur quite a long time after the first visit has taken place. This aspect is a point that needs improvement.

Moreover, **the DPJJ seems to have only limited hold over associative CEFs**. This partnership, rather than hierarchal, relationship may sometimes affect the effective implementation of recommendations. The interviews conducted during this research study revealed two cases of situations of violation of rights, indeed detected by a monitoring body, but left at a standstill because the associative structure was not compelled to apply these recommendations.

⁷⁹ <http://www.cglpl.fr/2014/recommandations-en-urgence-sur-le-quartier-des-mineurs-de-la-maison-darret-de-villeneuve-les-maguelone-herault/>

Financial considerations also undermine the influence of these reports of inspection: the ISP indeed mentioned that it is compelled in practice to take into account the limited budget of the administrations when drafting its recommendations. Recommendations asking for building work incurring 100.000 to 200.000-expenses will systematically not be followed.

4.8 THE PUBLICATION OF REPORTS

Content

Reports drafted by the CGLPL, the IPJJ or the ISP contain **observations** made during the visit, and **recommendations** to improve the functioning of the structure and the treatment of detainees. Recommendations are **more or less general**, and may concern a very specific point. All the aspects relating to the conditions of detention are studied: security, property, furniture, staff, etc.

For example, following each of its visits, the ISP can make as many as 60 to 100 recommendations. In order to help inspectors in their mission and to work on common ground, a database sums up every recommendation possible, through a standardized formulation.

Confidentiality

Monitoring bodies have developed through practice internal rules of procedure: as much as possible, they make sure to respect the confidentiality of the interviewees **by keeping interview records secret and by anonymizing all statements published in the report, so as to avoid any reprisal.**

Adversarial procedure

Although they are not bound by a legal obligation to respect the adversarial procedure rule, monitoring bodies **developed this guarantee in their practice.**

The **CGLPL** first drafts a **preliminary report** of observation which does not provide any analysis but is merely factual. This report is then sent to the **Head of the structure** who can make **observations** about material or factual errors. Then, the CGLPL drafts a final report of visit which includes observations as well as an assessment of the organization and the functioning of the visited site. This final report is sent to the relevant **Ministries** who can make **observations**⁸⁰. These observations will be published together with the relevant report. If the CGLPL decides to use its urgency powers, it publishes its **recommendation in urgency** without restraining itself to this adversarial **procedure**. However, this recommendation in urgency confines to the most urgent observations; the final report which covers all observations will be drafted later and published through the adversarial procedure. In the same way, after its drafting, the **report of the IPJJ** is sent to the **Direction of the structure**: if a part of the report is relating to someone in particular, this part is sent to this person individually with a specific period of time given to make **written observations**. Then, the IPJJ can correct any error and annex other observations.

As regards the **ISP**, the inspector drafts a **preliminary report** which is sent the **Head of the structure**. Then, the inspector corrects errors of the report and sends it to the **national level** of the ISP. The report is validated both on content and form at the central level and sent back to the **Head of structure and to the interregional direction**. They can make **observations** about what they have already put in place and what they commit to do in order to put an end to the relevant infringement of the violation.

Although this adversarial procedure constitutes a real guarantee for both the structures and the Staff members concerned, it is necessary to emphasize that the implementation of this procedure is **quite long** in practice and may result in delaying in proportion the publication of the report. For example, since its implementation, the CGLPL has visited as many as 46 CEFs; however, only 18 of these reports are currently available on its website.

⁸⁰ As stated above, these reports are written by the ISP and the IPJJ for the structures falling within the area of competence respectively of the DAP and the DPJJ.

Publication

At the end, all of the **reports from the CGLPL** are intended to be published on its **website**. However, **none of the staff members** interviewed during this research study **was aware that these reports were available** on the Internet. Furthermore, the results of the interviews showed that **neither lawyers nor judges** know that these reports are accessible. It is a shame because **it could be useful in their work**, for example by referring to the CGLPL's incriminating findings in a defense speech to avoid the sending of a minor client in a CEF as this was successfully done by one lawyer.

Concerning **reports from the administrative inspections**, the publication is more restrictive. The directors of the ISP and IPJJ are in charge of the distribution. The reports are sent to the **Head of the structure** and to their **hierarchy** (central, territorial and interregional directions). On request, the CGLPL and the DDD can also be addressed the report. Then, the Head of the structure can decide to communicate the report to its Staff. Most of the time, they make a short **review during a Staff meeting** or communicate **only the part which is directly relating to them** and do not refer to the parts relating to the Direction.

