

***Convention on the rights of  
Persons with disabilities***

***1st Report - Belgium***

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**Position of the associations and Advisory Structures  
representing persons with disabilities**

**Shadow report initiated and coordinated by the  
Belgian Disability Forum**



**20 February 2014**

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Let us together submit our recommendations in order for Belgium to comply with the United Nations Convention on the rights of persons with disabilities.



***The following organizations participated in the writing of this report,***

***The member associations of the Belgian Disability Forum (BDF) :***

ALTÉO asbl (Mouvement social de personnes malades, valides et handicapés)  
Association de parents et de professionnels autour de la personne polyhandicapée asbl (AP3)  
Association des Hémophiles et Malades de von Willebrand, asbl  
Association Nationale d'Aide aux Handicapés Mentaux asbl - Nationale Vereniging voor Hulp aan Verstandelijk gehandicapten vzw (ANAHM-NVHVG)  
Association Nationale pour le Logement des Personnes Handicapées asbl (ANLH)  
Association Socialiste de la Personne Handicapée asbl (ASPH)  
Ligue Braille asbl  
Federatie van Vlaamse Doven en Slechthorende vzw (FEVLADO)  
Fédération francophone des sourds de Belgique asbl (FFSB)  
Groupe d'Action pour une Meilleure Accessibilité pour les Personnes Handicapées (GAMAH)  
Katholieke Vereniging Gehandicapten vzw (KVG)  
Kleines Forum  
Landsbond der Christelijke Mutualiteiten - Alliance Nationale des Mutualités Chrétiennes (LCM-ANMC)  
Les Briques du GAMP  
Le Silex asbl  
Ligue nationale belge de la sclérose en plaques asbl - Ligue nationale belge de la sclérose en plaques asbl  
Union Nationale des Mutualités Socialiste - Nationaal Verbond van Socialistische mutualiteiten (UNMS- NVSM)  
Vereniging Personen met een Handicap vzw (VFG)

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Section « personnes handicapées » de la Commission Communautaire Commune bruxelloise - COCOM - Afdeling 'Personen met een handicap' van de 'Brusselse Gemeenschappelijke Gemeenschapscommissie' - GVC  
Conseil Supérieur National des Personnes Handicapées (CSNPH)  
Conseil Bruxellois Francophone des Personnes handicapées - COCOF  
Commission Wallonne des Personnes handicapées (CWPH)

***For the writing of this report, the BDF leaned on the expertise of:***

European Disability Forum (EDF)  
International Disability Alliance (IDA)

***Coordination and writing***

Olivier MAGRITTE

***The BDF thanks particularly for their precious help:***

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# Introduction

## **Why a shadow report?**

1. The official Belgian report, as is the case for any state-Party report, focuses solely the legal aspects of implementation. Persons with disabilities experience an entirely different reality. There is a disparity between the two approaches.
2. A shadow report produced by civil society actors can serve to bridge the gap by making an impartial contribution to the Experts Committee on the situation of persons with disabilities in Belgium

## **Who? What kind of partnership?**

3. The present report was prepared and drafted on the initiative of the Belgian Disability Forum (BDF). The decision to undertake this major project was finalised during the BDF General Assembly of 24 January 2011.

## **The BDF, a forum for organisations representing persons with disabilities**

4. The BDF was established on 18 October 2001 by 10 organisations representing persons with disabilities in Belgium.
5. The aim of the organisation is to work together for better progress on policies at international level with a view to ensuring better implementation in Belgium: working together for greater impact.
6. The BDF is a place to come together, talk and take positions on international issues that have an impact on persons with disabilities.
7. The BDF currently consists of 18 member associations and represents a total of 250,000 persons with disabilities and their families. This is a substantial number in a country with a total population of 11,000,000.

## **A representative forum**

8. Through its 18 member associations, the BDF covers all types of disability, in all the regions and communities in the federal state of Belgium.
9. The members of the BDF are associations, rather than individuals. The BDF is not in the front line: the member associations are responsible for working directly with persons with disabilities in their day to day lives.



10. The drafting of the shadow report by the BDF involved bringing together the experience gained on the ground and putting it into perspective.

#### An independent forum

11. The BDF is a truly independent organisation, as set out in its charter and as demonstrated by its funding mechanisms, based on member contributions.

12. The BDF is a non-profit organisation under Belgian law. All decision-making powers are vested in the General Assembly. The Board is tasked with the implementation of the decisions taken by the General Assembly. The Board members are nominated by the General Assembly. A five-person office is responsible for the day-to-day management of the organisation.

13. Paradoxically, the independence of the organisation can result in limitations in terms of its capacity to take action. Its independence depends on sufficient self-generated resources.

14. The BDF has limited resources, which were harnessed in the most efficient manner possible for the preparation and drafting of the present report. However, it was not possible to fully attain the goal of participation of persons with disabilities, in accordance with the spirit of the Convention. It was also impossible to translate all the working documents in the three national languages and to transcribe them in Braille and in simplified language. Similarly, it was not possible to provide sign-language interpretation in the three national languages during all the discussion throughout the two years of work.

15. However, this should not serve to undermine the work carried out by all the partners who contributed to the shadow report. It simply demonstrates that Belgium still has a long way to go.

#### **The BDF and the UNCRPD**

##### A long-standing partnership

16. The BDF has been following the work of the UNCRPD since 2003. The importance of the UN Convention on the rights of persons with disabilities (UNCRPD) in the work of the BDF has increased every year.

17. The text of the convention, its underlying ethos and structures now provide a clear direction for the BDF.

18. Modelling the structures of the BDF on the UNCRPD constitutes both an operational and philosophical choice on the part of the BDF, allowing it to position itself as a key independent actor with regard to a single text, to which it subscribes with a view to greater involvement and more active participation of persons with disabilities in Belgian and European society, given that the BDF is the official representative of Belgium in the European Disability Forum (EDF).

## Chronology

19. 2003-2005: Contribution to drafting the UNCRPD text through the European Disability Forum (EDF).
20. 2003-2005: Informing and raising awareness among the member associations on the importance and utility of the text and the "UN system".
21. 2003-2005: Lobbying the eight competent governments to sign the Convention
22. 2005-2009: Lobbying the eight competent governments to obtain the ratification of the optional protocol by Belgium
23. 2009-2012: Lobbying the eight competent governments to ensure optimal establishment of the bodies provided for under Article 33.
24. 2009-present: Ongoing lobbying of the eight competent governments on the implementation of all aspects of the Convention
25. 27 October 2010: Decision of the Board of the BDF to draft a shadow report. Approval of the decision by the General Assembly on 24 January 2011.

## **Broad representation of persons with disabilities**

26. The BDF also wished to extend the preparation and drafting mandate for the shadow report to the structures representing persons with disabilities established by the federal and federated levels of power.
27. The involvement of these structures should facilitate greater knowledge of the competences at each level of government. Furthermore, some of the organisations that are not affiliated to the BDF<sup>1</sup>, but which are represented in these structures, were therefore involved : representatives of the services sector, universities, business organisations. Thus, all sections of civil society are covered by the partnership.
28. Two distinct, yet complementary groups participated in the drafting of the BDF shadow report:
  - the BDF member associations, which we will call "Organisations Representing Persons with Disabilities" (ORPD). There are 18 ORPDs :
    - ALTÉO asbl (Movement for persons with illnesses and disabilities)
    - *Association de parents et de professionnels autour de la personne polyhandicapée asbl* (AP3) (Organisation for parents and professionals working with persons with multiple disabilities)
    - *Association Nationale d'Aide aux Handicapés Mentaux asbl - Nationale Vereniging voor Hulp aan Verstandelijk gehandicapten vzw* (ANAHM-NVHVG) (National Association for Persons with Intellectual Disabilities)

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<sup>1</sup> The BDF is open to other organisations. Any organisation for persons with disabilities covering an entire region or two Belgian provinces can become a member of the BDF.

- *Association Nationale pour le Logement des Personnes Handicapées asbl* - Nationale Vereniging voor Hulp aan Verstandelijk gehandicapten vzw (ANLH) (National Housing Association for Persons with Disabilities)
  - *Association Socialiste de la Personne Handicapée asbl* (ASPH) (Socialist Organisation for Persons with Disabilities)
  - Brailleliga vzw – Ligue Braille asbl (Braille League)
  - *Federatie van Vlaamse Doven en Slechthorende vzw* (FEVLADO) (Flemish Federation for Deaf and Hearing-impaired Persons)
  - *Fédération francophone des sourds de Belgique asbl* (FFSB) (French-speaking Federation for Deaf Persons in Belgium)
  - *Groupe d'Action pour une Meilleure Accessibilité pour les Personnes Handicapées* (GAMAH) (Action Group for Persons with Disabilities)
  - *Katholieke Vereniging Gehandicapten vzw* (KVG) (Catholic Organisation for Persons with Disabilities)
  - *Kleines Forum*
  - *Landsbond der Christelijke Mutualiteiten – Alliance Nationale des Mutualités Chrétiennes* (LCM-ANMC) (National Alliance of Christian Mutual Companies)
  - Les Briques du GAMP (Organisation for persons with complex dependency needs)
  - Le Silex asbl
  - *Nationale Belgische Multiple Sclerose Liga vzw* - Ligue nationale belge de la sclérose en plaques asbl (Multiple Sclerosis Belgium)
  - *Union Nationale des Mutualités Socialistes - Nationaal Verbond van Socialistische mutualiteiten* (UNMS- NVSM) (National Union of Socialist Mutual Companies)
  - *Vereniging Personen met een Handicap vzw* (VFG) (Association of Persons with Disabilities)
  - *Vereniging van Hemofilieëlijders en von Willebrand-Zieken vzw* (AHVH) (Hemophilia Association)
- the structures representing persons with disabilities, which are advisory bodies established at various levels of government and which we will call "Advisory Structures of Persons with Disabilities" (ASPwD). There are 4 ASPwD :
    - The "Persons with disabilities" section of the European Union Committee in the Commune of Brussels: COCOM - Brussels Region
    - Conseil Supérieur National des Personnes Handicapées (CSNPH) (National Council for Persons with Disabilities)
    - *Conseil Bruxellois Francophone des Personnes handicapées* (Brussels Francophone Council for Persons with Disabilities): COCOF - Brussels Region
    - *Commission Wallonne des Personnes handicapées (CWPH)* (Walloon Committee for Persons with Disabilities): Walloon Region

Comments:

- There is currently no representative organisation in Flanders <sup>2</sup>. The BDF has consistently brought this issue to the attention of the competent ministers. The report can only draw upon the contributions of the various NGOs.

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<sup>2</sup> A pilot project was established from January to September 2010 *Niets Over Ons Zonder Ons'* (NOOZO) "Nothing about us without us", initiated by a group of representative organisations of disabled persons in Flanders, financed by the Region of Flanders. NOOZO constituted an advisory organ for Flanders in embryonic form. During this

- There are no ASPwD bodies in the French and Dutch Communities in Belgium.

## **How?**

29. The work to determine the situation on the ground and the actual drafting was carried out over a period of just over two years: from March 2011 to June 2013

## **Participation in the process**

30. Each partner contributed to every step of the drafting process. They had the opportunity to contribute their view on each situation referred to in the report.

31. The following were the main participants in the process:

- The affiliated organisations: the ORPD and the ASPwD bodies. They played a central role. They were tasked with providing and approving the contents of the report.
- The Monitoring Committee: composed of a representative of each organisation. Representatives were designated within each ORPD and ASPwD bodies to liaise with the secretariat of the BDF. They were tasked with collecting information on the ground within their organisation, drafting, explaining and clarifying or "defending" their contribution during the meetings of the monitoring committee.
- The Secretariat of the BDF was the central coordination point for the entire process. It was tasked with designing and managing the process, preparing worksheets, approving the various drafts, introducing amendments approved by the monitoring committee, organising and hosting, and reporting on the meetings of the monitoring committee. The Secretariat was also responsible for the final draft of the text of the report and the recommendations as well as the final communication document. Throughout the process, the Secretariat reported to the Monitoring Committee.

## **The four stages of the process**

32. The process was divided into four main stages, each divided into a number of steps:

33. Stage 1: determining the situation on the ground

- Step 1: The Secretariat prepared a file for each of the Articles 5 to 33 of the Convention. The files were available on the dedicated section of the BDF site. Each organisation involved in the drafting had six months to discuss and draft their contributions. They had the opportunity to express their views on all of the articles or on a selection thereof, depending on the experience of their members (March 2011 - September 2011 - three meetings of the Monitoring Committee)
- Step 2: The Secretariat drafted the summary files for each article, bringing together similar contributions, and highlighting differences of opinion, and occasional contradictions. The summaries were endorsed by the Monitoring

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period, NOOZO contributed to the preparation the BDF alternative report. Unfortunately, the Region of Flanders decided not to continue with this initiative.

([http://www.vfg.be/vfg/standpunten/pages/nietoveronzonderons\(noozo\)eenvlaamseadviesstructuur.aspx](http://www.vfg.be/vfg/standpunten/pages/nietoveronzonderons(noozo)eenvlaamseadviesstructuur.aspx))

Committee (September 2011 - December 2011 - three meetings of the Monitoring Committee)

- Step 3: Further issues based on the information gathered during Step 2 and the points for discussion suggested by the International Disability Alliance, the Secretariat circulated a series of further issues in order to obtain additional information on certain issues which were not covered in the initial contributions received from the ORPD and ASPWD bodies.

#### 34. Stage 2: Drafting the report

- Step 1: Based on the summary files, the Secretariat prepared a draft for each article. The drafts were uploaded on an ongoing basis to the dedicated section of the BDF website. The time constraints were considerable as additional statistical, legal and field research was required in many cases. Furthermore, each draft had to be translated from French to Dutch.
- Step 3: Amendments Along with the drafting work, meetings of the Support Committee were held, with one meeting every three weeks. During the meetings, the draft(s) were discussed and amended. Discussions covered the real issues on the ground, and every word was weighted in order to reflect the reality on the ground (April 2010 - March 2013: 18 meetings of the Monitoring Committee for Steps 4 and 5)
- Step 3: drafting and formatting of the final report. The Secretariat undertook this task and the document was finalised by 21 March 2013. The work was approved during the meeting of the Monitoring Committee on 23 March 2013.

#### 35. Stage 3: Recommendations

- Step 1: "Brainstorming" the preparation of recommendations. This step was not envisaged at the beginning of the process. However, as a kind of 'team spirit' emerged throughout the meetings of the Monitoring Committee, it became apparent that a 'brainstorming' session dedicated to the preparation of final recommendations based on the report would be a valuable addition (meeting of 22 March 2013)
- Step 3: Finalisation of the recommendations This task was taken on by the secretariat and amended during the meeting of the Monitoring Committee on 12 April 2013.
- Step 3: approval of the report and recommendations. Official approval was granted during the General Assembly of the BDF on 14 June 2013. During the month of May, the ORPD and the ASPWD bodies were asked to hold a meeting to approve the result obtained and mandate their delegates to approve the final document.

#### 36. Stage 4: Technical finalisation. Once the content had been approved, three 'technical' steps had to be taken.

- Step 1: a detailed analysis of the recommendations for the attention of the members and the Expert Committee. This 40-page document summarises the recommendations produced by the BDF. The Secretariat of the BDF was tasked with preparing the summary, drawing on the communications officers working in the ORPD.
- Step 3: Translation of the documents The entire document was drafted in French and Dutch. For practical and budgetary reasons, it was not possible to draft the

document in German, the third national language. Only the recommendations and detailed analysis thereof were translated or transcribed as follows:

- German
- Spanish
- Braille (French, Dutch, German)
- Simplified language
- Sign-language: Dutch, French and German sign language

37. In conclusion, the process gave a voice to the ORPD and ASPwD bodies, a report was produced describing the realities on the ground and the main recommendations were drawn up. Recommendations were then classified on an objective basis and a 'communication document' was produced, which provides an analysis of the context of the various recommendations.

38. In total, 25 meetings of the Support Committee were held over 26 months.

39. The end product is structured in three complementary documents, allowing the reader to approach the problem from three different perspectives:

- Overall recommendations
- Detailed analysis of the recommendations
- Article-by-article analysis

### **Some of the articles were not covered**

40. In the article-by-article analysis, certain articles were not commented on. This was due to the method for the preparation and drafting of the shadow report: none of the partner organisations communicated information on the situation of persons with disabilities in Belgium in relation to these articles.

41. The following articles were not commented on:

- 11 - Situations of risk and humanitarian emergencies
- 15 - Freedom from torture or cruel, inhuman or degrading treatment or punishment
- 17 - Protecting the integrity of the person
- 18 - Liberty of movement and nationality

42. However, this does not necessarily imply that the situation is ideal in all areas. The organisations who contributed to preparing and drafting the report are not active in these areas or their contributions were covered under another article of the Convention: Article 14 - Liberty and Security of the Person and Article 16 - Freedom from exploitation, violence and abuse, for example. Alternative information could undoubtedly be harvested through other channels.

### **Summarising the work and bringing everyone together**

43. The BDF is proud of the work produced. The essence of the work was to extrapolate the day-to-day experience of the ORPD members. A participative approach was taken under the supervision of a diverse monitoring committee, which ensured that all perspectives and the realities experienced by each ORPD were taken into account

44. The BDF hopes that the work constitutes an effective contribution towards the objective of demonstrating the realities of life that correspond to the institutional and legislative framework in Belgium.

### **Addendum: The Belgian institutional context, the distribution of competences**

45. Belgium is a federal state composed of the federal level, three Regions, and three Communities. However, the Region of Flanders and the Flemish Community have merged.

46. Unlike other federal states, there is no hierarchy of norms between these entities.

47. Each entity has exclusive competence over certain designated areas<sup>3</sup>. Therefore, the federal state has no power over the areas within the competence of the communities and regions. The federal state has exclusive competence over federal issues.

48. As a result, citizens need to have excellent knowledge of the distribution of competences between the various institutions in order to identify the appropriate institution for a given situation.

49. This also applies to the reader of the present report. For each situation described, the drafters have specified the relevant institutional level.

50. Unfortunately, the complexity of the system negatively impacts all citizens, including those with disabilities, who have to approach a number of different offices depending on their specific needs. The *Centre pour l'Égalité des chances et la Lutte contre le Racisme* (Centre for Equality of Opportunity and Combating Racism), has produced a document which details the distribution of competences for each type of disability, illustrating the complexity of the issue<sup>4</sup>.

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<sup>3</sup> [http://www.belgium.be/fr/la\\_belgique/pouvoirs\\_publics/la\\_belgique\\_federale/](http://www.belgium.be/fr/la_belgique/pouvoirs_publics/la_belgique_federale/)

<sup>4</sup> *Tab.d. - Scope:*

[http://www.diversite.be/?action=onderdeel&onderdeel=189&titel=Photographie+des+I%C3%A9gislations+antidiscrimination#\\_Champs\\_d\\_application\\_](http://www.diversite.be/?action=onderdeel&onderdeel=189&titel=Photographie+des+I%C3%A9gislations+antidiscrimination#_Champs_d_application_)

## Part 1:

### **Recommendations and detailed analysis**



## **List of action points and recommendations at the time of analysis of the initial report by Belgium.**

The following action points and recommendations are presented in order of priority as determined by the four Advisory Councils and the BDF.

Similarly, references to specific articles under the title "Reference to the articles of the shadow report" are classified in the order of their relevance, as per the relevant "Point for discussion" rather than the order of the articles of the Convention.

# Action point n° 1

- 1. The cooperation structures between the three levels of government in Belgium are insufficient and ineffective. Explain how they can be improved at the various levels of the federal structure.**
- 2. Various definitions of the term "disability" in the Belgian federal and federated bodies. Indicate whether the adoption of a legal definition of the term 'disability' is envisaged.**
- 3. Indicated when the independent monitoring mechanisms will be put in place and whether sanctions have been provided for in the event of a failure to implement these mechanisms.**

## **Context**

Over time, Belgium has evolved into a complex federal state in which the majority of citizens have difficulties finding their way around the institutions.

This problem occasionally manifests itself in a dramatic manner when persons are confronted with a difficult situation or an emergency: "What service should I go to? Who should I ask for the help or support I need? ". These questions arise far too often for Belgian citizens, and in particular, for persons with disabilities.

Another part of the problem is that the various federal bodies have taken a different approach to the concepts in Articles 1 to 4 of the UNCRPD. Once the Convention has been voted and ratified, the State is required to implement it in a coherent manner across the entire territory.

## **Referral to the articles of the shadow report:**

[Article 29](#) – Participation in political and public life

- Paragraphs 76 to 80: funding for organisations representing persons with disabilities
- Paragraphs 81 to 130: Advisory Councils for persons with disabilities must be created at each level of power for the relevant files

[Article 14](#) - Liberty and security of the person

- Paragraphs 1 and 68 to 74: lack of coherence between regional and federal policies

[Article 5](#) - Equality and non-discrimination

- Paragraphs 10 and 11: there is insufficient awareness among the general public on how the Centre for Equality of Opportunity and Combating Racism (CEOOR) operates

[Article 31](#) – Statistics and data collection

- Paragraphs 1 to 16: the lack of coordination typical of federal Belgium can be explained in part by the fact that there are currently no comprehensive and usable statistics on disability

#### [Article 7](#) – Children with disabilities

- paragraphs 52 to 56: devolution of family payments policies to the Communities, undermining the principle of equality

#### [Article 9](#) – Accessibility

- Paragraphs 4 to 21, 46 to 57, 83 to 86 and 50: complexity involved in the coexistence of regional laws on accessibility
- Paragraphs 14 and 15, 20 and 21 and 31 to 45: non application of the regulations in force, absence of inspections and/or sanctions
- Paragraphs 23 to 25: incompatibility between the regulations on accessibility and those on the preservation of the preservation of architectural heritage

#### [Article 20](#) – Personal mobility

- Paragraphs 5 to 14: lack of coordination between the levels of government to achieve the necessary integration to facilitate the personal mobility of persons with disabilities
- Paragraphs 101 and 102: mobility equipment and the transfer of competences from the federal state to the regions.

#### [Article 26](#) – Habilitation and rehabilitation

- Paragraph 1: various levels of service on offer from one region to the next

#### [Article 27](#) - Work and employment

- Paragraphs 26 and 27: employment and professional training under the responsibility of different levels of government

#### [Article 33](#) - Application and monitoring at national level

- Paragraphs 9 to 12: increasing number of "points of contact"
- Paragraphs 13 to 16: coordination structures, a necessity in the context of an explosion in the number of competences

## **Recommendation**

The first recommendation is designed to clarify the institutional machinery of federal Belgium and the need to put in place the necessary organisational tools to ensure proper service given the institutional complexity of the federal state:

- The establishment of cooperation structures between the three levels of government in Belgium is a necessity. To date, the efforts in this regard have been insufficient and ineffective.
- The federal and federated bodies must integrate the commitments under Articles 1 to 4 of the UNCRPD in the same manner, including the definitions of disability, reasonable accommodation and the participation of persons with disability in their respective legal structures.
- The implementation of all legislation in accordance with the rights of persons with disabilities must be subject to independent monitoring and sanctions in the event of a failure in the implementation.

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## Action point n° 2

- 4. Provide further details and concrete examples of the consultation of persons with disabilities and representative organisations on the implementation of relevant legislation and policies.**
- 5. Provide a time-line for establishing the Advisory Councils in the Regions and Communities in which these structures are not yet in place.**
- 6. Specify the resources to be allocated to the Advisory Councils for their roles and operation. The resources should be provided on a long-term basis.**

### **Context**

The participation of persons with disabilities and/or representative organisations in the decision-making process affecting persons with disabilities is among the basic principles promoted by the UNCRPD.

From the perspective of the stakeholders who contributed to the BDF shadow report, establishing structures such as the 'Advisory Councils' is the best way of organising such participation.

As regards the highest levels of government in Belgium, only the Federal State, the Walloon Region, the Brussels-Capital Region and the EU affairs office in the Commune of Brussels had organised such "Advisory Councils" as of 30 June 2013<sup>5</sup>.

Currently, there is no competent consultation structure for disabilities at the level of the regions and communities. This also applies at local level: there are 10 provinces and 589 communes. In this regard, it should be borne in mind that many decisions with a direct impact on the daily lives of persons with disabilities are taken at local level.

In terms of the procedures followed within the 'Advisory Councils', the stakeholders to the BDF shadow report noted that the bodies with an Advisory Council for persons with disabilities are not obliged to give reasons for their decisions. The duty to give reasons must be imposed in order to ensure that the Advisory Councils can work effectively.

Finally, the "Advisory Councils", when in place, must receive the resources required to fulfil their role throughout the negotiation process. This will involve logistical costs, and expenses in order to ensure that the members of the committees can participate in the meetings.

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<sup>5</sup> The text formalising the establishment of "Advisory Councils" for the German-speaking region shall be voted in September - October 2013. The '*Kleines Forum*' has been fulfilling this role since 2005, outside of a proper legal framework.

## **Referral to the articles of the shadow report:**

### [Article 29](#) – Participation in political and public life

- Paragraphs 75 to 130: participation of persons with disabilities in decisions which affect them

### [Article 33](#) - Application and monitoring at national level

- Paragraphs 1 to 25: the implementation of Article 33 should be a model for the involvement of persons with disabilities in the political decision-making process, which is not the case at present

### [Article 9](#) – Accessibility

- Paragraph 10: The ORPD and ASPwD bodies have been closely following consultation procedures

### [Article 12](#) - Legal capacity on an equal basis with others

- Paragraphs 4, Paragraphs 37 to 39: Consultation with the ORPD and ASPwD bodies has been insufficient

### [Article 20](#) – Personal mobility

- Paragraph 42: The absence of a consultation mechanism for persons with disabilities in Flanders limits proper participation in improving the tram network
- Paragraph 44: Tram network project in Liège, the ORPD were not involved

### [Article 26](#) – Habilitation and rehabilitation

- Paragraph 1 to 11: various levels of service on offer from one region to another
- Paragraphs 12 and 13: The region is competent in this domain, but certain measures must be taken by the federal State

### [Article 32](#) - International cooperation

- Paragraphs 1 to 7: the organisations representing persons with disabilities were not consulted on the issue of international cooperation
- Paragraph 7: The *Agence wallonne pour l'Intégration des Personnes handicapées* (Walloon Agency for the Integration of Persons with Disabilities - AWIPH) is a regional agency, and therefore not an organisation representing persons with disabilities.

## **Recommendation**

In this second recommendation, we wish to invite the various institutions to consult with persons with disabilities and/or their representative organisations:

- The various levels of government - the federal state, the Regions and Communities - must implement the provisions of Articles 4.3 and 33 of the UNCRPD, by ensuring active participation of persons with disabilities in the preparation and implementation of policies.
- The Organisations Representing Persons with Disabilities (ORPD) and the Consultation Structures for Persons with Disabilities (ASPwD) take the view that the authorities should use "Advisory Councils" in their work with persons with disabilities. Reasons should be given for any decision of an authority not to follow an opinion issued by one of the committees.
- It is important that Flanders, the German Community and the French Community meet this requirement as soon as possible with regard to the organisation and participation of persons with disabilities in the political decision-making process. In any event, sufficient resources must be allocated to the consultation mechanisms to ensure their effectiveness.

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## Action point n° 3

- 7. Describe the measures taken with a view to offering a full range of assistance services for every aspect of life, i.e. services that are accessible to all persons with disabilities, including children, freely chosen and accessible, regardless of their place of residence.**

### **Context**

Freedom of movement of citizens is among the founding principles of the European Union, of which Belgium is a member.

Sadly, it must be acknowledged that even within Belgium, persons with disabilities and their families are regularly faced with obstacles to their freedom of movement should they wish to move from one region to another, and cannot access certain services under the same conditions as other citizens living in the destination Region.

Cooperation agreements have been concluded between certain institutions, but do not cover all areas or institutions. Therefore, if an institution does not provide a particular service, the person with a disability cannot avail of the service provided by another institution if this has not been provided for in a cooperation agreement.

### **Referral to the articles of the shadow report:**

[Article 19](#) – Independence and inclusion: the overall issue of living independently and inclusion

[Article 26](#) – Habilitation and rehabilitation

- Paragraphs 1 to 11: various levels of service on offer from one region to another
- Paragraphs 12 and 13: dependence on federal government

[Article 27](#) - Work and employment

- Paragraph 15: differences between the Region of Flanders, on the one hand, and the Walloon Region and Brussels-Capital on the other.



## **Recommendation**

The objective of this third recommendation is to ensure that persons with disabilities can enjoy their fundamental right to freedom of movement within the various institutions in Belgium, and should be read in tandem with Recommendation n° 1:

- The necessary resources should be put in place to ensure that persons with disabilities can exercise their right to freedom of movement within the various institutions in Belgium, on an equal basis with others. Proper effect should be given to freedom of movement, both now and after the transfer of competences provided for between the federal state and the federated states.

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## Action point n° 4

- 8. Provide all the available data on the number of persons with a cognitive, intellectual, sensory or physical disability in the various entities in Belgium and describe the methods used to collect this data at national level, apart from the federal and federated structures.**

### **Context**

The distribution of competences that has arisen from the progressive federalisation of Belgium has thus far failed to provide for sufficient coordination between the various levels of government (See Recommendation 1).

The lack of coordination hinders the establishment of databases and statistical tools.

Therefore, only partial, or even non-existent, statistical data is available to the various levels of government when preparing policies.

Furthermore, within the various federal and federated entities, the institutions have information available with regard to their tasks and needs, but there are discrepancies in the form in which the information is presented and the media on which it is available. Given that no overall approach has been determined, generalised data is not available.

'Mainstreaming' and 'handstreaming' is therefore necessary.

### **Referral to the articles of the shadow report:**

[Article 31](#) – Statistics and data collection

- Paragraphs 1 to 16: the issue of statistics and general data collection

[Article 27](#) - Work and employment

- Paragraphs 8 to 11: lack of statistical data and discrepancies

### **Recommendation**

This 4<sup>th</sup> recommendation concerns statistics and data collection, an area in which the stakeholders who contributed to the BDF shadow report wish to see progress in the short-term - with regard to the quality of future policies on disability.

- Statistics must be compiled on the number of persons with disabilities and their needs. The availability of precise statistics will facilitate the development of a long-term vision on planning for the development and improvement of services.

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## Action point n° 5

### **9. Provide further information on the measures taken to promote the rights of children and adults with disabilities in the media and among the general public.**

#### **Context**

The BDF notes that to date, very little, or even no information on the UNCRC has been distributed to promote the Convention among the general public. The BDF has regularly distributed information to the media, at each stage of the ratification and implementation process, but the media have failed to pass on this information.

In an information society, the promotion of the principles of the UNCRC is certainly a first step that must be taken to ensure their respect by all the stakeholders, i.e., all citizens.

In accordance with Article 33 of the UNCRC, this role is delegated to the independent body. This body was set up in 2010 and received funding for the purpose of promoting, protecting and monitoring the Convention in Belgium.

The stakeholders who contributed to the BDF report noted that, up until now, the Convention has not been monitored sufficiently, despite the fact that 'promotion' appears first in the phrase "promotion, protection and monitoring" in Article 33.2, emphasising that, from the perspective of the drafters and signatories of the UNCRC, the promotion of the content of the Convention is the primary objective of the independent body. While this task should also be undertaken first, the objectives of promotion, protection and monitoring should be pursued equally.

The stakeholders who contributed to the BDF shadow report wish to ensure that the UNCRC is promoted within a reasonable time-frame in cooperation with persons with disabilities and their representative organisations.

#### **Referral to the articles of the shadow report:**

Introduction in the shadow report to the participative process put in place by the BDF for the drafting of the shadow report

#### **Article 8** – Raising awareness

- Paragraphs 1 to 12: poor promotion of the UNCRC

## **Recommendation**

Regarding the implementation of Article 33 of the UNCRPD, particularly with regard to promotion:

- The State must ensure that accessible information on the Convention on the rights of persons with disabilities is distributed in good time to civil society and the general public, particularly with regard to the structures set up under Article 33.

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## Action point n° 6

**10. Provide further information on the measures already taken, as well as those provided for in the near future to ensure decent quality of life for all persons with disabilities, particularly in the context of the economic crisis.**

### **Context**

As Belgium is essentially a consumerist society, persons with insufficient income tend to be excluded.

From the perspective of the stakeholders who contributed to the BDF shadow report, the minimum persons with disabilities should receive should be equivalent to the minimum wage, although they are fully aware that this level of income would fail to cover the costs related to the disability. This would represent a minimum of progress.

Furthermore, it must be kept in mind that income determines access to all aspects of life, including integration into society.

Income affects respect for equality and non-discrimination, the quality of life of women and children with disabilities, accessibility, the right to life, legal status, access to justice, freedom and security, exploitation, violence and abuse, independence and social inclusion, personal mobility, freedom of expression and opinion and access to information, respect for privacy, the home and family life, education, health, rehabilitation, work and employment, political and public life, culture and recreation.

The degree to which a person is integrated in society is linked to their level of income. For over 300,000 persons, all or part of their income comes from social welfare payments. Social welfare payments for persons with disabilities should be raised to the same level as the minimum wage.

Furthermore, it is important to note that the income of the person with disabilities should be framed as an individual right, which is not the case at present.

### **Referral to the articles of the shadow report:**

[Article 28](#) – Adequate standard of living and social protection

- Paragraphs 3 to 8: standard of living in Belgium
- Paragraphs 9 to 38: social welfare payments fail to ensure quality of life and independence
- Paragraphs 39 to 50: access to goods and services
- Paragraphs 51 to 58: families where a member has a disability

[Article 16](#) – Freedom from exploitation, violence and abuse

- Paragraph 1 to 17: begging, unpaid work, volunteer work

[Article 23](#) - Respect for home and the family

- Paragraphs 38 to 40: the cost of disability

#### [Article 25](#) – Health

- Paragraphs 75 to 84: The cost of health

#### [Article 27](#) - Work and employment

- Paragraphs 58 to 60: against means-testing the integration payment
- Paragraphs 79 to 83: work and social inclusion

### **Recommendation**

This 6<sup>th</sup> recommendation aims to ensure a decent quality of life for all persons with disabilities in Belgium.

- Social welfare payments for persons with disabilities must be increased so as to provide adequate income for all. This amount should be at least equal to the minimum wage in Belgium, with the objective of facilitating inclusion in every aspect of life. Income for persons with disabilities should be framed as an individual right.

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# Action point n° 7

**11. Provide further information on the measures taken in order to provide full and high quality information on all the aspects related to disabilities are available to persons with disabilities and their families.**

## **Context**

The availability of full, high-quality information is the minimum required for the person to make good decisions on the way in which they manage their life.

Furthermore, the information provided should be objective and indicate all possible solutions. Advantages and disadvantages should be set out for each option.

A multidisciplinary approach, which is rarely used at present, should be taken to drafting and distributing the information to the relevant persons. The medical sector has a strong influence and decisions are often taken solely on a medical basis.

## **Referral to the articles of the shadow report:**

[Article 21](#) – Freedom of expression and opinion, and access to information

- Paragraphs 3 to 5: problems accessing information
- Paragraphs 6 to 11: the cost of accessing information
- Paragraphs 12 to 14: barriers in terms of understanding the information
- Paragraphs 15 to 18: languages
- Paragraphs 19 to 20: the role of the media
- Paragraphs 21 to 31: accessibility online
- Paragraphs 32 to 34: legislation on authors rights and documents in the public domain

[Article 6](#) - Women with disabilities

- Paragraphs 13 and 14: lack of accessible information for women with disabilities who are experiencing disabilities

[Article 7](#) – Children with disabilities

- Paragraphs 7 to 16: put in place the resources for effective parent-child, adult-child dialogue
- Paragraph 46 to 49: excessive limitations on freedom of choice

[Article 9](#) – Accessibility

- Paragraphs 6, 7, 12, 13, 18 and 19: legislation on accessibility only covers physical accessibility

### [Article 10](#) – Right to life

- Paragraphs 12 to 18: legislation on euthanasia
- Paragraphs 19 to 23: legislation on abortion
- Paragraphs 24 to 29: stereotypes on the quality of life of persons with disabilities

### [Article 12](#) - Legal capacity on an equal basis with others

- Paragraphs 33 to 36: legal capacity and medical treatment

### [Article 22](#) – Respect for privacy

- Paragraphs 2 to 10: data protection with regard to persons with disabilities

### [Article 23](#) - Respect for home and the family

- Paragraphs 35 to 40: decisions on parenthood
- Paragraphs 35 to 40 and 58 to 63: disability and parenthood

### [Article 24](#) – Education

- Paragraphs 47 to 52: freedom of choice in education: mainstream or special education, integration between the two
- Paragraphs 53 to 65: Learning sign-language
- Paragraphs 66 to 68: Learning Braille

### [Article 25](#) – Health

- Paragraphs 3 to 84: quality of information and assistance with understanding the basics required to take decisions on health

### [Article 26](#) – Habilitation and rehabilitation

- Paragraphs 14 to 17: the importance of high-quality information

## **Recommendation**

Providing full and comprehensible information to each person with disabilities and those close to them.

- The person with a disability and those close to them, including children, must have access to all important information, in their choice of accessible language.
- This information must provide a clear and objective understanding of the implications of the disability. All solutions should be identified which would facilitate the person and those close to them in living on an equal basis with any other citizen.
- The information provided must be open, transparent and multidisciplinary: it is unacceptable for decisions to be taken solely on the basis of medical criteria, as is often the case at present.

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## Action point n° 8

**12. Describe the measures to be taken to provide a full range of housing and care services, including personal carer services for all aspects of life, designed for and accessible to all persons with disabilities (including children and adults with complex dependency needs), regardless of income, freely chosen with regard to their organisation and regardless of their place of residence.**

### **Context**

Housing and care for persons with multiple disabilities and for those who need complex care needs is clearly insufficient at present. Furthermore, it is poorly distributed across the country of Belgium, which affects not only persons with disabilities, but also their families for whom the burden is too much to bear.

This constitutes a breach of the principle of equality of opportunity as, in many cases, one of the parents of the person with a disability must give up their professional life to help their child, including when they have reached adulthood.

A group of organisations for persons with disabilities brought this issue before the European Committee of Social Rights, which has held that Belgium is in violation of the European Social Charter.

### **Referral to the articles of the shadow report:**

[Article 23](#) – Respect for home and the family

[Article 16](#) – Freedom from exploitation, violence and abuse

- Paragraphs 21 and 22: legitimate need for rest and leisure

[Article 24](#) – Education

- Paragraphs 77 to 86: exclusion from education

[Article 28](#) – Adequate standard of living and social protection

- Paragraphs 51 to 56: children with disabilities
- Paragraphs 57 and 58: parent(s) with disabilities

[Article 26](#) – Habilitation and rehabilitation

- Paragraphs 9 and 10: Poor distribution of services across the Walloon Region
- Paragraph 11: Insufficient services for certain types of disabilities in the Brussels-Capital region.

## **Recommendation**

Establish a comprehensive care plan for accommodation services with a personal approach.

This should ensure respect for the right and expectations of the residents, along with sufficient funding.

A number of the stakeholders who contributed to the BDF shadow report noted the stigma attached to the term 'high dependency'. However, it was decided to use this term in the recommendation as the term is used in recent legislation, which, aside from the use of the term itself, is a step in the right direction.

- An implementation plan for the provisions on persons with complex dependency needs is needed. The plan should provide for proper geographic distribution of a range of adequately funded tailored solutions.
- All levels of government in Belgium must respond urgently to the inhuman lack of suitable resources for young persons and adults with significant and varied needs for support.

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## Action point n° 9

### **13. Describe the specific measures taken to provide those close to persons with disabilities with a minimum standard of living in their professional, social and cultural life.**

#### **Context**

Living with family is, in theory, the ideal environment for any person, including persons with disabilities.

However, caring for a person with a disability comes with responsibilities that can have a major impact on the quality of life of all members of the family, in every aspect of life, from costs, to social life and culture, to life choices.

Therefore, the family must receive the support they need.

#### **Referral to the articles of the shadow report:**

##### Article 7 – Children with disabilities

- Paragraphs 7 to 13: the importance of the quality of family life
- Paragraphs 45 and 60 to 64: problems in terms of 'disability by association'
- paragraphs 52 to 56: devolution of family payments policies to the Communities, undermining the principle of equality
- Paragraphs 57 to 59: disability and financial vulnerability, cumulative effects

##### Article 16 – Freedom from exploitation, violence and abuse

- Paragraphs 21 and 22: legitimate need for rest and leisure

##### Article 23 - Respect for home and the family

- Paragraphs 41 to 55: legal lacuna on the status of informal carers

##### Article 27 - Work and employment

- Paragraphs 79 to 83: work and social inclusion

#### **Recommendation**

This recommendation concerns the quality of family life.

- Greater support should be provided for families where one or more persons has a disability. It is unacceptable that family members of persons with disabilities experience certain forms of discrimination as a result of their ties to the person with a disability, particularly those with high dependency needs.

## Action point n° 10

### **14. Provide further information on the appropriate services and procedures to respond to the needs of persons with disabilities.**

#### **Context**

The situation of persons with disabilities remains a major issue with regard to integration into mainstream society, which is an important issue for them. "Mainstreaming" is among the tools required to achieve equality of opportunity.

In this regard, the services provided to the general public must meet the needs of persons with disabilities. Services must be funded in such a way as to respond effectively to the needs and expectations of persons with disabilities.

However, 'mainstreaming' is not an absolute. If poorly applied, the needs of the person may fall by the wayside: they may be drowned in the masses to the point of disappearing and not receiving the attention the need.

Mainstreaming should not be used to free the competent authorities from their obligation to put in place the appropriate services and procedures to provide specific responses required for the particular person or persons with disabilities.

Public awareness campaigns on equality of opportunity are always directed at a specific target group: women, children, Roma persons, persons with disabilities. It is rare for a campaign to take an overall approach to equality of opportunity, at least in Belgium.

#### **Referral to the articles of the shadow report:**

##### [Article 6](#) - Women with disabilities

- Paragraphs 4 to 8: Belgian law fails to take account of the situation of women with disabilities

##### [Article 27](#) – Employment

- Paragraphs 16 to 23 and 76 to 77: specific needs and the labour market

## **Recommendation**

Implement mainstreaming, one of the most ambivalent concepts promoted by the UNCRPD, while taking into account the specific needs, while taking into account the specific needs particular to different disabilities.

- General services should be adapted to the needs of persons with disabilities.
- Along with general services, governments should develop and fund a sufficient range of specific services adapted to the real needs of persons with disabilities (assistance with daily living, accommodation, support, etc.).
- Specific support for persons with disabilities must be provided for as required.

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## Action point n° 11

**15. Provide further details on the awareness-raising programmes designed to promote a positive image of children and adults with disabilities, particularly in the areas of education, employment and healthcare.**

### **Context**

Greater awareness of the realities of disability should naturally lead to solutions which take into account the principles of mainstreaming and equality of opportunity, right from the beginning of the decision-making process, which should also result in a major reduction in costs.

While the stakeholders who contributed to the BDF are well aware of the need to raise awareness among the public, they wish to target certain specific groups of actors and specific sectors of society.

The education sector must be a priority area: children are part of today's society but will be the decision-makers in future years. They also have a real impact on their elders, as is well-understood by advertising professionals.

Medical and paramedical professionals should also be targeted given that they work with a significant number of persons with disabilities at important times in their lives. It is important for them to have a positive perception of the person behind the patient.

In general, all professionals in contact with the public should have sufficient knowledge of disability to allow them to relate to persons with disabilities on an equal basis with the rest of the population.

