

**Report submitted by the “Collectif National de Résistance à Base Elèves” to the
Committee of Children's Rights
in the context of the review of the fifth periodic report of France**

The Collectif National de Résistance à Base Elèves, hereinafter referred to as CNRBE, which includes teachers, parents, trade unions, associations, citizens, was formed in 2008 to denounce the collections of data on children through various databases created by the Ministry of Education through primary school. The collection of personal data on children, their families and their relatives starts with the database called “Base Elèves 1er Degré” hereinafter referred BE1D.

In 2009, the CNRBE sent an alternative report to the committee in this respect. Our concerns were then relayed by two major non-governmental organizations, the League of Human Rights (Ligue des Droits de l’Homme) and Defence for Children International (Défense des Enfants International).

I. Summary of the conclusions of the Child Rights Committee and actions of other mechanisms of human rights

The 2009 final recommendations of the Committee of the Rights of the Child (CRC / C / FRA / CO / 4) were very welcomed, especially the last part of recommendation 21 to solely enter unidentified personal information in those databases:

Data Collection

20. The Committee takes note of the establishment of a centralised data collection and monitoring centre gathering information relating to children at risk, namely the National Observatory for Children at Risk (*Observatoire National de l’Enfance en Danger*, ONED). However, it remains concerned at the process of collecting data from different sectors and whether there is a unified method in assessing and documenting the data which is harmonized between data providers. The Committee is further concerned at the conditions under which data providers and processors can access the information collected, in particular at the lack of a comprehensive policy on the use of personal data.

21. The Committee recommends the establishment of a harmonized nationwide system to collect and analyse data, disaggregated on all areas covered by the Convention and its two Optional Protocols, as a basis for assessing progress achieved in the realization of children’s rights and to help design global and comprehensive policies for children and their families and facilitate the promotion and implementation of the Convention and its two Optional Protocols. **The Committee further recommends the State party to solely enter unidentified personal information in the databases and to regulate by law the utilisation of the collected data in order to prevent misuse of the information.**

Protection of privacy

50. The Committee notes with concern the multiplication of databases, in which personal data of children are gathered, stocked and used for a lengthy period, which may interfere with the right of children and their families to privacy. With regard to “*Base élèves*”, the the right of children and their families to privacy. With regard to “*Base élèves 1er degré*”, the Committee notes with appreciation that the State party has removed sensitive data, initially included, from this database. However, given the fact that its utility for the educational system and purposes are not clearly defined, the Committee is concerned that this database be used for other purposes, such as for the detection of delinquency and irregular migrant children and at the insufficient legal safeguards to prevent interconnection with other administrative databases. It is further concerned that parents cannot oppose, are often not informed of the registration of their children and may be reluctant to enroll them in schools.

51. Recalling the recommendations made by the Human Rights Committee (CCPR/C/FRA/CO/4, para. 22), the Committee urges the State party to take all necessary measures to ensure that the gathering, storage and use of sensitive personal data are consistent with its obligations under article 16 of the Convention. The State party should in particular ensure that:

- (a) The gathering and holding of personal information on computers, data banks and other devices, whether by public authorities or private individuals or bodies, is regulated by law and its aim is clearly defined;**
- (b) Effective measures are adopted to ensure that such information does not reach the hands of persons who are not authorized by law to receive, process and use it;**
- (c) Children and parents under its jurisdiction have the right to access their data and to request rectification or elimination of information, when it is incorrect or has been collected against their will or processed contrary to the provisions of the Law No. 78-17 on computing, filing and liberties (*Loi relative à l’informatique, aux fichiers et aux libertés*).**

On 10 December 2009, the Special Rapporteur on the defenders of human rights sent a letter of allegations indicating concern with regard to the situation of teachers, transferred and subjected to various sanctions for refusing to file children. She demanded the implementation of the Child Rights Committee recommendations.

Teachers and headmasters who have used your recommendations to object orders they considered as conflicting with your recommendations have been sanctioned by their hierarchy.