This restricted communication is said to be intended to protect Staff members from possible reprisals from Staff members who could trace back, through the verbatim accounts and although they are anonymized, the authors of incriminating statements. However, this constitutes nonetheless a detrimental default of transparency and the risk of reprisals could be addressed by working on a **neutral summarized version** of the report which could be distributed to every member of the Staff.

The persons interviewed confirmed that the **level of information shared depends on the level in the hierarchy**. Staff members most often receive information only about the recommendations relating to their area of competence.

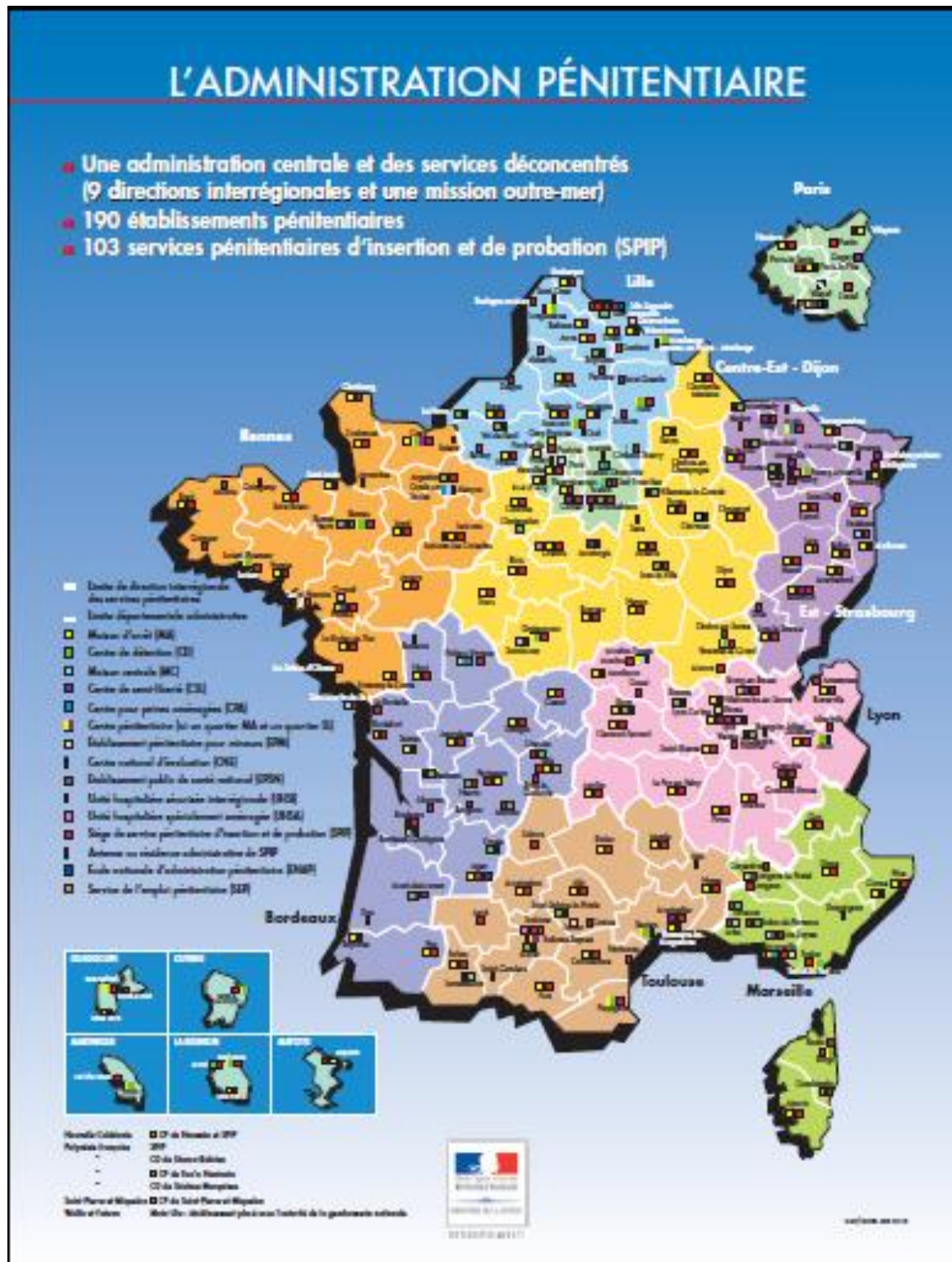
Further, certain Staff members think the recommendations are **idealistic** or **no longer relevant** because, by the time the report is being published, the relevant infringement has already been put to an end.