### **Referral to the articles of the shadow report:**

[Article 8](#) – Raising awareness

- Paragraphs 1 to 50: raising awareness on disability in Belgium

[Article 13](#) - Access to justice

- Paragraphs 22 to 24: training the legal sector

[Article 14](#) - Liberty and security of the person

- Paragraphs 6 to 10: lack of awareness and disability training of staff working in the legal system

[Article 20](#) – Personal mobility

- Paragraphs 80 to 83: lack of training and awareness on disability among the staff of transport companies.

### [Article 23](#) – Respect for home and the family

- Paragraphs 26 to 28: disability and parenthood

### [Article 24](#) – Education

- Paragraphs 23 to 27: training for school principals

### [Article 25](#) – Health

- Paragraphs 72 to 74: Training for health professionals
- Paragraphs 60 to 66: prejudices regarding the personal and sexual life of persons with disabilities, as well as maternity
- Paragraphs 67 to 71: end of life

### [Article 27](#) - Work and employment

- Paragraphs 4 to 7, 14, 29 to 31: lack of awareness of employers, colleagues and social partners on the realities of disability
- Paragraphs 61 to 75: the employment market and the use of quotas of persons with disabilities

### [Article 29](#) – Participation in political and public life

- Paragraphs 3 to 18: right to vote for persons with disabilities
- Paragraphs 45 to 50: awareness should be raised among polling station masters

### [Article 6](#) - Women with disabilities

- Paragraphs 13 and 14: lack of accessible information for women with disabilities who are experiencing difficulties

### [Article 29](#) – Participation in political and public life

- Paragraphs 19 to 74: right to vote and to stand for election, the exercise of democracy must serve as an example for all areas of society

## **Recommendation**

Ensure that the general population has a better awareness and knowledge of disabilities.

- Action plans should be put in place to ensure greater understanding of the problems linked to various disabilities and to combat prejudice in all areas of life.
- Education, employment, media, healthcare, and homecare sectors should be targeted in order to work towards an inclusive society.
- Training and awareness-raising initiatives should be undertaken, with priority given to medical and paramedical professions, social workers, teachers, journalists, decision makers, etc.

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## Action point n° 12

**16. Different accessibility standards and policies in force in the federated and federal authorities in Belgium. Indicate where harmonisation is planned.**

**17. Provide concrete examples of sanctions applied in the event of non-compliance with accessibility standards.**

### **Context**

Progress has been made on accessibility over the past 30 years. However, development has not been as radical as hoped.

Weak political will and the failure to apply the sanctions provided for, either because no monitoring mechanism is in place or because they cannot be applied in accordance with law, have hindered progress.

By 'policy development', the stakeholders who contributed to the BDF shadow report sought to emphasise that they should participate in all stages of the process, from the formulation of principles to their implementation and the sanctions applied in the event of non-compliance.

The parties emphasised that the objective of achieving the result set out by the legislation must be set out in the policy.

Thus, the accessibility policy must set out a set of rules, and monitor their application, and, any applicable sanctions in the event of non-compliance.

### **Referral to the articles of the shadow report:**

#### [Article 9](#) – Accessibility

- Paragraphs 1 to 96: the overall issue of accessibility

#### [Article 13](#) - Access to justice

- Paragraphs 7 to 19: Access to procedures, premises, documents, hearings

#### [Article 20](#) – Personal mobility

- Paragraphs 15 and 20: lack of accessibility to public transport
- Paragraphs 24 and 25: lack of accessibility to rail transport
- Paragraphs 35 and 36: lack of accessibility to the Brussels metro network
- Paragraphs 37 and 39: lack of assistance in the Brussels metro network
- Paragraphs 40 and 41: adaptation of the tramlines in Flanders, a major construction project under way
- Paragraph 43: lack of accessibility to trams in the Walloon region
- Paragraphs 45 to 47: lack of accessibility to trams in the Brussels region
- Paragraphs 48 to 52: lack of accessibility to trams in the Walloon region



- Paragraphs 53 to 54: lack of accessibility to trams in the Brussels region
- Paragraphs 55 to 57: major loopholes in school transport to special schools
- Paragraphs 59 to 61: lack of accessibility to bus transport
- Paragraphs 72 to 75: too few adapted taxis and refusal to provide services
- Paragraphs 77 to 79: problems with air transport
- Paragraphs 80 to 83: too little training and low awareness among staff on disability

#### [Article 29](#) – Participation in political and public life

- Paragraphs 19 to 31: taking transport to vote, the exercise of democracy must serve as an example for all areas of society
- Paragraphs 32 to 55: voting procedures should be accessible

#### [Article 30](#) - Participation in cultural life, recreation, leisure and sport

- Paragraphs 4 to 57: the accessibility of infrastructures determines the quality life of persons with disabilities in terms of culture, leisure and sport.
- Paragraphs 58 to 62: access to culture for deaf persons
- Paragraph 63: cultural products and intellectual property

### **Recommendation**

Significant improvement of accessibility for persons with disabilities, at all levels.

- An accessibility policy must be developed on the accessibility of buildings and public places.
- The necessary tools must be put in place to allow any person with a disability to form their own opinion, and to express themselves, particularly with regard to the right to vote.
- Access to information must be open and transparent. Information must be accessible in various formats which meet the needs of every person with disabilities.

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## Action point n° 13

### **18. Set out the measures taken to improve integration between the various modes of public transport, as well as passenger assistance.**

#### **Context**

Step-by-step, progress is being made by the various public transport companies. In that regard, the stakeholders who contributed to the BDF report wished to emphasise that the progress made is based on European legislation.

However, there is a long way to go in terms of interchange between the various modes of public transport, as well as passenger assistance.

#### **Referral to the articles of the shadow report:**

##### Article 20 – Personal mobility

- Paragraphs 1 to 121: the overall issue of accessibility
- Paragraph 3: the importance of public transport for persons with disabilities
- Paragraphs 7 to 14: lack of integration between transport networks
- Paragraphs 21 to 23 and 28: lack of assistance
- Paragraphs 24 to 27 and 29 to 33: lack of accessibility of rail transport
- Paragraphs 35 and 36: lack of accessibility of the Brussels metro network
- Paragraphs 37 and 39: lack of assistance in the Brussels metro network
- Paragraphs 40 and 41: adaptation of the tramlines in Flanders, a major ongoing construction project
- Paragraph 43: lack of accessibility of trams in the Walloon Region.
- Paragraphs 45 to 47: lack of accessibility of trams in the Brussels region.
- Paragraphs 48 to 52: lack of accessibility of trams in the Walloon Region.
- Paragraphs 53 to 54: lack of accessibility of buses in the Brussels Region.
- Paragraphs 55 to 57: major lacunas in school transport to special schools
- Paragraphs 59 to 61: lack of accessibility of bus transport
- Paragraphs 63 and 64: the 'Belbus' system in Flanders, discrepancies between the theory and reality
- Paragraphs 66 to 69: 'door-to-door' transport in the Walloon Region, limitations and under-funding
- Paragraphs 70 to 71: adapted minibus services in the Brussels Capital Region: a new mixed system for greater flexibility from 2013
- Paragraphs 72 to 75: too few adapted taxis and refusal of services; Paragraphs 84 to 100: personal vehicles, parking
- Paragraphs 101 to 111: mobility equipment
- Paragraphs 114 to 119: lack of planning for public places to facilitate independent mobility

#### [Article 9](#) – Accessibility

- Paragraphs 46 to 53: problems in terms of accessibility between various buildings

#### [Article 16](#) – Freedom from exploitation, violence and abuse

- Paragraphs 23 to 25: school transport for special schools

#### [Article 24](#) – Education

- Paragraphs 69 to 74: problems with school transport

#### [Article 29](#) – Participation in political and public life

- Paragraphs 19 to 31: taking transport to vote, the exercise of democracy must serve as an example for all areas of society

#### [Article 30](#) - Participation in cultural life, recreation, leisure and sport

- Paragraphs 1 to 3: general difficulties with access to leisure

### **Recommendation**

This recommendation on mobility will focus particularly on public transport mobility. The stakeholders who contributed to the BDF report gave first priority to mobility for all, rather than individual mobility, which, in their view, would mainly depend on individual income.

- Mobility and, in particular, access to public transport is a prerequisite for the participation of persons with disability in all aspects of life on an equal basis with other citizens.
- Mobility requires an adaptation of all the transport networks and carriers. The competent authorities must impose an unconditional obligation on public transport companies to assist persons with disabilities and coordinate services for persons of reduced mobility in order to adapt to the realities of transport interchange.

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## Action point n° 14

**19. Set out the measures taken towards inclusive education, including the financial resources and staff needed for this purpose.**

**20. Provide information on the measures taken to increase the numbers of persons with disabilities who complete secondary education and university studies.**

### **Context**

To achieve inclusive education, all reasonable adaptations must be made to facilitate access to education for children with disabilities, as well as parents, and all teaching staff.

Parents, teachers, educators, school principals and inspectors must be allowed to fulfil their role on an equal basis with others, regardless of the disability.

All aspects of education must be taken into consideration: infrastructure, tools, materials, books, signage, learning support, inspections etc.

However, inclusive education also necessitates the use of adapted methods when necessary. Assistants may be required in the class from time to time. Inclusive education must also be organised in a flexible manner so that all students can make progress in a shared environment.

Practical solutions to implement inclusive education should be used in each education establishment, so as to ensure freedom of choice and equality of opportunity for every child. This would also result in a reduction in travel time from home to school for children and young persons with disabilities, which is often excessive at present.

From the perspective of the stakeholders who contributed to the BDF shadow report, the principle of freedom of choice dictates that special education and mainstream education should continue to coexist. Mainstream and special education should not be dissociated from one another and exchange systems and mixed classes should be put in place.

The authorities must find a solution as a matter of urgency to the lack of places in special schools. It is unacceptable that in Belgium in the 21st century, there are still children who do not have the opportunity to attend school.

Regardless of the path taken by a child or young person at school, it should lead to a qualification.

## **Referral to the articles of the shadow report:**

### [Article 24](#) – Education

- Paragraphs 1 to 94: the general issue of education

### [Article 7](#) – Children with disabilities

- Paragraphs 17 to 40, 50 and 51: children with disabilities must receive a quality education, designed in an inclusive manner
- Paragraph 46 to 49: Excessive limitations on, or even non-existence of freedom of choice
- Paragraph 49: exclusion of children with disabilities from education

### [Article 16](#) – Freedom from exploitation, violence and abuse

- Paragraphs 23 to 25: school transport for special schools

### [Article 20](#) – Personal mobility

- Paragraphs 55 to 57: major shortcomings in school transport to special schools

### [Article 27](#) - Work and employment

- Paragraphs 35 to 57: difficulties making the transition from education to employment

### [Article 6](#) – Women with disabilities

- Paragraphs 2, 21 and 22: Women with disabilities often encounter problems in terms of their pathways in education

### [Article 29](#) – Participation in political and public life

- Paragraphs 117 to 118: Community of Wallonia-Brussels:\_"Committee for Learning Support for Young Persons with disabilities"

## **Recommendation**

This 14<sup>th</sup> recommendation calls for truly inclusive education in all the constituent Communities in Belgium. From the perspective of the stakeholders who contributed to the BDF shadow report, the most effective way of making progress towards a truly inclusive society.

- A curriculum must be developed for pupils with disabilities based on the requirements of the UNCRPD. Pupils with disabilities must have the possibility to choose the type of curriculum that suits them the best. Full, accurate and accessible information must be made available to pupils with disabilities in the appropriate format.
- Every educational establishment must have the capacity to respond appropriately to the needs of the student. Appropriate teaching methods must be made available, including sign language.
- A structural solution must be found for the lack of places in special schools. Attendance at school, including special schools, must lead to a qualification.

## Action point n° 15

- 21. Provide information on the rate of employment, the type of employment and the average income of men and women with disabilities outside of sheltered work, in comparison with other workers.**
- 22. Indicate the measures taken for professional training for young persons with disabilities and job search support.**
- 23. Set out the measures taken to raise awareness in the private sector on the employment of persons with disabilities, including a quota system.**

### **Context**

Employment policy is essentially an issue for regional policy. Although there are major variations in the overall employment figures from region to another, this is not the case for persons with disabilities. Persons with disabilities across Belgium are faced with the same difficulties when it comes to finding a job.

The stakeholders who contributed to the BDF shadow report in order to increase the rate of employment among persons with disabilities advocate an approach based on the principle of mainstreaming, training, raising awareness among employers, the strict application of regulatory measures (which is not always the case at present) and combating barriers to employment.

### **Referral to the articles of the shadow report:**

[Article 27](#) - Work and employment

- Paragraphs 1 to 83: the general issue of work and employment

[Article 24](#) – Education

- Paragraphs 75 and 76: The transition from education to employment

[Article 28](#) – Standard of living and social protection

- Paragraphs 3 to 8: the influence of income on the standard of living

[Article 31](#) – Statistics and data collection

- Paragraphs 1 to 16: impossibility of carrying out an overall analysis on the policies to be implemented, due to the lack of statistical data

[Article 6](#) - Women with disabilities

- Paragraphs 2 and 3, 15 to 20: some women with disabilities do not have the same professional opportunities as men with the same abilities

## [Article 13](#) - Access to justice

- Paragraphs 25 to 29: eligibility to be nominated as a judge and to sit on a jury

## **Recommendation**

This recommendation relates to access to employment for persons with disabilities, development and harmonisation of a policy for true professional integration, through mechanisms under which all the actors are accountable, including in the private sector. Priority must be given to the following themes under the development of this policy:

- Take the philosophy of the Convention as the basis for employment policy for persons with disabilities, particularly with regard to the mainstreaming approach
- Give persons with disabilities the tools in terms of knowledge, social skills, and life skills which will allow them to work, particularly in terms of choosing their path, education, training and support and the skills required when looking for a job.
- Incentivise the recruitment of persons with disabilities and put in place proactive procedural requirements for recruitment and support in the workplace. In particular, the current employment quotas must be respected and the suitability of job quotas in the private sector should be studied in depth.
- Systematically identify the 'barriers to employment' in the legislation and regulations, and develop policies to remove them.

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## Action point n° 16

**24. Set out the measures taken to ensure the provision of specific medical services for various types of disabilities in Belgium, including early diagnosis.**

**25. Set out the measures across various disciplines taken to support persons upon receiving a diagnosis of a disability in the event of a double diagnosis.**

### **Context**

Health is a major issue for many persons with disabilities. Furthermore, some are obliged to make extensive use of health services.

In this regard, the stakeholders to the BDF shadow report wished to draw attention to the high cost of health services, and the fact that rare illnesses are not covered sufficiently and the need for clarification of the legislation on nursing care.

Full accessibility of health infrastructures is among the primary issues in terms of health, for all disabilities, which is not the case at present.

A good relationship with the service providers, based on dialogue and trust, is fundamental to making a diagnosis.

Being able to count on a trusted general practitioner is also an important factor in day-to-day care, as well as a source of support at difficult times. Too few practitioners are trained in communicating with persons with disabilities with difficulties with comprehension. The fears inherent in any situation in relation to health must be maintained at a reasonable level.

Finally, it is important that Belgian society evolves towards a more human conception of health, with less focus on medicine. Care in multidisciplinary settings would be a particular advantage.

### **Referral to the articles of the shadow report:**

#### [Article 25](#) – Health

- Paragraphs 1 to 84: the general issue of health

#### [Article 9](#) – Accessibility

- Paragraphs 58 to 82 and 92 to 96: access to goods and services

#### [Article 10](#) – Right to life

- Paragraphs 1 to 29: Medical practices that can result in death, euthanasia, termination of pregnancy, stereotypes on the quality of life of persons with disabilities

#### [Article 12](#) - Legal capacity on an equal basis with others

- Paragraphs 33 to 36: legal capacity and medical treatment



[Article 16](#) – Freedom from exploitation, violence and abuse

- Paragraphs 18 to 20: physical or chemical imprisonment

**Recommendation**

- This sixth recommendation relates to health issues, in particular: Medical services should be distributed on an equitable basis across Belgium and meet the needs of universal accessibility by offering specific services for every type of disability.
- Disabilities should be diagnosed as early as possible in order to prevent the development of complications. Furthermore, the diagnosis delivered in a medical setting should be followed up by a programme of multidisciplinary support so that the person and/or their representatives will be best placed to take decisions to live their life on an equal basis with others.
- Persons with intellectual disabilities and mental illnesses or with a double diagnosis (disability + mental illness) should receive adequate support and assistance.

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## Action point n° 17

### **26. Set out the measures taken to ensure access to information in formats adapted to various disabilities.**

#### **Context**

Accessible information is an essential prerequisite in order to allow the person to form their own opinion and collect the information they need to take personal decisions, decisions for the future, etc.

It is also essential in terms of facilitating participation in public and political life, including the possibility of standing for election.

#### **Referral to the articles of the shadow report:**

[Article 21](#) – Freedom of expression and opinion, and access to information

- Paragraphs 3 to 5: problems accessing information
- Paragraphs 6 to 11: the cost of accessing information
- Paragraphs 12 to 14: barriers in terms of understanding the information
- Paragraphs 15 to 18: languages
- Paragraphs 19 to 20: the role of the media
- Paragraphs 21 to 31: accessibility online
- Paragraphs 32 to 34: legislation on authors rights and documents in the public domain

[Article 29](#) – Participation in political and public life

- Paragraphs 2 to 55: the right to vote
- Paragraphs 56 to 60: Access to information during election campaigns
- Paragraphs 61 to 64: the right to stand for election
- Paragraphs 76 to 80: Funding for organisations representing persons with disabilities
- Paragraphs 81 to 130: Involvement of representative organisations of persons with disabilities in the decision-making process

[Article 5](#) - Equality of opportunity and non-discrimination

- Paragraphs 39 to 40: persons with disabilities have too little information on the concept of reasonable accommodation

[Article 9](#) – Accessibility

- Paragraphs 58 to 82 and 87 to 96: access to goods and services

[Article 20](#) – Personal mobility

- Paragraphs 9 to 14: problems accessing information in public transport

## **Recommendation**

This 17<sup>th</sup> recommendation is aimed at providing each person with access to the information which they need or is of interest to them. To achieve this, information must be made available in all the formats required.

- Tools should be put in place to facilitate access to information for all in the formats best suited to their situation, so that any person with a disability will have the capacity to form their own opinion and express themselves, particularly by participating in public life by exercising their right to vote as well as standing for election.

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## Action point n° 18

### **27. Set out the measures taken to provide persons with disabilities living in collective accommodation with the privacy required to develop a balanced life.**

#### **Context**

The stakeholders who contributed to the BDF shadow report were unanimous in the view that large-scale institutions are not the ideal model for development, even if they are often the only solution possible having regard to the situation of the person, their needs and financial resources.

However, large institutions and smaller communities should both ensure a minimal, if not optimal level of privacy for their residents. To date, few accommodation structures meet the minimum acceptable level of humanity. Often privacy is limited to the mere formality of a curtain.

The authorities should determine this minimum level, but it is clear to the stakeholders that an individual room should be made available, as a minimum. This is the only way of ensuring that the person will have the personal space required to develop a personal life and live within the community and society.

This is a necessary development, but requires investment. Under no circumstances should this come at the cost of a fall in the quality of service overall. Funding must be provided to support this development.

#### **Referral to the articles of the shadow report:**

[Article 23](#) – Respect for home and the family

- Paragraphs 1 to 19: life in institutions and privacy
- Paragraphs 56 to 63: birth control and the wish to have a family

[Article 22](#) – Respect for privacy

- Paragraphs 11 to 13: privacy in institutions

[Article 6](#) – Women with disabilities

- Paragraphs 23 to 25: women with disabilities are often confronted with difficulties in their private and sexual life and in terms of their wish to have a child

[Article 7](#) – Children with disabilities

- Paragraphs 13 to 15: it is rare that the opinion of children living in institutions is taken into account

[Article 16](#) – Freedom from exploitation, violence and abuse

- Paragraphs 18 to 20: chemical and physical contents

## [Article 25](#) – Health

- Paragraphs 60 to 66: personal and sexual life of persons with disabilities, maternity

### **Recommendation**

This recommendation relates to persons living in supported accommodation or institutions, whether this is a personal choice or because those close to them cannot provide the care they need.

- Persons with disabilities should enjoy the same conditions of privacy as any other person. The competent authorities should put in place the necessary tools to allow the person to develop relationships and their sexual life which form the basis for their integration into society.

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## Action point n° 19

### **28. Set out the concrete measures taken to provide the legal system with the means to implement new legislation on the rules on incapacity.**

#### **Context**

Change is under way with regard to the legal status of persons with disabilities: legislation reforming the rules on incapacity establishing a new status of protection in accordance with the principle of human dignity will enter into force from 2014.

The stakeholders who contributed to the BDF shadow report do not wish to review the positive and negative opinions they expressed during the debate on the legislation. The law must now be implemented. An evaluation is expected to be carried out in the years to come.

However, there is a cause for concern with regard to implementation in terms of the substance of the law itself. The law provides that the *Justice de Paix* (Justice of the Peace) will act as the decision-making body charged with the application of the new legislation. However, the reality is that the *Justice de Paix* cannot keep up with its current workload. Unless the necessary resources are made available, the implementation of the provisions of the new law will be impossible.

#### **Referral to the articles of the shadow report:**

[Article 12](#) – Children with disabilities

- Paragraphs 1 to 40: the general issue of legal recognition

[Article 23](#) - Respect for home and the family

- Articles 29 to 34: persons with disabilities whose with extended minority status

#### **Recommendation**

This recommendation relates to the Law reforming the rules on incapacity and establishing a new status of protection in accordance with the principle of human dignity, which will enter into force in 2014.

- The Justice of the Peace has a key role in the application of the provisions of the new legislation. The magistrates must be provided with all the resources necessary to ensure full implementation of the law. In the absence of proper implementation, the law will be nothing more than an empty shell.

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## Action point n° 20

**29. Set out the measures taken to ensure access to justice for every person with disabilities, regardless of the characteristics of the disability.**

**30. Provide further details on the modifications of the law on social protection with a view to preventing the incarceration of persons with intellectual disabilities or mental health issues.**

### **Context**

All avenues of the justice system must be accessible to every person with disabilities, which is not the case at present.

The person with disabilities must receive adequate legal, material and intellectual support in their dealings with the justice system.

Another major issue is the incarceration of offenders with intellectual disabilities or mental health problems; under no circumstances should persons experiencing these issues be sent to prison.

It often happens that, due to a lack of space in appropriate social protection institutions, detainees remain in psychiatric departments of prisons, and are not provided with the care and support they need, which eliminates any possibility of social reintegration.

This is an unacceptable form of torture in a developed society.

### **Referral to the articles of the shadow report:**

[Article 13](#) - Access to justice

- Paragraphs 1 to 29: the general issue of access to justice

[Article 14](#) - Liberty and security of the person

- Paragraphs 16 to 67: social protection and administrative detention
- Paragraphs 75 to 81: entry into force of the Law on the incarceration of person with mental health issues: problems, on 1 January 2015

[Article 12](#) – Children with disabilities

- Paragraphs 1 to 40: legal capacity of the person with disabilities

[Article 6](#) – Women with disabilities

- Paragraphs to 14 and 36 to 48: women experiencing discrimination or abuse, faced with a complex system

### [Article 27](#) - Work and employment

- Paragraphs 32 to 34: difficulties with the implementation of employment discrimination law in the courts

### [Article 5](#) - Equality and non-discrimination

- Paragraphs 24 to 28, and 41 to 50:

## **Recommendation**

This 20<sup>th</sup> recommendation relates to access to justice, in concrete terms:

- Access to justice must be improved. In this regard, persons with disabilities must have access to buildings and to information.
- Persons with disabilities must also be able to count on adequate support, tailored to their particular disability. All staff in the justice system must receive training in this regard.
- Under no circumstances should persons experiencing an intellectual disability or mental health issues be placed in prison, which constitutes an unacceptable form of psychological torture.
- Persons who are currently being detained must receive support from a multidisciplinary team outside of the prison system, in order to facilitate their reintegration into society.

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## Action point n° 21

**31. Explain the reasons for which persons who develop a disability after the age of 65 are discriminated against in comparison with other persons with disabilities.**

### **Context**

Persons who receive a diagnosis of a disability after the age of 65 do not have access to the range of support available from the Regions to facilitate their independence.

As they do not receive this support, their independence is diminished and their entry into 'collective' institutions is accelerated.

Similarly, the social welfare payments to persons with disabilities vary depending on whether the disability was recognised before or after the age of 65.

### **Referral to the articles of the shadow report:**

[Article 28](#) – Adequate standard of living and social protection

- Paragraphs 34 to 38: support payments to older persons

[Article 20](#) – Personal mobility

- Paragraphs 104 to 108, and 112 to 113:

### **Recommendation**

This 21<sup>st</sup> recommendation relates to discrimination against persons who receive a diagnosis of a disability after the age of 65.

- It is essential to eliminate all existing differences in treatment actions of the authorities, with regard to the diagnosis of the disability before or after the age of 65.

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## Part 2:

### **Detailed analysis by article**

# Article 5: Equality and non-discrimination

## **An overall theme**

1. Article 5 sets out the requirements under the convention in terms of equal treatment and non-discrimination. These principles first appeared in Belgian legislation as early as 1981<sup>6</sup>.
2. In legal terms, all citizens have the same rights and the same rights to protection. The same applies to discrimination. Persons with disabilities have the same rights as any other person.
3. In reality, the ORPD and ASPwD bodies have found that persons with disability face discrimination on a regular basis.
4. Although the principles are set out in legislation, progress must be made in practice and attitudes must be change. Over the course of 25 years, it is legitimate to expect results in terms of opinions. This is not the case in reality.
5. Non-discrimination is of course a cross-cutting theme and we wish to emphasise its overall impact. Reference is made to this theme in the chapters on the various articles.

## **Existing tools**

6. In Belgium, when a person experiences discrimination, they can invoke they law of 10 May 2007, and the various regional decrees <sup>7</sup> transposing the European Directive prohibiting discrimination on the grounds of religious or philosophical conviction, disability age or sexual orientation<sup>8</sup>.
7. It is also possible to call on the Centre for Equality of Opportunity and Combating Racism (CEOOR) to obtain the necessary assistance to enforce their rights<sup>9</sup>.
8. Finally the governments are implementing diversity plans, but it is too early to evaluate the results. The ORPD and ASPwD bodies were consulted, but reported that the consultation period were far too short.

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<sup>6</sup> <http://www.diversitybelgium.be/overview-belgian-antidiscrimination-legislation>

<sup>7</sup> <http://www.diversitybelgium.be/overview-belgian-antidiscrimination-legislation>

<sup>8</sup> Directive [2000/78/EU](#)

<sup>9</sup> <http://www.diversite.be/poser-une-question-%E2%80%93-introduire-un-signalement>

## **The CEOOR**

9. The CEOOR has become the central point of reference for persons experiencing discrimination on the grounds of their disability.
10. The CEOOR has established a long-term working relationship with the ORPD bodies by establishing agreements with many of them<sup>10</sup>. It is therefore important to refer to the work carried out by the CEOOR. Cooperation agreements are important as the CEOOR procedures are not well-known among the general public.
11. Persons with disabilities tend to hesitate to contact the CEOOR. The ORPD bodies serve as important contact points in this regard. It is also important to note that the CEOOR essentially relies on referrals from individuals. The figures mentioned hereinafter must therefore be understood as representing a 'minimal' amount of the actual figures.

## **Quantitative data**

12. The Discrimination/Diversity Report 2012<sup>11</sup> by the CEOOR contains a chapter on statistics which provides useful data with a view to understanding the extent of the problem<sup>12</sup>.
13. We noted the following figures:
  - The CEOOR received 4,226 complaints on the ground of discrimination and declared their competence with regard to 1,315. This constitutes an increase of 3% in comparison with 2011.
  - Disability is the third most common ground of discrimination, with 261 new complaints, distributed as follows:
    - Goods and services: 126
    - Employment: 47
    - Education: 30
    - Living in the community: 14
    - Police and justice: 12
    - Media: 4
    - Other: 28
  - The CEOOR brought five cases to the courts, including one for discrimination of the grounds of disability.
  - Forty-six complaints were settled by negotiation, almost half of which related to disability and health.

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<sup>10</sup> <http://www.diversitybelgium.be/links#handicap>

<sup>11</sup> <http://www.diversite.be/rapport-annuel-discriminationdiversit%C3%A9-2012>

<sup>12</sup> It is interesting to note that the report is also available on the CEOOR website in an 'easy to read' version. This can only be expected from the CEOOR, but given that it is extremely rare for an organisation to publish an 'easy to read' version of their report, it should be noted that the report is provided for educational purposes.

## Multiple ground of discrimination

14. Often, the person is discriminated against both on the basis of their disability and for other reasons: gender, age, ethnic origin, etc.

## Interpretation of the CEOOR data

15. The most obvious change from the perspective of the ASPwD and ORPD bodies is that disability is the third most common ground of discrimination after racial and religious discrimination, which have replaced disability which was the second most common form of discrimination in 2011.

16. The number of complaints of discrimination on the ground of disability and health significantly increased in 2012: it is therefore reasonable to take the view that it is becoming more and more common for persons with disabilities, with the help of representative organisations<sup>13</sup>, to consult the CEOOR for advice and to enforce their rights.

17. However, there has been little change the number of new cases filed by the CEOOR for discrimination based on disability over the past three years and there has even been a slight decrease (6%) in comparison with 2011.

18. However, this does not necessarily mean that there has been a fall in incidences of discrimination, or that persons with disabilities now have sufficient knowledge of their rights and the CEOOR procedures.

## Case study

19. On 4 and 5 December 2012, a number of persons with disabilities looked for accommodation in Brussels as part of the European Parliament Day of Persons with Disabilities.
20. The BDF was contacted by the representative of the national council for persons with disabilities in France with regard to the fact that a blind person was required to pay EUR 65 extra in order to stay with their guide dog.
21. The BDF confirmed that this was in violation of legislation in Brussels on equality of opportunity and that they should contact the CEOOR to find a solution.
22. The person returned to the hotel reception and mentioned that contact had been made with the CEOOR. The additional charge was dropped immediately without any intervention on the part of the CEOOR.
23. Of course, it is a cause for concern that the CEOOR had to be invoked in order to secure respect for a basic right. However, it is interesting to note that this was sufficient to motivate the parties to come to an agreement quickly and at a low cost.

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<sup>13</sup> The CEOOR has concluded a number of cooperation agreements with organisations representing persons with disabilities

## **Difficulties proving the existence of discrimination**

24. A person with disabilities who has experienced discrimination on the grounds of disability can take their case to the courts. However, it is rare for a case to reach the stage with the sanctions provided for under the law on non-discrimination apply.
25. The CEOOR dispenses advice to litigants on the likelihood that they will succeed in the courts: the lack of sufficient proof is the stumbling block to obtaining justice.
26. Many instances of discrimination occur orally, in the absence of witnesses and can go no further than being filed by the public prosecutor.
27. In the event of litigation, the CEOOR makes contact with the person, as well as the defendant business, in order to initiate a mediation process based on the terms of the law. Such intervention facilitates the resolution of a certain number of disputes.
28. The CEOOR first looks to mediation, rather than the legal process to find a negotiated solution, particularly with regard to reasonable accommodation, rather than taking the risk of losing a case, which would subsequently serve as a precedent. This explains why the CEOOR has only taken a small number of cases to the courts.

## **Reasonable accommodation**

29. The Law of 10 May 2007 sets out the concept of reasonable accommodation.
30. However, there is a clear discrepancy between the intention of the legislator and the reality on the ground. The scope of the principle of reasonable accommodation is particularly lacking in precision, to the extent that it is difficult, or even impossible to know what can be requested in terms of reasonable accommodation.
31. Conversely, state initiatives are used by some service providers as a justification for not making reasonable accommodation, despite their obligations.

### Case study

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| <p>32. On the pretext that French-speaking deaf persons already receive a certain number of hours of sign-language interpretation per year, employers, public service authorities and event organisers often fail to cater for their needs. The result is that deaf persons either use up their quota quickly, or do not have the opportunity to participate in certain events on an equal basis with others.</p> |
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### Case study

33. The State noted in the official report that: 'Like any other person, persons with disabilities can make use of the law. In order to ensure full legal protection, measures have been provided for such as interpreters, including sign-language interpreters'
34. However, across much of the French-speaking part of the country, no measures have been taken to organise either initial training or continuing professional development for sign-language interpreters. The profession has no legal status whatsoever. There are far too few interpreters to meet the needs of deaf persons using French sign-language.
35. Under such circumstances, deaf persons cannot exercise their rights before the law on a truly equal basis with others.
36. The question for the person with disabilities is to determine whether the solutions envisaged constitute reasonable accommodation or not. If the request is accepted, all the better. If not, what can be done? Go to the courts and enter into a long, costly and risky procedure?
37. At best, such a procedure will reach its conclusion long after that failure to make reasonable accommodation has produced its harmful effects.

### Case study

38. There have been many failures to make reasonable accommodation for persons with disabilities in the education system. The judicial process involves delays in terms of the application of the decision, such that the child concerned will have passed the stage of education referred to in the complaint. The child will not have had the opportunity to follow the course of education of their choice, and from their perspective, the delay is unreasonable.
39. At present, the information available to persons with disabilities on the principle of reasonable accommodation is too theoretical to be used in practice. The ASPwD and ORPD bodies expressed their regret that they do not have sufficient resources to provide support in this regard.
40. The best option for persons with disabilities is to contact the CEOOR in order to decide whether to take action. As the situations stands, persons tend to hesitate and do not contact the CEOOR.

### **The limitations of the justice system**

41. Whether the person with disabilities who has experienced discrimination takes their case to court, either with the help of the CEOOR, or individually, proof is the main issue to contend with.
42. In many cases, persons with disabilities who experience discrimination do not have the necessary evidence to resolve the discriminatory behaviour or seek redress in the courts.
43. Often, cases are not followed up by the public prosecutor.

44. The majority of discriminatory incidents occur verbally or are hidden behind claims that are based on elements other than the disability. Persons with disabilities therefore have a high level of awareness of discrimination.
45. However, there is one exemplary case where deaf persons secured a judgment against the government of the Region of Flanders for failure to make reasonable accommodation<sup>14</sup>. There is no doubt that this will become the first piece of case-law that can be relied on in the courts.
46. Another aspect of judicial procedure is that only the person who has experienced a wrong can take a case to the courts. In order for ORPD bodies to take a case on behalf of or jointly with an individual, this possibility must be set out in the incorporation documents, which is rarely the case.
47. The CEOOR has the capacity to take a case to the courts under the anti-discrimination law of 10 May 2007 against any act which violates the principle of non-discrimination. Cases can also be taken by the CEOOR based on the decree of the Flemish Community of 2008.
48. The CEOOR makes use of this avenue, but with great care, it would be counter-productive if cases were lost. The CEOOR only takes legal action where they have a good chance of succeeding and where winning the case would lead to a significant change in society: with regard to case-law, clarification of the legislation, or particularly serious incidents, such as hate crimes.
49. The cases taken by the CEOOR in 2010 and 2011 gave rise to precedent with regard to leisure<sup>15</sup> and work<sup>16</sup> and in three cases taken to the courts, the first with regard to a refusal to employ a person suffering from syndactyly, a condition where two or more digits are fused together, the second for dismissal of a father of a child with a disability, and the third for dismissal due to pregnancy with medical complications<sup>17</sup>. Over the course of 2012, the CEOOR took five cases to the courts. One of these cases related to a case of discrimination on the ground of disability.
50. The courts do not seem to have the necessary case-law at their disposal to make decisions in favour of persons with disabilities. Often, cases are not followed up by the public prosecutor.

## Conclusion

51. In reality, the ORPD and ASPwD bodies have found that persons with disability face discrimination on a regular basis. Although, as we have seen, the principles are set out in legislation, what is needed now is a change in attitudes. In this regard, the ORPD and ASPwD bodies wish to highlight two main issues: first the lack of inclusiveness in Belgian society and the organisation of Belgian society.

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<sup>14</sup> Cf. Article 24 - Education

<sup>15</sup> Commercial Court, Ghent, 29/09/2010, confirmed on appeal C. app. Ghent, 20/01/2011. Cf. Rapport Discrimination/Diversité (Discrimination/Diversity Report) [2010](#), p.132.

<sup>16</sup> Chambre du travail (Labour Court), Anvers, 21/11/2011. Cf. Rapport Discrimination/Diversité [2011](#), p.132.

<sup>17</sup> Cf. Rapport Discrimination/Diversité [2011](#), p.143



52. The media are currently focused almost exclusively on ratings. Too much emphasis is placed on sensationalism to the detriment of principles of life in society, including equality of opportunity and non-discrimination.
53. With regard to society, it is clear that the lack of inclusiveness in Belgian society increases the impact of discrimination and failure to provide for reasonable accommodation.

### ***Recommendation***

1. Although it is difficult to change attitudes, the principles of non-discrimination should be recalled at every opportunity, not only in national campaigns, but also in the media, in order to reach the greatest number possible.

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## **Article 6: Women with disabilities**

1. Gender-based discrimination continues in Belgian society, in spite of efforts to reduce it. It arises from the roles traditionally assigned to men and women.
2. In reality, women and girls with disabilities do not have the same educational opportunities, training, employment supports; they do not occupy the same positions and do not receive the same salaries. Even though they have equal rights, they do not enjoy them in practice.
3. Disabilities exacerbate gender-based discrimination and serve as an alibi to maintain the discrimination. Often, it is more acceptable for a woman with a disability to be dependent or to give up work following an accident.

### **Women with disabilities in the eyes of the law**

4. The laws and regulations in force in Belgium do not give any particular attention to the rights of women with disabilities. The law is supposed to apply to all and no specific provisions are made with regard to women with disabilities.
5. Women with disabilities confronted with discrimination can invoke the legislation which prohibits discrimination with regard to women and/or the legislation which prohibits discrimination against persons with disabilities.
6. However, experience on the ground shows that in many cases, women with disabilities are confronted with a double discrimination, first, as a woman, and second, as a person with a disability. An analysis of these issues is set out in 'Femmes et handicaps' (Women and disabilities)<sup>18</sup>.
7. At present, no particular policy has been developed to combat multiple discriminations.
8. In Points 16, 17 and 18, the official report by Belgium does not give the full picture of the situation in Belgium in terms of equality between men and women. Explicit reference is made only to the way in which the federal legislation and regulations by the French Community, ignoring the other authorities.

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<sup>18</sup> Femmes et handicaps, [http://www.universitedesfemmes.be/052\\_chronique-feministe.php?idchro=36](http://www.universitedesfemmes.be/052_chronique-feministe.php?idchro=36)

## **Legal remedies**

9. The complexity of the Belgian legal system <sup>19</sup> makes it particularly difficult for women with disabilities to inform themselves of their rights and take appropriate action to enforce them: this is left to a system where the person becomes entirely dependent on assistance from intermediate bodies.
10. In this regard, to obtain legal assistance, depending on the particular case, the applicant must contact either *l'Institut pour l'égalité des femmes et des hommes* (Institute for Equality between Men and Women - IEFH)<sup>20</sup>, or the CECLCR<sup>21</sup>.
11. The presence of two distinct procedures, in itself, leads to uncertainty, to the detriment of potential applicants. It also results in delays and in time being lost, which explains why injustices and abuse continue to be perpetrated.
12. Paradoxically, persons who find themselves in a difficult situation can contact a wide range of institutions, NGOs, family organisations, businesses and even 'mercenaries' to find a solution to their problems:
  - Federal state bodies
  - Regional agencies
  - Services run by the communes - *Centre public d'action sociale* (Public Centre for Social Welfare - CPAS)
  - Social services of mutual bodies
  - Unions
  - Support services
  - Organisations representing persons with disabilities
  - Local government bodies
  - Police
  - Lawyers
  - etc.
13. The relevant contact point depends on the particular case in hand. How can persons decide who to contact first, depending on their situation? The wide range of bodies, the roles of which overlap to some extent, and the lack of transparency in the range of service may become a source of confusion, occasionally accentuated depending on the level of education, cognitive capacity, independence and even the helplessness of the person with a disability.
14. With regard to the dissemination of information, the information is not always available in the relevant formats to all persons with disabilities (Braille, sign-language, simplified language, and accessible websites).

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<sup>19</sup> [http://www.belgium.be/en/about\\_belgium/government/federale\\_staat/](http://www.belgium.be/en/about_belgium/government/federale_staat/)

<sup>20</sup> <http://iqvm-iefh.belgium.be/en/>

<sup>21</sup> <http://www.diversitybelgium.be/victim-discrimination-0>

## **Women with disabilities and the labour market**

15. Women with disabilities are confronted with a double discrimination on the labour market.
16. Despite the implementation of communication and awareness-raising initiatives, we are still a long way off achieving equality between men and women on the labour market, particularly on the open labour market.
17. For many women with disabilities, this is an all too apparent fact, even with regard to adapted employment<sup>22</sup>. Although communication and raising awareness initiatives are well developed with regard to women on the labour market, this is not the case for women with disabilities.
18. 'Gender and ETA' a study by the King Baudouin Foundation, the AWIPH and PHARE illustrates these realities<sup>23</sup>.
19. In Belgian society, getting and keeping a job and having an income are important factors in terms of integration into society. The double discrimination referred to above constitutes a barrier to participation in society for women with disabilities and all the related activities, consumption, self-worth, social life, etc.
20. The authorities need to have sufficient statistical data at their disposal in order to develop the necessary policies with regard to access to employment for persons with disabilities. This is not the case at present<sup>24</sup>.

## **Women with disabilities**

21. In terms of access to education and professional training, women with disabilities also encounter problems due to double discrimination: they are often confined to courses which are considered to be of a sufficient level, even though they could undoubtedly achieve better results if other courses were better adapted with a higher level of support.
22. Women with disabilities should be encouraged and supported to take courses which respond to the needs of employers. They could therefore take on positions of responsibility based on their real ability and develop the self-worth needed to thrive in life.

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<sup>22</sup> In French-speaking Belgium, the term 'protected employment' was abandoned in favour of 'adapted employment'

<sup>23</sup> [http://www.kbs-frb.be/uploadedFiles/KBS-FRB/05\) Pictures, documents and external sites/09\) Publications/PUB\\_2011\\_3036\\_GentreEtEta.pdf](http://www.kbs-frb.be/uploadedFiles/KBS-FRB/05) Pictures, documents and external sites/09) Publications/PUB_2011_3036_GentreEtEta.pdf)

<sup>24</sup> See Article 31 – Statistics and data collection

## **Women with disabilities and relationships**

23. Developing relationships and a sexual life is fundamental need for every human being. Issues of relationships and sexuality are often intertwined. Persons with disabilities are often denied a sexual life, both within the family and institutions. Positive initiatives have been taken by certain institutions, with their own resources, without official support. However, in a large number of institutions, sexual life is often 'regulated', or even prohibited. In this regard, it is worth noting that the absence of legislation providing for space for couples. This reality is brushed under the carpet.
24. The possibility for persons with disabilities to develop sexual relationships remains taboo in Belgium. Persons with disabilities are not devoid of sexuality.<sup>25</sup> In practice, it appears that the sexuality of men with disabilities is more widely accepted than that of women with disabilities<sup>26</sup>.
25. This is undoubtedly related to the fact that for women with disabilities, the development of a sexual life implies the possibility of having children, which is difficult to accept for a large part of the population, and even persons with disabilities themselves<sup>27</sup>.
26. Faced with this 'risk', the response consists, all too often, in limiting the development of the relationships and sexuality of persons with disabilities. Often, this leads to the administration of contraceptives or forced sterilisation, or even the deprivation of the right to sexuality.
27. The only reliable data available dates from 1999<sup>28</sup>. In the years following this study, it appears that there has been no improvement, but are limited to relying on certain indicators and anonymous testimonials to support this hypothesis.
28. It appears that the forced sterilisation of women with disabilities, particularly those with an intellectual disability, is widespread in the institutions for persons with disabilities, although this remains a taboo subject. In a large number of accommodation centres, sterilisation is an entry requirement for women on the pretext of protecting them from an unwanted pregnancy<sup>29</sup>.
29. Given the shortage of places in institutions and the general shortage of support and assistance services for persons with disabilities, families are often left with no choice: a place becomes available, and the sterilisation is agreed to, along with the related risks of physical and psychological abuse. Forced sterilisation is a violation of the integrity of women.