839. *On 10 December 2009, the Special Rapporteur [on the defenders of human rights], together with the Special Rapporteur on the right to education and the Special Rapporteur on the human rights of migrants sent a letter of allegation to the Government regarding the implementation of a data software "First Base-degree students" within the Ministry of Education in which there are personal data relating to children enrolled in schools, and whose principals are required to enroll all pupils in their schools.*

840. *On 9 October 2009, Messrs. Didier Claude Michel Duckit and Rémi Ri Allan and Mrs. Elisabeth Heurtier and Patricia Arthaud, principals and school principals in the Isère department, would have received a letter from the school inspectorate their department asking them to record pupils their establishments in the computer file Base first degree students, under penalty of up to withdrawal of their posts. Mail from the school inspectorate would specify that the seizure was to be completed by 25 October 2009.*

841. *Messrs. Didier Duckit and Rallian and Mrs. Heurtier Arthaud and have already been the subject of disciplinary sanctions because of their refusal to implement the decree of 20 October 2008 establishing the first students Base level because the file would be contrary to right of children and their families to respect their privacy. Several days of salary deductions have been made against these guidelines. In addition, Mr. Jean-Yves Le Gall would remove saw his position as director and was automatically transferred for the same reasons.*

842. *It is also alleged that more than a thousand complaints were filed by parents for illegal recording of their children in the first degree students Base. The State Council was seized of the matter. The applicants and principals, would require that they comply with the observations and recommendations recently adopted by the United Nations Committee on the Rights of the Child.*

843. *Concern was expressed about the fact that the disciplinary action taken against these principals and school principals and disciplinary sanctions threats are related to their peaceful activities for the promotion and protection of human rights, including the right to respect for private life. Concerns are also raised about the conservation of personal data of students for a period of thirty-five years, and the fact that these data could be used to search for children of illegal migrants and for the collection of data on crime.*

Observations

844. *The Special Rapporteur thanks the Government for its reply dated 8 September 2009, but regrets, at the time of finalizing this report, the lack of response to its communication of 10 December 2009. It considers the responses to her communications as part of government cooperation with his mandate. It urges the Government to respond quickly to the fears expressed in them.*

France has paid no attention to your concerns and has done nothing to implement the recommendations of your Committee. Today, those who still request a full application of your recommendations continue to be harassed and punished by their superiors (reduction of salary, lost of their post as headmasters).

II. What is Base Elèves 1er Degré:

BE1D constitutes the **gateway to a widespread filing process in the school system which starts when children enter the school at the age of three years old**. Every child is registered in the file B E1D, the starting point of many other electronic files spreading throughout the school system [\[1\]](#) . Since its first enrollment in a school, even if school enrollment is not compulsory at the age of 3 years entering kindergarten (called “école maternelle”), it is assigned a number called Identifiant National Elève (INE).

BE1D was set up after a simple declaration made to the CNIL (Commission Nationale Informatique et Libertés) before a ministerial circular formalized its existence in 2008.

The most sensitive data was removed from BE1D thanks to the mobilization of citizens and professors. Some of the data originally collected was prohibited in France (nationality, country of origin, language spoken at home).

Remain today in BE1D the personal information of the child, parents or persons having parental authority, persons authorized by parents to get the child from school as well as some education data [\[2\]](#) .

Curiously, the Ministry of Education claim that “ there is nothing in BE1D “ while family personal data is considered as sensitive data, by the Ministry itself, but in other contexts than BE1D [\[3\]](#) ...

One has to realize that at the time of registration of a pupil, the absence of INE is always a clue to the administrative status of the parents: the probability of having to deal with a family in illegal situation, without official immigration documents, then exists. The address of the parents being recorded for registration of the child, BE1D is always a potential tool for searching for "undocumented families". BE1D may thus dissuade families in irregular situation to enroll their children in school. On the other hand, the INE allowing relations between files leads to a real electronic curriculum for each pupil.

Our research has allowed us to connect this filing with the requirements that have nothing to do with education, emanating from economic sector for setting up digital education passport called "Europass". In addition, this extended process of filing allows the use of fully automated procedures to seek, evaluate, monitor, sort and guide children throughout their schooling, using criteria beyond control.