Staff members often have high expectations from monitoring visits. The fact that these visits often occur long after the incident has been reported, that they are usually not aware of the content of the report, that follow-up procedures are not always performed and that the expected improvements are rarely triggered can cause great disappointment.

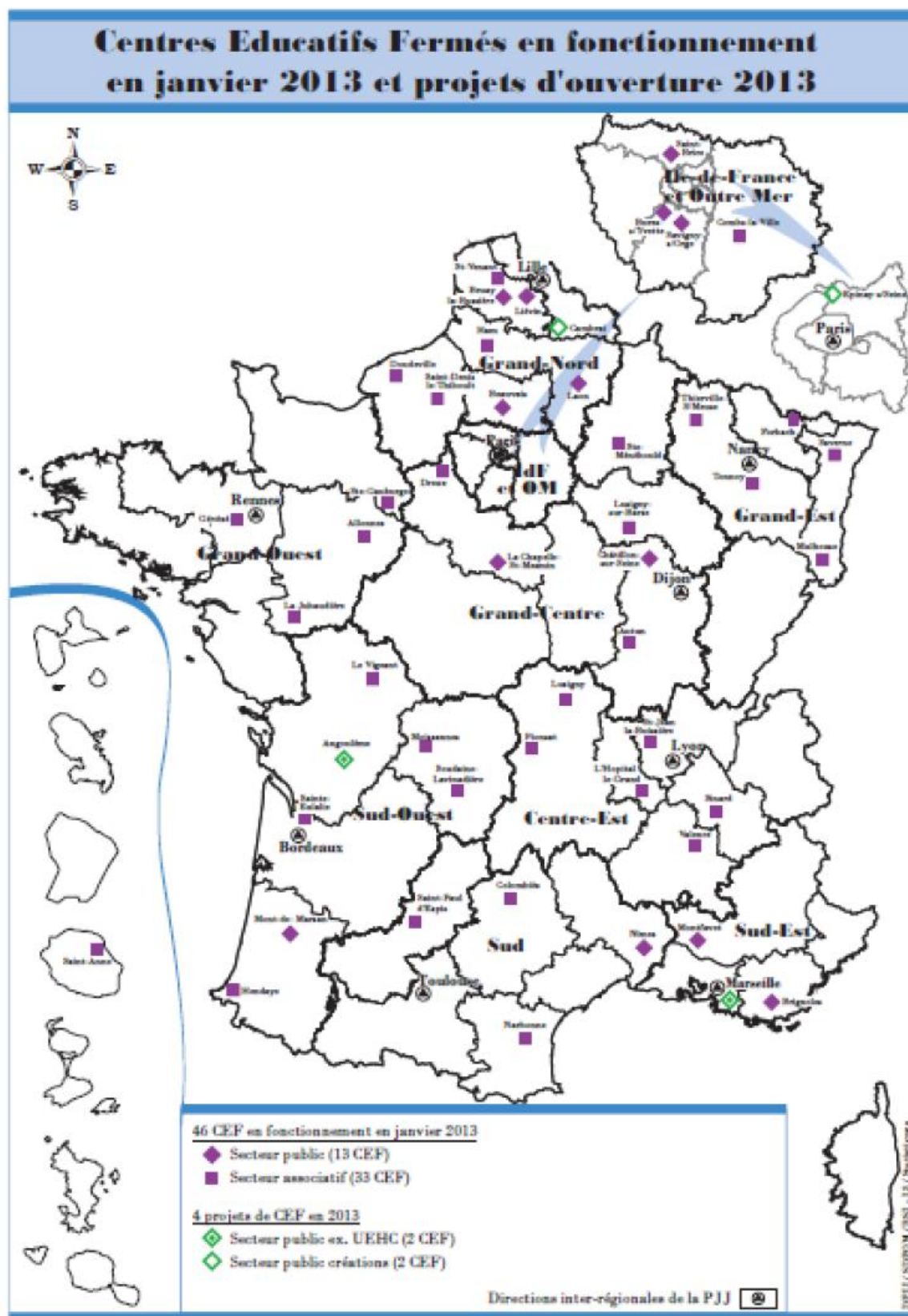
These are important aspects of credibility that monitoring bodies should address.