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<sup>25</sup> Seminar "Seksualiteit en relaties bij mensen met een handicap", Universitaire Centrum Sint-Ignatius, Antwerp, 6/10/2011, [http://www.ucsia.org/main.aspx?c=\\*UCSIA2&n=97681&ct=97381&e=267506](http://www.ucsia.org/main.aspx?c=*UCSIA2&n=97681&ct=97381&e=267506)

<sup>26</sup> Conference 'Vie affective et sexuelle des personnes handicapées' (Relationships and sexuality of persons with disabilities' – COCOF – 2008

<sup>27</sup> Statement (2010) <http://ententecarolo.be/temoignage66d.html>

<sup>28</sup> Abstracts : <http://www.ncbi.nlm.nih.gov/pubmed/11869381> and <http://www.ncbi.nlm.nih.gov/pubmed/15504650>

<sup>29</sup> <http://www.asph.be/Documents/analyses-etudes-2009-PDF-anysurfer/sterilisation-personnes-handicapees.pdf>

## **Women with disabilities and maternity**

30. As is the case for men, women with disabilities have to manage their disability and their situation of dependence, but they also have to manage their sexuality and, in some cases, their desire to have a child<sup>30</sup>. The desire to have a child is an undeniable biological function in women, and in men.
31. The desire of women with disabilities to have children, particularly women with intellectual disabilities, is feared by medical professionals, family and friends, and society in general, because the view is taken that they are incapable of taking care of a child, owing to their disability<sup>31</sup>. Furthermore, it is a matter of consensus that the child of a mother with intellectual disabilities will automatically inherit that deficiency. This has not been proven by scientific studies.
32. In reality, the experience of certain support services<sup>32</sup> shows that women with intellectual disabilities are capable of raising children if they receive the necessary support.
33. Even if the desire to have a child is subject to restrictions, support should be provided with regard to contraception. The same applies to unwanted pregnancies.
34. At present, resources, grants and the legal framework are limited and insufficient to support mothers with disabilities, including the physical accessibility of family planning centres<sup>33</sup>. Furthermore, there is a flagrant lack of training and specialisation among staff, as well as a low number of office hours, not only during pregnancy, but also after the birth of the child.
35. Finally, in legislative terms, a woman with disabilities who is accorded the status of a minor is deprived of the right to exercise parental authority<sup>34</sup>.

## **Women with disabilities and maternity**

36. Many women with disabilities find themselves in a situation where they are victims of violence. Research shows that women with disabilities are twice as likely to be subject to violence and sexual abuse than women who do not have a disability<sup>35</sup>.
37. In theory, they can enforce their rights in this regard.
38. However, in order to do so, they must have sufficient knowledge of their rights, of the procedures in force and the assistance they receive, not only in terms of enforcing their rights, but also to leave the situation of dependence.
39. Furthermore, women with disabilities have greater difficulties expressing themselves and communicating their suffering. In this regard, 'functional' difficulties are exacerbated by the ever-present stereotypes of persons with disabilities.

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<sup>30</sup> Testimonial (2010): <http://ententecarolo.be/temoignage66b.html>

<sup>31</sup> <http://www.asph.be/Documents/analyses-etudes-2007-PDF-anysurfer/femme-handicap-desir-enfant.pdf>

<sup>32</sup> <http://www.labiso.be/?page=VisualiserContenuOuvrage&Id=482>

<sup>33</sup> See Article 9 – Accessibility

<sup>34</sup> See Article 12 – Legal recognition

<sup>35</sup> [http://www.persephonevzw.org/dossiers/geweld/data/Geweld\\_def\\_E\\_vertaling.pdf](http://www.persephonevzw.org/dossiers/geweld/data/Geweld_def_E_vertaling.pdf)

40. One of the difficulties inherent in situation of violence experienced by women with disabilities is related to poor management of their own frustrations. Women with disabilities often live in stressful situations which often lead to violence, by others and by themselves.

### Case study

41. By way of illustration of the problems accessing existing services in the area of domestic violence, we wish to emphasise that the *Fédération Francophone des Sourds de Belgique* (French-Speaking Federation of Deaf Persons in Europe - FFSEB) had the opportunity to meet with those running the Domestic Violence Helpline 36 with a view to making the service accessible to deaf persons.
42. The positive aspect of this experience was that the Helpline staff was well aware of the issues at stake and open to seeking a solution.
43. However, the issue of anonymity is crucial in this type of situation.
44. In practical terms, the most effective solution would be to call on persons who master sign-language and rely on a videophone. This is not an ideal solution in terms of maintaining anonymity given that sign language relies on both facial expressions and gestures. Furthermore, it is difficult to find competent staff.
45. Another solution could be to work with a sign-language interpreter, which would involve major difficulties given the limited number of interpreters available in Belgium. This also limits anonymity considerably as the deaf person is confronted with a high probability communicating with a sign-language interpreter whose service they use on other occasions. A specific time for the call would have to be allocated, which does not correspond to the normal operation of the service which relies on immediate communication.
46. Other media such as email and 'chat' were also considered but receive a lukewarm reception as they do not correspond to the way in which the Helpline normally operates. Set-up of such services would also have a significant impact on the budget of the organisation which operates with a limited budget.
47. In the end, staff at the helpline was made aware of the issues but nothing has been put in place to respond to the problem.
48. This case demonstrates the extent of the problem of obtaining a satisfactory solution on an equal basis with others.

49. Based on the consultation, the following recommendations to improve the situation of women with disabilities have been made:

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<sup>36</sup> Note: this service is only available in the French Community in Belgium

## ***Recommendations***

1. Simplify the administrative mechanisms for access to information and enforcement of the rights of persons with disabilities.
2. Put in place specific policies with a view to reducing the extent of the discrimination with which women are confronted.
3. Develop awareness-raising initiatives for employers and colleagues for the integration of women with disabilities into the workplace.
4. Develop statistics of the experience of women with disabilities in order to develop policies with a view to improving the situation.
5. Develop awareness-raising initiatives among the general regarding relationships and sexuality of persons with disabilities.
6. Provide specific support for women with disabilities for the development of relationships and sexuality.
7. Offer support to women with disabilities, in order to diffuse situations likely to generate conflicts or violence.
8. Implement an awareness-raising strategy with regard to situations involving multiple discriminations.
9. Set up rooms for couples in institutions accommodating persons with disabilities
10. Provide funding for the relevant bodies to support persons with disabilities who wish to have a child, or persons with disabilities who wish to develop relationships and sexuality aside from any desire to have a child.
11. Provide specific long-term support to mothers with disabilities during pregnancy and following the birth of the child.

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## **Article 7: Children with disabilities**

1. The present chapter was drafted in collaboration with the NGOs for parents and families of children with disabilities, and not directly with the children themselves. The NGOs had already presented their testimonials as part of the 'What do You Think' project<sup>37</sup> as well as the '*Deuxième rapport des enfants de Belgique à l'attention du Comité des droits de l'enfant*' (Second Report on Children in Belgium for the Attention of the Committee on the Rights of the Child) 1 February 2010<sup>38</sup>.

### **The best interests of the child**

2. The Belgian constitution provides that the interest of the child is the primary consideration to be taken into account in any decision concerning them<sup>39</sup>. This principle also applies to children with disabilities.
3. In reality, this principle is rarely fully applied. Many children with disabilities do not have access to the various goods and services which should be available to them, on an equal basis with others.
4. The specific needs of children with disabilities are rarely taken into consideration in the legislation with regard to children, which runs counter to the principles of diversity and inclusion.
5. The legislation organising Belgian society should provide for the necessary measures in order to meet the needs of children with disabilities.
6. Another solution would involve developing specific legislation on these needs.

### **Listening to the child**

7. The family is the natural environment for children with disabilities to live.
8. From the time the diagnosis of the disability is delivered to parents, they must be ready to care for the child. The quality of their understanding of what the disability will mean for them and for their child will determine their future relationship and the development of a constructive dialogue in order to build an optimal parent-child relationship.
9. As is the case with all parent-child or adult-child relationships, listening and dialogue are central to developing a positive relationship, based on mutual trust.
10. The quality of the parent-child relationship will form the basis on which the child constructs their relationship with the world and their understanding of the society in

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<sup>37</sup> [http://www.unicef.be/webdata/press-release-pdf/2009-09-08/Nous\\_sommes\\_tout\\_dabord\\_des\\_jeunes\\_FR.pdf](http://www.unicef.be/webdata/press-release-pdf/2009-09-08/Nous_sommes_tout_dabord_des_jeunes_FR.pdf)

<sup>38</sup> <http://crin.org/docs/ChildrenReportBelgium.pdf> (pp. 44-47)

<sup>39</sup> Belgian Constitution, Article 22bis, Paragraph 4

which they will have to find their place. At present, Belgian society is ill-adapted to the need of children and adults with disabilities.

11. It is therefore clear that the tools required to listen to the child must be put in place in the family, first and foremost. The same is true for any child. In the case children with disabilities living with their families, tools should be put in place to ensure good communication and dialogue.
12. In this regard, there is a lack of assistance for families in Belgium. The support structures are not sufficiently well-developed to ensure that the child with disabilities is cared for from a young age. Often, the preparation of parents is limited to the information received from their doctor or found on the Internet. It is rare for support to be received from a multidisciplinary team<sup>40</sup>.
13. In some circumstances, it may be that the best solution for the child is not within the family, but rather in a special institution. Often, the best solution is found in a combination of both, with time spent in the institution combined with time with their family. Regardless of the circumstances, listening to the child should be a primary consideration.
14. In reality, it should be noted that in the institutions, the voice of the child is rarely heard and their right to choose is rarely respected. Very few specialised centres set aside time specifically to listen to the opinions of the children using their services. Even when a mechanism for listening to the child's needs is in place, it often takes the form of groups of representatives, i.e. parents and teachers.
15. Similarly, support is rarely tailored to the age and type of disability experienced by the child.
16. In terms of access to justice, mechanisms are in place to take into account the testimonials, expectations or experience of the child. However, those responsible for hearing depositions have no specific training on dealing with children with disabilities,

### **The right to a quality education**

17. In principle, every child should have access to a high-quality education.
18. The fundamental principle of education is that a child is a child, first and foremost, and should not be reduced merely to his/her weaknesses.
19. Although good results have been achieved with regard to the education of visually impaired children, with the right support and assistance, it is clear that the Belgian education system do not generally fulfil the criteria of an inclusive education.

### **Case study**

20. By way of illustration of the campaign led by persons with disabilities, their family and representative organisations with a view to ensuring respect for access to a quality education for all, we describe below the complaint submitted by the parents of four deaf

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<sup>40</sup> Support from a multidisciplinary team would also be an asset right throughout childhood, particularly in school

children against the Minister for Education for Flanders and a number of schools in order to enforce the rights of their children to inclusive education <sup>41</sup>.

21. The complaint was based on the fact that, due to a lack of resources for interpretation, the children in question were not in a position to participate for over half of their education.
22. In July 2009, the Court of First Instance of Gent held that this failure to make reasonable accommodation by government of Flanders constituted discrimination. The government of Flanders was ordered to ensure that the children receive translation into Flemish sign-language during at least 70% of class time. The court also ordered the application of a financial penalty in the event of non-enforcement.
23. The government of Flanders choose not to defer to the situation and appealed the decision.
24. In September 2011, the Court of Appeal held that the appeal was unfounded. The judgment confirms that the government cannot rely on individuals to make reasonable accommodation. The Court noted that a bordering country, the Netherlands, interpretation is provided for 100% of classes. The argument advanced by the government of Flanders regarding the shortage of Flemish sign-language interpreters as the Flemish school inspection service has determined that there are a sufficient number of interpretation, but the low level of funding set aside for their pay means that they cannot work on a professional basis.
25. This judgment is an important precedent in the fight against discrimination and the principle of reasonable accommodation.
26. It was followed up by the judgment of the Ghent Court of Appeal in September 2012: deaf students were granted almost all the hours of interpretation required. In 2012-2013, a VGT (Flemish sign-language) interpreter will be assigned to them for an average of 40% of the hours required.
27. A strategy has been drawn up with a view to attaining 70% obligatory interpretation by 2015-2016. Over the course of three years, the salary of interpreters will be increased by EUR 2 each year. Currently<sup>42</sup>, the right to interpretation in education has not yet been set out in a ministerial order and there has been no change to the status of the VGT interpreters.

28. In concrete terms, children with disabilities are systematically directed to specialised institutions, where the focus is almost exclusively on catering for the disability.

29. Inclusiveness is not a priority in the Belgian education model.

30. It is worth noting that this should be addressed even before school-going age<sup>43</sup> as pre-school activities are generally not based on an inclusive model, and with the exception of a small number of pilot projects, children with disabilities are separated from their peers

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<sup>41</sup> It is worth noting that the case study described here relates only to the Community of Flanders (*cf.* Introductory chapter on federal structures in Belgium).

<sup>42</sup> December 2012

<sup>43</sup> The compulsory school age in Belgium is 6.

at a very young age. This state of affairs makes it difficult to take an inclusive approach at later stages of life: family life, professional life, relationships and sexuality, leisure.

### Case study

31. By way of illustration, we will describe the case of school transport, which clearly demonstrates the cumulative effects of the lack of equality of treatment experienced by many children with disabilities and their parents.
  32. Education is a fundamental right. Children with disabilities enjoy this right but receive a lower standard of education than other children.
  33. Many have to travel further to attend a school which is tailored to their needs.
  34. In order to support the families and children in accessing education tailored to their disability, the Regions and Communities organise school transport specifically for children with disabilities. Although their intentions are good,
  35. children with disabilities often experience difficult transport conditions which, in certain cases, constitute abuse. The time spent on the commute is the main issue.
  36. Some children spend a number of hours on the bus to the detriment of their health, education and socialisation.
  37. The development of educational inclusion initiatives will mean that children can attend schools closer to where they live. Such a change would facilitate learning as the children will have more energy.
38. Children with disabilities following a specialised course of education in a special school are often faced with another problem : the absence of publicly-funded daycare, which has a major impact on the child and their family, particularly in terms of their quality of life.
39. This also interferes with the quality of education of other children. In many cases, one of the parents has to make sacrifices in their career, or even give up their job, resulting in 'disability by association'.
40. Another issue that cannot be ignored regarding special education in the French Community in Belgium is the absence of daycare and supervised homework time. Contrary to mainstream education, any such support put in place by schools receives no public funding.<sup>44</sup>.

### **The right to leisure**

41. The majority of non-educational institutions<sup>45</sup>, which are essential social outlets, make no provision for children with disabilities.

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<sup>44</sup> The Decree by the French Community of 28/04/2004 on recognition and support for supervised study time makes no provision for the needs of children with disabilities : [http://www.galillex.cfwb.be/document/pdf/28805\\_000.pdf](http://www.galillex.cfwb.be/document/pdf/28805_000.pdf)

<sup>45</sup> The decree on the coordination of activities for children during their leisure time and support outside school fails to provide for children with disabilities.

42. The result is that children with disabilities have a very limited range of activities to choose from. Their desire to participate in society is drastically limited due to the lack of organisation in this regard. The same is true for holidays.
43. Pilot projects have been initiated <sup>46</sup> and, with the right support and adaptations, the inclusion of children with disabilities within groups of other children have proven to be successful. The pilot projects demonstrate that inclusion can be beneficial to all.
44. Even where legislation has provided for inclusion for children with disabilities, the measures are rarely followed up. This has been the case for the decree on social and professional integration of persons with disabilities <sup>47</sup> and the order of the *Collège de la Commission Communautaire Française* (French Community Commission) the accreditation and funding of day centres for school children<sup>48</sup>.
45. It is important to draw attention to the problem of disability by association (see also, hereafter, Points 60 to 64). The parents of children with disabilities have to invest much of their time and potential for personal and professional development supporting their child with disabilities in their education.

### **Freedom of choice**

46. Freedom to choose between special and inclusive activities should apply to both education and leisure. Furthermore, it should be possible to switch from one to the other without difficulty.
47. Freedom of choice facilitates equality between all children.
48. In reality, the right to choose is highly restricted due to the limited range of educational and leisure options. In many cases, special education is the only possibility for children with disabilities.
49. Cases where children cannot access any special education which meets their needs are becoming more and more common due to a shortage of places. Such cases, where children receive no education whatsoever, are a regular occurrence, as attested to by the existence of *Services d'accueil de jour pour jeunes non scolarisables* (Daycare Services for Children not Attending School - SAJJNS)<sup>49</sup>.

### **The lack of diversity**

50. In general terms, implementation of the principles of inclusion has failed to lead to support for diversity on the ground.

<sup>46</sup> [http://www.enseignement.be/index.php?page=23827&do\\_id=5464&do\\_check](http://www.enseignement.be/index.php?page=23827&do_id=5464&do_check)

<sup>47</sup> Decree of the French Community of 3/7/1991 on the social and professional integration of persons with disabilities - <http://www.pfwb.be/le-travail-du-parlement/doc-et-pub/documents-parlementaires-et-decrets/documents/000044474>

<sup>48</sup> Order of the 'Commission Communautaire Française' of 18 July 2002

<sup>49</sup> In 2011, 351 young persons were spread across 14 Daycare Centres (p. 22: [http://www.awiph.be/pdf/documentation/publications/revues\\_rapports/rapport\\_annuel/rapport\\_annuel\\_AWIPH\\_2011.pdf](http://www.awiph.be/pdf/documentation/publications/revues_rapports/rapport_annuel/rapport_annuel_AWIPH_2011.pdf))

51. Diversity would benefit both children with disabilities and those who are in contact with them. Society would benefit from the investment with greater understanding of others and of how to accommodate persons with disabilities.

### **The principle of equality between children**

52. In accordance with the federal organisation of Belgium, the most concrete aspect of child policy fall within the competence of the Communities.
53. At present, the most important measure in this regard taken at federal level is the allocation of a family supplement for children with disabilities.
54. Until the designation of the federal government on 1 December 2011, children across Belgium received the same allocations, regardless of their cultural background or the region in which they were living.
55. Under the government agreement published on 1 December 2011, the competence to grant family benefits was transferred to the Communities. There is therefore a risk that, in the near future, children will receive different treatment depending on their place of residence or on the Community where they live.
56. This could affect children with disabilities in receipt of family payment supplements. Children across the territory of Belgium would no longer be considered to be equal.

### **Multiple vulnerabilities**

57. Although some may hold idealised images where families manage to lead a happy life in spite of difficult circumstances, but it is clear that it is easier for a child to thrive if they come from a well-off and close-knit family.
58. Many families do not have the necessary financial resources to access the services and support which they should be entitled to. Their professional and socio-cultural circumstances have a significant impact on the support obtained.
59. Specific supports should be put in place which take account of the realities of their life should be developed.

### **Disability by association**

60. Parents of children with disabilities are faced with issues which impact their life in a number of ways. This is known as disability by association. This expression refers to the impact of living with a person with a disability on the social, professional and cultural life of the person who does not have a disability.
61. The person finds that they are limited by society as a result of their relationship with the person with the disability.
62. For instance, career choices, which impact income, are made on the basis of the attention which must be given to a parent with a disability, or the fact that they could

not participate in a cultural event without making plans to accommodate the disability (care for the child, for example), etc.<sup>50</sup>

63. In many cases, parents find themselves trapped in a life centred around their child's disability.
64. Parents therefore experience barriers in their professional, social and cultural lives. These issues are only taken into account in a sporadic manner in Belgium. 'Respite' and 'daycare' facilities only exist in embryonic form at present.

## ***Recommendations***

1. The legislation organising Belgian society should provide for the necessary measures in order to meet the needs of children with disabilities. Another solution would involve developing specific legislation on these needs.
2. Multidisciplinary support should be provided to families with a disabled child. Such support should be directed at establishing an effective dialogue between the child and all the persons in her life. This would ensure that the voice of the child with a disability was heard.
3. Promote diversity and inclusion in education, in educational and leisure activities.
4. Put in place administrative support for the child in order to determine their needs in order to prevent situations where children with multiple disabilities have no access to education, as a result of a lack of planning.
5. Promote inclusive education. Children with disabilities should be accommodated either on a part-time or a full-time basis, depending on their needs.
6. Promote integration into after-school activities and cultural and sports activities. Children with disabilities should be accommodated flexibly, depending on their needs.
7. Implement action plans to 'demystify' disability: a necessary step on the road to building a truly 'integrated' society. Teachers should be targeted first, in this regard.
8. Develop gateways between special and mainstream education, and between the various types of special education. The development of the child in terms of their education and social integration should be the objective.
9. Develop a true integration policy, the objective of which is to accommodate the child with a disability as a whole person and direct them to the most relevant education and socio-cultural development bodies.
10. Develop the current support services for improved support for families with children with disabilities.

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<sup>50</sup> [http://www.kbsfrb.be/uploadedFiles/KBS-FRB/05\\_Pictures\\_documents\\_and\\_external\\_sites/09\\_Publications/PUB2007\\_1754\\_EcouterLesAidantsProches.pdf](http://www.kbsfrb.be/uploadedFiles/KBS-FRB/05_Pictures_documents_and_external_sites/09_Publications/PUB2007_1754_EcouterLesAidantsProches.pdf) (pp. 46-50)

11. Provide families with the financial, educational and human support required to implement quality inclusion projects.
12. Develop an appropriate range of services to support parents of children with disabilities in fulfilling their additional responsibilities, which interfere with their professional, social and cultural lives. Giving parents the possibility of developing a balanced life would have a positive impact on the child with a disability.
13. Opening day centres in Special Schools, to place children with disabilities and their parents on an equal footing with those in mainstream schools.

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# Article 8: Raising awareness

## The general public

1. It must be noted that there has been no awareness campaign for the general public on the UN Convention on the Rights of Persons with Disabilities (UNCRPD).
2. While the BDF and the member associations have been involved in raising awareness of the UNCRPD, the federal authorities have limited themselves to a small number of press releases<sup>51</sup> and various documents on the Secretary of State for Persons with Disabilities' portal<sup>52</sup>.
3. The measures taken are limited to providing information or, even worse, a basic communication. It must be acknowledged that while a minimal communication effort was made, this did not go far enough in terms of raising awareness.
4. Raising awareness at federal level was also limited to minimal measures: information was published by the agencies responsible for the integration of persons with disabilities, on their respective websites and in their publications. The information was not accessible to all sections of the community. For instance, no information was provided in sign language.
5. Therefore, the information only reached the users of the federal and regional services, which only reached a small number of persons with disabilities. The competent authorities did not take active measures to inform persons with disabilities.
6. It is therefore clear that the general public was not targeted in any meaningful way. The only way they might come across it would be by reading on of the very few mini-articles in the official press. Unfortunately, the press failed to relay the press releases from the bodies representing persons with disabilities (see below). The chances of reaching citizens beyond the sphere of disability were almost nil.

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<sup>51</sup> 2008: <http://www.presscenter.org/fr/pressrelease/20080905/droits-des-personnes-handicap%C3%A9es>  
2009: <http://www.presscenter.org/fr/pressrelease/20090708/la-belgique-a-ratifi%C3%A9-la-convention-relative-aux-droits-des-personnes-handicap?setlang=1>  
2011: <http://www.presscenter.org/fr/pressrelease/20110720/personnes-handicap%C3%A9es>  
2012: <http://www.presscenter.org/fr/pressrelease/20120511/impl%C3%A9mentation-de-la-convention-onu-relative-aux-droits-des-personnes-handicap>  
2012: <http://www.presscenter.org/fr/pressrelease/20121207/rapport-semestriel-sur-limplementation-de-la-convention-onu-relative-aux-droit>

<sup>52</sup> 2009: <http://archive.fernandez.belgium.be/fr/c%e2%80%99est-parti-la-ratification-de-la-convention-9-janvier.html>  
2009: <http://archive.fernandez.belgium.be/fr/la-belgique-a-ratifi%C3%A9-la-convention-relative-aux-droits-des-personnes-handicap%C3%A9es-8-juillet.html>  
2011: <http://archive.delizee.belgium.be/fr/ouverture-%C3%A0-new-york-de-la-conf%C3%A9rence-des-etats-parties-%C3%A0-la-convention-relative-aux-droits-des-pers> ([http://archive.delizee.belgium.be/it\\_works.html](http://archive.delizee.belgium.be/it_works.html))  
2011: <http://archive.delizee.belgium.be/fr/une-personne-de-contact-handicap-dans-chaque-cabinet-et-administration> ([http://archive.delizee.belgium.be/it\\_works.html](http://archive.delizee.belgium.be/it_works.html))  
2012: <http://www.courard.belgium.be/fr/impl%C3%A9mentation-de-la-convention-onu-relative-aux-droits-des-personnes-handicap%C3%A9esun-premier-rapport>

### **Merely providing information is not the same as raising awareness**

7. Providing information to the target section of the public is one facet of an awareness campaign. However, an overall approach, involving much more than drafting a standard press release, is required to build proper awareness campaign.
8. In this regard, the BDF and all the stakeholders who contributed to the shadow report cannot fail to note that in no way did the Belgian authorities develop any general public awareness campaign on the UNCRPD.
9. The BDF and its member associations have taken on the role of raising awareness among successive governments on adherence to the Convention and the need for Belgium to take the necessary steps towards ratification.
10. It is regrettable that by carrying out lobbying, it was the NGO sector that effectively raised awareness among the federal and federated governments.
11. Unfortunately, raising awareness among political decision-makers has a cost: in terms of both time and money.
12. The BDF takes the view that the investment is justified by the result: Belgium ratified the Convention, completed the implementation of Article 33 and the BDF and the member associations, the CSNPH and the consultation mechanisms for persons with disabilities at regional level must be consulted with regard to the implementation of the UNCRPD.

### **Raising awareness on the UNCRPD by the organisations for persons with disabilities: low take up by the media**

13. The organisations for persons with disabilities took awareness-raising measures with regard to the importance and the content of the UNCRPD. They did so in accordance with their role<sup>53</sup>, taking advantage of the usual communication channels: reviews, information letters, website, thematic information meetings, etc.
14. However, the organisations representing persons with disabilities have noted that the media have taken little interest in the UNCRPD.
15. For example, at each stage of the ratification process, the BDF distributed various documents and press releases<sup>54</sup> which were not relayed in the media.
16. Even for a text of such significance failed to generate media attention. Concrete use of the Convention on the ground has greater potential to attract the attention of the press,

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<sup>53</sup> The primary role of the organisations representing persons with disabilities is to serve their members and defend their interests at government level.

<sup>54</sup> Conference on the international convention on the rights of persons with disabilities. Movement of persons with disabilities - organised by the BDF and the CSNPH - Wednesday 7 November 2007: BDF press release: UN Convention on the Rights of Persons with Disabilities: Historic signature 2007-03-28: BDF press release: UNCRPD. Civil society report 2010-10-27

and, even in that case, it is certain to come in second place to the concrete achievements<sup>55</sup>.

17. In order to reach the general public, the organisations should develop a specific communication strategy. However, they do not have the financial resources to develop campaigns aimed at the general public, for which a budget well-beyond the level of the budget currently available.
18. The NGO sector in Belgium is vast and fragmented. However, the organisations are highly committed. Their resources are limited and public funding is insufficient or even non-existent in some cases. When an organisation succeeds in obtaining funding, it is often accompanied by constraints which do not allow for sufficient flexibility in order to develop major public awareness campaigns.

### **Weaknesses of the evaluations of the awareness campaigns**

19. The development of communication campaigns promoting the inclusion of persons with disabilities is an important step. However, such campaigns are being initiated by various institutions independently, without any cooperation.
20. Similarly, the evaluation of the real impact of the campaign is limited to the figures communicated by the broadcasters, which does not constitute a full and objective evaluation.
21. Finally, even where evaluations have been carried out, they are not published.
22. Overall, the campaigns are neither designed nor evaluated in a sufficiently objective manner.

### **Raising awareness among children and young persons**

23. In order to achieve meaningful results, children and young persons should be targeted from the earliest possible age, at least from school age. This should occur in the most natural way possible: by putting the child in contact with the realities of the society in which he/she is growing up.
24. In concrete terms, if we take the lowest estimation of the number of persons with disabilities, or 10% of the population, this means that in every class, there should be at least two children with disabilities. Belgium is a long way off. The same principle should apply to sports clubs, cultural organisations, youth clubs, professional life, the media, etc.
25. Similarly, it would be beneficial if students were in contact with an equivalent proportion of teachers with disabilities. This would be a natural way of raising awareness.

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<sup>55</sup> In this regard, it is particularly troubling to note the capitalist stance taken in the media: for a press release to be promoted by the National Press Agency, the press committee must be affiliated to the Agency, and pay an annual subscription.

26. Attitudes should evolve naturally, in an everyday context, within an inclusive society, without needing to resort to the media, simply by providing the necessary support.
27. Unfortunately, Belgium has not opted for an inclusive model. For the most part, young children live in a world where children with disabilities simply do not exist: this separation automatically generates ignorance of the other.
28. This situation leads to misunderstanding, a lack of respect, rejection and fear.
29. This also explains the need to develop an awareness media campaign targeted at adults to compensate for the fact that this did not occur naturally early in life.
30. All sectors of Belgian society are paying for a costly process in terms of time, money, and the pain inflicted on those who, from a young age, suffer as a result of a difference that society refuses to accept.
31. Communication campaigns are therefore a posteriori solution, which is insufficient to compensate for the years of being hidden away from the rest of society.
32. The BDF and the organisations that participated in drafting the report are not opposed to awareness-raising campaigns. Campaigns are a necessity given the current situation. They would like to be involved. However, they wish to draw attention to the fact that the development of an inclusive society would reduce the need for and the cost of awareness-raising measures.
33. In parallel to the campaigns, Belgium must take steps towards becoming an inclusive society as a matter of urgency, beginning with inclusive education: such an investment is important and would involve a high medium-term return on investment.

### **Persons with disabilities in television**

34. Television is an important factor in shaping public opinion. An analysis of the role of persons with disabilities on screen is therefore of particular interest. However, it should be kept in mind that the media are just a reflection of society.
35. The Diversity/Equality Barometer 2012<sup>56</sup> published by the *Conseil Supérieur de l'Audiovisuel* (Audiovisual Council) contains stark figures demonstrating the extent to which persons with disabilities are absent from the small screen in the French Community in Belgium.

### **Case study**

36. Diversity/Equality Barometer 2012: the sample used for this study shows that out of 38,531 accounted appearances, only 117 had a visible disability, or 0.30%<sup>57</sup>.
37. Among those who were featured, only nine expressed their views. The other 108 persons with disabilities were seen on screen but did not speak.

<sup>56</sup> [http://www.csa.be/system/documents\\_files/1712/original/Barom%C3%A8tre%202012.pdf?1332936426](http://www.csa.be/system/documents_files/1712/original/Barom%C3%A8tre%202012.pdf?1332936426)

<sup>57</sup> Sample: one week of programming analysed systematically, or 274 hours, for on a total of 24 state, private and community television channels. The analysis was carried out between 1st August to 6 September 2011.

38. Of the nine persons with disabilities who spoke, six spoke about disabilities.

39. These figures could not be extrapolated for the Region of Flanders. Unfortunately, we do not have figures available for the Dutch-language channels.

40. An official report emphasised the existence of a television programme promoting the collection of funds for persons with disabilities.

41. The stakeholders who contributed to the report are in favour of developing such initiatives insofar as they contribute to raising awareness among the public. . Such initiatives contribute to improving the visibility of persons with disabilities in Belgium.

42. However, it is important to note:

- the need to collect funds to improve the institutions of collective facilities for accessibility is indicative of the underfunding in the sector
- there is a risk that persons with disabilities will appear as an object of compassion who must be helped, rather than a person who has the right to fully participate in Belgian society

43. Furthermore, it is regrettable that these programmes, which are focused on disabilities are not accessible to persons with certain types of disabilities who may require subtitling, sign-language and simplified language.

44. A specific aspect of television production in Flanders is the participation of persons with disabilities in television game shows, at least on the state channels. The survey carried out by Lien De Doncker is instructive in this regard, insofar as it demonstrates that the producers are required to find persons with disabilities. They do so because it is required under the management contract on the basis of the Diversity Charter which applies to the public service channels<sup>58</sup>.

45. While acknowledging the efforts that have been made to ensure better representation on television of persons with disabilities in the two main Communities, the ORPD and ASPwD bodies noted that there has been a failure to develop an overall approach to the person with disabilities in television.

46. In concrete terms, what is the role assigned to persons with disabilities on television?

47. In practice, in far too many cases, persons with disabilities are assigned the role of the 'disabled' person experiencing problems. The result is that persons with disabilities are reduced to the problems with which they are faced. While this is better than nothing, it is not particularly constructive.

48. It is rare to see persons with disabilities express their views on television on an issue other than their disability, either on Dutch<sup>59</sup> or French language television<sup>60</sup>. Persons with disabilities represent a minimum of 10% of the population.

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<sup>58</sup> DE DONCKER (L.), Personen met een handicap op de Vlaamse televisie: een doorlichting van het beleid achter de schermen, Scriptie ingediend tot het behalen van de graad van licentiaat in de pedagogische wetenschappen, optie orthopedagogiek, Universiteit Gent, 2007, P.92.

([http://www.ugent.be/nl/onderzoek/maatschappij/wetenschapswinkel/onderzoek/scriptie\\_Lien\\_De\\_Doncker.pdf](http://www.ugent.be/nl/onderzoek/maatschappij/wetenschapswinkel/onderzoek/scriptie_Lien_De_Doncker.pdf))

<sup>59</sup> DE DONCKER (L.), Op.cit., Loc.cit.

<sup>60</sup> [http://www.csa.be/system/documents\\_files/1712/original/Baromètre%202012.pdf?1332936426](http://www.csa.be/system/documents_files/1712/original/Baromètre%202012.pdf?1332936426) (pp. 28-29)

49. For instance, when ten persons are asked about films in the cinema, one of them should be a person with a disability. The film in question should not be on the theme of disability<sup>61</sup>. Moreover, there is still no reason for disability to be mentioned, the person is simply a regular cinema-goer expressing their view on a particular film.
50. A similar approach should be applied to all television programmes, from football to the news, and from finance to stock market prices: persons with disabilities should be an integral part of every aspect of society. It is unacceptable that they only express their views on disability.

## ***Recommendations***

1. Allocate an annual budget to the design and implementation of awareness campaigns on disability with the objective of achieving a more inclusive society.
2. Introduce an obligation to involve the organisations representing persons with disabilities in the design of the campaigns on the inclusion of persons with disabilities in society.
3. Educate and inform persons on disabilities and all the issues faced by persons with disabilities. Priority target groups should include: medical professionals, social workers, teachers, etc.
4. Encourage the development of an inclusive education system, for both pupils and teachers and other staff so that awareness of disabilities develops naturally, simply by getting to know persons with disabilities.

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<sup>61</sup> Over the past 30 years, every time disability and film is discussed, films about disability are the point of discussion, from 'Rain man' to 'Intouchables'. It is clear that such a focus is important in terms of raising awareness. However, such discussion should figure in a context where disability is an aspect of everyday life for all the population.

## **Article 9: Accessibility**

1. Compliance with the UNCRPD provisions on accessibility is a particularly important issue for the Organisations Representing Persons with Disabilities (ORPD) and the Consultation Structures for Persons with Disabilities (ASPwD). While we do not wish to establish a hierarchy between the various articles, we wish to emphasise their interdependence. For this reason, many of the sections of the report make reference to Article 9.
2. The focus on the compliance of buildings and the built environment is strongly influenced by the change of paradigm set out in the UNCRPD. Environmental obstacles constitute a greater barrier to the participation in society as the 'functional' limitations which the person with disabilities must overcome.
3. Physical accessibility is invariably the focus in accessibility policy. Although information and understanding are central to achieving accessibility, they have thus far fallen by the wayside.

### **Accessibility rules for buildings and public places**

4. According to the rules on the division of competences between the various levels of government determined by the federal state, accessibility rules for public places fall within the remit of the Regions. Each Region has drawn up specific regulations on the issue.

### **Flanders:**

5. In Flanders, the Government Order of 5 June 2009 sets out urban planning rules on accessibility<sup>62</sup>. This regulation has been in force since 1st March 2010.
6. With regard to the objectives pursued, the ORPD and ASPwD organisations regret that only physical accessibility is targeted. As a result, the specific needs of certain groups of persons with disabilities cannot be met.
7. Thus, information and communication efforts are left aside, despite the fact that they are key to achieving accessibility.
8. There is a long way to go yet in terms of implementation: the aim of full accessibility should be pursued. The regulation is a relatively new piece of legislation, which has been in force for three years, making it difficult to carry out a critical evaluation at this stage. The planning permissions granted on foot of the regulation are only beginning to give rise to concrete results.

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<sup>62</sup> [http://www.ejustice.just.fgov.be/cgi\\_loi/change\\_lq.pl?language=fr&la=F&cn=2009060545&table\\_name=loi](http://www.ejustice.just.fgov.be/cgi_loi/change_lq.pl?language=fr&la=F&cn=2009060545&table_name=loi)

9. The RRU does not apply to all public property. For instance, street furniture does not fall within its remit. Therefore, 1 metre wide by 2 metres high advertising panels can be set up on footpaths 40 centimetres from the ground held up by a pole. This type of obstacle can cause problems for blind persons as they may not detect it with their cane and collide with the advertising panel.
10. An evaluation of the concrete achievements under the regulation should be carried out in the years to come. The NGO sector and Advisory Councils will monitor this process closely.

## **Walloon Region**

11. Articles 414 and 415 of the Walloon Code on Land Use and Urban Planning, Heritage and Energy (CWATUPE) specify the list of areas and buildings and sections of buildings open to the public or for general use which should be accessible to persons with reduced mobility and the technical and architectural requirements for these buildings and areas<sup>63</sup>.
12. With regard to the objectives pursued, the ORPD and ASPwD organisations regret that only physical accessibility is targeted. As a result, the specific needs of certain groups of persons with disabilities cannot be met.
13. Thus, information and communication efforts overlooked, despite the fact that they are key to achieving accessibility.
14. Strictly under the terms of the CWATUPE, persons with disabilities, their representative organisations and experts on accessibility have reported that the provisions of the codes and regulations are not adhered to or applied correctly.
15. Failures to apply the legislation are generally a result of one of the following:
  - lack of knowledge on the part of architects and tradesmen
  - the absence of sanctions in the event of failure to comply
  - although inspections are in place, binding measures are rarely taken with a view to ensuring compliance.
  - the low number of compliance checks upon completion of works
  - the common practice of delivering the permit 'subject to compliance with the provisions on accessibility standards', which is not checked upon completion
16. With regard to the regulations in force in the Walloon Region, the ORPD and ASPwD bodies regret that Articles 414 and 415 do not cover all barriers to accessibility, particularly with regard to the accessibility of persons with sensory or intellectual disabilities. These deficiencies constitute significant barriers to independence for persons with disabilities.

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<sup>63</sup> <http://wallex.wallonie.be/index.php?doc=1423>



## **Brussels-Capital Region:**

17. Titles IV and VII of the *Règlement Régional d'Urbanisme* (Regional Urban Planning Regulation - RRU) set out the accessibility standards for public places and buildings<sup>64</sup>.
18. With regard to the objectives pursued, the ORPD and ASPwD organisations regret that only physical accessibility is targeted. As a result, the specific needs of certain groups of persons with disabilities cannot be met.
19. Thus, information and communication are left aside, despite the fact that they are key to achieving accessibility.
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  - the low number of compliance checks upon completion of works
  - the common practice of delivering the permit 'subject to compliance with the provisions on accessibility standards', which is not checked upon completion

## **'Listed' buildings**

22. In all three regions, the organisations representing persons with disabilities condemned the fact that for certain major restoration projects, the fact that buildings are 'listed' has been used as an excuse to justify the failure to apply the accessibility regulations.
23. This is even more frustrating as the 'listed' label is used indiscriminately: in many cases, not all parts of the building are protected, only some.
24. Furthermore, it is the responsibility of the project managers to find the optimal technical and architectural solutions with a view to balancing conservation and accessibility needs<sup>65</sup>.

## **Signage**

25. Accessibility includes signage designed to direct members of the public. There are a number of shortcomings in this area.
26. Signage is often the 'poor relation' in construction projects: the budget allocated is generally far too low. The budget is often used to enhance the image of the business or

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<sup>64</sup> <http://urbanisme.irisnet.be/fr/lesreglesdujeu/les-reglements-durbanisme/le-reglement-regional-durbanisme-rru?set-language=fr>

<sup>65</sup> <http://www.gamah.be/documentation/dossiers-thematiques/patrimoine/aires-libres-nr10-dossier-patrimoine>

institution rather than in a truly effective manner. The main problem is that there is no proper standardisation of symbols.

27. Aside from the icons showing a person in a wheelchair, a man and a woman (for the toilets), a lift and a person running towards an emergency exit, icons are left to the imagination of graphic designers<sup>66</sup>.
28. Even for basic icons, it is important to emphasise that they do not have universal status, and vary from one country to another. Such differences, which have a cultural basis, are further accentuated when compared from one continent to another. This results in problems in a globalised world where freedom of movement is a fundamental right.
29. Effectiveness and consistency in signage are essential for persons with cognitive difficulties.

### **Compliance and enforcement of accessibility standards** <sup>67</sup>

30. With regard to physical accessibility, much depends on the architects with responsibility for the project. The organisations representing persons with disabilities noted that architects and tradesmen have little inclination to implement the regulations on accessibility.
31. Regulation is in place, and contracting authorities must comply with it. However, concrete implementation depends on the solutions proposed by the project manager and the cost of the solutions.
32. In many cases, the low-cost solution is chosen. Often, this is to the detriment of compliance with the regulations on accessibility, which is merely one 'under-rated' aspect of the regulations which have to be complied with.
33. One of the main problems in terms of compliance with regulations on accessibility is that it must be set out in concrete terms in the specifications document submitted by the contracting authority to the candidates bidding for the project. From the beginning, this causes problems given that the contracting authority does not have the same level of knowledge as the candidates: it is therefore difficult to draft a proper specifications document. The requirements in terms of accessible architecture are rarely included in the specifications document apart from an overall reference to "compliance with the x or y regulations".
34. In this regard, the fact that permissions are granted off the plans and inspections are rarely carried out upon completion significantly undermines the binding nature of the legislation.
35. Furthermore, complaints with regard to the accessibility of buildings of public places can only be submitted based on the non-discrimination law, not on the accessibility law.
36. In terms of checks on compliance with accessibility standards, it is not enough for the competent authorities or contracting authorities to look to organisations of persons with disabilities, or even persons with disabilities themselves in order to verify compliance. At

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<sup>66</sup> <http://www.sclera.be/en/vzw/home>

<sup>67</sup> <http://www.diversite.be/accessibilit%C3%A9-des-b%C3%A2timents-ouverts-au-public>

present, the authorities and contracting authorities constantly confuse the different roles. It is important to reiterate that:

37. The role of the end-user of goods or services is to determine their needs and check the effectiveness of the solution offered by the candidate.
38. The role of the contractor is to implement the appropriate technical solutions to meet the needs of the end-users. The contractor would be well-advised to call on a specialised surveyor's office to determine the solution best suited to meeting the needs of the end-users.
39. The ASPwD and ORPD bodies' role is three-fold:
  - ensure that the needs of the end-users are expressed in general terms in order to ensure that the solutions meet all their needs
  - participate in drawing up the rules so that the solutions are obligatory for all projects
  - participate in general enforcement of the standards. In this regard, it must be kept in mind that the ASPwD and ORPD bodies do not have a technical role, but rather are involved in enforcement.
40. The role of the competent authorities is to draft and apply the standards. They are required to do so in cooperation with the ASPwD and ORPD bodies. Competent authorities would be well-advised to call on a competent surveyor to carry out a specific analysis of the technical implications of the standards.
41. Failure to do so would constitute a significant error in methodology: persons with disabilities and their representative organisations have expertise in their capacity as users of places, goods and services. They are experts by virtue of their experience. However, they are not technical experts.
42. For example, checking accessibility off the plans involves technical competence which cannot be required of individuals, or the ORPD and ASPwD bodies.
43. Furthermore, the ORPD and ASPwD bodies do not have the necessary funding for accessibility surveys on buildings or public places, goods or services.
44. Finally, an evaluation carried out by a small number of individual users cannot provide an overall objective understanding of the situation. While the experience of individual users can be useful by way of illustration<sup>68</sup>, a systematic analysis must still be carried out by professionals.