Early filing of children in school, raises ethical objections since it impairs the rights of the child to respect for his private life, as guaranteed by the Convention on the Rights of the Child, and exposes children to discrimination and data leakage. The large number of users of school files (or data extracted from these files), the numerous exchanges with other information systems and the possible use of these files in other jurisdictions, multiply the risk

of accidental or malicious disclosure of personal data collected throughout the schooling of children. Greater protection of personal data is still needed.

As announced from its creation in 2004, BE1D is the cornerstone of an extended information system, the information system of the 1st degree (Système d'Information du 1er Degré - SI1D) that develops through multiple databases and related applications. It then continues in college and high school, then throughout life through the information systems used in the second degree (SIECLE, former SCOMET), in apprenticeship, in high school and in the vocational training. These information systems exchange numerous data with each other, including the BE1D, without the knowledge of those concerned.

SIECLE is presented [4] as "*accessible only via secure internet*", but this database is *interconnected with other national applications, academic and other public and private software*. Neither parents nor teachers nor students have a means of control to find out what happens to the data once entered into these databases (where they are stored, who has access ...).

Since 2010, our association has alerted on a filing of a nature and on a scale never imagined: the skills. Particularly sensitive and often subjective to assess, these data had been included in the file BE1D in 2007, but were removed from 2008 after being recognized as "liberticide" by the Minister of Education itself. However, these data reappeared in 2010 in a new school database, a personal skills booklet (Livret Personnel de Compétences, LPC). Many people express concern about the profiling of students. What will happen if the assessments made by teachers become accessible to potential employers ? It is a heavy responsibility that carries the educational system.

Data not mentioned in the decree of October 20, 2008 are always saved in the BE1D file, as demonstrated by the "Manual for the headmasters of public schools".

Some of this data is relevant to the child's family situation (type of attachment to the child, parental authority) as well as special schooling. The database contains information about a child with disability or foreign and non-French origin. Such precision is useful within the school but it could cause discrimination when data are included in a centralized file.

The "school record" and "identity school card" indicated in the BE1D file, show the features of the institution attended, such as the geographical location of the school in sensitive or disadvantaged area (specifications ZUS, ZFU, ZRU ...) or socio-economic difficulties of people attending schools in specific areas (ZEP specifications, RAR, RRS, REP, REP +, ZP ...) [5].

Such information as the previous ones are definitely sensitive data that could cause prejudice to children and their families. As a matter of fact, one can consider that having graduated from an institution classified in a sensitive area may be discriminatory compared to the same degree from ordinary area.

On 15 February 2008, a decree has been voted as part of the law known as "Prévention de la délinquance" ("Delinquency Prevention") allowing the mayors of every villages to create a file of children residing in their municipality, to manage absenteeism and to link it with social measures. BE1D can be used by mayors to socially control children and their families through BE1D. This is particularly scaring in the context of municipality being managed by racists political parties

III. Key developments since June 2009

a) BE1D sanctioned by the State Council (July 2010) _ :

On 19 July 2010, the Conseil d'Etat (highest administrative jurisdiction) adjudicated on the BE 1D and the Base Nationale des Identifiants Elèves (BNIE, National Database of Students ID, now renamed National Directory of Students ID, Répertoire National d'Identifiants Elèves). He cancelled the circular of 20 October 2008 establishing the BE 1D, prohibiting families the right of opposition, and sanctioned not only the omission of data reconciliations between BE1D and other existing files, but also the collection data on the education of children with disabilities in Classes d'Inclusion Scolaire (Inclusive classes).

The Conseil d'Etat also canceled the timeframe for implementation of the BNIE, which it considered as disproportionate in relation of the aim of the database (35 years !!!).

b) Parents rights systematically refused:

Although the Conseil d'Etat reminded the Ministry of hits obligation to properly inform parents about the recording of data in school databases and about their right to access this data , rectify it and even oppose this filing. In spite of this and as highlighted by the French Défenseur des Droits, parents are, in most of the cases not informed. The right to oppose BE1D is still not mentioned in the forms provided to families to collect the data stored in the file.