5 APPENDIX

Appendix 1 – Mapping of the Prison Administration's organization



Appendix 2 – Mapping of CEFs (as of January 2013)



Appendix 3 – Excerpt from the Newcomer Detention Guide, 6th edition, January 2013

Note: it clearly appears that the following detention guide has not been written in child friendly manner and vocabulary.

Vous n'êtes pas d'accord

Le règlement intérieur de l'établissement donne la liste des autorités judiciaires et administratives auxquelles il est possible d'écrire sous enveloppe fermée.

Vous pouvez

Pour contester une décision prise par le chef d'établissement

- demander à vous faire expliquer les motifs de la décision ;
- demander au chef d'établissement de revenir sur une décision ;
- écrire au directeur interrégional des services pénitentiaires si vous n'êtes pas satisfait de la réponse, notamment dans le cadre d'une mise à l'isolement ;
- écrire au directeur de l'administration pénitentiaire ou au ministre de la Justice et des Libertés si vous n'êtes pas satisfait de la réponse du directeur interrégional ;
- dans une enveloppe fermée, écrire à tous les services de l'établissement.

Pour un problème concernant l'exécution ou l'application de la peine

- écrire aux autorités judiciaires (juge de l'application des peines*, procureur de la République, juge d'instruction, juge des libertés et de la détention, juge des enfants si vous êtes mineur).

Pour une question concernant votre santé

- écrire au directeur de l'hôpital auquel est rattachée l'UCSA*, aux médecins inspecteurs de l'agence régionale de santé (ARS) ainsi qu'au chef de l'inspection générale des affaires sociales (IGAS).

Pour un problème grave sur le fonctionnement de l'établissement

- écrire au chef de l'inspection des services pénitentiaires à la direction de l'administration pénitentiaire.

Vous pouvez aussi

- écrire au président du conseil d'évaluation de l'établissement (préfet ou sous-préfet) ;
- saisir directement le Défenseur des droits ;
- écrire au Contrôleur général des lieux de privation de liberté pour l'informer de tout fait ou situation qui constitue une violation des droits fondamentaux de la personne. Le Contrôleur peut aussi s'entretenir, en toute confidentialité, avec des personnes détenues lors de ses visites d'établissement ;
- écrire au président de la commission d'accès aux documents administratifs ;
- déposer plainte en écrivant au procureur de la République pour porter à sa connaissance une infraction pénale ;
- exercer un recours devant le tribunal administratif contre les décisions de l'administration pénitentiaire prises à votre encontre.

Dans le cas où **vous n'êtes pas d'accord avec une sanction disciplinaire**, vous devez d'abord faire un recours auprès du directeur interrégional dans un délai de 15 jours à compter de la notification de la décision. Le directeur interrégional a un mois pour répondre. L'absence de réponse équivaut à un rejet. Vous pouvez alors saisir le tribunal administratif ;

- exercer un recours devant la Cour européenne des Droits de l'homme après avoir fait tous les recours possibles en France.

Toutes ces correspondances, si elles portent clairement le nom du destinataire, ne sont pas contrôlées par l'administration.

Appendix 4 – IPJJ's Frame of reference for the control of CEFs

A - Dimension institutionnelle

OBJECTIF A1 - Le pilotage du CEF par les échelons déconcentrés de la PJJ est effectif

RISQUES :

- Une insuffisance de pilotage par les échelons déconcentrés de la PJJ rend difficile le contrôle de l'activité et de la prise en charge éducative.
- Elle ne permet pas de garantir que le fonctionnement de l'établissement répond à l'intégralité des dispositions du cahier des charges des CEF.

POINTS DE CONTRÔLE

A1.1 - Le directeur du CEF est invité régulièrement au collège de direction territoriale et y participe effectivement.

A1.2 - Le directeur territorial effectue des visites régulières de l'établissement.

A1.3 - Des modalités communes de travail avec le directeur du CEF ont été mises en place permettant au directeur territorial d'effectuer efficacement le suivi et le contrôle de l'activité de la structure : les éléments concernant les effectifs de mineurs accueillis sont régulièrement transmis et actualisés ; la situation des mineurs fait l'objet d'échanges réguliers avec la direction territoriale.

A1.4 - Le comité de pilotage territorial se réunit régulièrement et son fonctionnement donne satisfaction aux participants. Le préfet ou son représentant y est systématiquement associé, de même que les chefs de la juridiction du ressort.

A1.5 - La situation des personnels est connue et suivie par la direction territoriale et la DIR.

A1.6 - La direction interrégionale a mis en place des procédures efficaces de contrôle et de tarification associant l'échelon territorial et lui permettant d'intervenir concrètement sur la façon dont l'établissement remplit sa fonction éducative.