### **Continuity in accessibility**

45. In each of the three Regions, the organisations representing persons with disabilities have noticed a problem in terms of the lack of continuity in accessibility. In many cases, a particular infrastructure is brought into compliance, but the surroundings are not.

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<sup>68</sup> <http://www.plain-pied.com/upload/brochures/90.pdf>

46. For example, in many cases two buildings in the same commune at a reasonable distance from one another are in compliance with the applicable regulations in terms of accessibility but that persons with disabilities cannot travel from one to the other due to the presence of obstacles.
47. Difficulties with planning, communication, and cooperation between the various bodies, businesses and institutions tend to arise.
48. It is clear that this problem is even more acute with regard to the accessibility of buildings and public places which are subject to different regulations, as is the case in Belgium. Currently, there are no proper cooperation mechanisms in place between the three Regions.
49. Implementation problems arise in this regard. The three sets of regional regulations set out rules which differ from one another in certain aspects. Contracting authorities are left to determine how the rules are implemented.
50. This adds to the differences in terms of certain features of major importance to persons with disabilities who wish to use public areas independently.
51. Tactile paving designed to help persons using canes to find their way vary widely from one place to another: rubber tiles, stainless steel nodules, grooved tiles with hollows or rises, traffic lights may or may not have sound.
52. Similarly, guide dogs are trained to follow certain rules in relation to a limited number of easily identified landmarks and signage. However, on large squares where there is no signage indicating footpaths, for example, they do not know which way to go.

### **Planning - Schedule**

53. In terms of gradual implementation, the three sets of regional rules in force involves two aspects:
  - all new constructions must comply with the regional regulations on accessibility
  - all modifications to existing structures must comply with the regional regulations on accessibility
54. Apart from the fact that these principles are not always followed, there is the problem of the lack of binding rules: there is no obligation to ensure that buildings and public places are accessible within a set time-frame. Under such circumstances, some works may never be carried out or systematically postponed to a later date.
55. A proactive approach has been taken in neighbouring France, where all buildings and places open to the public must be made accessible by a particular date<sup>69</sup>.
56. Furthermore, the organisations representing persons with disabilities condemn the fact that there is no proper plan in place with a view to making buildings and public places accessible.

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<sup>69</sup> <http://www.developpement-durable.gouv.fr/IMG/pdf/PAVE-3.pdf>

## **Access to goods and services with ICT**

57. With the development of information and communications technology, our society is constantly changing. This has a major impact on access to goods and services as well as their provision and delivery.

### **Internet access**

58. The Internet has become central to day-to-day life. We access information, times and opening hours of services and events, purchase goods, and access an increasing number of services via the Internet.

59. Belgium is among the countries with the best internet connections in the world. However, not all public websites meet all the essential accessibility criteria. With regard to private sector websites, the majority do not meet such criteria.

60. In spite of this, Belgium put in place the 'AnySurfer' quality mark for Internet accessibility. Obtaining this label does not involve substantial cost. However, it provides site owners with a guarantee that their site will be accessible to all internet users.

61. Since 2009, the competent authorities have regularly insisted that all websites at federal level are required to obtain this label. This objective has not yet been met. The federal bodies have not officially expressed a desire to do so. The label is rarely obtained in the private sector, and depends on the level of awareness in the business on the issue.

62. Access to information remains a significant problem for a large number of deaf persons who do not have a sufficient level of written comprehension: the shortage of sign-language interpreters coupled with the lack of resources make it impossible to create enough 'capsules' in sign-language for integration into websites and interactive terminals.

63. The same must be noted with regard to integration of pages in simplified language or easy-to-read texts. Such pages are few and far between.

64. With regard to the accessibility of websites, much depends on the web designer with responsibility for the project. In general, the organisations representing persons with disabilities criticised the fact that web designers have limited knowledge of the standards on Internet accessibility and show little inclination to implement them<sup>70</sup>.

### **The increase in automatic services**

65. By 'automatic services', we mean machines which provide a service to customers without the physical intervention of the staff of the business or institution.

66. The most obvious example is cash machines. A small number of banks have made progress in terms of accessibility of those located inside the buildings of certain bank branches<sup>71</sup>. However, machines located outside the banks are almost all inaccessible to

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<sup>70</sup> See Article 21 'Access to information'

<sup>71</sup> <http://www.handimobility.org/blog/distributeurs-argent-fortis-bnp-paribas-fintro-accessibles-aux-malvoyants/>

many persons with disabilities: keyboards are too high, screens cannot be read by persons from 120cm from the ground (reflections which make the screen illegible), the absence of voice instructions etc.

67. There are no binding regulations that oblige the banks to make the services accessible to all on a strictly equal basis. The organisations representing persons with disabilities and the consultation bodies have made constant efforts to raise awareness among the organisations representing the banking and insurance industry, without success.
68. Another problem with certain cash machines and a large number of interactive terminals providing information or for reservations is the use of touch screens, which cannot be used by persons with visual impairments. Touch screens cannot be used on an equal basis by all.
69. Service stations are another example. The majority are now 'self-service' and are not designed for independent use by all. Pumps are located on raised concrete blocks which makes it difficult for wheelchair users. The payment terminals are also located on raised islands. Service stations are therefore completely inaccessible<sup>72</sup>.
70. Persons with disabilities among such consumers are therefore obliged to:
  - either go to one of the few stations which are still manned, which involves three problems for persons with disabilities: a litre of petrol is more expensive in view of the service provided, the tank must be filled during the opening hours of the station and they cannot travel along on long journeys without careful planning, in order to be sure that they can fill up independently, without depending on the kindness of strangers.
  - or count on the kindness of a friend or relative to fill up the tank and hope to find someone to go on holidays with, for example.
71. Both cases are a long way of the vision of independence inspired by cars.
72. In the Walloon and Brussels-Capital regions, some service stations were constructed after the entry into force of the CWATUPE<sup>73</sup> and the RRU. In general, the service station 'shops' are accessible. In such cases, it is the accessory which has been made accessible, not the primary service. Spot the error...
73. There are no binding regional regulations that require consumer products to be made accessible to all on a strictly equal basis.
74. A final example is that of ticket machines in train and metro stations<sup>74</sup>.

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<sup>72</sup> [http://www.gamah.be/documentation/conseils-accessibles/cas-specifiques/copy\\_of\\_les-stations-service](http://www.gamah.be/documentation/conseils-accessibles/cas-specifiques/copy_of_les-stations-service)

<sup>73</sup> CWATUPE = Walloon Code of Land Planning, Town Planning, Heritage and Energy):  
<http://dgo4.spw.wallonie.be/dgatlp/dgatlp/Pages/DGATLP/PagesDG/CWATUP/GEDactualise/GED/gedListeArbo.asp>

<sup>74</sup> <http://www.restode.cfwb.be/pmr/ABCDaire.pdf> (p. 42)

### **Growing automation**

75. The increase in automated services goes hand-in-hand a fall in services involving human interaction. As long as everything works, there is no problem. However, when a problem arises, automatic systems have little or no capacity to respond.
76. Such systems should be designed properly with a view to responding effectively in all circumstances and offer unfailing reliability. This is not the case at present.
77. Persons with cognitive disabilities are particularly affected by the absence of staff. While they have learned to identify the persons they can trust when necessary, they find themselves faced with a system where no human relationship is present.
78. Other sections of the population are also affected: older persons, children, etc. The wider impact of the problem should not serve to diminish its severity.

### **Automation and failure to make buildings accessible**

79. The growing automation of access to goods and services, particularly with the growth in Internet sales is sometimes used to justify the failure to adapt buildings and the built environment.
80. Such reasoning is clearly out of step with the spirit of the UNCRPD which seeks to ensure accessibility for persons with disabilities on an equal basis with others.

### **Reasonable accommodation**

81. The concept of reasonable accommodation is used in a wide variety of legislation in Belgium. While the words remain the same, the contents vary to a greater or lesser extent with regard to the UNCRPD text.
82. While it is understandable that an authority may wish to provide a precise definition in a legal text which corresponds to the scope of the text, this cannot be used to justify definitions which vary from that set out in the UNCRPD, thereby putting the legislation at odds with the interest of those for whom reasonable accommodation measures are taken.
83. The most complex definition of the notion of reasonable accommodation may be found in the decree of 9 July 2010 by the French Community Commission (*COCOF*) on combating certain forms of discrimination and implementing the principle of equal treatment. The Decree states:
  - Reasonable accommodation constitutes appropriate measures taken based on needs which arise in a concrete situation in order to facilitate access, participation and advancement in employment or any other activity within the scope of the decree of 9 July 2010, unless those measures impose a disproportionate burden on the person responsible. Such a burden shall not be deemed to be disproportionate where it is compensated by existing policy measures on persons with disabilities which are implemented by the French-speaking Brussels Office for Persons with Disabilities.

84. Such a definition is particularly problematic in that it limits reasonable accommodation to measures taken specifically under policies on persons with disabilities. Reasonable accommodation is thereby shifted from the general sphere, to the more limited area of disability policy.

### **Accessibility of consumer products**

85. Consumer society has developed an incalculable number of products. Every product has potential accessibility problems, mainly due to fact that accessibility (or usability) has not been factored in from the beginning.

86. Usage labels are important in terms of the accessibility of goods. Such labels are often written in complex language, with technical terms, and convoluted or even incorrect syntax.

87. In general, the sentences are too long and the quality of the French, Dutch and German translations from other languages leave much to be desired.

88. Instructions are generally printed on the packaging, with no regard for readability criteria such as the size of the characters and contrast. Finally, in many cases, optical pick-up apparatuses cannot be used to read notices on certain materials such as bottles or flasks. Usage labels are rarely available via email or on the Internet.

89. Taken together, these issues make it difficult, or even dangerous, to use products without assistance.

### **Accessibility of public services and health services**

90. Public services are under a duty to serve all the population. Over the past few years, the development of 'e-services' has led to a growing number of forms to be made available via the Internet.

91. Such services are generally designed as a simple way of rationalising the provision of services by reducing the number of opening hours or staff.

92. Such an approach is at odds with a service-oriented approach which should use the reduced workload to increase the time available for support and assistance services for those most in need.

93. It is also regrettable that the public services do not provide effective solutions to cater for the needs of deaf persons. Deaf persons are often left to take the initiative of providing a sign-language interpreter. This is particularly problematic given that due to the limited number of interpretation hours to which they are entitled, they have to pay the travel costs and are dependent on the availability of interpreters and the opening hours of the office, with the result that deaf persons cannot receive services on an equal footing with other citizens.

94. Similar findings could be made about health services for deaf persons and persons with cognitive difficulties.



## ***Recommendations***

1. The competent Ministers should take the necessary measures to amend all the legislation so that the same definition is given to the concept of reasonable accommodation. The organisations representing persons with disabilities recommend using the definition set out in the preamble to the UNCRPD.
2. The competent ministers should establish an inter-regional cooperation body in order to optimise the continuity of accessibility across the territory.
3. The competent ministers should initiate serious discussions on adding a binding schedule to the existing legislation.
4. The competent ministers should develop an accessibility policy with binding deadlines on all public buildings managers, to begin with, and subsequently all managers of buildings accessible to the public. Such a policy should be drawn up based on realistic, specific accessibility standards drawn up in cooperation with persons with disabilities or their representative organisations. Sanctions should be provided for cases where the standards are not met.
5. The competent ministers should take the necessary measures with a view to providing for sanctions in the event of non-compliance with regional regulations on accessibility.
6. The competent authorities should not accept the argument that a building is listed as an excuse for non-compliance with accessibility standards. In order for such an argument to be acceptable, requirements in view of the status as a 'listed' building and compliance with accessibility standards must be integrated into all specifications documents and all candidates submitting offers must have concluded that there is no reasonable solution that would allow for compliance with both sets of requirements.
7. The competent authorities should draw up legislation obliging companies who develop cash machines to use horizontal, rather than vertical selection.
8. The competent authorities should therefore draw up regional legislation requiring that all consumer products and services sold via automated machines are accessible to all on a strictly equal basis.
9. The competent authorities should adapt the training course for architects and engineers to integrate concerns on accessibility as a requirement.
10. The competent authorities should make it obligatory for all qualified architects to follow training to update them on accessibility.
11. The competent authorities should make it possible to introduce a complaint about on the inaccessibility of any place open to the public based on accessibility regulations, including those beyond the scope of equality legislation.
12. The competent authorities should integrate Internet accessibility into courses on web design. Training on accessibility for practising web designers should also made obligatory.

13. The competent authorities should design, put in place and fund independent inspection processes on the concrete implementation of accessibility regulations.
14. Competent authorities should take account of the fact that persons with disabilities and their representative organisations have expertise in their capacity as users of places, goods and services. They do not have the technical expertise required to develop or enforce legislation. Neither do they have the funds required for accessibility surveys.
15. Manufacturers and operators should take into account that fact that the product or service which they are developing must be designed to be used by all without the need for further adaptation, in accordance with the principles of 'universal design' and reasonable accommodation.
16. The competent consumer authorities should take the necessary measures to ensure that product usage labels are printed legibly (contrasts, size of the characters) and comprehensibly (simplified language) for all. Furthermore, any usage labels on consumer products should be available in electronic format, such as on the Internet.
17. In order to reduce the risks inherent in the digital divide, the authorities initiated a tax-reduction programme on the purchase of multimedia IT devices. The authorities should also support the organisation of training on Internet use for all.
18. The competent authorities should establish a pool of mobile sign-language interpreters to support state and local authority employees in their relations with deaf persons<sup>75</sup>. The pool of sign-language interpreters should also be available in healthcare.

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<sup>75</sup> This system is in place and operates effectively in the municipality of Toulouse, in France: <http://www.toulouseinfos.fr/index.php/actualites/societe/7427-handicap-toulouse-lance-deux-cabines-telephoniques-en-langue-des-signes.html#.USO0vKinPfc.twitter>

## Article 10: Right to life

1. The issue of the right to life is regulated solely at federal level.

### **The right to life**

2. Every person in Belgium has the right to life. This right is inalienable, regardless of the degree or nature of the disability, and in no way does it detract from the value of human life.
3. The right to life is absolute, but cannot act as a barrier to the exercise of other absolute rights such as the right to self-determination over one's own body. Belgian legislation on the termination of pregnancy has struck a balance between these two rights.
4. Similarly, while the right to life is absolute, it cannot be used to endorse ill-advised obstinacy in the treatment of extremely premature infants, or persons who are kept alive to the detriment of their quality of life. The Belgian law on euthanasia was also designed to strike a balance between these fundamental rights.
5. As specified in the official report, the Belgian constitution does not specifically guarantee the right to life. The closest reference to the right to life is contained in Article 23 on the right to lead a life in accordance with the principle of human dignity<sup>76</sup>.
6. This is a completely different concept, the terms of which allowed ethical debates to be approached with greater flexibility. In particular, the article opened the door to the debate on euthanasia, which led to the introduction of one of the most progressive set of rules on the issue in Belgium.
7. In concrete terms, the right to a life in accordance with the principle of human dignity affects areas other than the right to die, particularly the right to sufficient income, access to housing, etc. Reference is made to this right under the corresponding articles in the present document.
8. The application of the death penalty runs counter to the right to life. Belgium has abolished the death penalty.
9. The right to lead a life in accordance with the principle of human dignity applies to persons with disabilities on an equal basis with the rest of the population in the same way as the abolition of the death penalty.

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<sup>76</sup> [http://www.ejustice.just.fgov.be/cgi\\_loi/change\\_lg.pl?language=fr&table\\_name=loi&la=F&cn=1994021730](http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&table_name=loi&la=F&cn=1994021730)

## **Medical practices which may result in death**

10. The Law of 22 August 2002 on the rights of patients<sup>77</sup> provides for the protection of patients in the area of medical practices. Where the patient is incapable of exercising their rights independently, the decision to intervene medically falls to their parents or legal trustee.
11. In this regard, the ORPD bodies hope that the implementation of new law on assisted legal capacity will have a positive impact for patients, particularly in terms of the participation of patients who are deemed to be 'incapable' of taking the decision affecting them.

## **Euthanasia**

12. The Belgian Law of 28 May 2002, authorising euthanasia under certain conditions has been in force for 11 years<sup>78</sup>. It has already been relied on by persons with disabilities. To date, it has not led to particular difficulties. The absence of such difficulties tends to prove that the decision has been designed and applied correctly.
13. However, two limitations should be noted:
  - Euthanasia cannot be applied to minors and those with extended minority status<sup>79</sup>.
  - The law provides for the possibility of submitting an early declaration expressing the desire for euthanasia in the event that an irreversible coma. Such a declaration must be made consciously and repeatedly. Therefore, euthanasia cannot be applied to persons with intellectual disabilities.
14. In 2010, a bill was submitted in favour of widening the scope on the legislation on euthanasia for minors. The bill could apply to persons with prolonged minority status if their decision-making and self-determination capacity has been established. The debate is ongoing.
15. The ORPD and ASPwD bodies have not expressed a common position on this ethical debate.
16. However, it is apparent from the discussions which served as a basis for the preparation of the shadow report that the ORPD and ASPwD bodies are opposed to widening the scope of euthanasia where the will and self-determination of the person cannot be determined, which could result in considerable excess and abuse.
17. In practice, difficulties have arisen where patients are not in a position to express their will. Such is the case for severely disabled extremely premature infants. The medical team has to decide, on the course of treatment, along with the parents, who should be properly informed.

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<sup>77</sup> [http://www.ejustice.just.fgov.be/cgi\\_loi/change\\_lg.pl?language=fr&la=F&table\\_name=loi&cn=2002082245](http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&table_name=loi&cn=2002082245)

<sup>78</sup> [http://www.belgium.be/fr/sante/soins\\_de\\_sante/fin\\_de\\_vie/euthanasie/](http://www.belgium.be/fr/sante/soins_de_sante/fin_de_vie/euthanasie/)

<sup>79</sup> On February 13th 2014, The Chamber voted the extension to the under-18s of the law on euthanasia

18. However, parents do not always have sufficient psychological support for such decisions, or receiving the news that their child has a disability. At present, the decision is based on only on medical advice, i.e. views or arguments from professionals who view the disability as resulting in a lower quality of life. Full and accurate understanding of all aspects of the decision is not always offered by the professionals supporting the decision. The legal obligation of free and informed consent is not always met<sup>80</sup>.

### **Termination of pregnancy**

19. As specified in the official report, termination of pregnancy has been decriminalised in Belgium up to the 12th week of pregnancy.

20. From the perspective of the ORPD and ASPwD bodies, the legal framework is sufficiently clear and allows for action, in accordance with law, based on the wishes of the mother and the interest of the unborn child.

21. However, the reality on the ground may be more difficult and support for the person concerned, often in distress, is insufficient, due to a lack of time and resources.

22. The right to terminate a pregnancy must remain incontestable. It is clear that society, in general, has little knowledge on disability. Such lack of awareness should be considered when the aim is to ensure that decisions are taken on a fully-informed basis.

23. Providing full, concrete, and multi-disciplinary information on the realities of disability to all sections of the population as soon as possible could be an important step in ethical terms<sup>81</sup>.

### **Stereotypes on the quality of life of persons with disabilities**

24. Many stereotypes exist on the quality of life of persons with disabilities.

25. The medical implications of disability are significant. Overall, the medical aspects are well-known.

26. However, during the crucial months before and after the birth, and the months, or even years at the end of life, sufficient psycho-social support is not available. In general, the support is limited to that received from a doctor. Doctors can provide some 'psychosocial' information, but this is not sufficient, as such issues are beyond their area of competence.

27. The approach taken during these months has significant impact on the acceptance of disability by the person concerned and their loved ones right throughout their life.

28. Sufficient psychological and social support should also be provided in order to ensure that the decision is taken under optimal conditions. The ORPD and ASPwD bodies have criticised the fact that the support currently available exists only in embryonic form, with

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<sup>80</sup> Comité Consultatif de Bioéthique, Opinion n°41 of 16 April 2007 on informed consent and the DNR codes: [http://www.prpb.be/internet2Prd/groups/public/@public/@dg1/@legalmanagement/documents/ie2divers/11898459\\_fr.pdf](http://www.prpb.be/internet2Prd/groups/public/@public/@dg1/@legalmanagement/documents/ie2divers/11898459_fr.pdf)

<sup>81</sup> <http://plateformeannoncehandicap.be/Parents>

most of the work falling on the shoulders of medical staff that are not trained on these issues.

29. In reality, support is not available at many stages of life.

### ***Recommendations***

1. The competent authorities should take measures to ensure that persons facing the birth of a severely premature child or considering abortion receive the psycho-social support on all aspects of the disability.
2. The competent authorities must put in place and fund competent services and provide the necessary resources for existing services to ensure proper support for persons with disabilities a their loved ones at all stages of life. This is even more important for traumatic events such as end-of-life and termination of pregnancy.

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## **Article 12: Recognition of legal capacity on an equal basis with others**

1. All legislation on legal capacity in Belgium is enacted at federal level.
2. Major changes will be made under the scope of Article 12 of the UNCRPD in the next few years. On 28 February 2013, the Senate voted in favour of a bill to reform the rules on capacity and establishing a status of protection in accordance with the principle of human dignity.
3. The effects of the reform will not be felt on the ground for several months as the law will not enter into force until the first day of the twelfth month following the publication by the *Moniteur Belge*<sup>82</sup>, i.e., 1 April 2014 at the earliest, given that transitory provisions have been made for those under the current protection status.
4. This change in the law has been long awaited by the Organisations Representing Persons with Disabilities (ORPD) and the Consultation Structures for Persons with Disabilities (ASPwD).
5. On paper, the new law meets the expectations of the sector. Under the previous regimes, a declaration of incapacity would result in the person being systematically being placed under a regime where they are represented by a third-party: either parents, trustees, or provisional administrators. When the new law comes into force, persons declared incompetent will receive support.
6. In concrete terms, the person protected will retain their capacity to take decisions on all issues concerning them personally and their rights. If they require assistance with certain decisions, a judge will designate an administrator to assist them and ensure that their interests are protected.
7. This creates problems in relation to the present report, as the new law is not in force at the time of writing and the experiences reported are based on the law currently in force.
8. The BDF report aims to report on the experiences of persons with disabilities, highlights certain issues giving rise to problems for persons with disabilities who are not in a position to exercise their legal capacity. It should be born in mind that the following analysis does not take account of the improvements resulting from the implementation of the new law in 2014.

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<sup>82</sup> As of the 10 April 2013, the law was not yet published in the *Moniteur Belge* (Official Journal)

## **Prolonged minority status**

9. The ORPD bodies have strongly criticised the prolonged minority system <sup>83</sup> which significantly restrict the capacity of persons with disabilities assigned to this status.
10. Prolonged minority status involves assigning the person to the same status as a minor under 15 years old.
11. The person is therefore deemed to be a minor, in terms of both personal decisions and property. In concrete terms, the person cannot validly conclude any legal act.
12. They remain under the authority of their parents or are assigned a trustee.
13. Where an adult person is assigned to prolonged minority status, only their civil rights are restricted.
14. Therefore, the person:
  - cannot sign a contract
  - cannot manage their property: they must be represented, i.e. another person must take their place to manage their property
  - cannot donate their property
  - cannot make a will <sup>84</sup>
  - are automatically resident with their mother and father
  - cannot legally possess their property
  - cannot marry and, as a consequence, cannot conclude a marriage contract
  - cannot give their consent to their own adoption
  - cannot adopt a child
  - are not consulted by the judge when deciding the details of the role of the trustee
  - do not receive the management accounts drawn up by the trustee
15. Their civil rights are almost non-existent.
16. However, other rights are also affected.
  - In terms of public law, the person cannot exercise their right to vote or to stand for election.
  - In terms of social rights, the person cannot conclude an employment contract. If the person is offered a job, they have to be represented upon conclusion of the employment contract.
  - With regard to the courts, they cannot take a case to the courts
  - In terms of medical law, the parents or the trustee continue to exercise their rights on their behalf. In theory, they should be involved in the exercise of their rights to the extent of their capacity. This is rarely the case in practice<sup>85</sup>.
17. Belgian legislation fails to take account of the fact that the person is still an adult in physical, physiological and psychological terms. Persons with disabilities have the needs

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<sup>83</sup> Prolonged minority status organised under the Law of 29 June 1973 inserting Article 487(1) of Book I of the Civil Code.

<sup>84</sup> Article 904 of the Judicial Code

<sup>85</sup> See the commentary on Article 24



of aspirations of any adult, even though they are fictitiously deemed to be under the age of 15.

18. On the one hand, prolonged minority status has the advantage of providing some form of protection to the person based on a 'legal fiction'. On the other hand, the person has a whole range of fundamental rights and their legal status constitutes an obstacle to their personal growth.

### **An overly 'medical' approach**

19. Up to now, the decision to assign a person to prolonged minority status has been based solely on 'medical' criteria. Social workers are regulated to a particularly limited role. Such an approach contravenes the spirit of the UNCRPD.

### **Excessive workload for property administrators**

20. Administrators are appointed by the judge of the peace. Professionals given a mandate over the property of those assigned to prolonged minority status often have responsibility for a large number of files. As a result, they do not have enough time to work on each case.
21. It is difficult for the ORPD and ASPwD bodies to understand why judges continue to assign files to the same administrators. It appears that there are too few property administrators available. Furthermore, it appears that the judges prefer to assign cases to the property administrators with whom they work regularly.
22. The OPPH and ASPwD wish to see a clear limit in the number of cases assigned to any particular professional administrator.

### **Avenues for in the event of abuse by a trustee**

23. Abuse by trustees is a sensitive issue. The majority of trustees are dedicated professionals, carrying out their role with the highest respect of the interest of the beneficiary in accordance with law. Some trustees have also campaigned for a full reform of the current system.
24. However, unscrupulous trustees also exist. In such case, identifying a failure on the part of the trustee is the first stumbling block. The second is reporting the problem and obtaining rectification. Currently, a case must be taken before the competent judge of the peace.
25. Judges are faced with a considerable backlog of case and do not have sufficient contacts on the ground. The shortage of contacts is linked to the lack of resources available to the courts in order to fulfil their duties. In many cases, it is difficult to put an end to abusive situations.
26. Social workers, neighbours and loved ones also need to be aware of what steps to take when faced with evidence of a failure in provisional administration.

## **Legal capacity and the conclusion of lending and insurance contracts**

27. Persons under prolonged minority status cannot independently sign a contract, take out a mortgage, or undertake other legal transactions. Their trustee is accredited to carry out such acts on their behalf.

### Case study

28. The mother of a young woman assigned to prolonged minority status sought to open a current account for her daughter to allow her to carry out purchases and manage her monthly budget. The mother is the legal trustee of the daughter and was therefore deemed to be responsible for the bank account.

29. The bank card delivered was in the name of the mother, and not in the name of the daughter. After four months of dealings with the bank, she received the following written response: "The person who requested the card is the holder of the card, the person requesting the card must be a natural person with legal capacity and must be able to act independently without any limit with regard to the account. Your account has therefore been refused based on the failure to comply with the conditions".

30. After consulting with the legal service of the National Association of Persons with Intellectual Disabilities (ANAHM), the Federal Public Service for the Economy, the Association of Belgian Banks and a lawyer, she was reassured that there is no legal provision which prohibits the use of a bank card by a person with prolonged minority status.

31. The mother took a case to the Ombudsman. The young woman was granted a bank card, eight months after the initial request.

32. The end result of the dispute is positive, albeit after months of administrative hassle and refusal to recognise the rights of the person. Many trustees do not have the same level of tenacity as the mother in this case<sup>86</sup>

## **Legal capacity and medical treatment**

33. Where a person is assigned to prolonged minority status decisions on medical treatment and medical experimentation on the person fall to the trustee. In principle, the patient should be involved in decision-making if they are capable of understanding what is involved in the decision.

34. Trustees sometimes refuse particular types of medical treatment which they consider to be too burdensome.

35. With regard to forced hospitalisation (see Paragraph 57 of the official report), the Federal Commission on the Rights of the Patient proposed in 2011, a series of concrete

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<sup>86</sup> Testimonial from Sylvette Norre, 1340 Ottignies

measures an recommendations, following reports of forced medication, use of force, isolation and intimidation in a number of studies to which the Commission referred<sup>87</sup>.

36. Problems with forced hospitalisation also affect minors who have already presented their testimonials and demands in the report on children in Belgium at the Committee on the rights of the child, on 1 February 2010<sup>88</sup>.

**Bill reforming the rules on capacity and establishing a new protection status in accordance with the principle of human dignity**

37. The aim of the shadow report is to provide an update on the realities of life experienced in day-to-day life. An evaluation of the expected impact of legislation which has not yet entered into force is therefore beyond the scope of the present report.

38. However, problems with the legislative process do fall within its remit. In this regard, it should be noted that the current level of cooperation with the ORPD and ASPwD bodies leaves much to be desired.

39. The ORPD and ASPwD bodies have had to campaign to ensure that they are consulted and their voices are heard. Their voices were also listened to during the second half of 2011. However, since 2012, they have not been kept informed of the progress on the bill.

40. Although the text voted by the Parliament and the Senate is satisfactory from the perspective of the ORPD and ASPwD bodies, some aspects are at odds with Article 12 of the UNCRPD. Difficulties arise in relation to:

- Property transactions: the principle of the bill is that the person is incompetent
- The exercise of political rights: the person may be declared incapable of exercising their right to exercise their rights and to representation<sup>89</sup>.
- Monitoring the work of the property administrator: the judge can dispense the administrator from the requirement to communicate the management report to the person concerned<sup>90</sup>.

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<sup>87</sup> Opinion on the application of Article 8 of the law on the rights of patients in the mental healthcare sector and on the right of the patient to give their free and informed consent to all medical treatment  
[http://www.health.belgium.be/internet2Prd/groups/public/@public/@dg1/@legalmanagement/documents/ie2divers/19068992\\_fr.pdf](http://www.health.belgium.be/internet2Prd/groups/public/@public/@dg1/@legalmanagement/documents/ie2divers/19068992_fr.pdf)

<sup>88</sup> [http://www.unicef.be/webdata/LR\\_RapportFR\\_0.pdf](http://www.unicef.be/webdata/LR_RapportFR_0.pdf) (pp. 51-55)

<sup>89</sup> Article 7, 1°; article 497/2

<sup>90</sup> Article 498/3. §1er

## ***Recommendations***

1. The authorities must act without further delay to introduce a full reform of the overall protection status of adults who have been declared incompetent, by taking measures to implement the new law establishing the new protection status in accordance with the principle of human dignity. The reform should be based on wide consultation with all the stakeholders through their representative organisations.
2. The competent authorities should deal with persons with disabilities on the basis of their 'protected' status as adults for issues aside from property such as health, choice of the place of residence, activities, leisure, holidays etc.
3. The authorities should set up and fund appropriate support structures to allow persons with disabilities covered by the new law on protected status to take their own decisions in areas in which they already have a full or partial choice.

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## **Article 13: Access to justice**

1. The legal system is essentially a federal issue. Other authorities have no competence in this area.

### **A long way off from achieving accessibility**

2. Under the law, persons with disabilities have access to justice on an equal basis with others.
3. On the ground, the organisations representing persons with disabilities and the consultation structures for persons with disabilities have noted that we are a long way off: persons with disabilities meet many different obstacles.
4. Few persons with disabilities can participate in the legal system. The lack of accessibility may impact them personally in certain cases or the objectivity required for decisions taken on other aspects of this fundamental area for the proper function of a society based on the participation of all.

### **Simple barriers which must be overcome**

5. A lack of resources explains many of the failures which have prevented the justice system from modernising its processes and improving its capacity to cater for and assist persons with disabilities. Years of under-capacity have cumulated in accessibility failures both in terms of infrastructure and procedures.
6. The justice system is notable for the following accessibility issues. This is not intended to be an exhaustive list. Nor are the following points presented in any order of priority: all the issues must be addressed in order to bring access to justice into line with the UNCRPD.

### **The accessibility of the legal process in general**

7. It is particularly difficult for persons with disabilities to access the judicial process. To date, the competent authorities have failed to demonstrate their desire to adapt the environment and procedures so as to ensure that every citizen has the same rights in terms of access to justice and all related procedures (police, prison, etc.)
8. Certain barriers make things completely impractical for persons with disabilities.

## **Access to buildings**

9. Physical access to courtrooms, police stations and prisons is sporadic and depends much on the date of construction and renovation of the building as well as implementation and compliance with the regional regulations<sup>91</sup>. In reality, persons with reduced mobility do not have proper access to all the buildings.
10. The lack of physical accessibility constitutes a barrier to the legal process overall, particularly to hearings, as well as evidence and documents.

## **Access to documents**

11. Access to documents is particularly problematic. This is a fundamental issue given that the legal process involves work on large case-files. Sufficient measures have not been taken to ensure that every person has access to all documents.
12. During a legal case, no provision is made for persons with visual impairments to facilitate direct access to evidence and documents in alternative formats.
13. Similarly, no provision is made to ensure access to documents for persons with cognitive disabilities.
14. The person therefore has no other choice than to rely solely on their lawyer. In this regard, communication between the lawyer and the client is extremely important. Problems encountered by deaf persons would therefore be difficult to overcome given the shortage of sign-language interpreters.

## **Access to hearings**

15. Hearings also play an important role in the legal proceedings. In this regard, the ORPD and ASPwD bodies noted that there is practically no way in which deaf persons can participate in hearings in a satisfactory manner with the help of sign-language interpreters due to the shortage of such interpreters<sup>92</sup>. Similarly, there is currently no room with induction loops or other equipment to facilitate communication.
16. For those who require the assistance of a sign-language interpreter, the shortage is further exasperated by the fact that, in order to participate in the legal process, a sworn interpreter is required.
17. Furthermore, the legal process requires the use of specific terminology which is not taught to sign-language interpreters.
18. Similarly, no provision is made for alternative, improved communication, to ensure that a person with cognitive disabilities can follow and participate fully in hearings.
19. The same applies to investigations, under which it is almost impossible for a person with a cognitive disability to provide circumstantial evidence.

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<sup>91</sup> See Article 9 – Accessibility

<sup>92</sup> See Article 9 - Accessibility and Article 21 - Freedom of opinion and access to information

### **'Dehumanised' procedures**

20. Aside from access to justice, the issue of dehumanisation also raises issues for the justice system. While a certain level of formality is undoubtedly necessary, it may go too far, to the extent that the system becomes nothing more than formality. This cannot be said of the justice of the peace, which has made admirable efforts in this regard.
21. Although this does not create problems for most persons, it is regrettable that accommodation is not made for persons with psychosocial disabilities.

### **Insufficient training for staff**

22. As is the case in most other sectors, staff in the legal system, at all stages of the process, and staff in directly related sectors such as prison staff and police, do not receive a minimum level of training on disability.
23. This leads to a lack of understanding, the impact of which is greater than normal: encountering the legal system is particularly stressful for any citizen.
24. The lack of understanding of disability among staff is nowhere as dramatic as in the prison system. Persons with disabilities in the prison system are there 24/7. Not hearing or understanding what is being said can have catastrophic consequences for the person. Leaving the person in prison on a long-term basis could even constitute torture.

### **Access to the courts**

25. Judges have an important role in Belgian society where a large number of cases are taken before the courts. It would be logical for a certain number of persons with disabilities to be appointed to such positions.
26. This is not the case at present and may lead to problems inherent in the justice system, such as accessibility. However, this is also due to the lack of accessibility in other sectors, particularly education: unless education is made accessible to all on an equal basis, it is impossible for a decision to be handed down by a judge with a disability<sup>93</sup>.

### **Access to jury duty**

27. The jury system is used in Belgium for the most serious cases. Citizens are therefore appointed to decide on cases submitted to the Assize Court. The system is organised so that the citizens appointed as jury members can fulfil their duties and be relieved from professional obligations so as to gain full knowledge of the case and participate in the hearings.

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<sup>93</sup> See Article 24 - Education and Article 27 - Work and employment

28. In theory, the same should apply to persons with disabilities, who should be able to sit on a jury. In reality, the accessibility problems reported in the legal system result in the actual participation of jurors with disabilities being left to chance.
29. The practical conditions do not facilitate the fulfilment of the founding principle of trial by one's peers.

### ***Recommendations***

1. The competent authorities should take the necessary measures to provide assistance to facilitate access to justice for any person with a disability.
2. Sign-language interpreters should receive additional training on legal terminology in order to ensure that they can provide a high quality service to deaf persons.

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## **Article 14: Liberty and security of the person**

1. In Belgium, the liberty and security of the person is a federal issue (Justice and Internal Affairs). However, some aspects interact with regional policy.
2. Although mentioned previously<sup>94</sup>, we wish to return to the lack of awareness and failures to make reasonable accommodation with which persons with disabilities are faced in relation to the police, the courts, and the prisons.
3. We will then discuss the problems in relation to the social protection and the imprisonment of a person suffering from an intellectual disability or a mental illness who has committed a crime, the disastrous consequences of which <sup>95</sup> fall within the scope of Article 15 - Freedom from torture and cruel, inhuman and degrading treatment or punishment.
4. Furthermore, as will be explained on the section on the policy fragmentation, interactions with regional policies often create problems or difficulties for those concerned.
5. Finally, we will discuss the new legislation on preventive detention, the entry into force of which has been postponed until 2015.

### **Lack of awareness-raising and reasonable accommodation**

6. Training for professionals involved in the justice system on the realities of disability, from the police to judicial and prison staff leaves to be desired. It is not uncommon for a person with a disability to be deemed to be a delinquent whereas a proper understanding of their experience would lead to the situation being managed with respect for the person and their mental state. Staff must therefore be made aware of the specifics of various disabilities.
7. Law enforcement personnel carrying out identity checks and administrative or judicial arrests only receive brief training on the specific details of various disabilities, which is only received from organisations for persons with disabilities<sup>96</sup>.

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<sup>94</sup> See Article 13 - Access to justice

<sup>95</sup> X. *De lijdensweg van gedetineerden*, dans *De Standaard*, 30 January 2010.  
<http://www.pfpcg.be/De%20lijdensweg%20van%20gedetineerden.pdf>

<sup>96</sup> *Le Soir*, 16 January 2008: <http://archives.lesoir.be/des-policiers-se-mettent-a-la-place-de-personnes-handic-t-20080116-00EJLD.html>

### Case study

8. Persons with disabilities are sometimes approached in public places, or even held for short periods in psychiatric wards, without being charged with any crime, simply because they do not have the capacity to express themselves easily (cerebral palsy<sup>97</sup>) or to understand what is asked of them (deaf persons, and persons with intellectual disabilities).
9. With regard to prison officers may be unaware of the influence of the illness or disability on behaviour. NGOs regularly receive complaints describing abuse and misunderstanding of persons with an illness or a disability in prisons and detention centres.
10. Furthermore, the lack of awareness among prison officers on disabilities not only impacts persons with mental health problems and intellectual disabilities, but also those with other types of disabilities (sensory and motor).
11. There are no specific provisions whatsoever setting out reasonable accommodation measures for any particular disability so that persons with disabilities can enjoy their rights on an equal basis with others, at all stages of the police, judicial or prison process.
12. Once it has been determined that a person with a disability should be deprived of their freedom, either on the basis of criminal law, or preventive detention for the protection of the public, the competent authorities are under a duty to ensure that they are treated on an equal basis with other persons who have been deprived of their freedom.
13. Accommodations therefore must be made for accessibility, communication and support.

### Case study

14. Deaf persons, in particular, whose disability prevents them from understanding questions, are affected, and their behaviour is sometimes deemed to be uncooperative. Worse still, some are placed in handcuffs which prevents them from expressing themselves in gestures.
15. Not only must a sign-language interpreter be provided, all questions must be recorded on video to prevent any errors in interpretation to the detriment of the defence of the person's rights.

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<sup>97</sup> Altéo (see first Testimonial): <http://www.alteoasbl.be/Sensibilisation-des-policiers-au>

## **Questioning preventive detention and imprisonment**

16. The deprivation of freedom ranks among the primary tools employed by the justice system to protect society from crime. Prison sentences are handed down by the courts to persons with disabilities, as is the case for any other citizen, on the basis of the crime committed.
17. Although Article 71 of the Criminal Code<sup>98</sup> allows the judge to dismiss the case or order an acquittal, the law on preventive detention for the protection of the public allows judges to order the person to be detained if the mental state in which they were in at the time the crime was committed is still present at the time of the court investigation or judgment.
18. *Stricto sensu, such cases do not constitute imprisonment, but a security measure.* In reality, the detention has the effect of depriving the person of their freedom and therefore falls within the scope of Article 14 of the UNCRPD.
19. Although the legislation on equal treatment for persons with disabilities and the deprivation of freedom, it is clear that these conditions are not met in reality.
20. The experience of detainees, particularly those with intellectual disabilities or mental illness, has been repeatedly condemned by various organisations for persons with disabilities, notably in the 'white paper'<sup>99</sup>, setting out their various demands in this regard.

## **Inappropriate legislation**

21. *La loi de défense sociale à l'égard des anormaux et des délinquants d'habitude* (Law on the protection of society from abnormal and habitual delinquents) of 1 July 1964<sup>100</sup> is still in force and relates to persons who have committed crimes while in a serious state of mental imbalance or debility rendering them incapable of controlling their actions.
22. This legislation and its implementation results in legal problems<sup>101</sup>:
  - First, the law does not require that the crime be punishable by imprisonment. As a result, persons with disabilities are detained for crimes which would not have resulted in imprisonment had they acted as ordinary defendants.
  - Furthermore, the law only refers to the incapacity of the person to control their actions, not to mental problems which would seriously affect their judgement.
  - Finally, the law does not specify that the detention should only apply where there is a serious risk of reoffending, with the result that many persons with intellectual disabilities or mental health problems are imprisoned, not because they are a danger to the public, but because they are seen to be 'deranged'<sup>102</sup>.

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<sup>98</sup> "No crime shall have been committed where the accused or defendant was in a state of insanity, or was subject to an irresistible impulse. "

<sup>99</sup> ANAHM-NVHVG, Similes and the CEOOR, 2011. *La politique des oubliettes : internement des personnes handicapées mentales et/ou malades mentales* (pp. 1-84): <http://nl.similes.be/file?fle=46039&ssn=>

<sup>100</sup> [http://www.ejustice.just.fgov.be/cgi\\_loi/change\\_lg.pl?language=fr&la=F&cn=1964070102&table\\_name=loi](http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=1964070102&table_name=loi)

<sup>101</sup> Bosly & Colette-Basecqz, *La nouvelle loi belge relative à l'internement des personnes atteintes d'un trouble mental*, dans: *L'irresponsabilité pénale, Regards croisés Droit - Santé - Culture*, Paris, Cujas, 2009 (pp. 53-100).