More importantly, following a specific request from the teachers' union SNUipp-FSU Ain, the local authorities of the Education Ministry indicated in writing that they would not follow their obligation to inform the families about their right of opposition, among other reasons, because no administration of Education does so It is quite serious to see that the administration openly refuses to comply with a decision of the Conseil d'Etat.

At present, families who exercise their right to oppose the collection of data in the BE1D receive an automatic rejection from the Inspection Académique. The order of Inspections Académiques to school headmasters is very simple: **consider any ground of opposition as illegitimate and systematically register children in the BE1D!** The Only option for families is to resort to administrative courts to enforce their rights and those of their children. Actions before administrative courts are ongoing in several regions. Such an action was successful June 14, 2012 for a family at Bastia court (Corsica).

c) While disciplinary sanctions are overturned by courts, the administration of the National Education continues to sanction:

On 21 September 2011, the Montpellier Administrative Court overturned the decision to withdraw his post to Mr Cazals. The refusal of entering children into the BE1D - was considered as an insufficient reason by the court.

The decision of the Academic Inspector [\[7\]](#) of Loir et Cher, to removing the post of the school director to Mr. Wain, (school of Bauzy), was canceled by the Administrative Court of Orleans on 26 February 2013.

On 9 April 2013, the Grenoble Administrative Court overturned April decisions of the Isère Academic Inspector to remove five days' salaries to five Isère headmasters, Ms Arthaud, Heurtier, Messrs. Duckit, Didier and Riallan, and to withdraw the employment of school director to the latter two because they all had refused to register their pupils in the file.

In 2011, In the region of Ain, three teachers who had acted as school directors and needed to be confirmed on their posts (Ms. Mathy, Ms. Vilela, Mr. Simone) were not allowed to do so. The documents signed by the inspectors of the National Education emphasized the refusal to inform the BE1D. They were victims of discriminatory decisions of an administration that continues to want to get rid of all those who oppose filing children.

On 7 January 2013, Mr. Milville, Academic inspector for the Jura region, sent a formal notice to twenty school directors not using BE1D, threatening them with financial sanctions.

All those school directors had respected their obligations and had transmitted on time the number of children attending the schools in an excel document, these figures being the only necessary data to be received by their hierarchy..

It is difficult to understand that officials who demonstrate a great sense of ethics and apply recommendations of your Committee are punished, even though the failure to file the pupils disrupt in no way preventing the smooth running of their schools and does not deprive the administration of the any necessary data.

Headmasters are placed under constant pressure from their superiors not to comply with their obligation to inform families of their right to information, rectification and opposition. It should also be highlighted that the fact for a school director not to use BE1D is often used as blackmail to the opening or closing of a class. More than a director can testify oral messages received from their chiefs in this respect.

d) Incapacity to ensure data safety:

The administration admits security flaws (mail from Nantes Inspection Académique dated 29 April 2011 which states that " *RSA company has been the subject of a cyber attack in the month March 2011. This intrusion attempt shows that pirates do not hesitate to tackle the authentication devices strong* "). This company RSA SecureID is the company that provides the " strong authentication device "(In the words of Education Nationale) imposed on schools to connect to the server and access data on their pupils through a digital key "One Time Password " or OTP key.

Internet users have been on several occasion data contained in BE1D through the Internet. In June 2012, the data contained in the databases of the Vonnas college (Ain), were freely available on the Internet (names, addresses and fixed and mobile phone numbers [\[8\]](#)). This is a serious breach of the obligations of file owner which shows that the right to protection from interference in one's privacy is not respected.