A1.7 - La direction interrégionale fait remonter sans délai au directeur de la PJJ les dysfonctionnements afin qu'ils soient traités par l'autorité ou le service compétent (inspection, préfet). Le préfet, autorité qui dispose du pouvoir exclusif de fermeture provisoire ou définitive de l'établissement, doit être informé de manière adaptée.

OBJECTIF A2 - Le CEF est géré par une structure associative en capacité de prendre en charge les mineurs délinquants

RISQUES

- L'opérateur n'a pas d'expérience du cadre judiciaire de la prise en charge des mineurs délinquants et des caractéristiques de ce public.
- Le choix de l'opérateur repose prioritairement sur des critères politiques et/ou économiques sans prise en considération suffisante du projet éducatif, lui-même.

POINTS DE CONTRÔLE

A.2.1 - L'association qui gère le CEF a un projet associatif dont les objectifs sont compatibles avec la prise en charge des publics accueillis et garantissent leurs droits.

A.2.2 - L'association dispose d'une dimension suffisante et/ou est en capacité de développer un ancrage territorial ainsi qu'un réseau de partenaires utile.

A.2.3 - L'association gère déjà un dispositif accueillant des mineurs délinquant ou un public aux problématiques très proches.

A.2.4 - Les instances de l'association gestionnaire (conseil d'administration et directeur général) jouent pleinement leur rôle d'appui pour le pilotage et le fonctionnement du CEF ; leur participation au comité de pilotage est effective.

OBJECTIF A.3 - Un projet d'établissement, dynamique et fédérateur, connu des personnels comme des prescripteurs.

RISQUE :

Le projet d'établissement ne structure pas ou plus la vie de l'établissement.

POINTS DE CONTRÔLE

- A.3.1 - Le projet de l'établissement est écrit, mis à jour, validé conformément à l'habilitation délivrée et selon une démarche participative associant les professionnels.
- A.3.2 - Les principes éducatifs et les actions énoncées sont, en droit et en fait, compatibles avec la dignité, la santé et la sécurité physique et morale des mineurs.
- A.3.3 - La référence au cahier des charges des CEF est repérable : les publics sont identifiés, les objectifs, les actions, les méthodes et les moyens sont exposés.
- A.3.4 - La conception du projet, comme son évaluation et son adaptation, font l'objet d'une démarche régulière d'appropriation des personnels.
- A.3.5 - Les magistrats (magistrats spécialisés du parquet, juges coordonnateurs, juges des enfants) sont associés à la conception, à l'évaluation et à l'adaptation du projet.
- A.3.6 - L'association est responsable de la communication sur le projet à l'interne et à l'externe. Elle délègue une partie de cette fonction à la direction du CEF.

OBJECTIF A.4 – Le directeur assure de manière effective et adaptée le pilotage du CEF

RISQUES

- Le directeur n'est pas reconnu dans sa fonction d'autorité : du fait de sa manière de l'exercer ; du fait d'une instabilité structurelle liée à un turn-over important des directeurs.
- Le directeur de CEF n'identifie pas son rôle et son positionnement propre. Il existe une confusion avec tout ou partie des autres fonctions et/ou un déséquilibre des fonctions d'encadrement.
- Le directeur centralise à l'excès le niveau de prise de décisions.
- Le mode de management est préjudiciable à la cohésion d'équipe.

POINTS DE CONTRÔLE

- A.4.1 - Le directeur assure une présence effective dans l'établissement.
- A.4.2 - Il dispose d'une feuille de route ou d'une lettre de mission émanant de sa hiérarchie. Il constitue un interlocuteur reconnu tant des chefs de service, dont il se distingue clairement à travers sa fonction propre, que de l'ensemble des personnels. Il est disponible et accessible pour les professionnels comme pour les mineurs. Il exerce sa fonction d'autorité de manière efficace, stable dans la durée et bien repérée.
- A.4.3 - Le directeur exerce un management adapté à la diversité des intervenants éducatifs.
- A.4.4 - Le directeur a délégué de manière explicite et formelle des missions à son équipe, aux cadres et à certains personnels sur des missions particulières.
- A.4.5 - Le directeur s'est doté d'outils de pilotage fiables et lisibles.
- A.4.6 - Le directeur est présent dans les instances du CEF relevant des missions qu'il n'a pas déléguées.
- A.4.7 - Le directeur rend compte régulièrement de l'activité du CEF à l'association gestionnaire et au DT PJJ. Il participe aux comités de pilotage et met en œuvre les orientations décidées.
- A.4.8 - Il est bien identifié dans sa fonction par les magistrats du ressort et par les interlocuteurs extérieurs avec lesquels il entretient des relations régulières.