<sup>102</sup> *Mental'idées* n°17, p. 29: [http://www.lbfsm.be/IMG/pdf/mentalidees\\_n17\\_DEF\\_PDFWEB.pdf](http://www.lbfsm.be/IMG/pdf/mentalidees_n17_DEF_PDFWEB.pdf)

- Finally, the law does not require an initial psychiatric opinion and medical observation of the person in preventive detention is not required.

23. In cases where the person is placed under observation, they are placed in a psychiatric unit in the prison, not in a hospital, for a total of one month, which may be extended to a maximum of six months, at the end of which the person is placed in a short-term prison, unless a course of treatment is ordered.

24. When the observation period comes to an end and the person has not yet been placed in prison, they remain subject to the terms of the arrest warrant and general law on detention is applicable.

25. In this context, as at all stages of the judicial process, the problem of the judicial backlog and the resulting slowdown in the process is crucial. The person finds themselves in limbo. Their detention may or may not be deemed to be justified and they may or may not receive treatment adapted to their needs. Meanwhile, the person is deprived of their liberty like any other prisoner, which is detrimental to their well-being.

### **The Committees on Social Protection (CDS) and the lack of uniformity of treatment of detainees**

26. The details of the imprisonment are determined by the CDS committees distributed across Belgium with one CDS for every short-term prison with a psychiatric unit.

27. The Committees are composed of a magistrate, who presides over the committee, a psychiatrist and a lawyer. Based on the case and the psychiatric opinion, the CDS determines the institution to which the person will be sent: a prison psychiatric unit, a social protection institution or a social protection unit in a psychiatric institution.

28. The CDS may also decide to place the person in a psychiatric institution such as a psychiatric hospital but classic institutions and psychiatric services have expressed major reservations about their capacity to cater for detainees.

29. The imprecise terms of the legislation of 1964<sup>103</sup> gives rise to diverging interpretations among psychiatric professionals<sup>104</sup> and, therefore, unequal treatment.

#### Case study

30. Jhan Baeke, a psychiatric expert interview by *De Standaard* in 2010, there are diverging interpretations of these terms by psychiatrists, such that: "For the same crime, a person could be detained in the province of Anvers and convicted West Flanders"<sup>105</sup>.

<sup>103</sup> "...either in a state of insanity, or in a severe state of mental imbalance or debility rendering them incapable of controlling their actions"

<sup>104</sup> X., *La décision sur l'irresponsabilité pénale et l'internement en défense sociale*, dans *Mental'idées* n°17, 2012, pp. 11-21 [http://www.lbfsm.be/IMG/pdf/mentalidees\\_n17\\_DEF\\_PDFWEB.pdf](http://www.lbfsm.be/IMG/pdf/mentalidees_n17_DEF_PDFWEB.pdf)

<sup>105</sup> X. *De schandvlek van Justitie*, dans *De Standaard*, 30-31 January 2010. <http://www.pfpcq.be/De%20schandvlek%20van%20Justitie.pdf>

31. This situation results in unequal treatment according to the Committee for Social Protection with responsibility for the issue: "Detention is a lottery"<sup>106</sup>
32. Aside from the wording of the 1964 law, the ORPD and ASPwD bodies have condemned the situation, along with the absence of oversight of the work of the CDS, which gives rise to subjective and arbitrary decisions being taken by certain Committees.
33. Finally, figures on detainees with intellectual disabilities and/or mental health problems should be provided by all the CDS committees, classified by pathology and the nature of the crime. The true extent of the problem will remain unknown unless detailed data are made available.

### **The quality of the psychiatric expertise in question**

34. The way in which psychiatric opinions are formulated often raises concerns.
35. Magistrates call on only a small number of psychiatrists, who are already overburdened. Therefore, they cannot respond to the request within a reasonable period. The result is that, in the majority of cases, the psychiatrists only see the detainees once and can only give a short amount of time to them. Such interactions cannot be said to constitute psychiatric care.
36. Among the reasons for the shortage of psychiatric experts is that the role is not valued: there is no specific training required of psychiatrists in order to fulfil this role in the courts, in addition to the standard training. This type of training is available in the Netherlands. Furthermore, psychiatric experts are not paid enough in relation to their level of training and the importance of their role.
37. The concerns raised about the quality of the psychiatric opinions are based on the absence of monitoring of the quality of the work by the psychiatric experts. A lack of information, training and even professionalism has been reported with regard to the experts.
38. Finally, according to the report by the "Observatoire International des Prisons" (OIP), 'the fact that the psychiatrists draft the criminal file in their report, even before meeting the person concerned, affects the objectivity and the quality of their work. Under such circumstances, it is extremely difficult to disregard any prejudices arising from the criminal file'<sup>107</sup>.

### **The indeterminate detention period**

39. Detention may be more difficult to cope with than prison, due to its indeterminate duration.
40. Detention is not limited in time, even though the detainee and their lawyer are entitled to appear every six months before the Commission for the social protection, either to modify the detention conditions or request release, which is unlikely to be granted.

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<sup>106</sup> X., *Internering is een loterij*, in *De Standaard*, 30-31 January 2010.

<http://www.actualiteit.org/forums/archive/index.php?t-29091.html>

<sup>107</sup> International Prison Observatory, Belgian Section. Notice 2008: *De l'état du système carcéral belge* (189 p.): [http://www.oipbelgique.be/biblio/notice/Notice\\_2008.pdf](http://www.oipbelgique.be/biblio/notice/Notice_2008.pdf) (p. 114)

41. Release, either on a trial basis or permanently, is only possible where the mental state of the person has sufficiently improved, and the reintegration conditions are fulfilled. Upon release, the person is sent to an open residence which meets to their specific needs, on the condition that such an establishment exists and there is a place available.
42. Freedom is subject to compliance with conditions for a trial period set by the CDS. If the person on release does not comply with the conditions, they may be brought into a psychiatric unit for further detention.
43. In theory, detainees can be released after six months. Such cases are few and far between and extremely unlikely. Persons are often held for a number of years.
44. Detainees are therefore left in a permanent state of uncertainty. Life is centred on the hearings at the Committee for the social protection and a cycle of anticipation and disappointment that repeats itself every six months.

### **A failing social reintegration system**

45. Among the conditions for release which must be met by detainees is drawing up a reintegration plan, but the CDS have shown great caution in granting releases.<sup>108</sup>
46. The health of persons with disabilities and mental health problems often deteriorate during detention, which makes it difficult to establish social reintegration plans and constitutes a barrier to release.
47. The ORPD and ASPwD bodies would criticise the lack of adequate support and care, which makes it difficult for the person to make progress and to draw up a proper social reintegration plan. The government has not put in place the necessary support to facilitate detainees in working towards fulfilling of the conditions for release provided for under law.

### **Shortage of places and appropriate care in social protection**

48. There is a cruel shortage of places in social protection units in Belgium. This state of affairs has led to persons with mental health problems and intellectual disabilities being left in prison psychiatric units, or even in cells with other prisoners, while waiting to be transferred to a social protection unit<sup>109</sup>. Detainees may spend years in prison, in deplorable conditions<sup>110</sup>, leading the person to despair, or even to take their own life<sup>111</sup>.
49. The European Court of Human Right has issued several warnings to the Belgian government, between 2009 and 2012<sup>112 113 114</sup>, reminding them of their obligation to

<sup>108</sup> X., *La libération de l'interné, dans Mental'idées* n°17, 2012.

[http://www.unicef.be/\\_webdata/LR\\_RapportFR\\_0.pdf](http://www.unicef.be/_webdata/LR_RapportFR_0.pdf) (pp. 66-73)

[http://www.lbfsm.be/IMG/pdf/mentalidees\\_n17\\_DEF\\_PDFWEB.pdf](http://www.lbfsm.be/IMG/pdf/mentalidees_n17_DEF_PDFWEB.pdf)

<sup>109</sup> Siréas, 2010/02. Care for mentally disabled detainees: <http://www.sireas.be/publications/analyse2010/2010-02int.pdf>

<sup>110</sup> Derestiat (P.), 11 March 2013: <http://www.justice-en-ligne.be/article539.html>

<sup>111</sup> *La Dernière Heure*, 26 May 2010: <http://www.dhnet.be/archive/un-interne-se-suicide-a-namur-51b7e6b8e4b0de6db996980b>

<sup>112</sup> De Schepper c. Belgique ([application n° 27428/07](#))

<sup>113</sup> De Donder et De Clippel c. Belgique ([application n° 8595/06](#))

<sup>114</sup> L.B. c. Belgique ([application n° 22831/08](#))

take all appropriate measures to establish a public or private body to accommodate detainees presenting a danger to the public.

50. The Court has found against Belgium on three occasions, in 2013, for the violation of certain articles of the European Convention of Human Rights and Fundamental Freedoms<sup>115</sup>, for holding detainees in prison psychiatric units for years without appropriate care<sup>116</sup>  
<sup>117</sup> <sup>118</sup>.
51. The Court also emphasised the existence of a structural problem, as there is no possibility to fund care for persons with mental health issues in prisons, i.e. the lack of capacity in the external psychiatric system.

### Case study

52. Over the past decade, Belgian prisons have accommodated over 25% additional detainees on a daily basis. Over a long period, the number of psychiatric detainees has risen sharply, with an increase of 72%, not counting residents in social protection institutions in Wallonia in Mons and Tournai, or outside the prison system. There has been a comparable increase across the three regions. On 1 March 2011, there were 1,103 psychiatric detainees in Belgian prisons, out of a total of 11,065 prisoners<sup>119</sup>.

53. Psychiatric detainees are held in prisons, which is not the right place for them. This situation is harmful both to persons with disabilities, and the prison system.
54. In 2008, the International Prison Observatory (IPO) condemned the deplorable conditions in the psychiatric prison units<sup>120</sup>, which the CPT has confirmed<sup>121</sup> following visits by their delegation in Belgium in 2009 to psychiatric units in Lantin and Jamioulx and in 2012 to the psychiatric unit in Forest.
55. Finally, not only do the units accommodate prisoners, but also detainees with various psychiatric issues (suicidal, drug dependency, etc.). The variety of problems tends to exacerbate the health problems experienced by detainees; three are often confined to a cell designed for one or two<sup>122</sup>.

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<sup>115</sup> Text of the Convention: <http://conventions.coe.int/treaty/en/treaties/html/005.htm>

<sup>116</sup> Claes c. Belgique ([application n° 43418/09](#))

<sup>117</sup> Dufourt c. Belgique ([application n° 43653/09](#))

<sup>118</sup> Swennen c. Belgique ([application n° 53448/10](#))

<sup>119</sup> Justice in figures 2011, SPF Justice, 2012 (pp. 52-53).

[http://justice.belgium.be/fr/binaries/Justice%20en%20Chiffres%202011\\_tcm421-157705.pdf](http://justice.belgium.be/fr/binaries/Justice%20en%20Chiffres%202011_tcm421-157705.pdf)

<sup>120</sup> In the 2008 report, the IPO states that the psychiatric units are the most overpopulated sections of the Belgian prisons, to the extent that psychiatric detainees are relegated to 'normal' cells (pp. 115-116):

[http://www.oipbelgique.be/biblio/notice/Notice\\_2008.pdf](http://www.oipbelgique.be/biblio/notice/Notice_2008.pdf)

See also the additional by the OIP, published on 26 July 2010:

[http://lib.ohchr.org/HRBodies/UPR/Documents/Session11/BE/OIP\\_Observatoireinternationaldesprisons-fre.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session11/BE/OIP_Observatoireinternationaldesprisons-fre.pdf)

<sup>121</sup> CPT reports following two visits by the delegation in Belgium in 2009 to psychiatric units in Lantin and Jamioulx and in 2012 to the psychiatric unit in Forest: <http://www.cpt.coe.int/fr/etats/bel.htm>

<sup>122</sup> The CPT recommended that the Belgian authorities undertake restructuring works to accommodate patients in rooms with one or two beds and provide better sanitation. Restructuring should be accompanied by an increase in recreational and socio-therapeutic activities.

## **Shortage of social protection staff**

56. In 2007, a ministerial memorandum <sup>123</sup> set out two measures;

- Establishment of multidisciplinary care teams in the units and social protection institutions. Teams are composed of a psychiatric nurse, a coordinating psychologist, a social worker, a specialised teacher, an occupational therapist and a psychiatrist.
- Placing specifically trained and selected personnel in the psychiatric units.

## ***Psychiatric prison units***

57. During the visit to the psychiatric prison units in Lantin, Jamioulx and Forest, the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment (CPT) reported that the care team, particular for psychiatric care, was insufficient in relation to the needs reported on the ground.

58. The CPT reported that psychiatrists and psychiatric nurses spend at least 20% of their time in consultations and on care for the rest of the prison population. Without such care, the rest of the population would receive no care at all. Furthermore, employing a psychiatrist part-time is far from satisfactory in view of the care required for detainees in psychiatric units.

59. Furthermore, prison staff are often required to place detainees in distress in security cells or empty cells in the short-term jail where there are no longer under the supervision of specially trained staff.

60. While conditions have improved considerably, substantial efforts must be made in order to achieve the primary objective set out in the memorandum of June 2007, i.e. to provide detainees with 'an equivalent standard of care as that provided in free society'.

61. It goes without saying that a stay in a psychiatric unit in such inadequate conditions does not contribute to improving the state of health of the detainee, despite the fact that the law requires such an improvement as a condition for release.

## ***Social protection institutions***

62. The multidisciplinary teams have been assigned to the social protection institutions are well-qualified, but too low in number.

63. The recommendations by the CPT on the living conditions and access to care in the psychiatric units should also be applied to the social protection institutions (EDS).

## **Double diagnosis**

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<sup>123</sup> SPF Justice - Circulaire n° 1800 of 7 June 2007



64. The fragmentation of the various policies has led to a major problem for persons with intellectual disabilities who are also suffering from mental health or behaviour problems<sup>124</sup>.
65. Detainees find themselves in no man's land between the services for intellectual disabilities and mental health<sup>125</sup>. Without specialised and adapted institutions providing sufficient guarantees of safety, detainees are often assigned to the EDS institutions or psychiatric prison units.

### **Lack of prevention efforts**

66. It is clear that many of these problems could be avoided if greater efforts were made on the prevention side. This is true for social protection and for the legal system overall.
67. Support must be provided to persons with disabilities suffering from behaviour problems and prevention networks must be strengthened in order to avoid further harm. For example, it goes without saying that sexual education for persons with intellectual disabilities helps to avoid inappropriate behaviour.

### **Policy fragmentation**

68. In practice, the institutional landscape of social protection in Belgium is complex. First, different rules on detention apply in the Dutch-speaking North and the Francophone South. Second, the various detention institutions are not subject to a single authority, have different types of staff and are not subject to the same rules in terms of care<sup>126</sup>.
69. The distribution of competences in federal Belgium therefore has a negative impact on the care of detainees.
70. Thus, the care sector for persons with intellectual disabilities and mental health daycare fall within the remit of the Regions.
71. However, justice, the sector of residential care in mental health and the management of secure institutions, including prison psychiatric units and the EDS, are subject to federal authority.
72. Care of detainees with intellectual disabilities is at the crossroads between competences of the various levels of power.

### **Case study**

73. The Walloon Region:

<sup>124</sup> SPF Santé publique. *Dual diagnosis*:

<http://www.health.belgium.be/internet2Prd/groups/public/@public/@dq1/@mentalcare/documents/ie2divers/19068789.pdf>

<sup>125</sup> Inclusion Europe. *The differences between mental illness and intellectual disability*: [http://inclusion-europe.org/images/stories/documents/Project\\_MMDP/EN/EN\\_Leaflet.pdf](http://inclusion-europe.org/images/stories/documents/Project_MMDP/EN/EN_Leaflet.pdf)

<sup>126</sup> Cartuyvels Y. et al. *Déviante et société* 34(4), 2010: [http://halshs.archives-ouvertes.fr/docs/00/58/39/55/PDF/La\\_da\\_fense\\_sociale\\_en\\_Belgique.pdf](http://halshs.archives-ouvertes.fr/docs/00/58/39/55/PDF/La_da_fense_sociale_en_Belgique.pdf)

- The Paifve EDS is managed solely by the Federal Ministry of Justice
- The social protection departments in the Tournai Psychiatric Centres (CRP "Les Marronniers") and in Mons (CHP "Le Chêne aux Haies") are managed by the Ministry of Health of the Walloon Region, whereas the security staff are partly funded by the Federal Ministry of Justice.

74. According to the professionals on the ground<sup>127 128</sup>, the flagrant lack of cooperation between the two levels of power constitutes a barrier to the establishment of a coherent policy which meets the specific needs of detainees.

### **Reform of the law on social protection**

75. The law on social protection of 1 July 1964 has been reformed recently by the Law on the Detention of Persons with Mental Disorders of 21 April 2007<sup>129</sup>. Its entry into force has been postponed on a number of occasions, with the latest date set at 1 January 2015<sup>130</sup>.

76. Although improvements have been made to the law of 1964, the new law is still subject to criticism and discussion, first on the transfer of competences between the Committee on Social Protection (CDS) to the *Tribunal d'application des peines (Sentencing Court - TAP)*.

77. In terms of the future role of the Sentencing Court, the ORPD and ASPwD bodies which to emphasis the inherent procedural contradiction. Detention is not a punishment, and decisions in this area should not fall within the remit of a criminal sentencing court.

78. The new legislation has given rise to strong criticism among NGOs, legal professionals and psychiatrists, with the organisation of a number of conferences (2007<sup>131</sup>, 2010a<sup>132</sup>, 2010b<sup>133</sup>, 2011<sup>134</sup>) and publications (some of which are exhaustive<sup>135 136</sup>).

<sup>127</sup> L'internement en défense sociale : entre soin et sécurité. 'Mental'idées' n°17, 2012, pp. 45-55:

[http://www.lbfsm.be/IMG/pdf/mentalidees\\_n17\\_DEF\\_PDFWEB.pdf](http://www.lbfsm.be/IMG/pdf/mentalidees_n17_DEF_PDFWEB.pdf)

<sup>128</sup> Maes (B.), Goethals (J.) et Verlinden (S.), *Samenwerking tussen justitie, gehandicaptenzorg en geestelijke gezondheidszorg*, dans *Personen met een verstandelijke handicap onderhevig aan een interneringsmaatregel*, 2009. (pp.62-63):

<http://www.google.be/url?sa=t&rct=j&q=personen%20met%20een%20verstandelijke%20handicap%20onverhevig%20aan%20een%20interneringsmaatregel&source=web&cd=1&cad=rja&ved=0CDAQFjAA&url=http%3A%2F%2Fwww.vaph.be%2Fvlafo%2Fdownload%2Fnl%2F3456387%2Fbestand&ei=OL3iUYO3D8vu0gWS9oGYBQ&usq=AFOjCNE4jNe48ggVj7umPS8ZuJwqjVkgw&bvm=bv.48705608,d.d2k>

<sup>129</sup> [http://www.ejustice.just.fgov.be/cqi\\_loi/change\\_lq.pl?language=fr&la=F&table\\_name=loi&cn=2007042101](http://www.ejustice.just.fgov.be/cqi_loi/change_lq.pl?language=fr&la=F&table_name=loi&cn=2007042101)

<sup>130</sup> Article 71 of the Criminal Code with also be modified on 1 January 2015: "No crime shall have been committed where the accused or the defendant, at the time of the incident, is suffering from a mental disorder which has eliminated or seriously altered his judgement or control over his behaviour or where he was subject to a force which he could not resist. "

<sup>131</sup> *La nouvelle loi relative à l'internement des personnes atteintes d'un trouble mental*, FUNDP, 9 November 2007, Namur.

<sup>132</sup> *Internering : geen schuld, wel straf*. Vormingscentrum Guislain, 20 May 2010, Gent:

[http://www.mensenrechten.be/agenda/2010-03\\_folder\\_project\\_internering\\_DEF.pdf](http://www.mensenrechten.be/agenda/2010-03_folder_project_internering_DEF.pdf)

<sup>133</sup> *Malades mentaux, justice et libertés : renverser l'entonnoir*, FUSL, 17-18 September 2010, Brussels:

<http://extranet.obfg.be/agenda/LGcolloque%20malades%20mentaux.pdf>

<sup>134</sup> *La politique des oubliettes : internement des personnes handicapées mentales et/ou malades mentales*, KBC, 25 February 2011, Brussels :

79. Furthermore, Réginald de Beco, President of the Prisons Commission and of the Human Rights League, condemned the gaps in the legislation, which, in his view, was passed in haste and without prior consultation (2007)<sup>137</sup>:

- Absence of a second psychiatric opinion and of advice at the time the person is put under observation
- The transfer of competences to the Sentencing Court and the confusion between criminal penalties and security measures
- The absence of a psychiatrist in the Sentencing Court in spite of criticism from a number of deputies<sup>138 139</sup>
- the elimination of the Court of Appeal against decisions by the Sentencing Court, which may now only be appealed to the Supreme Court, to which only the lawyer of the detainee may lodge an appeal, within a very short time-frame
- the decision to immediately incarcerate administrative detainees
- the lack of clear provisions on the procedures for persons whose detention has not been ordered by a court
- unilateral provisional arrest in circumstances giving rise to the revocation of the arrest procedures.

80. Finally, in its opinion of 17 October 2011<sup>140</sup>, the CSNPH criticised that the text were finalised without consultation the organisations representing persons with disabilities. Apart from the delay, the CSNPH called for discussions on the details of the legislation, by involving persons with disabilities and their representative organisations.

81. The ORPD and ASPwD bodies agree that the circumstances arising from social protection measures are unbearable for detainees and the law of 2007 must be amended as a matter of urgency before its entry into force on 1 January 2015.

## **Recommendations**

1. The competent authorities should put in place with necessary staff and procedures to ensure that at the end of a maximum of 6 months of observation under the law on social protection, a properly documented decision can be taken with regard to the necessity of the detention.

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<http://www.anahm.be/?action=onderdeel&onderdeel=111&titel=Colloque+%22La+politique+des+oubliettes%22&=1&titel=ANAHM+-+Nationale+Vereniging+voor+Hulp+aan+Verstandelijk+Gehandicapten&setLanguage=2&titel=ANAHM+-+Association+Nationale+d%27Aide+aux+Handicap%C3%A9s+Mentaux>

<sup>135</sup> Bosly et Colette-Basecqz, *La nouvelle loi belge relative à l'internement des personnes atteintes d'un trouble mental*, dans *L'irresponsabilité pénale, Regards croisés Droit - Santé - Culture*, Paris, Cujas, 2009. (pp. 53-100).

<sup>136</sup> Casterman, *Internering van geestesgestoorde delinquenten*, Universiteit Gent, 2012.  
[http://lib.ugent.be/fulltxt/RUG01/001/891/901/RUG01-001891901\\_2012\\_0001\\_AC.pdf](http://lib.ugent.be/fulltxt/RUG01/001/891/901/RUG01-001891901_2012_0001_AC.pdf)

<sup>137</sup> De Béco (R.), *Le point de vue de l'avocat de l'interné. Colloque sur la nouvelle loi relative à l'internement (9 November 2007)*, FUNDP, Namur, 2007.

[http://www.liguedh.be/images/PDF/documentation/documents\\_thematiques/Colloque\\_sur\\_la\\_nouvelle\\_loi\\_interne\\_ment.pdf?766a6a4a76f17874a59bb7f42f2bb3fa=02402686aa092a01e21e2eca7b30a047](http://www.liguedh.be/images/PDF/documentation/documents_thematiques/Colloque_sur_la_nouvelle_loi_interne_ment.pdf?766a6a4a76f17874a59bb7f42f2bb3fa=02402686aa092a01e21e2eca7b30a047)

<sup>138</sup> *Doc.Parl., Chambre, sess.ord. 2006-2007, n° 51 – 2841/004*, pp. 20, 28, 29.

<sup>139</sup> *Doc.Parl., Sénat, sess.ord. 2006-2007, n° 2094/3*, pp. 17-24.

<sup>140</sup> CSNPH, Avis 2011/19: [http://ph.belgium.be/view/fr/advice/advice\\_2011/advice\\_2011\\_19.html](http://ph.belgium.be/view/fr/advice/advice_2011/advice_2011_19.html)

2. The competent authorities should take the necessary measures to remedy the problem of the shortage of places in social protection institutions as soon as possible.
3. The competent authorities should ensure that the detainee receives the necessary support to develop a social integration plan upon release.
4. The competent authorities should monitor the full implementation of Circular n°1800 of 7 June 2007 on multidisciplinary support for detainees.
5. The competent authorities should establish cooperation between the Regions and the Federal state to ensure that coherent and complementary decisions are taken. To that end, figures on detainees with intellectual disabilities and/or mental health problems must be provided by all the social protection committees, classified by pathology and the nature of the crime.
6. The competent authorities must acknowledge and support the crime prevention programmes over the long term, for both mental health and intellectual disabilities. The persons concerned, their families and friends should be targeted.
7. The competent authorities should also provide proper training for state employees, judges and other professionals working in the courts and the police on the various disabilities
8. The competent authorities must take the necessary measures to improve the quality of the expert psychiatric opinions provided in cases of social protection detentions. Priority objectives should be to provide psychiatric experts with additional training on the provision of medical expertise, rebuild respect for the profession and introduce quality controls and continuous professional development courses.
9. The competent authorities should correct the procedural failure whereby psychiatric experts consult the criminal file on the detainee before meeting with them in person.
10. The competent authorities should consult with persons with disabilities and their representative organisations from the beginning of the work on the legislation amending the new social protection law, before its entry into force on 1 January 2015.

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## **Article 16:**

# **Freedom from exploitation, violence and abuse**

### **Begging**

1. Begging is prohibited under the law in Belgium. However, it is ever present on our streets, particularly in large towns.
2. In the Brussels-Capital Regions, the ORPD and the ASPwD bodies have reported that children and adults with disabilities are often seen begging on the streets.
3. It appears that persons, who are often trafficked in from other countries, are forced to beg by criminal gangs who take advantage of their disability for profit. The proceeds are often directed to a third party.
4. Apart from the exploitation of such persons, taking advantage of a disability for the purposes of begging constitutes an affront to human dignity.
5. The fact that such practices persist demonstrates the inadequacy of the measures taken by the justice system and the police force.

### **Proceeds of unpaid work and volunteering**

6. In Belgium, employment legislation protects all workers against various forms of exploitation in terms of pay, working hours, safety, harassment, etc.
7. Logically, persons with disabilities should receive the same protection.
8. However, many persons with disabilities attend institutions or 'day centres', where art and craft activities are often on offer.
9. Promoting the well-being of attendees is the aim. However, in many cases, some or all of the produce is sold. Often, the proceeds of sale are only partially or not paid at all to the actual producers.
10. The ORPD and ASPwD bodies would criticise the fact that there is no regional regulatory framework for activities which have some of the characteristics of employment, and some of leisure.
11. For some persons with disabilities who are not in a position to take up employment, it is important to have activities which help them to feel that they are making a contribution and provide an opportunity for integration. The absence of a regulatory framework results in two problems:
  - First, the person and their work risk exploitation
  - Second, inspections, where they are carried out, are on the foot of employment legislation, which does not fit with the circumstances in question.

12. Persons attending occupational and day centres produce art and craft products. In many cases, the products are sold for a price. The issue of paying persons with disabilities a part of the price therefore arises.
13. Is it not appropriate that the producers themselves should receive individual payments for the products sold, minus the deduction for the cost of the 'raw materials' paid for by the institution.
14. Although some institutions allocate the profits to unfunded recreational activities for all the participants, there is a legal lacuna on this point.
15. Similarly, persons with disabilities may carry out volunteer work in NGOs or unpaid work for businesses. In such cases, the development of the person through activities through which they can make a contribution is the objective.
16. Some activities which are akin to work are organised without due regard for the rights of the person contributing to the organisation. The ORPD and ASPwD bodies have reported failures in terms of pay, hours, safety, harassment, etc. At present, there is no specific regulatory framework in place for such productive activities which do not constitute employment contracts.
17. Even where the profit from such activities is specifically allocated to the organisation of otherwise unfunded activities or the purchase of equipment to the benefit of all participants, the ORPD and ASPwD would criticise the lack of regulation in this area. Clarity is needed in order to ensure that the person does not find themselves in a situation where their work is exploited to generate a profit for which they are not properly compensated. In particular, it would make sense for part of the profits to go to the person individually.

### **Chemical and physical imprisonment**

18. Parents are rallying against the administration of cocktails of anti-psychotics and sedatives to persons with physical/mental disabilities with serious behavioural problems in psychiatric hospitals, leaving them in a practically vegetative state.
19. For those who have lost contact with their family, the situation is worse, they can no longer count on external support and protect against medical imprisonment.
20. Discussion is under way in the Walloon Agency for the Integration of Persons with Disabilities (AWIPH) in order to determine the limits and regulate medical and physical imprisonment. The fact that a study was launched by a regional agency demonstrates that such practices are currently in use. The disability sector is waiting for such rules to be put in place.

### **Legitimate need for respite and leisure**

21. Living day to day with a person with intellectual disabilities presents challenges. Over time, tiredness and exhaustion may set in. The family may lose the flexibility needed to deal with problems with behaviour and relationships.

22. The ORPD and ASPwD bodies would criticise the absence of respite options for families in critical situations such as parents and siblings reaching the point of exhaustion, problems with behaviour and relationships, deaths, etc. The absence of such a service constitutes a clear failure in terms of preventing abuse within the family.

### **School transport to special schools**

23. Problems with school transport in special education is emphasise in the comments on Article 9 and Article 20. Many children with disabilities spend over three hours on public transport every day, without competent support.

24. Similar problems also arise for adults attending day centres.

25. Difficult commutes are exasperated by outdated vehicles and the resulting absence of comfort and safety. From the perspective of the ORPD and ASPwD bodies, this constitutes ill-treatment.

### ***Recommendations***

1. The competent authorities should draw up an action plan in order to put an end to the practice of begging, in general, particularly where exploitation of persons with disabilities is at stake.
2. The competent authorities should take all the necessary concrete measures to regulate the sale of items produced as part of 'productive' activities organised by institutions for persons with disabilities.
3. The competent authorities should set up an authorisation system in order to provide a legal framework for unpaid productive activities.
4. The competent authorities should take the necessary measures to improve the school transport conditions for children in special education.
  - A code of conduct should be drawn up by all the stakeholders: public services, families, transport companies, drivers and schools
  - Bringing together a pool of drivers could compensate for the lack of card holders
  - training for drivers
  - Reduce the travel time for children transported before 7am.

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## **Article 19: Living independently and being included in the community**

1. Policies on independence and the inclusion of persons with disabilities fall mainly within the remit of the Communities and Regions.
2. However, it should be borne in mind that the financial resources the person has at their disposal play an essential role in that regard. The federal state therefore has an important role to play in terms of the allocation of payments to persons with disabilities, which is the only source of income for many persons with disabilities. In this regard, it should be noted that a large number of persons with disabilities are living under the poverty line<sup>141</sup>. Those under the poverty line do not have sufficient resources for an adequate standard of living and a satisfactory level of inclusion.
3. Over the past 30 years, the measures taken by the competent authorities in Belgium have demonstrated their awareness of the need to give persons with disabilities the opportunity to live independently in society.
4. However, such measures are too few and far between. There is a lack of coordination. Adequate, clear and full information is not provided to potential beneficiaries and their impact is limited by the lack of financial resources available.

### **Choice of residence**

5. From the perspective of the ORPD and ASPwD bodies, the right of a person to choose their place of residence is the cornerstone of their independence. The provision of accommodation falls to the Regions. However, none of the Regions which make up federal Belgium can boast a good track record on this point.
6. In general, the cost of accommodation in Belgium is excessive. For those on low incomes, accommodation often takes up half of their monthly budget. Many persons with disabilities cannot make their desire for independent accommodation a reality, due to a lack of resources.

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<sup>141</sup> See Article 28 – Standard of living and social protection



## Insufficient social housing

7. In view of their budget, many persons with disabilities should have access to accommodation provided by a social housing company. This would allow them to limit their expenditure on accommodation, including heating, water and electricity, to a reasonable proportion of one third of their monthly budget<sup>142</sup>.
8. For many years, there has been a shortage of social housing, which strongly reduces the chances of living an independent life. In this regard, the figures available<sup>143</sup> are clear:

Year	Flanders		Walloon Region		Brussels Region	
	<i>Social housing</i>	<i>Waiting list</i>	<i>Social housing</i>	<i>Waiting list</i>	<i>Social housing</i>	<i>Waiting list</i>
2011	146.756	91.926	100.790 <small>144</small>	35.285	39.306	38.928

9. The figures set out in the table relate to all social housing. The shortage of accommodation adapted or adaptable to the needs of persons with disabilities is even greater. At present, we do not have the official figures available.
10. In this regard, regardless of the region in question, it is particularly difficult for persons with disabilities whose sole income comes from social welfare payments to find accommodation where they can develop a truly independent life.

### **Flanders**

11. In Flanders, the ORPD and ASPwD bodies regret the shortage of accommodation that is adapted to the needs of persons with reduced mobility and persons with disabilities is too low in comparison with the number of persons affected. The existence of long waiting lists demonstrates the extent of the problem<sup>145</sup>.
12. At present, it would be impossible to speak of freedom of choice with regard to one's place of residence for the majority of persons with disabilities.

<sup>142</sup> On average, in 2005, householders living under the poverty line spent 33.7% of their budget in this area. Among such householders, where social housing was not available, they spend over 50% of their available monthly budget on accommodation : [http://croco.solsoc.be/IMG/pdf/Qui\\_sont\\_les\\_pauvres\\_en\\_Belgique.pdf](http://croco.solsoc.be/IMG/pdf/Qui_sont_les_pauvres_en_Belgique.pdf) (pp.5-6)

<sup>143</sup> Office for the fight against Poverty, Precariousness and Social Exclusion, Figures for 2011: [http://www.luttepauvrete.be/chiffres\\_logements\\_sociaux.htm](http://www.luttepauvrete.be/chiffres_logements_sociaux.htm)

<sup>144</sup> Walloon Accommodation Company (SWL), Annual Report 2012 (Figures for 2011, p. 15): [http://www.swl.be/images/swl/RA\\_comptes/ra2012-web.pdf](http://www.swl.be/images/swl/RA_comptes/ra2012-web.pdf)

<sup>145</sup> Cf. Table § 8

## **Walloon Region**

13. There has been a shortage in social housing in the Walloon Region for many years. In 2003, the Walloon government launched a programme for the restoration of rented social housing in the region<sup>146</sup>. In view of the state of dilapidation of social housing in the region, such an initiative is a welcome response. A billion euro was assigned for the project for 2004-2009.
14. The ORPD and ASPwD accept the choice taken to maintain existing properties before addressing the gap between supply and demand.
15. However, they hope that the proposal for a ministerial order on accessible, adaptable and adapted accommodation, which was adopted on first reading by the Walloon government<sup>147</sup>, in February 2013, will soon receive definitive approval and the concept of 'adaptable accommodation' will be included in specifications documents. The text of the order clearly sets out the criteria and the technical characteristics of the accommodation so that the government and the Walloon Accommodation Company could draw on funding to carry out inspections on the accommodation.
16. Furthermore, in a recent circular on the Action Programme for Communes 2014-2020, incentives have been introduced to encourage the construction of adapted and adaptable accommodation, under which 30% of the housing units must be adapted to the needs of older persons and persons with disabilities<sup>148</sup>.
17. It is worth noting that the Walloon Region has funded a guide to 'adaptable construction'<sup>149</sup>, but the local planning rules constitute a significant barrier to the development of such projects, particularly within new lots<sup>150</sup>.
18. In terms of decisions on granting social housing, a points system has been established to ensure that the procedure is objective. The ORPD and ASPwD bodies take the view that the introduction of objective criteria is a positive development. However, they regret that the points system does not lean more in favour of persons with disabilities.
19. Furthermore, the system covers the entire Walloon Region. When a person reaches the top of the list, they are offered the first housing unit that becomes available. The offer may come from 150 km from their current place of residence.
20. The person may therefore find themselves in an entirely new environment away from their community. This problem is mitigated by the additional point attributed to those living in a particular commune for the past three years. Where there is at least one person with disabilities in the household, additional points are attributed.

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<sup>146</sup> SWL : <http://www.swl.be/index.php/la-sw/11-le-financement>

<sup>147</sup> Press release by the Walloon government, February 2013: <http://gouvernement.wallonie.be/des-logements-publics-adaptables-pour-les-personnes-mobilite-r-duite-et-les-personnes-g-es-0>

<sup>148</sup> Strategy for the Communes on Housing Policy, May 2013 (cf. point 2.6., pp. 8-9):

[http://dgo4.spw.wallonie.be/DGATLP/DGATLP/Pages/Log/DwnLd/AncrageCommunal/2014/EGW\\_circulaire.pdf](http://dgo4.spw.wallonie.be/DGATLP/DGATLP/Pages/Log/DwnLd/AncrageCommunal/2014/EGW_circulaire.pdf)

<sup>149</sup> MET, 2006. Guide to the design of adaptable social housing, 111 p.:

<http://www.swl.be/images/swl/docsutiles/logementadaptable.pdf>

<sup>150</sup> *Le mensuel de l'entrepreneur*, February 2013 (pp. 28-29): [http://www.construire-adaptable.be/media/doc/Le%20mensuel%20de%20l%20entrepreneur\\_Fevrier%202013\\_Dossier%20logement%20adaptable.pdf](http://www.construire-adaptable.be/media/doc/Le%20mensuel%20de%20l%20entrepreneur_Fevrier%202013_Dossier%20logement%20adaptable.pdf)

21. However, the points system cannot take account of specific life events. For instance, a person may have spent all their childhood in the commune, have found accommodation in a neighbouring commune for two years following a divorce, register with a social housing company and receive an offer of housing 150 km away. As the person has not been resident in the neighbouring commune for the last three years, they are not assigned the additional points and are displaced from their community
22. Given the integration problems experienced by persons with disabilities, the ORPD and ASPwD bodies take the view that persons with disabilities do not receive enough priority points.
23. Although the person can choose not to take up the offer of accommodation, the result is that they are put back at the end of the waiting list. Under such circumstances, we are a long way of the freedom of choice set out in the UNCRPD.

### **Brussels Region**

24. In the Brussels Region, social housing applications must register with one of the 33 Public Service Property Companies (SISP). The person is thereby registered with all the SISP companies within which the person is seeking accommodation<sup>151</sup>.
25. Applicants are granted housing on the basis of a priority points system. The SISP makes an offer when a person makes it to the top of the list, i.e. when they have the largest number of priority points. Where there is at least one person with disabilities in the household, additional points are attributed.
26. The ORPD and ASPwD bodies take the view that not enough points are attributed to persons with disabilities and that the system fails to take account of the various types of disabilities.
27. The ORPD and ASPwD bodies would criticise the fact that the points system automatically rejects the request if the person refuses to take the offer made, except in cases of force majeure. The notion of force majeure is not clearly explained and may lead to misunderstandings by some persons with disabilities who feel obliged to accept housing that does not meet their needs.
28. Finally, they take the view that there are too few accessible social housing units and the SISP companies have not included the concept of adaptable housing in their plans, which would allow housing units to be transformed into accessible units at a low cost when needed.

### **Assistance with daily activities**

29. The idea of providing services for assistance with daily activities coupled with housing is an interesting response to the needs of those who seek to develop an independent life to the greatest extent possible having regard to the limits they experience due to their disability.
30. Such structures have been developed in all three regions in the country but there are too few to meet the demand and provide sufficient geographical coverage.

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<sup>151</sup> <http://www.slr.b.irisnet.be/louer-un-logement-social/Devenir-locataire/docs/comment-sinscrire>

## **Flanders**

31. There are three types of support available in Flanders, including housing that is linked with care services<sup>152</sup>. The 26 offices cannot meet the demand, and waiting lists are long.

### Case study

Testimony from a woman with a disability, working full-time, who had to wait for four years to access supported accommodation. She currently lives with her husband in another supported accommodation unit, of which she describes the advantages and disadvantages<sup>153</sup>.

## **Walloon Region**

32. In Wallonia, nine supported accommodation services are approved by the AWIPH, eight of which are provided by social housing companies. They have a total of 126 places on offer<sup>154</sup>.
33. One set of accommodation is available, which is reserved for persons with severe disabilities, located on a single site, where the residents can receive support services for daily activities at any time of the day or night.
34. With regard to the extent to which such services offer the person the opportunity to lead an independent life, the ORPD and ASPwD bodies take the view that it is a shame that the service is not available to more persons and that it does not cover all parts of Wallonia.
35. The conditions for access to supported accommodation are lacking in clarity: the ORPD and ASPwD bodies have reported that the regulations of the criteria for granting social housing and supported accommodation are different, or even contradictory.

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<sup>152</sup> VAPH: <http://www.vaph.be/vlafo/view/nl/20508-Zelfstandig+wonen.html>

<sup>153</sup> VAPH: <http://www.vaph.be/vlafo/view/nl/570354-Zelfstandig+wonen%3A+%27Een+heel+subtiel+evenwicht%27.html>

<sup>154</sup> AWIPH: [http://www.awiph.be/integration/etre\\_accueilli/aide+vie+journaliere.html](http://www.awiph.be/integration/etre_accueilli/aide+vie+journaliere.html)

36. First, in order to be granted social housing, applicants must meet the following criteria, which have been set by the landlord companies (pp.34-35):
- *In order to access social housing, the conditions with regard to income must be fulfilled, which should not exceed a certain ceiling.*
  - *In order to meet the property condition, the person cannot be an owner nor have the use of housing, unless the property cannot be restored, is inhabitable or unsuitable.*
37. Second, under the agreement between the housing company and the support service company, the support services company sets the following admission criteria (pp. 44-45):
- *Under no circumstances may persons with disabilities be required to fulfil income conditions in order to access housing with support services*
  - *Apart from the criteria for access to support services, the only other restriction is that the person must not own a residence. A person with disabilities who owns a property may not access supported housing.*

### **Brussels Region**

38. In the Brussels Region, 3 SISP companies out of 33 have housing available that is linked to support services<sup>156</sup>.
39. The supported housing concept functions well in the Brussels Region. However, due to a lack of resources, there are insufficient services to cover the entire region.

### **Access to services**

40. Many persons with disabilities need to receive paid-for services in order to live independently. They may need such services to clean their living space, help them in the bathroom, help with shopping, etc.
41. Depending on the needs of the person, their desire for independence has a relatively high cost in comparison with the rest of the population. Persons with disabilities do not have access to independence on an equal basis with the rest of the Belgian population.

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<sup>155</sup> AWIPH, *Guide d'information pratique pour les candidats locataires ou propriétaires en situation de handicap*, 2010. : <http://www.awiph.be/pdf/documentation/publications/droit/logement.pdf>

<sup>156</sup> PHARE: <http://phare.irisnet.be/logement/le-logement-adapt%C3%A9/>

## **Life in institutions**

42. Given the difficulties with which persons with disabilities are confronted in order to meet their desire for independence, living at their own place, many persons with intellectual or cognitive disabilities, as well as persons with disabilities in high dependency, live in institutions. Some may wish to leave this type of environment, but cannot for reasons related to cost and organisation.

### ***Rules and realities***

43. The ORPD and ASPwD bodies wish to emphasise that the institutions in Belgium are regulated by legislation which is supposed to ensure quality standards and participative management.