IV. Management or control ? Why maintaining unnecessary databases which are impossible to secure ?

The argument about the usefulness for statistical management does not even make consensus within the Education administration. The General Inspection of EN made in July 2011 a fairly eloquent report on this, quoted in an article Café Pédagogique (website):

"The file BEID is becoming general despite "the persistence of areas where challenge remains strong." But "it must be noted that the prospects of statistical analysis [...] now appear particularly limited, thereby removing much of the operational nature of the system put in place." If the aim is to conduct comprehensive studies for statistical purposes, it is clear that BEID is oversized because it is supposed to collect data on all students from France and under-informed because it does not hold sufficient information to conduct those studies. The tool is completely inadequate if one considers the argument of statistical relevance. "

<http://www.cafepedagogique.net/lexpresso/Pages/2012/10/19102012Article634862247594671755.aspx>

Why imposing a tool that is not indispensable in a school? Why exporting the identities of the children and their families on remote servers? Is it wise to use personal data in the Inspections Académiques and is it wise for education authorities to consult unexpectedly the identities of the pupils, their parents, and people who pick up children at school? Is there not a danger of misuse of personal data of children ? What is so useful in the context of the management of the resources allocated to school ?

The administration only needs numerical datas (and not personal information) at a single moment : during the preparation of the school map, ie the opening or closing of teaching positions in schools.

In its 5th periodic report submitted for consideration at the Children's Rights Committee, the Government states (para. 254) that the registered persons are necessarily aware of the opportunity offered to them to request the correction or abandonment of a given concerning them (para 255). We have seen, in practice, the parents have no rights towards files belonging to the National Education National, having no information about them.

The Government also states (para. 256) that the data processing was declared on 24 December 2004, to CNIL under Article 23 of the Law of 6 January 1978, but it fails to mention that since 2004 the CNIL has only the power to take note of the creation of this type of file and not to question its content.

In paragraph 258, the Government indicates that its databases do not communicate. There would be no interconnection with other state files. This information is inaccurate. There is indeed connection between applications of Education, which, however, have the same purpose, the management of school data. Indeed, an internal document of National Education,(see Annex 4) clearly mentioned that databases are interconnected.

Finally, in paragraph 259, is stated that the nature of the data collected does not permit its use for purposes other than educative, including the detection of crime and children. This is of course wishful thinking, since the State services have all the legal arsenal to investigate a file, whose vast fragility lies precisely in the fact that it centralizes data and allows much more

simply than in a system of multiple data owners to collect information directly from all of the recorded data, to make queries, sorting, cross-checking.

VI. Conclusion :

The facts we report, added to all concerns and criticisms explained in our previous alternative report, and recognized by your Committee in 2009, raise the same question : why centralizing personal files of children when the only objective of the education system should be to provide quality of education ?

Children do not need to be monitored through databases, they need quality education and protection.

The lack of secure exchanges of information circulating on the Internet that can become accessible to all, the possible access to personal data relating to children outside the school on remote computers make it impossible for parents to protect their children.

Parents of foreign children in an irregular situation should not be afraid to send their child (ren) to school because education is a right irrespective of the nationality and the administrative status of a child.

For all these reasons we continue to request the application of the only solution that respects the rights of children: personal data should remain in schools and that only anonymized data be transmitted through Internet to the administration as requested by your Committee in 2009.

We think that a democratic debate on the impact of school databases involving families and children themselves is necessary. We also would like to see a full child rights impact assessment of these databases being conducted by the State authorities being involved in their management in order to determine whether they are really in the best interests of children. Last but not least, sanctions and pressure against school directors should stop and the right of parents to oppose the registration of their children be respected without having them being requested to prove that their reasons are legitimate ones.

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- [1] Appendix 1 : registered applications and files the French school system
 - [2] Appendix 2 : data stored in BE1D
 - [3] Appendix 3: Mail MEN rectors on the personal data called “sensitive data”
 - [4] Appendix 4 : Page MEN on SIECLE
 - [5] ZUS : Sensitive Urban Zone, ZFU : Urban Free Zone, ZRU : Urban Revitalization Zone, ZEP : Priority Education Zone, RAR : Network Ambition Success, RRS : School Success Network, REP : Priority Education Network, ZP : Particular area
 - [6] Appendix 5 : Statement of preliminary findings, School Inspectorate of Ain
 - [7] Inspector, Academic Inspector : designation for Academic Director or Director prior to 1st February 2012
 - [8] Appendix 6 : telephone data accessible via the Internet