OBJECTIF A5 – La démarche d'évaluation interne est réalisée

RISQUE :

- Le système d'évaluation interne est inexistant ou inadapté : il ne permet pas ou insuffisamment l'anticipation des risques et la mise en œuvre de démarches de prévention.

POINTS DE CONTRÔLE

- A.5.1 - L'évaluation interne est prévue dans le projet d'établissement.
- A.5.2 - L'évaluation interne est conduite conformément aux recommandations de l'ANESM, dans le cadre d'une démarche participative.
- A.5.3 - Un plan d'amélioration de la qualité est élaboré. Son suivi est réalisé et permet de mesurer les effets de l'évaluation interne.

B- La dimension organisationnelle

OBJECTIF B.1 - Les règles communes de fonctionnement sont lisibles et facilitent l'action éducative

RISQUES :

- Les professionnels se repèrent insuffisamment dans leur fonction et dans les procédures de travail.
- L'encadrement ne sécurise pas suffisamment l'équipe éducative, notamment pendant les astreintes.
- La cohésion d'équipe est mise en danger par la mauvaise organisation des emplois du temps et une mauvaise communication interne.
- La réflexion collective est insuffisante voire inexistante.

POINTS DE CONTRÔLE

B.1.1.- Le rôle et la place de chaque professionnel sont clairement définis et repérés ; des fiches de poste adaptées à la spécificité de la prise en charge en CEF existent ; des feuilles de route et/ou lettres de mission ou d'objectifs ont été élaborées pour l'encadrement.

B.1.2 - Des procédures de travail sont définies et connues. Elles sont régulièrement contrôlées, évaluées et, si besoin, améliorées. Des fiches de procédure de travail ont été établies et sont accessibles.

B.1.3 - L'organisation du temps de travail est conforme à la réglementation et garantit un taux d'encadrement permettant d'assurer la sécurité des mineurs et des professionnels. Les astreintes des cadres, réparties sur tous, sont organisées clairement et efficacement pour répondre aux besoins (le cas échéant : il existe un cahier des astreintes). Les périodes nocturnes sont organisées de manière cohérente et dans la continuité de la prise en charge éducative (qualification des professionnels, rédaction des cahiers de liaison, temps de consigne suffisants, participation aux instances institutionnelles). Les temps de passage de consignes sont suffisants et intégrés dans l'organisation des services.

B.1.4 - L'encadrement éducatif joue un rôle effectif et régulateur dans l'élaboration des emplois du temps (les changements éventuels s'opèrent de manière organisée et sont supervisés systématiquement). Les emplois du temps prennent en compte les besoins des mineurs. Ils organisent les services de façon équilibrée et équitable entre les professionnels. Ils sont suffisamment anticipés et remis sans retard préjudiciable à une bonne organisation.

B.1.5 - Les réunions et instances institutionnelles sont organisées : il existe des obligations de présence, des ordres du jour, des comptes-rendus, un suivi des décisions. Elles rassemblent de manière effective et régulière les différentes catégories de personnels. Elles permettent l'expression de chacun et l'élaboration d'une réflexion collective.

B.1.6 - Les cahiers de consignes ou de liaison sont investis, de manière adaptée, par tous les personnels et visés par l'encadrement.

OBJECTIF B.2 - La gestion des ressources humaines est dynamique et adaptée au projet d'établissement

RISQUES :

- La diversité des profils n'a pas été suffisamment analysée et adaptée au cadre spécifique d'un CEF, ce qui annule l'effet positif de la complémentarité et entraîne des divisions. La gestion des conflits entre adultes perturbe voire supprime la mission éducative.
- Les absences multiples et le turn-over important déstabilise l'équipe éducative et oblige à recourir à des contrats précaires et à des sociétés intérimaires.
- La gestion peu dynamique des ressources humaines entraîne une usure professionnelle.

POINTS DE CONTRÔLE

B.2.1 - L'effectif en personnel est conforme à la norme édictée par l'administration.

B.2.2 - Tout recrutement fait l'objet d'une procédure formalisée qui prévoit l'intervention des échelons déconcentrés de la PJJ (demandes de B2) et leur ménage un droit de regard.