44. The ASPwD and ORPD bodies report that they regularly receive testimonials from parents and persons with disabilities living in institutions of ill-treatment<sup>157</sup> and sexual abuse<sup>158</sup> of residents.

45. The institutions for persons with disabilities in Belgium are responsible for providing care, accommodation and support in order to help persons with disabilities thrive.

46. Likewise, it is important for the families of persons with disabilities to find a place for their loved one in an institution, which will take on the role as the 'new parent' after their death. Families of persons with intellectual, cognitive disabilities and multiple disabilities who find a place in these institutions report that they feel reassured, particularly with regard to continuity in the life of their loved one, when the time comes for the 'new parent' to step in.

### ***Shortage of places***

47. Given the shortage of independent living solutions, for many, living in an institution is the default option. There are long waiting lists for places in institutions.

48. The majority of parents wait in vain for a place to become available for their child. However, given the shortage of places, urgency is the main criteria applied. Is it legitimate to wait until families are at their wits' end before stepping in to provide care for their child/brother/sister?

49. In all three regions, the shortage of places in institutions and other forms of accommodation on a smaller scale has dramatic consequences for persons with disabilities and their families: job losses, financial insecurity, burn-out, extreme tiredness, isolation.

50. Thus, problems arise for the family members of the person with disabilities where they continue to live together. Such problems are known as 'disability by association'.

51. The family members of persons with disabilities live a life that is completely different from the rest of the population: additional costs, limited choices on where to live, modifying the family timetable, career choices: fathers and mothers of persons with disabilities are sometimes obliged to limit their professional life or even give up work in

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<sup>157</sup> See Article 16 – Freedom from exploitation, violence and abuse

<sup>158</sup> See Article 6 - Women with disabilities

order to care for their child with a disability, the impact of which on their financial stability and social life is well-documented.

52. Parents of persons with disabilities who continue to live at home worry about what will happen to the person with disabilities when they are no longer there to take care of them.
53. In the Brussels Region, the ORPD and ASPwD bodies have consistently reported that admission refusals are often motivated by the lack of resources and staff training needed to cater for behavioural problems. Such arguments are unacceptable as justifications for admission refusals. They only serve to provide further justification for the need for care.
54. Persons with disabilities and their families have no other option other than to continue living together.

#### Case study

55. On 29 July 2013, the European Committee of Social Rights confirmed the ruling which found that the shortage of accommodation and care for persons with complex dependency needs constitutes a violation of the European Social Charter<sup>159</sup>.
56. The decision follows a collective complaint submitted on 13 December 2011 by the Worldwide Human Rights Movement (FIDH) on behalf of twenty NGOs in the area of disability in Belgium.
57. These NGOs have been providing representation for persons with multiple disabilities for many years: persons with autism, acquired brain damage or cerebral palsy and their families, have criticised the authorities on the dramatic and inhuman circumstances in which they find themselves as a result of the unavailability of appropriate care.

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<sup>159</sup> [http://www.coe.int/t/dqhl/monitoring/socialcharter/Complaints/CC75Merits\\_fr.pdf](http://www.coe.int/t/dqhl/monitoring/socialcharter/Complaints/CC75Merits_fr.pdf)

## **Alternative solutions to institutions and family life**

58. Although the institutional system offers a solution to families of persons with disabilities, it is not necessarily the ideal option.
59. It is regrettable that alternative solutions have only been developed to a limited extent, or not at all. While a number of supported housing projects have been established, 'community housing', a publicly-funded private initiative is still in its infancy. Furthermore, such initiatives do not meet the criteria of fairness as only high-income families could find a solution for their loved one with disabilities.
60. Under such circumstances, persons with disabilities and their parents have no choice: an institution is the best option simply because there are no other possibilities.
61. At present, there is no strategy in place in Belgium to close the institutions. The ORPD and ASPwD do not wish to see the institutions closed down, but advocate the development of inclusive alternative units on smaller scale<sup>160 161</sup>.
62. Due to the shortage of appropriate accommodation, persons with disabilities are directed towards inadequate services such as psychiatric hospitals and nursing homes. Under such circumstances, the person generally receives inadequate support and/or inappropriate care, or over-medicalisation. This state of affairs has a harmful effect on the person, resulting in the loss of previously held skills and competences and regression.<sup>162</sup>

## **Personal income**

63. The income available to a person is central to their independence. The majority of persons with disabilities in Belgium rely solely on disability payments paid by the federal authorities<sup>163</sup>. Such payments are insufficient to provide the person with a decent standard of living and to cover all the costs associated with the disability.
64. In 2000, regional income assistance programmes were launched for persons with disabilities<sup>164</sup>. These programmes coincide well with the goal of personal independence. The programmes are developing in different ways in each region, but do not have the financial resources necessary to meet the demand.

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<sup>160</sup> Inforautisme, *J'habite dans ma maison*, 2008.

[http://www.inforautisme.be/01qui/Rapport\\_J\\_habite\\_dans\\_ma\\_maison\\_VF3.pdf](http://www.inforautisme.be/01qui/Rapport_J_habite_dans_ma_maison_VF3.pdf)

<sup>161</sup> Constellations asbl: <http://fr-constellations-asbl.iimdo.com/>

<sup>162</sup> GAMP *Livre noir de la grande dépendance*, 2010. [http://www.gamp.be/wp-content/uploads/2010/12/GAMP\\_Livre\\_Noir\\_VF.pdf](http://www.gamp.be/wp-content/uploads/2010/12/GAMP_Livre_Noir_VF.pdf)

<sup>163</sup> See Article 28 – Standard of living and social protection

<sup>164</sup> Huys (J.), *La situation du Budget d'Assistance Personnelle en Flandre, Bruxelles et Wallonie*, Expertisecentrum, 2010 : [http://www.independentliving.be/upload/EOL/Publicaties/Frans%20def/La%20situation%20du%20Budget%20dAssistance%20Personnelle%20en%20Flandre,%20Bruxelles%20et%20Wallonie\\_JH\\_2010.pdf](http://www.independentliving.be/upload/EOL/Publicaties/Frans%20def/La%20situation%20du%20Budget%20dAssistance%20Personnelle%20en%20Flandre,%20Bruxelles%20et%20Wallonie_JH_2010.pdf)



## **Flanders**

65. Flanders established a 'Persoonlijk assistentiebudget' (PAB, Personal Assistance Budget) in 2000<sup>165</sup>. A budget is made available to the person to hire a personal assistant to assist them with daily tasks.
66. However, there are insufficient budgetary resources in place. In 2010, there were 5,500 persons on the waiting list for a PAB in 2010.

## **Walloon Region**

67. In 2009, the Walloon Agency for the Integration of Persons with Disabilities also established a personal assistance budget (BAP)<sup>166</sup> for persons with disabilities who wish to live in their usual environment. The budget allocated allows them to pay various personal assistance services. The beneficiary of the BAP does not become the employer of the personal assistant, who is hired by government approved services, employment agencies and 'service voucher' companies.
68. The BAP system is not targeted at every person with a disability. Priority is given to persons with a developing illness in order to allow them to continue to live in their usual environment. In general, the beneficiaries have expressed enthusiasm for the concept but have criticised a number of aspects of its implementation (see §70).
69. The ORPD and ASPwD bodies regret that the measure currently applies to a small number of persons: very little information has been distributed to persons with disabilities. They emphasised that the budget is insufficient and that the eligibility criteria are limited.
70. They also noted that the current funding of an organisation of the existing services fails to respond to the demand of BAP beneficiaries. The service cannot meet the demands in terms of working hours and night services, for instance. The service plans are too rigid: the beneficiary must determine their needs in terms of the number of hours per week. If the beneficiary does not require the number of hours set, they cannot be allocated to another period or another service.
71. The fact that the person is not the direct employer and receives the service from a state body or company is perceived by some as a negative: they are required to decide which company they wish to use in the beginning and do not have the option to call on another service provider if necessary.
72. Paradoxically, there is a serious lack of flexibility with regard to facilitating the person's independence.
73. Furthermore, beneficiaries complain of constant changes in staff and the fact that social workers are not available to coordinate the service, red tape, etc.<sup>167</sup>

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<sup>165</sup> Decruynaere (E.), *10 jaar Persoonlijk Assistentiebudget in Vlaanderen*, BolBuldiv vzw, 2010.

<http://www.10jaarpab.be/upload/publicaties/Rapport%2010%20jaar%20PAB.pdf>

<sup>166</sup> Order of the Walloon Government of 14 May 2009:

[http://www.anlh.be/multimedia/actualites/1246618232\\_ARRETEBAPRW.pdf](http://www.anlh.be/multimedia/actualites/1246618232_ARRETEBAPRW.pdf)

<sup>167</sup> AWIPH, *Enquête de satisfaction BAP – Rapport complet*, 2011.

[http://www.awiph.be/pdf/documentation/etudes\\_et\\_statistiques/Rapport-evaluation-BAP-ACCOK.pdf](http://www.awiph.be/pdf/documentation/etudes_et_statistiques/Rapport-evaluation-BAP-ACCOK.pdf)

## **Brussels Region**

74. In the Brussels Region, the BAP was launched in 2012 on an experimental basis. The pilot project is limited to eight persons. Thus far, it has not led to the establishment of a legal framework.
75. The ORPD and ASPwD bodies have high expectations of the BAP services. However, clarity is needed in order to ensure stability.

## **Range of services**

76. The ORPD and ASPwD regret that the legislation on service voucher limits the number of vouchers <sup>168</sup> a person can use over the course of a year, along with the range of services a person can expect.
77. Furthermore, in Wallonia, the family support services only provide a limited number of hours per beneficiary. For the majority, working hours are between 8am and 4pm. The calculation of the hourly price is to the disadvantage of the person with disabilities as the amount of the disability payment is taken into account in the hourly rate which is charged to the person with a disability.

## **Recommendations**

1. The competent authorities in Belgium should increase the number of adaptable social housing units, in both construction and renovation projects, and provide for the possibility of being offered accommodation close to the current place of residence of persons with disabilities.
2. The competent authorities should develop additional supported accommodation services. The new facilities should provide greater geographical coverage of the region so as to avoid situations where persons are taken away from usual environment, and friends and family.
3. The competent authorities should fund services which enable persons with disabilities to lead a more independent life.
4. The competent authorities should provide opportunities for persons with disabilities to define their needs and make choices in accordance with their priorities.
5. The competent authorities should diversify the range of services available in response to the needs of persons with disabilities.
6. The competent authorities should provide concrete solutions for the shortage of places in institutions.
7. The competent authorities should put in place a more diverse range of solutions to the problems identified in the care sector for persons with disabilities. Solutions should

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<sup>168</sup> Service vouchers: <http://www.emploi.belgique.be/defaultTab.aspx?id=651>

include the creation of small community housing unit with a 24/7 BAP support system. Adequate funding should be provided for such housing units.

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## Article 20: Personal mobility

1. Freedom of movement is among the founding principles of the European Union. As a member state of the European Union, Belgium is required to comply with this principle. The right to personal mobility is a manifestation of this freedom of movement.
2. The implementation of other articles of the UNCRPD depends on the right to personal mobility.
3. Many persons with disabilities are dependent on public transport, both for reasons directly related to their disability and for reasons of cost.
4. The organisations representing persons with disabilities (ORPD) and the consultation structures for persons with disabilities (ASPwD) would note that a significant number of barriers make it difficult for persons with disabilities in Belgium to realise their right to personal mobility.
5. Much of the legislation in force on mobility comes from the regions. However, two issues remain under federal competence: train transport and the rules of the road.
6. In the following sections we will set out specific mobility issues and the authority responsible (federal state, Flemish Region, Walloon Region, Brussels Capital Region).

### **Lack of integration**

7. The ORPD and ASPwD regret that fragmented decision-making, the lack of interoperability of the various networks and the lack of planning undermine the possibility of achieving a basic level of mobility.

### Case study

8. For example, in order to get from A to B, a person must sometimes use two or three different transport networks. If the second stop is not accessible, the person will not be able to reach their destination. End of trip...

9. Access to information and stops remains a major problem. Reading the train, bus and tram times is difficult for all travellers.
10. The problem is exacerbated for wheelchair users and persons of short stature as the panels are usually located at an unsuitable height.
11. For persons with visual impairments, it is almost impossible to use the bus and tram networks, due to the lack of audio announcements, which are either non-existent, or few and far between. Furthermore, short and almost inaudible announcements on the train and in the metro also make things difficult for persons with visual impairments.

12. It is becoming more and more difficult for persons with visual impairments to buy transport tickets in the poorly designed ticket machines <sup>169</sup> or via Internet sites which do not meet the minimum <sup>170</sup> accessibility criteria.
13. Deaf and hard of hearing persons experience a different set of problems. Although they can organise their travel on the basis of the times, last minute changes, such as platform changes, may result in problems: information is often provided by audio only and with the inefficiency or non-existence of visual panels, they are left to figure out what is happening by observing the behaviour of other passengers, which may not be reliable. If no other passengers are present, it becomes impossible for them to find their way.
14. Last minute changes are often a source of significant difficulties for persons with cognitive disabilities. The withdrawal of manned services in small and medium-sized train stations and metro stations is a significant barrier to independent travel. The withdrawal of clearly identifiable uniformed staff is regrettable.

### **Lack of accessibility to public transport**

15. The major problem with public transport in Belgium from the point of view of persons with disabilities is accessibility. These issues are set out in the chapter on Article 9 on accessibility.
16. The fact that persons with disabilities cannot access transport vehicles and infrastructures independently and at the time of their choice is a major barrier to mobility.

### **Rail transport**

#### **Federal**

17. The Belgium National Rail Company (SNCB), an independent public company under federal law, is responsible for rail transport in Belgium.
18. Since 2009, the SNCB operates on the basis of the *Revalor* programme for the implementation of the European Regulation on the rail passengers<sup>171</sup>.
19. The Regulation involves a significant number of barriers to the mobility of persons with disabilities on an equal basis with other passengers. The ORPD bodies and the National Council for Persons with Disabilities (CSNPH).
20. We wish to point out the following discriminatory measures in particular:

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<sup>169</sup> See Article 9 - Accessibility

<sup>170</sup> The [Anysurfer](#) label certifies the compliance of websites in Belgium with accessibility criteria.

<sup>171</sup> Regulation (EC) n°[1371/2007](#) of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations.

### Obligation to provide notice

21. A person with disabilities who requires assistance to use rail transport services is obliged to provide at least 24 hours' notice that they require assistance. Furthermore, they are required to be present at least a quarter of an hour before the train leaves the station.
22. Under such circumstances, persons with disabilities cannot use the train under the same conditions as any other passenger. The real reason for such restrictions is the overall lack of accessibility of the rail network.
23. In 2010, the CSNPH and the Centre for Equality of Opportunity launched a communication campaign in order to raise awareness in the SNCB and among the general public of this issue which has created a marked inequality between rail passengers. The theme of the campaign was "The handicapped trains are probably 24 hours late. We are sorry for any inconvenience"<sup>172</sup>.

### Unsuitable ticket machines

24. To access a given train network, the passenger must have a ticket. If they have not bought it over the Internet, tickets may be bought at the train station using a ticket machine. Both processes present difficulties for persons with disabilities. These problems are set out in Article 9 on accessibility.
25. In the majority of train stations, the traditional ticket offices are inaccessible. The majority of wheelchair users and persons with hearing impairments have difficulties and are particularly affected by this problem. Very few ticket offices have equipment available for them to buy a transport ticket without difficulty.

### Ill-adapted train stations for blind and visually impaired persons

26. It is essential for blind and visually impaired persons to be able to find their way in a train station in order to travel independently by train. However, very few train stations are properly equipped to help persons find their way from the entrance to the right platform.
27. It is also important to draw attention to the fact that in the event of a last-minute platform change, it is difficult for blind and visually impaired persons to find their way to the new platform safely and within the allotted time.

### Assistance: only available in some parts of the network

28. Assistance for persons with disabilities is not available in all train stations and stops. Given that the infrastructure is not accessible across the entire network, passengers with disabilities cannot use the rail service on an equal basis with other travellers.

### Transport conditions

29. Various types of trains are in use by the SNCB. Stock has been bought up during different periods and therefore does not meet coherent accessibility and comfort criteria.

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<sup>172</sup> [http://www.diversite.be/?action=artikel\\_detail&artikel=477](http://www.diversite.be/?action=artikel_detail&artikel=477)

30. Only the most recent carriages are equipped with screens which allow deaf and hard of hearing passengers to check the next station.
31. All SNCB carriages are equipped with an audio system through which information on the next stop can be communicated. However, such information must always be announced by the steward, who are focused on inspections, and only rarely announce the information needed by blind and visually impaired persons. Up to present, the SNCB has not commissioned any automatic system.
32. Even the most recent equipment has not been designed to offer proper accessibility to passengers with limited mobility. Most of the time, persons with reduced mobility are obliged to travel on the access platform to the carriage. This inconvenience is exasperated by the fact that the person finds themselves in the way of passengers getting on and off the train. Such circumstances give rise to stigmatisation.

### Conclusion

33. The ORPD and ASPwD bodies note that the SNCB has not made sufficient provision for the accessibility of persons with disabilities in order to ensure the mobility to which they are entitled.

### **Metro**

#### **Brussels-Capital Region**

34. The Brussels-Capital Region has a metro system. The Intercommunal Brussels Transport Company (STIB) developed the system in the 1970s. However, accessibility was not taken into account in the design.
35. Since then, very few stations have been made accessible. These problems are set out in the commentary on Article 9 on accessibility. At present only 20 stations out of 80 are 'accessible' and have a proper signage system.
36. The main barrier to accessibility in the metro is the existence of horizontal and vertical gaps between the platform and the vehicle. Such gaps may be even wider in stations where the platform is curved. This problem persists even in 'accessible' stations.
37. Due to the inaccessibility of the majority of stations, the STIB has established an assistance service for persons with reduced mobility. The system is based on a booking system. The fact that a booking has to be made is a significant barrier to mobility, particularly in a metro system based on the principle that passengers can travel when they wish. Furthermore, there is a charge to use the assistance service.
38. The 'service' is excessive: the person has to be accompanied right throughout their journey in the metro. Under such conditions, a much larger team should be available in order to meet every request within a reasonable time-frame.
39. Since March 2012, the reservation procedures have become more complicated and the available times have been reduced. Instead of making progress, there has been a regression.

## **Tram**

### **Flanders**

40. In Flanders, the adaptation of tram stops to facilitate accessibility and the integration of various public transport modes is under way.
41. At present, there has not been enough progress made on this large-scale project for persons with disabilities to enjoy sufficient mobility on public transport, on an equal basis with other passengers.
42. The ORPD bodies working in Flanders have reported high demand by *De Lijn* in terms of participation and cooperation of persons with disabilities. However, as the Flemish government has not yet decided to create a proper consultation structure, it is difficult to organise such cooperation despite the desire on the part of both parties.

### **Walloon Region**

43. The tram is no longer in use in many parts of Wallonia. Currently, only the Charleroi area has a proper tram network. There are many problems in relation to mobility, but the most significant problems arise from the horizontal and vertical gaps and the accessibility of the stops.
44. The town of Liège is currently developing a major tram project. The ORPD and ASPwD bodies regret that they were not involved in the initial design stages. The involvement of the organisations representing users and a technical expert on accessibility would have been the best way of ensuring a fully accessible infrastructure and service.

### **Brussels Region**

45. In the Brussels trams, persons of short and medium stature complain that they cannot reach the overhead handles, which are too high.
46. As with the metro, the main accessibility problem with trams is the vertical and horizontal gaps between the platform and the tram. Therefore, the tram cannot be used independently by a significant number of persons with disabilities who have no other option but to be accompanied by a personal assistant.
47. Finally, with the recent commissioning of new tram models, the choice of grey for the vehicle colour gives rise to problems. The colour of the tram is too similar to the colour of the street and generates a risk of accidents for persons with visual impairments.

## **Bus**

### **Walloon Region**

48. In the Walloon Region, the adaptation of buses in the public transport network (TEC) is insufficient.
49. Only 45% of vehicles are equipped with manual ramps designed to allow wheelchair users to get on the bus. Furthermore, the driver must operate the equipment by leaving



the driver seat and get off the bus, which he is forbidden to do in order to avoid assault. In practice, although equipment is on board 45% of the vehicles, 100% are inaccessible to wheelchair users.

50. With a heavy heart, a group of organisations representing persons with disabilities took the Walloon public transport companies to court for accessibility failures. The outcome of the case is not yet known<sup>173</sup>.
51. Very few TEC buses are equipped with an audio system or with visual displays indicating the next stop or signalling problems on the line.
52. The bus stops and bus shelters are not adapted to facilitate the mobility of persons with disabilities. The bus stops are rarely equipped with visual displays or audio systems to identify the bus line and the various stops.

### **Brussels Region**

53. As is the case for the STIB metro, there are problems with vertical and horizontal gaps between STIB buses and the ground. The problem is more acute with regard to buses as they do not run on a fixed network and therefore stop at varying distances from the platform.
54. 66% of buses are equipped with retractable ramps. However, the ramps are rarely used, either because staff is not properly trained, or because the infrastructure has not been properly adapted: poorly designed or non-existent platforms, in particular.

### **School transport**

55. In the French Community, in the Walloon and Brussels regions, free school transport is organised for pupils attending special schools. Unfortunately, due to their nature, there are only a limited number of special schools. As a result, travel times for pupils attending special schools tend to be long and difficult to cope with<sup>174</sup>. This is also the case in Flanders<sup>175</sup>.
56. Children with disabilities in mainstream education are not entitled to free school transport in the Brussels Region<sup>176</sup>.
57. While the transportation of adults to day centres is not a matter for the education system, it is also indicative of similar difficulties with mobility: long distances due to the low number and geographic location of the centres, planning problems, high costs.

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<sup>173</sup> <https://sites.google.com/site/cawabasbl/actions-en-cours/action-high-tec>

<sup>174</sup> <http://www.diversite.be/recommandation-concernant-l%E2%80%99organisation-et-les-conditions-des-transports-scolaires-des-enfants-et>

<sup>175</sup> <http://www.diversite.be/recommandation-transports-scolaires-des-enfants-avec-un-handicap-en-flandre>

<sup>176</sup> <http://www.diversite.be/transports-scolaires-accessibles-en-r%C3%A9gion-bruxelloise>

## **Coaches**

58. Transport by coach is an interesting option for organising group trips to destinations which are not served by public transport.
59. The ORPD and ASPwD bodies would note that only a small number of adapted coaches are available from private companies.
60. Furthermore, the price for a coach with a wheelchair lift is much higher than that of other coaches. Furthermore, there are also a limited number of accessible places in the bus.
61. All of these factors constitute barriers to inclusive travel, whether organised by the ORPD bodies, by cultural or sporting organisations or structures under the authority of the communes.

## **'Door-to-door' public transport**

### **Flanders**

62. Bookings for the *Belbus*,<sup>177</sup> which transports persons from one stop to another within a given zone, must make a booking two hours in advance, except in Limbourg, with the booking may be made up to one hour in advance, and in Antwerp, where passengers are advised to book one day in advance.
63. Ordinary buses in urban areas must be booked 24 hours in advance, and regional lines must be booked 48 hours before travelling.
64. In practice, persons with disabilities have reported a different version of events to the CEOOR<sup>178</sup> :
  - The majority of drivers refuse wheelchair users access to the bus unless they have made a booking, even where the vehicle and the stops are accessible. They send them back to the *Belbus* centre, where their journey must be booked in advance. There, wheelchair users are informed that for travel on ordinary lines, it is not necessary to make a booking. Any accessible bus can be used without making a booking.
  - There is a charge for calling the telephone numbers for the centres. There are different numbers in each province. The cost of calls to a landline from a mobile can increase rapidly. It would seem to be reasonable to provide a free number so that persons with disabilities do not have to pay additional costs for a single service. Furthermore, setting up of a single number for all the provinces where the bus operates would be more convenient for users (with one personal number for each user, including information on their disability and the type of assistance sought).
  - Only deaf or hearing impaired users or those with a speech difficulty or aphasia can book the service by email. It would be practical for other persons with disabilities to have the possibility of booking by email or through an internet form. Furthermore, there would be a written record of the booking which could prevent misunderstandings and imprecisions.

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<sup>177</sup> <http://www.delijn.be/over/aanbod/belbus.htm>

<sup>178</sup> <http://www.diversite.be/accessibilit%C3%A9-de-lijn>

## Walloon Region

65. In the Walloon Region, the TEC company previously had accessible door-to-door transport systems: the TEC 105. The system was discontinued in July 2011, for budgetary reasons.
66. The public transport companies then concluded agreements with private transport companies, in particular the partner NGOs of the *ASTA*<sup>179</sup>. However, the NGOs do not have the same 'strength' as a public service, and are also faced with a lack of resources.
67. The public transport companies also concluded agreements with local operators. In some case, the service only covers a small number of communes. This causes problems, as the same service is not provided in all areas.
68. In general, the services are offered based on a partnership with social organisations such as mutual insurance companies. This offers the transport company the opportunity to collaborate with organisations with real experience on disability.
69. From the perspective of the ORPD and ASPwD bodies, there has been a regression in comparison with the previous situation. The following points have been the subject of criticism:
  - The service is limited to certain times. The services do not operate in the evening or at weekends.
  - Travel must be booked in advance.
  - There is often an additional charge for the service.
  - Given that there is a high level of demand in comparison with the level of service available, priority is often given to regular trips and transport for medical visits.
  - In general terms, due to the lack of reliability, persons with reduced mobility cannot rely on this service to travel to work or attend events at set times, such as cultural, social and recreational events.
  - Paradoxically, the system was developed with a view to offering a 'flexible' response to the mobility needs of persons with reduced mobility. On analysis, this is exactly the criticism that users direct at the service.
  - The fact that a separate transport system is provided for persons with reduced mobility as an alternative to offering a fully accessible public transport network is another fundamental failure of the approach.
  - Experience shows that the use of a specialised system involves a number of disadvantages with the result that persons with reduced mobility do not enjoy a full service, on an equal basis with other passengers.
  - At the same time, no progress is being made on making the general public transport service accessible, as a special service is available. The development of a special service has therefore become a barrier to the development of a general accessible service.

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<sup>179</sup> <http://www.asta.be/index.php/reseau-tec/50-la-reprise-du-service-105>

## Brussels Region

70. The STIB minibus service<sup>180</sup> was established in 1976 to compensate for the inaccessibility of the metro and the bus service. Despite requests and promises set out in the STIB integrated strategy for 2008-2012, the door-to-door service does not meet the expectations of users, who have demanded that the service be made more flexible to meet their needs and their requests, particularly with regard to the following points (CEOOR<sup>181</sup>):

- booking is required: 48 hours in advance (or 7 days in advance, to be sure of obtaining the service),
- only a limited service is available in the evenings and there is no service at weekends,
- a number of travellers are picked up on a single journey for profit, which results in longer travel times,
- the exclusion of non-residents, commuters and tourists from the service,
- the urgent need to replace obsolete vehicles.

71. For budgetary reasons, the Brussels government opted for a mixed system in 2012<sup>182</sup>, with 12 STIB minibuses and a certain number of mixed taxis - the Taxi+ service. The system will come into operation in 2013 and the STIB will coordinate accessible transport for persons with reduced mobility.

## Taxis

72. Traditionally, a door-to-door taxi service has been offered by taxi companies. It would make sense for persons with reduced mobility to use taxis to get from their home to train stations or bus stops of their choice to continue their journey using public transport.

73. However, the ORPD and ASPwD bodies would note that very few taxi companies have accessible vehicles available to transport wheelchair users, particularly, electronic wheelchairs.

74. Furthermore, taxi drivers often refuse to help persons get into and out of the vehicle or to get out of the taxi to collect persons with visual impairments who are waiting outside their homes. They tend to justify their behaviour on the basis of the argument that the person should be capable of getting in and out of the taxi independently or else be accompanied by a personal assistant. Accompaniment by a personal assistant obviously diminishes the independence of the person.

75. Finally, despite the regulations in force in the three regions, some taxi drivers refuse to allow guide dogs in their taxis.

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<sup>180</sup> <http://www.stib.be/minibus.html>

<sup>181</sup> <http://www.diversite.be/accessibilit%C3%A9-stib>

<sup>182</sup> <http://www.brigittegrouwels.com/fr/des-transports-publics-mieux-adapt%C3%A9s-aux-personnes-%C3%A0-mobilit%C3%A9-r%C3%A9duite>

## **Brussels-Capital Region**

76. In the Brussels Region, 99 accessible taxis are available to transport persons with reduced mobility. Private companies manage the taxis with a specific telephone number easily identifiable by the operators as a reduced mobility telephone number. However, the service leaves much to be desired and users have made the following complaints:

- Significant waiting times of up to two hours.
- Not turning up where prior bookings have been made,
- Inaccessible vehicles being sent even though the reservation was made through a reduced mobility number
- Lack of empathy and respect on the part of the telephone staff
- Lack of training among the telephone staff and taxi drivers

## **Air travel**

77. Problems often arise with air travel when it comes to groups. Groups are often refused travel if there are too many persons with disabilities who wish to travel together on the same flight. The question of how many is 'too many' varies from case to case. Two or three might be deemed to be too many, depending on the airport and the airline.

78. Some airlines require persons with disabilities to pay additional costs as they are required to travel with an assistant.

79. In that regard, the ORPD and ASPwD bodies hope that the Communication of the European Commission on the 'denial of boarding'<sup>183</sup> will have a positive effect in terms of protecting the rights of persons with disabilities travelling by air.

## **Training for staff, family helpers and personal assistants**

80. Employees of all types of transport companies, both private and public and in all regions, do not have sufficient knowledge of the realities and the implications of disabilities.

81. This lack of awareness constitutes a significant barrier to the organisation of high-quality accessible travel for all on an equal basis.

82. The ORPD and ASPwD bodies regret that in all the transport companies, staff regularly use the excuse that they cannot help persons with reduced mobility to board vehicles as they do not have the necessary training and are therefore not insured for any damage they may cause.

83. Similarly, there are very few training courses available to family carers and personal assistance accompanying persons with disabilities<sup>184</sup>.

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<sup>183</sup> Denial of boarding - Communication EC-04-2012.doc:  
[http://ec.europa.eu/transport/themes/passengers/air/doc/prm/2012-06-11-swd-2012-171\\_en.pdf](http://ec.europa.eu/transport/themes/passengers/air/doc/prm/2012-06-11-swd-2012-171_en.pdf)

<sup>184</sup> There is a private training course available (APH), but it is not well-known and very few persons have completed the course: <http://www.alteoasbl.be/-Formation->

## **Personal vehicles**

84. In modern society, having a vehicle at one's disposal is an important factor in individual mobility. Given the problems set out above with public transport, owning a car is essential for some persons with disabilities.
85. However, ownership and use of a vehicle comes with its own set of problems which place persons with disabilities at a disadvantage compared with the rest of the population.
86. Vehicles must be made accessible to persons with disabilities, they or a family member may be the driver. The cost of modifying a vehicle is often covered by the state. However, the vehicle must meet a certain number of requirements in terms of its size to allow for the necessary modifications.
87. All of this has a cost upon purchase, modification, and running costs: bigger engine size and automatic gears involve higher consumption, high insurance and tax, etc. Additional costs relate to running the car are not sufficiently covered so as to ensure that the need for a personal vehicle does not generate a further barrier for the person.
88. Specific problems are also involved in obtaining a driving licence. Persons with disabilities have to take the test with a specialised body, CARA. They are placed on a waiting list for a number of months.
89. Furthermore, tax credits are given to some persons with disabilities, but the person with disabilities is not always the person who will be driving the car. Where a member of the family has a disability, and the car is driven when the person is not present, households experience difficulties obtaining the repayment of value-added tax (VAT) applied upon purchase of the vehicle.
90. Petrol is consumed when travelling by car. It is regrettable that very few petrol pumps are accessible. Persons with reduced mobility have to seek help from family and friends, or even from strangers to fill up their tank<sup>185</sup>.
91. Persons travelling by car also have to use parking.
92. Belgium has adapted a European parking card which guarantees the card holder the use of a parking space reserved for persons with disabilities.
93. In shopping areas, the use of the parking spaces causes problems as they are often used by persons who do not hold the parking card.
94. Furthermore, abuse of the parking card system is reported on a regular basis. Family members use the card when the person with a disability is not present, use of the card of a deceased parent etc.
95. This type of behaviour is undesirable because it tends to discredit persons with disabilities. From 2009, the Secretary of State for Persons with Disabilities has been solicited in order to find a solution for the problems in relation to abuse of parking cards.

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<sup>185</sup> See Article 9 - Accessibility

96. For a long time, there were doubts about whether this type of behaviour was a reality. However, a series of incidents were reported and pursued <sup>186</sup> during a small-scale operation in Arlon in 2009 <sup>187</sup>, and on a large-scale in Flanders in 2011.
97. The ORPD regret that inspections are not in place in other parts of Belgium on vehicles parked in spaces reserved for persons with disabilities.
98. In terms of parking spaces, the ORPD and ASPwD regret that certain communes do not provide free parking for card holders. In this regard, it is worth nothing that in such communes, the parking machines are often inaccessible to wheelchair users and person of short stature: they are obliged to pay, but the equipment is inaccessible.
99. In the Brussels-Capital Region, the ORPD and ASPwD bodies would criticise the quotas in place for parking spaces for persons with reduced mobility with regard to 'public' spaces is not met. Inspections are insufficient and when a problem is reported, no sanction is applied.
100. The same applies for the use of parking cards by family members and those close to the person with disabilities using the card in the absence of the card holder.

### **Mobility equipment**

101. Mobility equipment is essential for a significant number of persons with disabilities. Wheelchairs are among the most common types of mobility equipment.

### **Federal**

102. The ORPD and ASPwD bodies are concerned about this issue as the federal government has proposed not to attribute financial supplements under the *Institut National d'Assurance Maladie-Invalidité* (National Institute for Health Insurance - INAMI). Competence on this matter is expected to be transferred to the Regions. At present, there is no clarity on whether the INAMI will continue to provide the same level of funding.
103. Specific modifications to wheelchairs are another problem. The adaptations correspond to the real needs of the person, beyond what is provided in the standard equipment. However, wheelchair users are only entitled to modifications specifically listed in the INAMI legislation.

### **Flanders**

104. In Flanders, the regulations provide that where a disability arises after the age of 65, the person cannot receive mobility assistance from the *Agence Flamande pour les Personnes Handicapées* (Flemish Agency for Persons with Disabilities - VAPH)<sup>188</sup>. From the perspective of the ORPD and ASPwD bodies, this provision constitutes age discrimination.

<sup>186</sup> [http://archives.sudpresse.be/parking-abus-la-carte-handicape-bien-trop\\_t-20110207-H2XLJH.html?queryand=hallet&firstHit=480&by=20&when=-1&sort=datedesc&pos=484&all=5278&nav=1](http://archives.sudpresse.be/parking-abus-la-carte-handicape-bien-trop_t-20110207-H2XLJH.html?queryand=hallet&firstHit=480&by=20&when=-1&sort=datedesc&pos=484&all=5278&nav=1)

<sup>187</sup> <http://www.rtl.be/info/belgique/faitsdivers/813126/la-police-traque-les-fausses-cartes-pour-handicape>

<sup>188</sup> [http://www.ejustice.just.fgov.be/cqi/article\\_body.pl?language=fr&caller=summary&pub\\_date=01-11-20&numac=2001036231](http://www.ejustice.just.fgov.be/cqi/article_body.pl?language=fr&caller=summary&pub_date=01-11-20&numac=2001036231)

## **Walloon Region**

105. In the Walloon Region, the regulations provide that a disability arises after the age of 65, the person cannot receive mobility assistance from the *Agence Wallonne pour l'Intégration des personnes Handicapées* (Walloon Agency for the Integration of Persons with Disabilities)<sup>189</sup>. From the perspective of the ORPD and ASPwD bodies, this provision constitutes age discrimination.
106. In such cases, persons are not entitled to assistance in order to modify their vehicle if their disability appears after the age of 65.

## **Brussels-Capital Region**

107. In the Brussels-Capital Region, the regulations provide that a disability arises after the age of 65; the person cannot receive mobility assistance from the PHARE. From the perspective of the ORPD and ASPwD bodies, this provision constitutes age discrimination<sup>190</sup>.
108. In such cases, persons are not entitled to assistance on order to modify their vehicle if their disability appears after the age of 65.
109. Furthermore, the legislation provides that PHARE can provide a second wheelchair in addition to wheelchairs provided under the INAMI legislation. However, PHARE only intervenes for the purchase of standard wheelchairs, to the exclusion of active manual wheelchairs, which users can push themselves using a disk integrated into the wheels.
110. Such a limitation is detrimental to certain persons with disabilities, as they cannot acquire suitable complementary equipment.
111. Owing to the shortage of accommodation spaces, persons with disabilities are obliged to live in Institutions outside the Brussels-Capital Region. In accordance with legislation, those who find themselves in this situation should receive financial assistance from the PHARE as they are living in the Brussels-Capital Region but do not reside in accommodation centres.

## **German-speaking Community**

112. It should be noted that, in contrast with the Walloon Region and the Brussels-Capital Region, the German-speaking Community abolished the limit of 65 years beyond with persons with disabilities cannot access mobility assistance payments.
113. This demonstrates that it is reasonable to abolish this arbitrary limit which is contrary to the principle of equality in personal mobility.

## **Independent mobility in public places**

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<sup>189</sup>

[http://www.ejustice.just.fgov.be/cgi\\_loi/loi\\_a1.pl?sql=\(text%20contains%20\(''\)\)&language=fr&rech=1&tri=dd%20AS%20RANK&value=&table\\_name=loi&F=&cn=2009051429&caller=image\\_a1&fromtab=loi&la=F](http://www.ejustice.just.fgov.be/cgi_loi/loi_a1.pl?sql=(text%20contains%20(''))&language=fr&rech=1&tri=dd%20AS%20RANK&value=&table_name=loi&F=&cn=2009051429&caller=image_a1&fromtab=loi&la=F)

<sup>190</sup> [http://www.ejustice.just.fgov.be/cgi/article\\_body.pl?language=fr&caller=summary&pub\\_date=00-06-08&numac=2000031179](http://www.ejustice.just.fgov.be/cgi/article_body.pl?language=fr&caller=summary&pub_date=00-06-08&numac=2000031179)



114. Having regard to the low level of accessibility of public places in Belgium, persons with disabilities have to call on personal assistance services outside the home.
115. The ORPD and ASPwD bodies report that even where services are available, there are insufficient numbers of staff, staff are not properly trained, and are only available at certain times (not in the evening, for example).
116. There is no training course on techniques for handling everyday obstacles such as curbs or on the rules of the road for wheelchair users. Training would be helpful for wheelchair users in order to learn to get from place to place independently and safely.
117. In general, there are insufficient accessible footpaths available. They should be developed as a matter of urgency in order to allow persons with disabilities to get around independently.

#### Case study

118. The commune of Watermael-Boitsfort and the commune of Evere have developed pedestrian ways inspired by the concept of pedestrian loop. The aim of the initiative is to provide a pedestrian network that is accessible to all. Well-maintained wide flat footpaths with no obstacles are built. The footpaths connect major activity centres: shops, schools, public transport, administrative offices<sup>191</sup>.

119. The OPRD and ASPwD bodies would note that many objects obstruct pedestrian areas and constitute an obstacle to personal mobility for persons with disabilities.

#### **A fragmented approach to mobility**

120. In Flanders, mobility policy is fragmented. The ORPD bodies that there is no central cooperation body on mobility to provide a service for every person with reduced mobility.
121. Similarly, from the perspective of the ORPD, it appears that even when collaboration is established between the Flemish authorities and the federal authorities, the relationship is highly uncooperative. Persons with disabilities, as end users, are victims of this situation.

#### ***Recommendations***

1. The competent authorities should be able to oblige the SNCB to make their infrastructures fully accessible, so that persons with reduced mobility can use the system independently, in every station, on an equal basis with other passengers.

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<sup>191</sup> [http://www.bruxellespourtous.be/IMG/pdf/20041210\\_pmr\\_fr\\_low-2.pdf](http://www.bruxellespourtous.be/IMG/pdf/20041210_pmr_fr_low-2.pdf)

2. The competent authorities should obliged the SNCB to make competent members of staff available in every station in order to provide the necessary assistance to every traveller, from the earliest train to the latest.
3. The competent authorities should require the SNCB to provide an automatic audio and visual announcement system for the next station.
4. The competent authorities should require the SNCB to make every effort to ensure that persons with disabilities can use the entire rail network comfortably, safety and without any stigma arising from problems caused to other passengers.
5. The competent authorities should require the STIB to make the entire Brussels metro network accessible without assistance.
6. As long as the metro network is not fully accessible, the STIB should offer a more flexible assistance system to persons with reduced mobility. Assistance, where necessary, should be provided promptly. Assistance should be offered in each station, beginning either at the entrance to the station or on the platform, and ending at the exit or the platform. Communication with the assistant in the departure station should allow the agent in the arrival station to help the person from the moment they arrive.
7. The competent authorities should oblige the public transport companies to coordinate the assistance services offered to persons with reduced mobility in order to offer a fully integrated experience to users. Where a person requires assistance using a rail service, they should also receive a similar service when using the SNCB and STIB networks, for example.
8. The competent authorities should require coaches to carry equipment suitable for persons with reduced mobility. There should be no price difference between adapted and non-adapted coaches, in order to ensure that this mode of transport is inclusive.
9. The competent authorities should make it obligatory that persons in active companies in the transport sector receive training on how to care of persons with disabilities. Given the type of activity, training courses should cover the basics on 'handling' persons with reduced mobility.
10. The competent authorities should require the regional transport companies to make all of their services accessible to persons with disabilities.
11. During the procedures when licences are granted to taxi companies, the competent authorities in the communes should include the obligation to make a certain percentage of vehicles available to transport persons with reduced mobility available in the specifications documents, with a minimum of one accessible vehicle per company. Similarly, the specification documents should state that the members of staff must take specific courses on dealing with persons with disabilities.
12. The competent authorities should establish training courses on handling for professionals and informal carers who assist persons with disabilities.
13. The competent authorities should put in place inspections on the proper use of parking cards akin to those carried out in 2011 in West Flanders.
14. Parking should be free of charge for card holders across Belgium.

15. The competent authorities should require the bodies responsible for the integration of persons with disabilities to demonstrate greater flexibility in the grant of payments for equipment that meets the needs of the person. Such flexibility would allow the person to opt for mobility assistance which best meets their needs. Similarly, it may be acceptable for the assistant to be granted a maximum amount as determined by the Agency.
16. The Brussels-Capital regional authorities should require the PHARE to make provision for financial assistance for mobility for persons with disabilities in Brussels who are obliged to live in an accommodation centre outside the Brussels Region due to a shortage of places within the Brussels Region.
17. In line with the measures taken by the German-speaking Community in Belgium, every regional authority should abolish the limit of 65 years beyond which persons with disabilities cannot receive assistance from the Agency for the mobility they need. The abolition of this restriction must be accompanied by the allocation of a larger budget.
18. The competent authorities should put in place training courses for techniques for passing typical obstacles (curbs) and on the rules of the road relevant to wheelchair users so that they can learn to get around independently and safely.
19. The competent authorities should develop a range of individual mobility assistance services with competent staff, with sufficient flexibility in terms of the times at which they are available.
20. The competent authorities should promote the development of footpaths inspired by the principle of 'pedestrian loops'.
21. The competent authorities should warn or sanction those who place obstacles in pedestrian zones.
22. The competent authorities in the Walloon Region should put in place real cooperation between the Liege tram operators and the ORPD and ASPwD. Cooperation should be of such a scope so as to ensure full accessibility in accordance with the requirements of the UNCRPD. The Liege tram network could serve as an example in terms of the decision-making process and implementation. This example should serve as a reference for similar projects. Furthermore, savings could be made in the medium and long term given that proper initial design is less costly than introducing modifications at a later stage.
23. The government of Flanders should establish a consultation body for all decisions within its remit. The consultation body would allow operators to clearly identify the needs of users with disabilities and organise the necessary cooperation. Persons with disabilities would also have an opportunity to have their voice heard on decisions affecting them.

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# **Article 21: Freedom of expression and opinion, and access to information**

## **Freedom of opinion, a constitutional right**

1. Freedom of opinion and expression are enshrined in the Constitution of Belgium<sup>192</sup>. Therefore, persons with disabilities also have these rights, without distinction. In principle, persons with disabilities can form their own opinion and express themselves freely.
2. In practice, persons with disabilities are confronted with a number of barriers which impede them from forming their own opinions, and consequently, expressing such opinions.

## **Difficulties accessing information**

3. In general, the ORPD and ASPwD bodies have noted that persons with disabilities are confronted with serious difficulties accessing information. As a result, they do not have access to information on an equal basis with the rest of the Belgian population.
4. As a result, many persons with disabilities experience greater difficulties than the rest of the population in forming their opinion and expressing themselves.
5. This makes it particularly difficult for persons with disabilities to fulfil their duty to vote<sup>193</sup>.

## **Barriers due to cost**

6. The technology aids for access to information established by the Regional funds is a step in the right direction, but insufficient to meet the needs of persons with disabilities.
7. With the growth of information society, access to technology is becoming more and more important in order to access information. Persons need to have computer and telecommunications equipment available to them, which in itself, is relatively costly. Acquisition of such equipment is not covered systematically by the Regional funds.
8. Furthermore, the rapid development of information technology also involves update and renewal costs. The Regional funds do not always cover such costs either.
9. Even if the person has the right equipment, accessible content in accessible formats must be found, and many websites are not accessible at present.

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<sup>192</sup> Constitution of Belgium, Article 19

<sup>193</sup> See Article 29 Participation in political and public life

10. Persons with disabilities are therefore confronted with obstacles in relation to their income<sup>194</sup>: the vast majority of persons with disabilities rely solely on disability payments, income protection payments, or very low salaries which place them below the poverty line. For instance, the acquisition of IT equipment is unlikely to be a priority for persons with this level of income.
11. In Flanders, the Walloon Region and the Brussels-Capital, persons diagnosed with a disability after the age of 65 do not receive the regional assistance to which other persons with disabilities are entitled<sup>195 196</sup>. Access to technology is therefore even more difficult for persons in this situation.

### **Obstacles related to comprehension**

12. The ORPD and ASPwD bodies would note that many official documents, particularly personal mail, are not accessible to persons with disabilities as they are drafted in far too obtuse language. The same is true for procedures. If the person is not in a position to understand all aspects of the procedure, they should receive assistance in this regard. Assistance should be available without additional cost.
13. In both cases, persons with disabilities often need help from others to explain documents or follow important procedures. Therefore, the ORPD have been asked to develop social services to help their members in their administrative tasks.
14. Technological development also necessitates training courses: it is not enough to have a tool available, the person must be able to use it. Some persons with disabilities need assistance from persons who are capable of teaching them how to use the new tools, and such persons are rarely available.

### **Obstacles in relation to language use**

15. Access to information is closely related to the use of language, in the broad sense of the term. Not only should information be made available in the three official languages of Belgium, but also in sign-language and simplified language and audio description.
16. All of these communication methods exist and can be used in Belgium. However, too little content is available in these languages and media. At present, the ORPD and ASPwD must report that too many persons with disabilities do not enjoy freedom of expression, opinion and the minimum necessary access to information to participate in society.
17. Access to written information is a related issue, which determines the extent to which an individual has access to information, freedom of opinion and freedom of expression. It is difficult for persons with cognitive disabilities and the majority of deaf persons to obtain access to information as they experience particular challenges learning to read and

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<sup>194</sup> See Article 28 – Standard of living and social protection

<sup>195</sup> See Article 28 – Standard of living and social protection

<sup>196</sup> The German-speaking Community is the only authority in Belgium that does not limit the age of diagnosis at which persons are entitled to disability payments.

write<sup>197</sup>. This is despite the fact that learning to read and write plays a major role in the process of forming their opinion.

18. The ORPD and ASPwD bodies note that the funding made available for support and assistance in order to allow every person with disabilities to receive the necessary information, to express themselves freely and to form their own opinion is insufficient at present<sup>198</sup>.

### **The role of the media**

19. The media play a central role in access to information, and in forming opinions and their free expression.
20. The ASPwD and ORPD bodies would note that television media, which play a central role in disseminating information, do not meet the needs of all persons with disabilities.

### **Obstacles to the accessibility of information on the Internet**

21. The Internet has become the most important information access point. In terms of the opportunities for exchange it offers, particularly through social media, it is becoming the primary tool for the expression of opinion. For this reason, it must be made accessible to all.
22. The 'AnySurfer' label was created to offer a guarantee of the accessibility of Internet sites. The label is available right throughout federal Belgium.
23. The label does not meet the needs associated with every type of disability. However, from the perspective of the ORPD and ASPwD, the label is a useful starting point which is a long way off from being achieved.
24. Furthermore, it would seem to make sense that the state bear to costs incurred by non-profit organisations in obtaining the label.
25. The label is a practical initiative for web design customers as, by including the 'AnySurfer' label in the call for tenders, developers are obliged to conform to the standards of the Web Accessibility Initiative (WAI)<sup>199</sup> without the customer being obliged to master the technical aspects of accessibility in order to determine whether the final product meets their requirements.
26. However, at present, the number of sites which have obtained the label is very limited:
  - The federal government has recommended to the federal bodies to obtain the label for their websites. As the recommendation is not binding, whether or not the websites are made accessible depends entirely on the relevant bodies.

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<sup>197</sup> See Article 24 – Education

<sup>198</sup> With the current shortage of sign-language interpreters, the needs of persons with hearing impairments cannot be met.

<sup>199</sup>

- To date, the regional and community governments have not taken measures to encourage their departments to obtain the label for the websites.
  - At local level, only a small number of communes have taken the initiative to obtain the label.
  - Very few NGOs have obtained the *Anysurfer* label for their website. Even among the ORPD bodies, not every organisation has obtained the label, due to a lack of competence and under-funding.
  - Finally, almost no business sites have obtained the label.
27. It is also important to draw attention to the fact that there is very little training available to persons with disabilities in Belgium on the use of new technologies. The digital divide is a real issue in terms of access to information, the formation of opinions and their dissemination.
28. The Internet itself is evolving with the rise of social media. Social media is developing rapidly without any restrictions. At present, there are no proper training courses available to their users, particularly for users with disabilities.
29. Given that social media are playing an increasingly important role <sup>200</sup> in the formation and dissemination of public opinion, they should be accessible to all, including persons with disabilities. Platforms such as Twitter and Facebook are not accessible to blind persons, for instance.
30. Finally, with regard to Internet access, development of computer technology plays an important role. According to experts, with the development of tablets and smartphones computers will no longer be available. Although this is unlikely in the short time, it may result in higher prices for computers in the long term.
31. The ORPD and ASPwD bodies wish to emphasise their concern in this regard as touch screens on tablets and smart phones cannot be used by all persons with disabilities. Reasonable accommodation measures required of manufacturers in certain countries are not required in Belgium.

### **Obstacles in relation to intellectual property rights**

32. At present, Belgian legislation on intellectual property rights makes it difficult for persons with disabilities to obtain books in electronic format.
33. Persons who use voice reading applications have to scan the book page by page, which is a significant barrier to access to information, and therefore to the formation of opinion and freedom of expression.
34. The ORPD and ASPwD bodies are not asking for books to be made available free of charge. However, it is unacceptable that persons with disabilities do not have access to books at the same price, in the format best suited to their needs.

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<sup>200</sup> During Barack Obama's election campaign in 2008, the intensive and extensive use of the possibilities offered by social networks was considered key to his success. Cf. BLOT (A), *Campagne virtuelle et élection réelle*, in *Politique, démocratie et culture aux Etats-Unis à l'ère du numérique*, Paris, 2011, p. 45-50 (Editions L'Harmattan).

## ***Recommendations***

1. The necessary tools must be put in place to allow any person with a disability to access information, form their own opinion, and to express themselves.
2. The competent authorities should offer remote video sign-language interpretation in order to improve its efficiency for administrative procedures. Such an improvement would free up time for sign-language interpreters to attend to other tasks, particularly in relation to public information.
3. The competent authorities should communicate the information clearly and make it accessible in simplified language and easy to read formats.
4. The competent authorities should develop and fund bodies capable of communicating the texts in simplified language.
5. The competent authorities should make it obligatory for all websites funded by the state to obtain the *AnySurfer* label.
6. The competent authorities should offer official recognition to the profession of sign-language interpreters.
7. The competent authorities should ensure that information is broadcast in every format in order to ensure sufficient access for all citizens to the information they need to form their own opinion and express it freely.
8. The competent authorities should make it obligatory to make reasonable accommodation for persons with disabilities so that they can access information, form their own opinion and express their opinion. The state should cover the cost of such measures.
9. The competent authorities should develop legislation that obliges manufacturers and developers to make all their products accessible.
10. The competent authorities should take the necessary measures to make information accessible to persons with disabilities and others, regardless of their age, level of education or social status, in all the services targeted to the public, in both the public (federal and federated authorities) and private sectors.

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## Article 22: Respect for privacy

1. Under the terms of Belgian privacy legislation, persons with disabilities enjoy the same protection as any other citizen.
2. However, the ORPD and ASPwD bodies note that there is a widespread assumption that communication of personal information in the interest of the person with a disability, is desirable, or even indispensable<sup>201</sup>.
3. Such an approach should be prohibited. Compliance with privacy law is a necessity, particularly in the case of persons with disabilities, who experience discrimination. One of the types of discrimination which persons with disabilities are subject to is that others often make decisions for them.

### **Access to personal information**

4. Personal information is held in a variety of settings: governments, institutions, educational establishments, etc.
  - the disability, the type of disability, and the consequences for the individual
  - administrative data (name and marital status, nationality, family, philosophical orientation, etc.)
  - Expenditure of pocket money, friendships and sexual or loving relationships.
5. All such information on the private life of persons with disabilities must be maintained confidential. Consent must be obtained from the individual in the event that such information is used for any other purpose than that for which it was recorded. Those with access to the information must be subject to strict professional secrecy.
6. Where the person receives a diagnosis, information is collected and communicated to the competent federal, regional and community authorities.
7. In spite of progress, persons with disabilities do not have full access to their personal data. This raises the question with regard to respect for privacy, as well as better management by the affected person regarding access to their information on care, income and support.
8. The way in which the lists are managed and communicated is rarely subject to strict procedures. Furthermore, such lists are almost never brought to the attention of the individuals.
9. It is even rarer for persons with disabilities to be given the opportunity to provide written agreement on the manner in which their personal data will be used, or disclosed to third parties.

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<sup>201</sup> AWIPH, *Le secret professionnel partagé*, 2009 (pp. 5-6)

[http://www.awiph.be/pdf/documentation/publications/informations\\_particulieres/secret\\_professionnel\\_partage.pdf](http://www.awiph.be/pdf/documentation/publications/informations_particulieres/secret_professionnel_partage.pdf)

10. Finally, respect for privacy implies that persons with disabilities should have the choice as to whether or not they reveal their disability. It appears that individuals are not systematically informed that mentioning their disability is not obligatory, although this allow them to enjoy certain advantages, such as moving up waiting lists<sup>202</sup>.

### **Privacy for persons living in or attending institutions**

11. Respect for privacy and personal space are essential to the well-being of persons with disabilities living in institutions or attending day centres.
12. At present, persons living in institutions and attending day centres do not have a proper private space. Private rooms remain the exception. Clearly, this is at odds with the concept of respect for privacy<sup>203</sup>.
13. In many institutions, there is limited respect for personal space. Staff interfere without prior agreement in private areas, sometimes even in the belongings of the individual. Other residents may also interfere in their personal space.

### ***Recommendations***

1. Every institution with data on the individuals' disabilities should fully inform the individual of the personal data held and the way in which it will be used. Explicit agreement must be obtained from the individual to register personal data in a database and with regard to the purposes for which it is used.
2. The concept of shared professional secrecy should be discussed by all the authorities in federal Belgium. Discussions should lead to the production of texts regulating professional practices in relation to persons with disabilities.
3. The competent authorities should ensure that ethical codes in relation to respect for privacy are published and accessible to all those in receipt of services.
4. The competent authorities must ensure that persons with disabilities have access their personal data along with knowledge of the use of such data.
5. The competent authorities should ensure that the procedures for registering persons with any database include the following, as a minimum:
  - The person with a disability should be informed that their disability has been mentioned
  - they must have access to the data and be aware of the purposes for which it will be used
  - no information on the disability should be indicated unless it results in access to a service linked to the disability

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<sup>202</sup> For instance, when applying for social housing.

<sup>203</sup> See *Article 23* – Respect for home and the family

- the person with a disability should not be subject to restrictions due to their disability
6. The competent authorities should take all the necessary measures to ensure that individual rooms are made available to persons who are resident in institutions.

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# Article 23:

## Respect for home and the family

### **Right to start a family**

1. By definition, starting a family follows on from choosing a partner. Every person in Belgium has the right to freely choose their partner. Persons with disabilities also have this right, regardless of the nature of their disability.
2. However, in reality, stereotypes about disability still exert significant influence in Belgian society<sup>204</sup>. Regardless of legislation, there are a number of obstacles to the development of relationships between persons with disabilities and others, as well as between two persons with disabilities<sup>205</sup>.
3. Once emotional relationships are discouraged, this is even more likely to be the case for loving and sexual relationships.
4. It is important to remember that starting a family depends on a decision being taken by two consenting adults. Each partner must therefore make a fully free choice.
5. In this regard, there are three major types of barriers: those generated by stereotypes in an inclusive society, legislative barriers and specific rules developed in institutions for persons with disabilities.

### **Stereotypes in the context of a non-inclusive society**

6. The lack of progress in terms of developing an inclusive society and the stereotypes that function as norms diminish the chances for persons with disabilities and others to meet and develop relationships.
7. From school-going age, many children live in ignorance of disability, while others live in an environment centred on disability: not only is their family life organised around the disability, they also attend special schools. In special schools, they only meet other children or teenagers with disabilities.
8. In a non-inclusive society, it is difficult to reconcile differences and for relationships to develop between persons with disabilities and others.
9. Stereotypes of persons with disabilities tend to deny persons with disabilities of relationships, or in the best case scenario, limit them to meeting other persons with disabilities<sup>206</sup>.

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<sup>204</sup> Cf. Art.8 - Awareness raising

<sup>205</sup> *La Libre Belgique*, 3 December 2012 : <http://www.fondspourlejournisme.be/telechargements/handi1.pdf>

<sup>206</sup> *Couples et Familles*, Analyse 2012-03:  
[http://www.couplesfamilles.be/index.php?option=com\\_content&view=article&id=270:les-handicapes-ont-ils-droit-a-une-vie-sexuelle-&catid=6:analyses-et-reflexions&Itemid=9](http://www.couplesfamilles.be/index.php?option=com_content&view=article&id=270:les-handicapes-ont-ils-droit-a-une-vie-sexuelle-&catid=6:analyses-et-reflexions&Itemid=9)

## Legislative barriers

10. The situation described above is further amplified by specific legal constraints where persons are assigned to prolonged minority status, with regard to the management of their property. The person is then placed under guardianship<sup>207</sup>
11. This guardianship also regulates freedom to develop relationships and a sexual life. This constitutes a barrier to the application of the UNCRPD.
12. Legally, the person assigned to protected minority status cannot marry. There are no exceptions to this rule.
13. The law reforming the rules on incapacity and establishing a new protection status in accordance with the principle of human dignity has been voted recently. While the law will bring significant changes, it will not enter into force until 1 June 2014<sup>208</sup>.

## Institutional rules

14. Persons with disabilities living in institutions, on a long-term or short-term basis, are required to follow the rules of the institution. While rules are a necessity, they can sometimes go beyond certain limits and encroach on the privacy of persons with disabilities.
15. In this regard, the ORPD and ASPwD bodies wish to draw attention to the problems which arise in communal rooms. Even though a private room is central to respect for the home, they are rarely offered in institutions.
16. This situation is due to the lack of public funding for the construction and maintenance of private rooms.
17. Every person needs privacy, which implies access to a private individual room. A space that is separated from the rest of the room by a screen or a curtain, as is the case at present, is not satisfactory.
18. Similarly, it is not acceptable for staff members or others to enter into a resident's room, or any other private area, without their agreement. In Belgium, persons with disabilities do not enjoy all the guarantees in relation respect for the home.

## Case study

19. The NGO '*Reviver à Sunny*'<sup>209</sup> drew up specific rules on respect for the home and privacy within the institution it runs. The innovative nature of this approach demonstrates that problems exist in the institutions in this regard.
20. The regulations put in place by this organisation have received particular attention during institutional meetings where professionals discussed organising events and establishing practices which favour respect for private life and the home of users with

<sup>207</sup> Cf. Art.12 – Legal recognition

<sup>208</sup> The Law of 17 March 2013 reforming the rules on incapacity and establishing a new protection status in accordance with the principle of human dignity ([M.B.](#) 14 June 2013:

<sup>209</sup> <http://www.revivresugny.net/>

intellectual disabilities. The ASPwD and ORPD bodies wish to see this type of initiative applied in all institutions.

### **Divorce and separation**

21. Like any other citizen, persons with disabilities have the right to divorce or separate from their partner.
22. In the event of a divorce or separation between parents who have a child with a disability, only the parent with whom the child lives is entitled to receive financial assistance to make the living environment accessible<sup>210</sup>.
23. However, the rules are changing in view of the rise in separations with shared guardianship. A number of decisions have been taken in this vein. The ASPwD bodies take the view that funding should be allocated to both guardians in all cases.

### **The right to parenthood**

24. The second essential aspect of founding a family is the right to become a parent. Under Belgian law, persons with disabilities have the right to have children. This right applies to both procreation and adoption.
25. However, in reality, persons with disabilities meet with a number of barriers in terms of becoming parents. Such barriers can be broken down into two groups: those arising from stereotypes in Belgian society, and legal barriers.

### **Stereotypes**

26. The way in which persons with disabilities are presented in society generates typical reactions of rejection fear and disapproval<sup>211</sup>. Although some efforts have been made to raise awareness, they have not been widespread enough to bring about the results expected by the ORPD and ASPwD.
27. There are no scientific studies available on this issue. However, the following stereotypes are widespread: doubts about the capacity of a person with disabilities to raise a child properly, the risk that the person would pass on the disability and the so-called incapacity of the person with a disability to educate their child, depending on the disability of the parent(s): language, reading and writing, etc.
28. It is particularly difficult to come up with evidence or testimonials on this issue as persons with disabilities and those close to them refuse to waive their right to anonymity. A number of the ORPD bodies have collected testimonials reporting on systematic contraception, and even sterilisation<sup>212</sup>, forced abortions, full-term

<sup>210</sup> Van Gysel (A.), *Divorce et capacité*, IN *Actualité du droit du divorce*, Bruxelles, 1996, pp. 7-64 : [http://www.biblioweb.be/pmb/opac\\_css/index.php?lvl=subcoll\\_see&id=3](http://www.biblioweb.be/pmb/opac_css/index.php?lvl=subcoll_see&id=3)

<sup>211</sup> *La Libre Belgique*, 5 December 2012 : <http://www.fondspourlejournalisme.be/telechargements/Handi5.pdf>

<sup>212</sup> ASPH, 2009: <http://www.asph.be/Documents/analyses-etudes-2009-PDF-anysurfer/sterilisation-personnes-handicapees.pdf>

pregnancies leading to expulsion from institutions, on the pretext that there were insufficient staff or space to manage a new arrival.

### **Legal barriers**

29. Persons with disabilities assigned to prolonged minority status are forbidden to exercise parental authority. Similarly, they cannot adopt as they do not meet the conditions for the age of adoption or definitive adoption.
30. It is important to draw attention to the legal vacuum on the issue of the forced sterilisation of persons with intellectual disabilities<sup>213</sup>.
31. In such cases, the person is deemed to be *de facto* incapable, and their legal representative takes the decision for the 'protected' person. However, the article 13-2 of the law on the rights of patients<sup>214</sup> provides that "the patient must participate in the exercise of their rights insofar as is possible and in accordance with their level of understanding"
32. However, if the person is incapable *de facto*, but is not assigned to a legally protected status, Article 14 of the law on the rights of the patient provides for representation where a doctor determines that the patient is in fact incapable of giving their consent to medical treatment.
33. In the end, the decision is taken by the doctor.
34. The patient may also designate the person who will exercise their rights in the event that they cannot do so themselves.

### **Assistance with parenthood**

35. The ORPD and ASPwD would criticise the fact that the parents of children with disabilities do not receive sufficient assistance in order to fulfil their role as parents. Depending on the extent of the disability, the lack of assistance could have a major impact.
36. The competent authorities do not sufficiently organise or fund assistance for parents of children with disabilities or parents with disabilities: there is a very real shortage of adequate services.
37. The ASPwD and ORPD bodies take the view that it is important to emphasise that parents or future parents only receive medical information, which is an extremely reductive approach to parenthood.
38. Given the lack of support from the competent authorities for families with children with disabilities, parents are often obliged to turn to the family or organisations for parents with disabilities to get the support they need.

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<sup>213</sup> Comité consultatif de bioéthique (Advisory Committee on Bioethics) Opinion n° 8 of 14 September 1998 on the issue of sterilisation of persons with intellectual disabilities:  
[http://www.health.belgium.be/internet2Prd/groups/public/@public/@dg1/@legalmanagement/documents/ie2divers/7988406\\_fr.pdf](http://www.health.belgium.be/internet2Prd/groups/public/@public/@dg1/@legalmanagement/documents/ie2divers/7988406_fr.pdf)

<sup>214</sup> Law of 22 August 2002 on the rights of the patient:  
[http://www.ejustice.just.fgov.be/cgi\\_loi/change\\_lq.pl?language=fr&la=F&table\\_name=loi&cn=2002082245](http://www.ejustice.just.fgov.be/cgi_loi/change_lq.pl?language=fr&la=F&table_name=loi&cn=2002082245)

39. Furthermore, it should be noted that the percentage of lone parents with children with disabilities is higher than among lone parents of other children. This state of affairs may also be an indication of the negative effect of stereotypes and the lack of support for families.
40. It appears that the arrival of a child with disabilities can negatively impact the stability of the couple. Parental obligations are more difficult to meet when caring for a child with a disability. As single parents are under a greater burden, it would make sense that they receive additional support services. This is not the case at present.

### **Family carers: the impact of the legal vacuum**

41. For many years, organisations of parents of children with disabilities have hoped to obtain the status as 'family carers' which would give rise to rights for parents or family members who have sacrificed years of their professional career to make time to take care of a child with disabilities<sup>215</sup>. Although progress has been made in terms of the understanding shown by the competent authorities, concrete results have not been achieved.

#### Case study

42. In spite of legislation on the right to rest, information, training and support for carers, many parents and family members of children with disabilities find themselves alone and under-resourced. It is important to emphasise that the legislation only applies for a limited period, whereas disability is for life.
43. Parents are also concerned about their right to healthcare, retirement, return to employment, etc. Families with children with disabilities have long campaigned for their dedication to be supported by ad hoc, recognised and protected services. A number of NGOs have advocated for clear legal status. The situation of family carers is a serious issue for society.
44. The term 'informal carer' can be defined as a non-professional person who is the principal carer, providing all or part of the care to a dependent person among their family or friends, for daily activities.
45. This regular care must be given on a long-term basis and may take several forms, particularly: nursing, care, support for education and social life, administrative tasks, coordination, observation, psychological support, communication, domestic tasks, etc.
46. At present, the future legal texts on the legal status of informal carers are only at the preparation stage.
47. There is a clear need for change.
48. On the ground, informal carers have no other option than to take all of their holidays to attend to the needs of their child (medical consultations, etc.), reduce their working time, and, in many cases, sacrifice their career. This results in a considerable reduction in the family income and a precarious financial situation, coupled with a high level of need (cost of care, accessible transport, adaptation of the home, etc.).

<sup>215</sup> <https://www.lapetition.be/en-ligne/Parent-d-enfant-handicape-A-quand-un-statut-3976.html>



49. In the absence of the necessary skills and equipment, the assistance provided is often inadequate. Given the significant workload, there is a higher incidence of symptoms of depression and anxiety, and feelings of stress and exhaustion among informal carers. Family carers receive no respite from their role, which they must also reconcile with their role in society (worker, mother or father, active citizen, etc.).

50. The legal vacuum with regard to the status of informal carers may lead to the child with a disability or the adult with a disability being separated from their family

51. With the expectations placed on the family carer and the shortage of proper services, parents are often left with no other option but to place their child in an institution, despite their desire to keep them at home.

52. Given the shortage of places in accommodation and day centres, parents are often required to take on the role of informal carer in spite of themselves, to the detriment of their professional career, without any legal status or protection.

53. In the context of a modern society, relying on family solidarity should be a choice, not the only available option. Society has washed its hands of its duty, to the detriment of respect for the rights not only of persons with disabilities, but also of their families.

54. The present article of the Convention guarantees the right of persons with disabilities to receive the care and support they need from a professional outside the family circle.

55. Due to a lack of resources, this right has no substance as the situation stands in Belgium, which seriously compromises the quality of family and spousal relationships.

### **Birth control**

56. Birth control is essential in relation to parenthood. As there is insufficient support available to persons with disabilities, birth control is not always effective. Some persons with disabilities do not receive the necessary information on sexuality and the effective use of contraception. Forced contraception and sterilisation<sup>216</sup>, often practised without the knowledge of the individual, have been reported to the ORPD bodies on a confidential basis.

57. Such practices constitute obstacles to the exercise of free will by persons with disabilities

### **Almost insurmountable obstacles**

58. For persons with disabilities, obstacles to parenthood are not insurmountable. However, they are significant and necessitate specific support which is not available at present. This is the case in every Region.

### **Right to be named as the parent of a child**

59. Article 328 of the Civil Code provides that any person who has been declared 'incapable' has the right to be named as the parent of a child. The following provision follows on from this: 'A minimum level of understanding is required'

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<sup>216</sup> *La Libre Belgique*, 4 December 2012 : <http://www.fondspourlejournisme.be/telechargements/Handi4.pdf>

60. The ORPD and ASPwD bodies regret the use of such a vague expression and the fact that no procedure to assess this 'minimum' is provided for.

### **Founding a family: a central aspect of Belgian society**

61. Although the number of single persons is on the rise in Belgium, founding a family remains central to the life of the majority of persons living in Belgium. The same is true for persons with disabilities.

62. In this regard, persons with disabilities do not have the opportunity to obtain the necessary information, in accessible formats, to prepare for this journey.

63. Similarly, support is rarely available for relationships and sexuality, with regard to marriage and parenting. It is clear that the lack of support is due to a lack of sufficient resources.

### ***Recommendations***

1. The competent authorities must harness all the necessary resources in order to provide persons with disabilities with the specialised support they need to develop relationships, a sexual life, and family life.
2. The competent authorities must use all the necessary resources to ensure that persons with disabilities receive the information they need to allow them to develop relationships and family life in accordance with their wishes.
3. The competent authorities must develop a policy in order to establish adequate services to support persons with disabilities in their role as parents.
4. The competent authorities must develop policies to ensure that persons with disabilities resident in institutions can develop personal, emotional, sexual and family relationships, with strict respect for privacy.

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## Article 24: Education

1. In Belgium, care and education of children with disabilities is organised separately from the rest of the population: the majority of children attend mainstream schools, while a significant number of children with disabilities attend special schools.

### **Belgium is behind on special education**

2. Children from the ages to 2 to 21 may attend special schools.
3. Eight types of special education are available, depending on the disability with which the child presents:
  - mild intellectual disability (Type 1)
  - moderate or severe intellectual disability (Type 2)
  - major emotional disturbance or personality disorder (Type 3)
  - physical disability (Type 4)
  - stay in a medical institution or a sanatorium (Type 5)
  - visual impairment (Type 6)
  - hearing impairment (Type 7)
  - major learning difficulties (Type 8)
  - Types 1 and 8 are not offered in primary schools.
  - Type 8 is not offered at secondary level.
  - No special education is available in higher education or at university level.
4. Belgium is among the last industrialised countries to still have a special education system for persons with disabilities.
5. The distinction made between children with disabilities and others is at odds with the UN Convention on the Rights of Persons with Disabilities (UNCRC), which recommends developing inclusive education. The current system therefore clearly falls short of the UNCRC standards.
6. Belgium has missed the boat in terms of inclusion at school, and therefore also in terms of building an inclusive society. As children are educated in ignorance of persons with disabilities, they fail to develop positive perceptions of others who are different. It is therefore hardly surprising that the job market, for instance, is not open to inclusion.

## **History of special education in Belgium**

7. Special education in Belgium was established in 1970, which explains the fact that it exists both in French and Flemish-speaking Belgium, with the laudable intention of making education available to severely disabled children, who, up until then, stayed at home and received no education.
8. The basic principle underlying special education was that children with learning difficulties should be offered education that meets their needs. In special schools, pupils benefit from specialised support, adapted teaching methodologies and greater attention than would be possible in mainstream schools.
7. Special education has been a great success in Belgium. For instance, for the school year 2008-2009, 32,208 children and teenagers were registered in special schools in the French Community. This is equivalent to 4.6% of primary and secondary school students<sup>217</sup>. The students are distributed across 250 schools in the French Community. In Flanders, in 2009-2010, 46,710 children and teenagers were registered in special schools<sup>218</sup>. This is equivalent to 4.2% of primary and secondary school students.

## **Progress is under way, but evaluation is lacking**

8. The number of children attending special schools is on the rise. However, an overall evaluation of the system has never been carried out<sup>219</sup>.
9. The fact that the education system has not been evaluated is indicative of the extent to which the competent authorities are not interested in the area, and therefore, the children and teenagers involved.
10. Due to the lack of regular evaluation, the sector has not been exposed to alternative models. In 2012, the system is still operating on the basis of ideas from the late 1960s.
11. Instead of being used in complement with the ordinary school system, it has replaced mainstream schools and is the only solution available to a large number of children with disabilities who could in fact thrive in mainstream schools.
12. Neither is it an optimal solution for children with disabilities who need specific methodologies and support: budgets are not being used efficiently.

## **The corruption of an originally praiseworthy approach**

13. While the approach taken was laudable, initially, and the system has been successful in terms of numbers, the long-term results over 40 to 50 years are poor, mainly because

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<sup>217</sup> [http://www.enseignement.be/index.php?page=23827&do\\_id=7775&do\\_check=](http://www.enseignement.be/index.php?page=23827&do_id=7775&do_check=)

<sup>218</sup> <http://www.ond.vlaanderen.be/onderwijsstatistiek/2009-2010/zakboekje%20en%20plooi%202009-2010/zakboek%202009-2010.pdf>, page 8.

<sup>219</sup> *Alter Echos* n°248 - Actualités du 29/02/2008 au 11/04/2008:  
[http://www.alterechos.be/index.php?p=sum&c=a&n=248&l=1&d=i&art\\_id=16635](http://www.alterechos.be/index.php?p=sum&c=a&n=248&l=1&d=i&art_id=16635)

the initial approach has been corrupted over time. We wish to draw attention to the following undesirable effects of the policy.

14. Ready-made alternative solutions for the care of children 'in difficulty' tend to relieve the mainstream education system of their responsibility with regard to inclusion and the education of the child. This partly explains the success of special schools in terms of numbers.
15. Special schools tend to become the destination for the weakest students, with some parents even using the term 'dumping ground'. Feelings of exclusion, being different, less worthy and of failure are reinforced among children with disabilities. In other words, the antithesis of inclusion.
16. Teachers are not required to follow training courses on specific aspects of the disabilities they are dealing with, which is at odds with the very idea of a specialised service. Training is left to the initiative of teachers and schools with varying results from case to case. In more concrete terms, teachers in special schools are specialised more in terms of the students they take care of than the method they follow. As a result, varying results are achieved.
17. Long-term systematic evaluation of the effectiveness of teaching methods is not in place. The evaluation of methods is left to the initiative of schools, again, with varying results.
18. In the absence of continuous professional development, the quality of specialised support has deteriorated over time.
19. Training for mainstream teachers on disability would facilitate early detection and attempts to provide remedial care within the mainstream system.
20. In practice, entry into special school is a one-way ticket with no option to return.

### **Problems with teacher training**

21. There are crying needs with regard to training for teachers in special schools. The objective here is not to vilify committed teachers.
22. However, it is important to note that the authorities do not provide special education teachers with the specialised technical, methodological and pedagogical tools they need to fulfil their role.
23. Similarly, teachers in the mainstream system do not receive the basic training on disability the need to include children with special needs in their class.
24. Current training for mainstream and special education teachers is insufficient to achieve the ideal of inclusive education. However, the fact that there is a long way to go is no excuse for the current inertia.
25. In this regard, the ASPwD and ORPD bodies regret that there is too little proper professional training in sign-language in the French Community in Belgium. There is also

a lack of continuous professional development <sup>220</sup>. This has a negative impact on the development of a professional career.

### **First steps towards an improvement**

26. On the plus side, the authorities have taken the first steps on the road towards an inclusive education system.

### **Integrated education in the Flemish Community**

27. The Flemish Community first took steps towards developing "integrated" primary education in 1984 and for secondary and higher education in 2010<sup>221</sup>.
28. Partnerships should be put in place between mainstream and special education institutions so that children with disabilities can attend mainstream classes and receive additional support in a special school.
29. It is interesting to note that following a period of slow progress in the number of children with disabilities in the inclusive system (from 1986 to 1999), faster progress was made from 1999 to 2009, with a total of 10,503 students following an integrated course of education.
30. However, organisations working in the community have pointed out serious difficulties. The Flemish Community has not yet made a clear choice in favour of inclusive education.
31. In many cases, children cannot get a place in mainstream education. Parents are almost always faced with a long battle with many obstacles on the way. Finding a place in an 'inclusive' school often takes a long time and involves a high level of stress.
27. Even when families find a school for their child with a disability, they still have to fight to get the right support for their child.
28. Finally, many of the families who manage to obtain support are those who have been allocated a 'personal assistance budget' (PAB) for their child or have high incomes, a strong social network or good organisational skills. There are inequalities with regard to obtaining specific advantages, and access is often limited to certain social classes.
29. There are also problems with regard to qualifications. Students with disabilities taking 'BuO' and 'ION' <sup>222</sup> courses are not awarded any qualification at the end of their education.
30. Parents of children with disabilities and their representative organisations are not given an opportunity to contribute to evaluations and discussions on their child's education.

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<sup>220</sup> In the French Community, adult education can only be accessed via the social services scheme for unemployed persons.

<sup>221</sup> GON: [Decreet basisonderwijs van 25/02/1997](#) , Article 11 in [Besluit van de Vlaamse Regering van 17/12/2010](#), houdende de codificatie betreffende het secundair onderwijs, Article 351

<sup>222</sup> BuO: *Buitengewoon Onderwijs* (special education) - ION: *Inclusief Onderwijs* (inclusive education): [http://www.onderwijskiezer.be/buitengewoon/buo\\_gon.php](http://www.onderwijskiezer.be/buitengewoon/buo_gon.php)

## **The French Community: pilot projects**

31. Since 2004, a pilot project for the reintegration of special classes in mainstream education has been under way, with a view to combating the problems in special education<sup>223</sup>.
32. Catering for children with disabilities is part of the educational mission of the mainstream school. In 2010, 843 pupils or 2.5% of the population were covered by the programme. The programme takes a step-by-step approach and depends on the goodwill of the educational institutions.
33. The Decree of 9 February 2011<sup>224</sup> went a step further: schools are now required to include their desire to integrate children with special needs into their mission statement. Schools which are effective in achieving integration receive support throughout the process.
34. To date, 800 pupils have seen the benefits of the decree, whereas 30,000 pupils attend special schools. While it must be acknowledged that a positive first step has been taken, further measures are needed:
  - it must be followed up by wide dissemination of information on the resources available and the principles promoted by the decree
  - the decree must be seen as a first step and not the final word on inclusiveness in education
  - take account of the results of a longitudinal evaluation of the provisions and any weaknesses in order to modify the details
  - acknowledge the low level of resources available, particularly in terms of networks, in comparison with the ambitions of the project

## **The German Community and learning support**

35. Since May 2009, the German Community has established learning support for children with disabilities attending mainstream schools<sup>225</sup>.
36. There is an important provision with regard to the learning support provided for children and teenagers with disabilities. Only four hours of learning support per week is provided for each child in primary school and the first four years of secondary school. Four hours is not enough. Proper integration of children with disabilities in mainstream schools cannot be achieved on this basis.

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<sup>223</sup> [http://theses.ulb.ac.be/ETD-db/collection/available/ULBetd-03132010-104350/unrestricted/doctorat\\_tremblay.pdf](http://theses.ulb.ac.be/ETD-db/collection/available/ULBetd-03132010-104350/unrestricted/doctorat_tremblay.pdf)

<sup>224</sup> Order of the Government of the French Community establishing the lists of primary and secondary schools in receipt of additional support along with those to which Article A of the Decree of 30 April 2009, modified by the Decree of 9 February 2011 on additional support in schools in the French Community with a view to ensuring equal opportunities for all students for social emancipation in a high-quality learning environment.

A.Gt 24-03-2011 - M.B. 20-04-2011: [http://www.gallilex.cfwb.be/document/pdf/36474\\_000.pdf](http://www.gallilex.cfwb.be/document/pdf/36474_000.pdf)

<sup>225</sup> Decree of the Parliament of the German Community of 11 May 2009.

37. During the last two years of secondary education, young persons with disabilities have access to eight hours of learning support per week. While this is an improvement, it is not sufficient in all cases.
38. In secondary education, students can receive up to 15 hours per week. This is a much more reasonable number of hours.
39. The fact that fewer hours of learning support are available at primary and secondary level is symptomatic of an elitist approach which is itself at odds with inclusive education: only the top tier of students with disability will manage to enter higher education.

### **Freedom of choice in education and for subjects in secondary education**

40. Freedom of choice is significantly limited for pupils with disabilities attending special and mainstream education.
41. Those attending mainstream schools are faced with limits due to the lack of accessibility, which exists in the majority of schools. Pupils are limited to certain schools. If the pupil chooses a school with accessibility problems, the procedures to obtain the necessary adaptations or to make reasonable accommodation may result in the student missing school. Very few parents are prepared to force the school to make the necessary arrangements. The only real option is to choose a school which is already accessible.
42. In special schools, children with disabilities are limited in their choices, depending on their particular disability. In this regard, the geographical distribution of schools also has a significant influence on the choice by the pupil or their family. Paradoxically, problems with accessibility to buildings are also present in special schools. For example, in the Mons-Tournai region, there is only one option for persons with physical disabilities: secretarial/tourism.
43. In mainstream education, choice is limited by a combination of factors: architectural inaccessibility, shortage or absence of nursing, persistence of clichés, etc.

### **Transferring from special to mainstream education**

44. The ORPD and ASPwD bodies have also reported that special education is cut off from the rest of the education system. It is difficult for children and young persons with disabilities attending special schools to transfer into mainstream education.
45. In general, there is little encouragement for pupils to move out of special education. The ORPD and ASPwD bodies insist on the importance of encouraging such transfers because they are aware that that young persons and their parents may have fears around this issue. In Belgium today, it is a leap into the unknown which requires top class advocacy skills. Very few persons are likely to take this step.



### **Sign-language teaching**

46. Besides the general deficits, there are also a number of problems in relation to certain disabilities in education. This is particularly the case for deaf children.
47. While sign-language is officially recognised in Belgium, they are not recognised as national languages. As a result, persons who need to use this language to communicate do not have the resources available to them in order to enforce their rights<sup>226</sup>.

### **Problems specific to primary education**

48. There are a number of technical problems in relation to special primary education. Giving a child with a hearing impairment the most accessible communication tools from an early age is essential too in terms of offering them the best chance of integrating socially and receiving an education.
49. Unfortunately, in the Belgian system for deaf persons, emphasis is placed on lip-reading, speech and development of spoken language. The effort required to achieve satisfactory results comes at the expense of progress in other subjects.
50. Deaf students end up making less progress than others, which makes it difficult for them to integrate into mainstream education. Many are therefore limited to special education, even though, with the right support, they could be successfully integrated into a mainstream school.

### **Problems specific to secondary education**

51. There is another major problem with regard to secondary education for deaf persons: it does not lead to a qualification. As a result, many deaf children attend mainstream education.
52. In mainstream schools, they are met with the problem of difference and acceptance by their fellow students, many of whom are unaware of the realities of disability. Without fellow deaf students whom they can communicate with, and a 'model' with which they can identify, they are often left in isolation, which is completely at odds with the principle of inclusion.
53. The issue of support is also a problem. Support must be provided for by sign-language interpreters. Currently, pupils attending mainstream second schools cannot call on a sign-language interpreter for all their classes and activities organised at school. It is therefore difficult for them to attain sufficient understanding of the subjects and have the minimum social contact necessary to overcome the barriers with which they are faced.
54. For instance, there are only 11 deaf persons who have qualified as teachers. This is a very small number in comparison with the support deaf students need. Of the 11

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<sup>226</sup> See Article 8: Raising awareness

teachers, only four are teaching in special schools. Therefore, there is very little sign-language expertise available in special schools.

#### Case study

55. See the complaint under Article 7 - Children with disabilities

56. The UNCRPD also emphasises the right to lifelong learning. Similar problems arise in this regard: the number of hours of interpretation to which adults are entitled is very low.

57. In the absence of reasonable accommodation, deaf adults cannot follow a course of training on an equal basis with others.

58. Sign-language interpreting in the French and Flemish Communities is insufficient at present<sup>227</sup>. Furthermore, the number of interpreters is too low to meet the demand. The profession of sign-language interpreting is the responsibility of the authorities responsible for the development of training, funding and improving the quality of sign-language interpretation.

#### **Teaching in Braille**

59. In contrast with the experience of persons with hearing impairments, the majority of persons with visual impairments attend mainstream schools. With adequate support, they can reach their potential without much difficulty, like any other student.

60. Assistance is available and is used. However, it is regrettable that not all schools are prepared to put the necessary measures in place for the integration of students with visual disabilities. Misconceptions about disability and the possibilities for support are still too widespread for inclusion to be systematic.

61. As a result, children and young persons with disabilities do not have the same freedom of choice as other pupils and students.

#### **Transport problems**

62. There are significant problems with school transport and special schools. Some children with disabilities have to commute long distances every morning and evening to and from school.

63. This is due to the fact that the geographical distribution of special schools fails to ensure that children can attend a school at a reasonable distance from their home. Furthermore, special schools are not always located in areas that are well-served by public transport.

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<sup>227</sup> <http://www.diversite.be/interpr%C3%A9tariat-en-langue-des-signes-besoins-insuffisamment-satisfaits>

## Case study

64. Children who have to travel for more than one hour in the morning and evening <sup>228</sup>

65. Families are often faced with the dilemma of having to subject their child with a disability to a long commute or relocate, with all the consequences this may entail for the child, as well as the other members of the family: uprooting, professional problems, loss of a social network, etc.

66. This major problem, as a result of which children do not have access to the education to which they are entitled, is directly related to the development of special education in Belgium over the course of the past 40 years and the slow rate at which truly inclusive education has developed.