B.2.3 - La composition de l'équipe éducative est équilibrée (âge, sexe, expérience professionnelle) ; les qualifications, la formation et les profils des personnels répondent aux nécessités d'encadrement

des publics visés par l'habilitation ; le recours aux contrats à durée déterminée ou aux contractuels reste limité.

B.2.4 - Les personnels sont stables et le nombre d'absences, notamment d'arrêts maladie, est limité.

B.2.5 - Le plan de formation répond aux besoins collectifs et individuels d'approfondissement des savoirs et des savoirs faire préalablement évalués et à leurs mises à jour ; le cadre juridique d'intervention auprès des mineurs fait partie des thématiques.

OBJECTIF B.3 - Les moyens matériels et financiers sont adaptés aux besoins des mineurs et sont correctement gérés

RISQUES :

- Les besoins des mineurs sont mal appréhendés et les dépenses ne sont ni adaptées, ni suffisamment maîtrisées et contrôlées.
- L'implantation et/ou la configuration des locaux rend complexe ou difficile la prise en charge des mineurs.

POINTS DE CONTRÔLE

B.3.1 - Les dépenses réalisées sont en cohérence avec le projet d'établissement, le profil et les besoins des mineurs accueillis.

B.3.2 - Les factures sont honorées, la gestion est maîtrisée et le suivi comptable de toutes les dépenses est rigoureux (exemples : règles de la régie respectées et contrôle de la dépense effectif ; système de tickets service bien géré dans le cadre d'une gestion de stock et au service des besoins des mineurs).

B.3.3 - La localisation du CEF facilite l'exercice de la mission, notamment le travail autour de la réinsertion des mineurs.

B.3.4 - Les locaux sont adaptés à la mission de l'établissement. Les normes d'hygiène et de sécurité sont respectées. L'entretien et la maintenance des locaux et du matériel sont assurés.

C- La dimension professionnelle

OBJECTIF C.1- Les mineurs sont placés au centre du dispositif de prise en charge

RISQUES :

- Les conditions d'accueil et d'hébergement ne prennent pas suffisamment en compte les droits fondamentaux des mineurs.
- La situation personnelle du mineur est mal appréhendée par l'établissement ; le lien avec la famille n'est pas suffisamment préservé et les relations avec le milieu ouvert sont insuffisantes, ce qui empêche de préparer efficacement la sortie du mineur.

POINTS DE CONTRÔLE

C.1.1 - Le mineur et sa famille sont accueillis selon un protocole établi. L'établissement informe correctement le mineur et sa famille de leurs droits et obligations. Il dispose des éléments de connaissance de la situation familiale et judiciaire du mineur, dès son arrivée.

C.1.2 - Les règles de vie respectent suffisamment les droits fondamentaux des mineurs (accueil adapté au cadre éducatif, fouilles, intimité).

C.1.3 - La participation de la famille aux choix éducatifs est recherchée et effective. Elle est soutenue dans l'exercice de l'autorité parentale.

C.1.4 - La situation juridique et pénale du mineur est correctement appréhendée et suivie. Le lien avec le milieu ouvert est organisé, par exemple, sous la forme de réunions de synthèses régulières.

C.1.5 - L'établissement constitue un dossier pour chaque mineur, bien organisé, lisible et tenu à jour. Ce dossier contient des éléments relatifs à son parcours pénal, personnel et familial (rapports éducatifs, document individuel de prise en charge (DIPC), bilans scolaire, psychologique, santé...).

C.1.6 - L'évocation des situations individuelles occupe une place suffisante dans les réunions d'équipe.

C.1.7 - Les rapports éducatifs sont de qualité et régulièrement adressés aux magistrats prescripteurs.

OBJECTIF C.2 – L'action éducative est organisée dans un cadre structurant, conforme au cahier des charges et respectueux des dispositions législatives comme des principes républicains.

RISQUES :

- L'action éducative est fondée, soit exclusivement sur l'aspect contenant, soit, à l'inverse, sur la recherche systématique de la paix sociale et, dans ces deux hypothèses, sans privilégier la vocation éducative et l'insertion ce qui prive de sens la prise en charge.
- La violence et les incidents ne reçoivent pas un traitement adapté et cohérent : ils sont banalisés et font partie du cadre de vie.
- L'organisation des activités montre l'incapacité de l'établissement à tenir le cadre : elles laissent place à l'oisiveté des mineurs voire à une forme d'errance, facteur de désordres et de violences ; le caractère insuffisamment éducatif des activités de détente et de loisirs est la marque d'une dérive.
- La consommation de tabac ne fait pas l'objet d'un accompagnement sanitaire adapté. La distribution contingentée de cigarettes constitue un facteur de troubles et de conflits.
- Les atteintes au principe de laïcité qui sont tolérées sont susceptibles de favoriser, dans le cadre de la prise en charge collective, des inégalités de traitement basées sur une identité, voire des attitudes prosélytes.

POINTS DE CONTRÔLE

C.2.1 - Chaque mineur dispose d'un emploi du temps de journée, obligatoire, constitué d'activités scolaires, d'apprentissage, sportives et socioculturelles ; la bonne articulation des activités permet la cohérence de la prise en charge ; les activités de loisirs sont adaptées à la nature de l'établissement et au public accueilli et poursuivent une visée éducative.

C.2.2 - Chaque mineur fait l'objet d'une évaluation de ses acquis scolaires et professionnels ; un projet individuel est établi pour chaque mineur ; la préparation à la sortie fait partie intégrante du projet de chaque mineur.

C.2.3 - Les sorties et hébergement extérieurs des mineurs respectent les prescriptions du cahier des charges ; les projets de sortie des mineurs sont suffisamment anticipés et en relation avec leurs capacités et envies repérées.

C.2.4 – La gestion claire des incidents, des fugues, de la violence et des interdits est sous tendue par une affirmation constante et lisible des principes. Les échelons déconcentrés de la PJJ sont informés sans délai des incidents significatifs.

C.2.5 - La prévention et la gestion des incidents et des passages à l'acte violents font l'objet d'un travail précis ; un protocole de gestion des incidents est rédigé avec le parquet du ressort ; le parquet est mis en capacité de faire le relevé exhaustif des fugues et des incidents revêtant une qualification pénale ; les plaintes contre les personnes sont systématiquement doublées d'une saisine du parquet et la direction territoriale est avertie. Les notes d'incidents sont rédigées et adressées au magistrat mandant.

C.2.6 - Chaque mineur bénéficie d'un bilan et d'un suivi relatifs à sa santé somatique et psychologique ; infirmier et psychologue sont bien identifiés et ont mis en place des pratiques qui leur permettent d'être associés efficacement à la prise en charge.

C.2.7 - L'interdiction légale de fumer au CEF est respectée par les mineurs comme par les adultes ; la consommation de cigarettes fait l'objet d'une approche sanitaire adaptée et d'une politique de réduction efficace, pensée en termes éducatifs.

C.2.8 - Les conditions de prise en charge des mineurs respectent le principe de laïcité ; la recherche de bonnes pratiques dans un cadre collectif concilie la prise en compte de la liberté religieuse des mineurs et de la laïcité de l'établissement.

C.2.9 - La mise en place de mesures destinées à évaluer et encourager les progrès des mineurs est lisible et cohérente avec le cadre éducatif défini par le cahier des charges ; le système de gratifications défini par la structure fait l'objet d'une gestion adaptée et claire.

Appendix 5 – Glossary

CAT	Committee against Torture (United Nations)
CEF	Centre éducatif fermé - <i>Closed educational institution for minors or Closed educational centers</i>
CGLPL	Contrôleur général des lieux de privation de liberté - <i>Controller General of Places of Deprivation of Liberty</i>
CPT	Comité européen pour la prévention de la torture ou des peines et traitements inhumains ou dégradants – <i>European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment</i>
CRC	Committee on the Rights of the Child
DAP	Direction de l'administration pénitentiaire - <i>Direction of the Penitentiary Administration</i>
DDD	Défenseur des droits – <i>Defender of Rights</i>
DEI	Défense des enfants international - <i>Defence for Children International (DCI)</i>
DPJJ	Direction de la Protection judiciaire de la jeunesse - <i>Direction of the Judicial Youth Protection</i>
ECHR	European Court of Human Rights
EPM	Etablissement pénitentiaire pour mineurs - <i>Juvenile specific Detention Centers</i>
IGSJ	Inspection générale des services judiciaires - <i>General Inspectorate of Judicial Services</i>
IPJJ	Inspection de la Protection judiciaire de la jeunesse - <i>Inspectorate of the Judicial Youth Protection</i>
ISP	Inspection des services pénitentiaires - <i>Prison Inspectorate</i>
OIP	Observatoire international des prisons – <i>International Watchdog for Prisons</i>
OPCAT	Optional protocol to the Convention Against Torture
QM	Quartier des mineurs dans un établissement pénitentiaire - <i>Juvenile sections within prison</i>