67. In addition to this major problem, there are a number of related problems which aggravate the situation. The ASPwD and ORPD bodies would draw attention to, in particular:

- The lack of training among bus drivers and persons accompanying children during their journeys
- The absence of extra-curricular activities before and after the time when class begins, which means that children have to commute long distances during rush hour

### **Making the transition from special education to professional life**

68. There is another problem in relation to the absence of inclusive education: students with disabilities are ill-prepared for professional life. For many young persons with disabilities, the only possibilities is to work in adapted employment.

69. Similarly, persons in the 'mainstream' world of work have not been in contact with persons with disabilities over the course of their education are not open to the idea of hiring persons with disabilities, or to colleagues with disabilities.

### **Non-attendance at school**

70. Any ambiguity with regard to the survival of the special education system is clarified by the fact that a non-negligible number of children with disabilities are not attending school. If the philosophy of special education was respected, non-attendance would be a non-issue.

71. In this regard, the statistical data available is insufficient for any proper comparison to be made.

72. In Belgium as a whole, attendance at approved INAMI centres is one indicator of non-attendance at school. However, some of these young persons do attend school. The numbers and geographical distribution of these students is unknown.

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<sup>228</sup> *Triologue*, n° 57, 2010, pp. 10-11: [http://www.fapeo.be/wp-content/Publications/Triologue/tria\\_57.pdf](http://www.fapeo.be/wp-content/Publications/Triologue/tria_57.pdf)

73. In French-speaking Belgium, there are 15 day centres for children who cannot attend school (SAJJNS) funded by the AWIPH, which is indicative of the extent of non-attendance at these centres<sup>229</sup>. In total, 271 places have been approved at these centres.
74. There are also three day centres for children with disabilities not attending school in the Brussels-Capital Region, with a total of 108 places<sup>230</sup>. All the day centres acknowledge that they have problems managing their waiting lists, which indicates that the number of children with disabilities not attending school in Belgium exceeds the number of places available.
75. As proper figures are unavailable, and no analysis has been carried out on the causes of non-attendance, it is difficult to achieve a proper understanding of the issues and to find ways to overcome these problems.
76. We are not seeking to denigrate the care received and the positive impact it can have on the children. However, day centres should only serve to tackle specific problems, ideally on a temporary basis. They should not be used to compensate for a shortage of places in schools, including special schools.
77. We also wish to emphasise the main problem with the system: there are no links with schools and integration of students into the education system is not the objective. As there are no teachers in day centres, children have no opportunity to make progress towards being able to attend school.
78. On the other hand, a number of day centres have begun discussion on closer cooperation with schools with a view to preparing the children for school. They are also seeking to limit the period during which the child attends the day centre. While these changes are a step in the right direction, they will not make the necessary impact unless they are supported with the necessary funding.

### **Higher and university education**

79. In Belgium, every university supports and funds services for students with disabilities, with help from the state. The resources vary from one university to the next, but appear to be sufficient to meet the needs of students.
80. On the other hand, students with disabilities cannot participate in international university exchanges on an equal basis with others: support must be provided by the State of origin. The French Community is not fulfilling its obligations in this regard.
81. In general, teaching and administrative staff have become more open to students with disabilities, and the environment has become more accessible. However, while the number of students taking university courses is on the rise, fewer resources are available to universities, which makes it difficult to make progress on inclusion.
82. On the other hand, there is less support available to students with disabilities in other higher education institutions. There seems to be less awareness on this issue.

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<sup>229</sup> [http://www.awiph.be/integration/etre\\_accueilli/accueil+jeunes.html](http://www.awiph.be/integration/etre_accueilli/accueil+jeunes.html)

<sup>230</sup> <http://phare.irisnet.be/centres-de-jour-et-centres-d-hebergement/l-accueil-de-jour/>

83. In particular, teachers are trained outside the university context. This works against the aim of recruiting more teachers with disabilities, which negatively impacts awareness on disability<sup>231</sup>.
84. Schools for students with hearing and visual impairments are no exception. Integration in mainstream schools appears to offer the best solution. Resources must be made available to each individual student.
85. Training for sign-language interpreters such be geared towards this purpose, and continuous professional development courses must be offered to mainstream teachers. At present, apart from affirmative action programmes, there is no professional training available in sign-language.
86. The competent authorities should provide for proper support for pupils with visual impairments in mainstream schools, so that they can participate on an equal basis with other students.

## ***Recommendations***

1. The competent authorities must provide the necessary resources for a full evaluation of special education, in order to identify the improvements needed. The objective of inclusive education must be pursued in accordance with the UNCRPD.
2. The competent authorities must make a clear choice in favour of inclusive education and provide for the necessary flexibility so that a large number of children and young persons with disabilities can attend mainstream schools right throughout their school-going years.
3. Students who complete their schooling in an inclusive setting must be awarded the appropriate qualification.
4. The competent authorities should actively involve persons with disabilities and their representative organisations in the evaluation of the schooling offered to disabled children and in discussions on the way forward.
5. The pilot project in the French Community on the integration of special classes in mainstream schools should be evaluated. The programme should be expanded if encouraging results are identified. Changes should be made in the event that objectives are not met. A major revision should be undertaken of teaching methods to ensure that the inclusion of children with disabilities goes beyond mere physical integration, or sharing the same premises.
6. Development of the education system in the Flemish Community should be developed further, working towards the inclusion of all pupils and students with disabilities.
7. Education in Belgium falls within the remit of the Flemish, French and German Communities, depending on the linguistic status of the student. Since the establishment

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<sup>231</sup> See Article 8 – Awareness raising

of special education in 1970 (a period when teaching was a unitary matter), varying levels of progress have been made in each of the three Communities. The Communities should draw on their respective experiences in order to develop an inclusive education system in Belgium.

8. An evaluation of the results obtained following the entry into force of the Parliamentary Decree of the German Community of 11 May 2009 should be carried out in order to identify the next steps towards inclusive education in the German Community.
9. Educational topics for discussions should address both learning at school and shared everyday activities such as breaks, lunchtime and after-school care.
10. The competent authorities should identify the numbers of children with disabilities not attending school in order to remedy this situation.
11. The competent authorities should require services and centres for children with disabilities not attending school to have teachers on their staff and cooperate with schools in order to promote the integration of children into school.
12. The French Community should make more information on the Decree of 9 February 2009 available to the parents of children with disabilities, in order to increase the number of students receiving support to attend mainstream schools. The necessary resources should be provided so that more students can benefit from the provisions of the decree.
13. The competent authorities in the French Community should consider increasing the number of years in teacher training course for primary and lower-secondary teachers. Teachers would therefore be better equipped in relation to achieving the objective of developing an inclusive education.
14. The competent authorities should implement the necessary solutions in order to ensure that each student has the freedom to choose their subjects in secondary school.
15. Curricula for future teachers should include obligatory modules on teaching pupils with disabilities.
16. Teachers who choose to spend an extra year studying special education benefit from this in terms of their career and pay.
17. The competent authorities should ensure that sufficient support is available in order to ensure that children and young persons with hearing impairments receive a high-quality education in an inclusive environment.
18. The authorities in the French Community in Belgium must put in place the appropriate measures to facilitate transfers from special to mainstream education.
19. The authorities in the French Community in Belgium must make funding available for after-school care for children with disabilities. This would also give the parents of children with disabilities an opportunity to reconcile their career with family life on a more equal footing with other citizens.

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## Article 25: Health

1. In Belgium, the social security system offers a safety net so that no patient is excluded from receiving the healthcare they need. However, the complexity of the system results in misunderstandings which means some persons fall through the net. Furthermore, the system sometimes fails to take account of rare or severe disabilities and disabling illnesses.
2. This is often the case for persons in financial difficulties, with regard to the level of their income and/or the extent of healthcare costs. Persons with disabilities represent a significant proportion of this group<sup>232</sup>.

### **High level of awareness among persons with disabilities**

3. In general, there is a good level of awareness among persons with disabilities with regard to healthcare. NGOs and health insurers play an important role in raising awareness among persons with disabilities.
4. However, raising awareness is not sufficient. Persons still need to be able to find the most relevant information and to understand it effectively. Otherwise, issues related to health become a source of stress, which does not contribute to good health management.

### **Information and communication in the health sector**

5. Access to information on healthcare remains a problem for some persons with disabilities. Problems can arise at various stages of life. We will address the most crucial stages below.

#### **Prevention**

6. The main priority is to stay healthy. Health education and the prevention of illness should be the first port-of-call in health policy.
7. Much progress has been made in this area over the past few decades. However, the ORPD and ASPwD bodies regret that many persons with disabilities do not have access to this type of information.
8. Prevention campaigns on alcohol, drugs, excessive use of medication, sexually transmitted diseases, CO<sup>2</sup> poisoning, preparation for giving birth, and sport have not reached all persons with disabilities either due to the inaccessibility of the communication channels or because the messages expressed are too complex.
9. Budgets allocated to prevention and health education are too low to make a real impact.

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<sup>232</sup> See Article 28 - Standard of living

10. Even the use of new communication technologies is not sufficient to compensate for gaps in traditional media. Thus, health insurers' websites do not meet the criteria for Internet accessibility.

### **Delivering a diagnosis of a disability**

11. Clearly, the delivery of the diagnosis of a disability is a key moment. The way in which this is managed can have a major influence on the future of the individual.

12. If the disability is present from birth, the way in which parents are made aware of how the diagnosis will affect their child plays an important role.

13. In the event that a diagnosis is delivered later in life, the person will receive this information themselves and, along with those close to them, they will have to manage their disability for the rest of their life.

14. In both cases, all the responsibility falls to medical staff, and GPs in particular. It is rare for a multidisciplinary approach to be taken when breaking the news to the individual or those close to them.

15. Belgium has not yet built an inclusive society. Thus, persons with disabilities and those close to them do not always feel welcome. There is a lack of awareness and best practices for delivering a diagnosis of a disability have not yet been developed.

16. The same is true for individuals: persons who receive a diagnosis of a disability are often ill-prepared to cope with this new reality.

17. It is difficult for them to find the help and support they need, often urgently. The person must learn about new concepts and networks they were unaware of before. The professionals they usually have contact with only have basic knowledge of what needs to be done to cope with the disability.

18. Support for parents of a child with a disability is almost always medical: the child must be 'repaired' as soon as possible. Parents are not equipped with the knowledge to make an informed decision on how they will educate their child.

### Case study

19. Belgium has opted for a screening programme for deafness. Early diagnosis is the best option children will therefore have better opportunities to integrate into society.

20. In the case of deafness, standard practice is to try 'repair' surgery, which involves implanting electrodes into the inner ear of <sup>233</sup> the newborn at the earliest opportunity. Cochlear implants are the most common solution.

21. Cochlear implants are offered to parents of newborn deaf children, as the best way of allowing the child to hear, from the perspective of 'medical technology'. The earlier the operation is carried the better the chances of positive results in terms of hearing, communication with the family and integration in society later on.

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<sup>233</sup> <http://www.explania.com/fr/chaines/sante/detail/quest-ce-quun-implant-cochleaire>



22. The organisations for deaf persons have a more holistic approach to such operations. Experience shows that while good concrete results can be achieved, the child will remain deaf even though they are perceived to be 'hearing' by their family, those close to them and society in general.
23. This distortion in understanding may lead the family to take inappropriate choices for the child. The main error is to take the view that a child who has received an implant hears 'normally', speaks well and does not need to learn sign language<sup>234</sup>. When it becomes apparent that this is not the case, the child will have fallen too far behind at school for the situation to be remedied<sup>235</sup>.
24. If one or both of the parents of the child are deaf, they also face the additional problem, yet far from insignificant, where, if they do not learn sign-language, or they do not learn it properly, they may be cut off psychologically from their parent.
25. Medical procedures may be carried out without taking into account the human and social context.
26. Cochlear implant operations should not be carried out on a newborn in the absence of fully informed consent by the parents so that they understand the limits of the technique and the importance that both they and the child learn sign-language.
27. Organisations representing deaf persons regret that their voice is not being heard and that their views are not being taken into account, simply because they are not 'professionals'.
28. In Belgium, there is currently no measure, legislation or decree which ensures complete supervision, and not only medical, regarding the decision to fit electrodes in newborn deaf children
29. Proper regulation, which takes account of the advantages and disadvantages of implants as well as the realities with which deaf persons are faced is needed. Sign-language teaching must continue and should be developed further<sup>236 237</sup>.
30. The way in which diagnoses are delivered will improve when disability becomes a reality in everyday life, of which everyone has experience and which is fully accepted by society.

## Illnesses

31. In general the Belgian healthcare system is based front line work by the GP. It falls upon GPs to deliver the diagnosis and treat the most common illnesses. GPs also recommend their patient to attend a specialist, where applicable.

<sup>234</sup> There is a similar problem with regard to the choice of lip-reading instead of sign-language

<sup>235</sup> Thoua (Y.), dans Giot (J.), Meurant (L.), et al. *Ethique et implant cochléaire : que faut-il réparer ?* Presses universitaires de Namur, Belgium, 2006. (Coll. : Transhumances).

[http://books.google.be/books?id=g6ia\\_qYLGHYC&printsec=frontcover&hl=fr#v=onepage&q&f=false](http://books.google.be/books?id=g6ia_qYLGHYC&printsec=frontcover&hl=fr#v=onepage&q&f=false)

<sup>236</sup> Cf. Drion B., In: Giot J., Meurant L., et al. *Ethique et implant cochléaire : que faut-il réparer ?* (Coll. : Transhumances), Presses universitaires de Namur, Belgium, 2006 : <http://bdrion.over-blog.net/article-4612826.html>

<sup>237</sup> APEDAF, Conference, 10 and 11 March 2012. *Implant cochléaire et langue des signes : des ressources pour l'enfant sourd*, pp. 3-5 : [http://www.apedaf.be/IMG/pdf/PARENTIERE\\_N22\\_juin2012.pdf](http://www.apedaf.be/IMG/pdf/PARENTIERE_N22_juin2012.pdf)

32. GPs enjoy a special relationship with their patients. A high level of trust is placed in the GP is ensured by the principle of freedom of choice enshrined in the law on the rights of the patient.
33. GPs play an essential role as it falls to them to explain the situation, the options available and advise their patients on the decisions they need to take. The principle of informed consent set out in the law on the rights of the patient implies that the patient must be provided with full information on their state of health and the therapeutic strategy(ies) that may be followed.
34. For some patients, it is essential to find a GP who meets their needs. Here, we refer to those who require specific communication strategies.
35. It is important for them to be able to count on the expertise of a doctor who can communicate and adapt to all types of disability as this facilitates a high-quality doctor-patient relationship. Success in this relationship depends on the quality of the care received.
36. Unfortunately, few doctors have received the necessary training and empathy in order to provide the care persons with disabilities need.
37. Ideally, the patient should be able to communicate directly with healthcare professionals, particularly in emergency cases. This is not always the case.
38. In Flanders, deaf persons are faced with specific problems. In general, they have to cover the cost of sign-language interpretation themselves. Therefore, they do not have access to healthcare on an equal basis with others.
39. Furthermore, tough medical exams are an almost intolerable burden for some persons with disabilities. The healthcare sector is so set in stone that it is difficult to adapt a care programme to the needs of the patient.
40. Depending on the circumstances, it may be appropriate to space out different examinations or, carry them out in one session.
41. As a result of the rigid nature of the system, the principle of freedom of choice rings hollow for some persons with disabilities in comparison with the rest of the population.

### **Emergencies - hospitalisation**

42. Emergency situations are another aspect of healthcare. The problems set out in the paragraph above are manifested in an even more dramatic manner in such cases. In many cases, it is impossible to offer patients the support they need when they find themselves in distress.
43. Hospitals can also be a source of difficulty for persons with disabilities.
44. For blind persons, preparation for a stay in hospital is particularly problematic: very few hospital websites are accessible, despite the existence of the *Anysurfer* label, which would be very useful at this stage<sup>238</sup>. Admission and release formalities are often difficult to complete.

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<sup>238</sup> See Article 9 - Accessibility and Article 21 - Freedom of opinion and access to information

45. Hospital stays can also be problematic for persons with intellectual or cognitive disabilities, as well as persons with high dependency needs. In many cases, they do not receive effective support at every step of their stay in hospital, and they often have negative, or even traumatising experiences.
46. Hospitalisation is also a difficult experience for many deaf persons<sup>239</sup>. Even if the fact that the person has a hearing impairment is indicated in the admission file, medical and paramedical staff quickly forget this, as deafness is not visible to the naked eye. Furthermore, deaf persons are obliged to cover the cost of sign-language interpretation themselves. This type of inequality of treatment is unacceptable.
47. Communication in hospitals is often carried out orally and a sign-language interpreter cannot be available at all times. The shortage of sign-language interpreters also makes it difficult to understand complex issues. Furthermore, deaf persons are obliged to cover the cost of sign-language interpreting themselves. This type of inequality of treatment is unacceptable.
48. For deaf persons, the shortage of sign-language interpreting is the main problem, particularly at important times. There are no in-house interpreters on call in each hospital.

#### Case study

49. Testimonials on the experience of deaf persons in hospitals (FFSB: see also access to healthcare)<sup>240</sup>:
50. "In order to make the needs of deaf persons apparent, we must first respond: the individual should not be required to make all the effort, but should be communicated with as an individual, and not be ignored and spoken about with a family member. "
51. "When appointments are being made, professionals should be informed of the disability. Secretaries do not know how to interact with deaf persons or how to adapt their speech, instead of repeating what has been said to confirm that they have understood correctly, they repeat the day and time at the same time. "
52. "I cannot always be accompanied. I have to accept the fact that I am deaf and deal with it myself. Health professionals need to adapt to the patient. When I am accompanied, doctors only speak to the other person"
53. "Upon admission to hospital, I mention that I am deaf, but deafness is invisible and is quickly forgotten. Every time I meet new staff, I have to explain the situation. After an operation, when feeling unwell, it is difficult to lip-read. They never receive proper information, the deaf person is always in a state of stress, as it is impossible to know if you are being taken care of properly. "

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<sup>239</sup> Wertz C., 2011:

[http://www.ffsb.be/sites/default/files/publications/accueil\\_de\\_personnes\\_sourdes\\_lors\\_d\\_interventions\\_psychosociales\\_urgentes.pdf](http://www.ffsb.be/sites/default/files/publications/accueil_de_personnes_sourdes_lors_d_interventions_psychosociales_urgentes.pdf)

<sup>240</sup> FFSB, *Sournal* N° 114, 2012. Dossier: *Le point sur l'accès à la santé*, pp. 10-18 :

[http://www.ffsb.be/sites/default/files/sournal/114\\_sournal.pdf](http://www.ffsb.be/sites/default/files/sournal/114_sournal.pdf)

54. There is no access to the telephone, text messaging is the only available avenue for communication. "
55. "The most important thing in a shared room, is that you have to beg to have a bed beside a window far from the door so that only the relevant hospital staff come and you do not have to suffer the incessant traffic of passers-by. "
56. "Another serious problem that turns nights into nightmares is that deaf persons are not woken by the noise but by the light: lights should not be constantly turned on and off. Any requests made to nurses seem to go in one ear and out the other. Instead of touching the arm of the patient, they shake the bed, which provokes feelings of panic: deaf persons feel vibrations much more strongly than non-deaf persons"
57. During hospital stays, I have always experienced a high level of stress due to the lack of communication with staff. During the consultation process, I was treated like nothing more than a skeleton, an object at which one points one's marker. "
58. "Only the anaesthetists took the time to communicate properly with me: if they can make the effort then why not the others? "
59. "Efforts must be made to change attitudes. While nurses do not have negative attitudes, they do not have the time, and are often over-worked. They should be given the tools to improve the situation. Changing the attitudes of doctors will be more challenging. They will have to agree to attend training courses. "

### **Sexuality and relationships, motherhood**

60. The ORPD and ASPwD bodies cannot fail to note that up until now, there have been a limited number of examples of persons with disabilities in relationships presented to society<sup>241</sup>.
61. Every media outlet, rehabilitation centre and support and information service distributes information on disability, but little information is available on sexuality and persons with disabilities.
62. With regard to the ethical questions that arise in relation to sexuality and persons with disabilities, they are almost never discussed except in highly specialised circles.
63. It is clear that the financial resources available are insufficient to provide the necessary support for the sexual and reproductive life of persons with disabilities.
64. High-quality support is essential to the positive development of relationships and sexuality among persons with disabilities. This is an important step with regard to the management of sexuality and the desire for a child. In this way, forced sterilisation could be avoided<sup>242</sup>.
65. The perspective of others is another issue with regard to motherhood for persons with disabilities. At present, in spite of the existence of a law on equality of opportunity, it is

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<sup>241</sup> UCL, 2007: <http://www.uclouvain.be/cps/ucl/doc/reso/documents/memBROSE.pdf>

<sup>242</sup> See Article 6 – Women with disabilities

not socially acceptable for a person with disabilities or a couple with disabilities to be expecting a child<sup>243</sup>.

66. Having a child is an important event in the lives of persons with disabilities, for which they should receive specialised support, in particular with regard to learning the appropriate gestures for one's child. Depending on the disability, it may be appropriate to offer specific support.

### **End of life**

67. In rare cases, specific support with regard to euthanasia - a reality in Belgium - may be necessary at the end of life of persons with disabilities. This issue is raised in the chapter on the right to life<sup>244</sup>.

68. It is worth noting two essential features which should characterise the support:

- Respect for the choice of euthanasia in the final stages of a terminal illness, based on informed consent and in accordance with legislation.
- All relevant information on the support available must be provided to the person requesting euthanasia, regardless of their disability.

69. The ORPD and ASPwD bodies wish to shed light on the issue of the end of life of those close to persons with disabilities. This is particularly important in the case of persons with intellectual or cognitive disabilities.

70. Belgian society is not particularly inclusive. Many persons with intellectual or cognitive disability live within the family and develop very few contacts outside this context.

71. The end of life of the person who is their main, or even their only, point of reference, is extremely difficult to deal with, owing to the uncertainty and stress involved. There is insufficient support available in Belgium to help persons with disabilities cope with this transition.

### **'Medicine' is only one aspect of health**

72. The ORPD and ASPwD bodies would criticise the excessive reliance on medicine. 'Medicine' is just one aspect of health. Apart from medical care, social and human support is needed, and other skills apart from those acquired in medical and paramedical training.

73. At present, there is insufficient coverage of such aspects in medical training.

74. Conversely, doctors are the main point of contact for the patient and those close to them, even with regard to issues not directly related to medical care.

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<sup>243</sup> See Article 6 – Women with disabilities

<sup>244</sup> See Article 10 – Right to life

## **Early diagnosis of deafness: lack of support - an ethical debate**

### **The cost of health**

75. Despite all the legislation in place with a view to offering high-quality healthcare to all sections of the community in Belgium, healthcare costs are excessive for:
- Persons on low incomes, including a high number of persons with disabilities<sup>245</sup>
  - Healthcare for persons with disabilities and illnesses is costly. In this regard, it is worth noting that the OMNIO<sup>246</sup> assistance is only granted on request. As a result, some sections of the target group are overlooked
76. Certain healthcare services and medicines are not covered by the National Health Insurance Institute (INAMI) and/or are too burdensome for persons with disabilities<sup>247</sup>.
77. Furthermore, there is no maximum price for certain devices such as orthotics and the adaptation of mobility vehicles. This gives rise to problems for persons with disabilities who are often confronted with considerable price differences from one sales point to another.
78. Over the course of the past fifteen years, there has been huge development in the area of hospital insurance products. However, the procedures and costs involved in joining such insurance schemes are beyond the capacity of many persons with disabilities.
79. The allocation of resources remains a problem. When persons on low incomes are faced with the prospect of being unable to finance basic living expenses, which is the case of many persons with disabilities, they are obliged to choose between different basic necessities.
80. For instance, research on poverty demonstrate that households living below the poverty line spend 35.4% less on healthcare than those above the poverty line<sup>248</sup>.

### **Case study**

81. The decisions taken by INAMI have a major influence on decisions on cochlear implants. INAMI reimburses the operation in full, which costs approximately €25,000, for adults and children.
82. On the other hand, hearing aids are only partially reimbursed, and cost between €63 and €2,080, depending on the age of the beneficiary and whether or not they are covered by the preferential regime, and whether or not the service provided is affiliated to the social security system. The disparities are disproportionate and unjust.
83. The major disparities in the level of cover generates disparities in treatment and accessibility which serves to promote cochlear implants despite the fact that the majority of deaf persons are opposed to this procedure.

<sup>245</sup> See Article 28 – Standard of living and social protection

<sup>246</sup> OMNIO: <http://www.inami.fgov.be/citizen/fr/medical-cost/general/omnio/fag.htm>

<sup>247</sup> See Article 28 – Standard of living and social protection

<sup>248</sup> [http://croco.solsoc.be/IMG/pdf/Qui\\_sont\\_les\\_pauvres\\_en\\_Belgique.pdf](http://croco.solsoc.be/IMG/pdf/Qui_sont_les_pauvres_en_Belgique.pdf)

84. INAMI has placed a lot of pressure on individuals in making their choice, despite the fact that the ethical issues remain open for discussion. This level of pressure is incompatible with the principle of informed consent provided for under the law on the rights of the patient.

## ***Recommendations***

1. In order to meet the requirements of the law on the rights of the patient, the competent authorities should establish equitable cover across Belgium, including:
  - Universal accessibility, including signage
  - Specific support for all types of disabilities This approach covers the necessary strategies with regard to the care of and information for persons using sign-language, or simplified language, depending on cases.
  - Consultations with medical practitioners in sign language and simplified language
  - Specialised consultations with the assistance of a sign-language interpreter and materials in simplified language
  - Training of medical and paramedical staff on communication with persons with disabilities
2. The competent authorities should review the INAMI cover in order to provide similar cover for cochlear implants and ordinary hearing aids.
3. The competent authorities should take all the necessary measures to adapt the organisation of medical examinations to the needs and capacity of the patient.
4. The competent authorities should put in place the necessary measures to ensure that deaf persons should no longer be obliged to cover the cost of sign-language interpretation in healthcare settings.

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## **Article 26: Habilitation and rehabilitation**

1. There is a wide range of well-organised habilitation and rehabilitation services in Belgium. However, there are significant disparities between Regions, given that most of the services fall within their remit. Only some of the services are covered by the National Health Insurance Institute (INAMI), a federal body<sup>249</sup>.
2. However, the ORPD and ASPwD in the three regions agree that apart from the basics, more 'unusual' situations are not properly covered or regulated with regard to habilitation and rehabilitation.
3. Similarly, a tailored approach to individual situations has not yet become sufficiently standard for the ASPwD and ORPD bodies to be fully satisfied.

### **A wide range of regional services, but problems remain...**

#### ***Flanders***

4. In Flanders, rehabilitation services for the most 'common' types of disability are well-distributed across the entire Region.
5. However, for persons with more specific disabilities, such as autism, services are not so easily available. As a result, persons with autism often have to commute long distances to avail of the services they need.
6. There are few opportunities for blind and visually impaired persons to attend night-classes or accessible cultural activities. Persons are therefore subject to unequal treatment.
7. The 'personal budget' (BAP) was established in Flanders in 2000. This policy is a step in the right direction in terms of helping persons with disabilities to become independent.
8. However, as has been noted previously, the waiting lists for the allocation of a personal budget are currently too long. Access for all to this budget is a long way off<sup>250</sup>.

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<sup>249</sup> The 6th State Reform, which is expected to be implemented over the coming months and years, provides for a transfer of competence in this area from the federal state to the regions. At present, the details of such a transfer have not been worked out.

<sup>250</sup> See Article 28 - Standard of living and social protection; Article 19 - Independence and inclusion in society



### **Walloon Region**

9. In the Walloon Region, the ORPD and ASPwD bodies have noted the problem of unequal geographical distribution of the bodies which provide habilitation and rehabilitation services. Persons are sometimes obliged to travel long distances from their home to access the services they need.
10. Persons in the German Community experience this problem even more acutely. They have to travel either to French-speaking centres in the Walloon Region outside of the Germanic community, or else abroad, to Germany to receive services in their native language.

### **Brussels-Capital Region**

11. With regard to the Brussels-Capital Region, the ORPD and ASPwD bodies take the view that the level of service is insufficient for persons with certain disabilities, including persons with cerebral palsy, young children with severe disabilities, and persons with brain damage, etc. Many have to look to other regions to find the habilitation and rehabilitation services they need.

### **Federal services**

12. While the majority of habilitation and rehabilitation services fall within the remit of the Regions, the federal state retains a number of competences in the area, in particular, the National Health Insurance Institute (INAMI).
13. In this regard, the ORPD and ASPwD bodies wish to point out specific problems arise from the fact that there is no standard legal fee for technical assistance offered to persons with disabilities. As a result, persons with disabilities have to cover significant costs to pay for the basic equipment they need to live independently.

### **Need for high-quality information**

14. With regard to habilitation and rehabilitation, what persons with disabilities need most is good advice. Newly acquired abilities are of vital importance to the individual: whether in terms of mobility, communication, independence, skills for everyday life, it is important that the best choice is made, depending on their financial capacity.
15. The ORPD and ASPwD bodies regret that persons with disabilities do not always have proper information available to them to make the right choice at the right stage in the habilitation and rehabilitation process.

### Case study

16. After becoming aware of the fact that ophthalmologists do not always have the skills to give the best advice to persons with visual impairments, the Braille League set up a working group with the ophthalmologist training institutes.
17. As a result, every student in ophthalmology now attends 15 days of training, either at the Braille League, or at a rehabilitation centre.

### ***Recommendations***

1. The competent authorities should provide proper funding for the support services with a view to developing the independence of each person with disabilities with the help of professionals.
2. The competent authorities should ensure that the skills of the professionals responsible for advising persons with disabilities on the available options on habilitation and rehabilitation.
3. The competent authorities must continue to fund and develop the personal budget system so that every person with a disability receives the services they need.
4. The competent authorities should widen the criteria for covering the cost of orthotics.
5. The competent authorities should require electronic mobility vehicle companies to charge standard fees so that users can acquire the equipment they really need.
6. The competent authorities should take the necessary measures to ensure that persons over the age of 65 continue to receive the resources they need to live independently and exercise their freedom of choice.

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## **Article 27: Work and employment**

1. Belgium employment legislation is among the most advanced in the world. Workers and employers enjoy a high level of security. Employment legislation also applies to workers with disabilities, both on the general labour market and the 'protected' labour market.
2. However, persons with disabilities are faced with a number of obstacles in relation to employment.
3. Employment policy falls primarily within the remit of the Regions.

### **Lack of openness to persons with disabilities in the labour market**

4. The ORPD and ASPwD bodies would note that the Belgian labour market is not particularly open and welcoming to persons with disabilities.
5. Managers recruiting employees, or even interns, generally prefer to hire a person who does not have a disability, even if the person with a disability is equally or more well-qualified for the job. Prejudice is the primary barrier: in many cases, the focus is on the disability rather than the real abilities of the candidate.
6. The legislation on 'equality of opportunity' is not sufficient to remedy the problem. Reliance on the legislation has proved problematic, particularly in light of difficulties in producing evidence<sup>251</sup>.
7. In concrete terms, it must be acknowledged that there is insufficient awareness of disability among employers, colleagues and even the social partners of the social and economic necessity of opening up the workplace to persons with disabilities.

### **Disproportionately high rate of unemployment**

8. The ORPD and ASPwD bodies cannot fail to notice the low rate of employment among persons with disabilities: access to the labour market is difficult for persons with disabilities.
9. The most recent statistics available on persons with disabilities and employment date from 2002<sup>252</sup>. There have been no more recent updates on these statistics. The rate of employment among persons with disabilities is 42.5%, in comparison with 63.4% for the rest of the population.

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<sup>251</sup> See *Article 5 - Equality and non-discrimination*

<sup>252</sup> CEOOR, 2012. *Etudes: Le baromètre de la diversité Emploi* (Diversity in employment barometer), p.151- table 13: <http://www.diversite.be/diversiteit/files/File/Barometer/Werk/FR/Le%20barometre%20de%20la%20diversite%20Emploi.pdf>

10. In 2013, the CEOOR published the results of its Diversity in Employment barometer. The rate of employment among persons with disabilities was 34.6% in 2011, or 22 percentage points below that of others<sup>253</sup>.
11. Furthermore, there are no indicators available on the type of disability, by gender or by type of job. The lack of statistical data makes it difficult to carry out rigorous evaluation of the situation and therefore the development of an effective policy for the integration of persons with disabilities into the workplace<sup>254</sup>.
12. A wide range of measures have been put in place at regional level with a view to increasing the rate of employment among persons with disabilities. These have included anti-discrimination measures at all stages of the employment process and affirmative action and incentives.
13. The ASPwD and ORPD bodies cannot fail to note that these measures are insufficient. The rate of employment among persons with disabilities is too low in comparison with the overall rate of employment.

### **Recruiting persons with disabilities**

14. The crucial point in a career is entry or return to the employment market, where a person has received a diagnosis of disability over the course of their professional life. The stakes are high when it comes to recruitment. Persons with disabilities run the risk that others will only see their disability, rather than their capacity to carry out the work set out in the job description.
15. Job search assistance for persons with disabilities is available at regional level. However, there is a fundamental difference in the organisation of the service between Flanders, on the one hand, and Wallonia and the Brussels Region on the other.

### **Flanders**

16. In Flanders, employment access services for persons with disabilities has been organised by the general jobseekers organisation, the 'Vlaamse Dienst voor Arbeidsbemiddeling en Beroepsopleiding' (VDAB).
17. The motivation for this change is based on the principle of inclusion. The ORPD and ASPwD bodies wish to emphasise that inclusion is an important objective in the area of employment and that more inclusion would improve the quality of Belgian society overall.
18. However, under no circumstances should the principle of inclusion be used to achieve ulterior objectives. It appears that the real objective was not inclusion, but to make savings.
19. A truly inclusive approach involves spending, which is really an investment, with the long-term objective of improving the rate of employment. The integration of jobseekers

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<sup>253</sup> CEOOR, 2012. *Etudes : Résumé Baromètre de la Diversité Emploi* (Summary of the Diversity in Employment Barometer), pp. 8-10 : <http://www.diversiteit.be/diversiteit/files/File/Barometer/Werk/FR/Resume%20Barometre%20de%20la%20Diversiteit%20Emploi.pdf>

<sup>254</sup> CEOOR, 2012. *Etudes : Le baromètre de la diversité Emploi*, p. 89: <http://www.diversiteit.be/diversiteit/files/File/Barometer/Werk/FR/Le%20barometre%20de%20la%20diversiteit%20Emploi.pdf>

with disabilities into the VDAB has not been followed up by specific measures with a view to achieving real inclusion.

20. Under such a scheme, the needs of persons with disabilities are no longer taken into account: their needs are crowded out by the masses and are disregarded.
21. The ORPD and ASPwD bodies have therefore concluded that persons with disabilities are 'drowned' as such in the 'masses of persons with a disability in relation to employment', a much larger group than jobseekers with disabilities.

#### Case study

22. The work of the Braille league training centre has been based on an inclusive approach for decades. In this regard, specific training courses have been offered to their target audience. Courses are offered at various locations, in order to reach a wider audience. The Braille league offers specific support to a very specific audience.
23. Due to budget cuts following integration into the VDAB, decentralisation has become impossible, persons receive less support, and their chances of entering the labour market fade. However, it is not the approach that is at fault - funding is lacking.

#### ***Walloon and Brussels Region***

24. In the Walloon and Brussels Region, employment access assistance for persons with disabilities remains under the control of the Walloon Agency for the Integration of Persons with disabilities (AWIPH) and the PHARE service.
25. The approach taken is not inclusive, as special bodies have been set up with a specific focus on disability.
26. One of the main problems in the Walloon and Brussels Regions relates to the fact two different levels of authority are involved in employment and professional training. The Regions cover employment and professional training falls to the French Community.
27. Work on the ground is thus more complicated and results in wasted time and inefficiency. The problem arises from a lack of cooperation.

#### **Under-investment in all Regions**

28. Whether or not an inclusive approach is taken by the Regions, the ORPD and ASPwD bodies would note that the results in terms of labour market integration are unsatisfactory, as in both cases, objectives cannot be achieved due to a lack of resources.

#### **Low level of awareness in the business world**

29. The ORPD and ASPwD bodies must therefore note that there is a low level of awareness in the public and private sectors among employers, workers and unions with regard to the realities of disability, the skills persons with disabilities possess and the need for persons with disabilities to work.

30. Recruiters are biased against persons with disabilities: when it comes to taking a decision, it is difficult to be objective. Decisions should be based on the extent to which the candidate meets the requirements set out in the job description.

### **Protection of persons with disabilities at every stage of the employment process**

31. The anti-discrimination law has been established at federal level<sup>255</sup>. Regional decrees have also been issued in support of this policy, as employment falls within the remit of the regions<sup>256</sup>.

32. To date, the legislation has been relied on in a number of instances of abuse with regard to access to employment and keeping a job. However, the ORPD and ASPwD bodies would note that, in the majority of cases, the legislation cannot be used effectively. It is quite difficult to prove a case of discrimination, particularly in the context of recruitment and dismissal.

33. The ORPD and ASPwD bodies wish to emphasise that more systematic cooperation should be established between the unions, the ORPD and ASPwD bodies with a view to promoting the integration of persons with disabilities. They are unaware of whether this issue is being addressed in dialogue with the social partners organised by the competent authorities.

### **Taking the leap from special education to employment**

34. A first job is a crucial step in the life of any young person.

#### **Support**

35. As it is more difficult for persons with disabilities to find a job than for those with no disabilities, effective professional support must be offered to help them choose a job and integrate into the labour market. Support must be adapted on the basis of the disability and must be offered by persons familiar with disability.

36. At present, support is available to persons with disabilities upon completion of their education. However, often there is a long period between leaving school and receiving support. The ORPD and ASPwD bodies take the view that this situation has a harmful effect on young persons with disabilities as access to employment becomes more difficult over time, with the loss of a social network, loss of skills etc.

#### Case study

37. The 'Springboard to Tomorrow' pilot project led by the 'Exception' support service: support is introduced at the age of 16, in special schools in Walloon Brabant<sup>257</sup>.

38. 'Actively preparing for adult life' a pilot project by AFrAHM – Walloon Region<sup>258</sup>.

<sup>255</sup> Anti-discrimination law of 2007

<sup>256</sup> The legislation is available on the CEOOR website: <http://www.diversitybelgium.be/overview-belgian-antidiscrimination-legislation>

<sup>257</sup> [http://www.exceptionasbl.be/attachments/File/Triptyque\\_16-25\\_derni\\_re\\_corr\\_LZ.pdf](http://www.exceptionasbl.be/attachments/File/Triptyque_16-25_derni_re_corr_LZ.pdf)

## **Low level of qualifications**

39. Today, a qualification is required to enter the mainstream labour market, regardless of the type of job sought. The education system must adapt to this reality.
40. Many persons with disabilities arrive on the labour market with a relatively low level of qualifications. This is due, in particular, to the fact that special schools do not offer qualifications<sup>259</sup>. Persons with disabilities who have attended special schools are thus excluded from the labour market or limited to jobs for which no qualification is required.
41. Furthermore, young person's leaving special school have major gaps in terms of their knowledge of the French language, maths and general knowledge. Such gaps are particularly apparent among young deaf persons.
42. Many children and young person's attend schools for many years and receive no qualification at the end. Parents who are aware of this reality try to find a place for their children with disabilities in mainstream schools.

## **Walloon Region**

43. The *Compétences Acquisées Antérieurement* (CAA - Previously Acquired Competences) project was launched in the Walloon Region and the French Community<sup>260</sup>. The objective of the project is to provide recognition for skills acquired during volunteering, for example. Unfortunately, many persons with disabilities do not follow the process due to the lack of reasonable accommodation in relation to the recognition procedures.

## **Lack of training opportunities and support from specialised professionals**

44. Accessibility and awareness raising are the only barriers to the workplace for some persons with disabilities.
45. However, others require specific professional training in order to ensure a smooth transition into the mainstream workplace.
46. Specialised support should also be provided on a regular basis. The ORPD and ASPwD bodies cannot fail to note that there is insufficient funding and management in place for certain support services.
47. Furthermore, subsidies generally come with uncompromising conditions in terms of obtaining results in terms of entry to the labour market. Furthermore, the evaluation criteria are too rigid in general in relation to the experiences of persons with disabilities. This approach is inappropriate given the gap between the demanding objectives set and the resources made available.
48. The lack of resources is even more apparent with regard to certain types of disability, particular deaf persons and persons with cognitive disabilities.

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<sup>258</sup> <http://ententecarolo.be/dossier74f.html>

<sup>259</sup> See Art.24 - Education

<sup>260</sup>

[http://www.dri.cfwb.be/index.php?eID=tx\\_nawsecuredl&u=0&file=fileadmin/sites/dri/upload/dri\\_super\\_editor/dri\\_editor/documents/Publications/Rapport\\_conjoint\\_2010\\_E\\_F2010.pdf&hash=31e80edb39c2750d9a85c4ea14e92a0f39d7a3db](http://www.dri.cfwb.be/index.php?eID=tx_nawsecuredl&u=0&file=fileadmin/sites/dri/upload/dri_super_editor/dri_editor/documents/Publications/Rapport_conjoint_2010_E_F2010.pdf&hash=31e80edb39c2750d9a85c4ea14e92a0f39d7a3db)

49. Thus, deaf persons in the Walloon Region can only receive professional sign-language training in one training centre out of the 13 funded by the AWIPH.
50. In the Brussels Region, there is no training centre for deaf persons apart from the French literacy course.

### **Access to adult education**

51. Access to adult education, in particular, courses organised in businesses, are problematic from the perspective of the ORPD and ASPwD.
52. Adaptations are often required depending on the disabilities of certain staff members. Such adaptations are not always provided for and the person therefore finds themselves discriminated against in relation to other staff members, who can follow the course directly, without depending on peer training.
53. Persons with hearing impairments whose main language is sign-language are particularly affected by this problem. In this regard, there is a serious shortage of sign-language interpreters and teaching assistants. Therefore, workers cannot follow continuous professional development courses effectively.

### Case study

54. At the beginning of a butcher's work-and-study programme (2 years), a number of companies were contacted in order to hire a teaching assistant, below are extracts of the responses received:

55. For the attention of Ms. X of SAREW (Job search assistance service)

*Dear Madam,*

*As discussed during previous telephone conversations, the SISW cannot provide interpretation on a regular basis for the classes given by Mr K. The scheduling of courses on Tuesdays and Thursdays makes it impossible to provide the service on a regular basis. A regular and reliable professional interpretation service is needed, partial cover serves to penalise students. For this reason, we wish to inform you that we will not be able to provide this service.*

*We will keep you informed of any developments within the SISW and of any external resources which come to our attention.*

*We wish to express our regret with regard to this state of affairs and we are making every effort to increase the level of human resources available to the SISW with a view to responding to requests.*

*Yours sincerely,*

From: SISW

Date: 2011/5/10

Subject: interpretation for Mr K.

To: SAREW

56. *Madam,*

*We have received your request for interpretation for the theory classes on butchery by Mr K. Unfortunately, we are not in a position to provide the service on this occasion.*



*At present, there is a shortage of interpreters for the type of services involved in such requests. As a result, we are not in a position to give a positive response. We will make every effort to address these issues in the medium term. We are aware that this will have a negative impact on Mr K's course and we regret this fact.*  
*Yours sincerely,*

### **Reducing barriers to employment**

57. The expression 'barriers to employment' relates to situations where a person remains unemployed because the salary they would receive from employment is insufficient to cover the costs and compensate for other constraints related to employment.

58. The CSNPH would report that, at present, persons with disabilities are afraid of taking on employment for two reasons:

- The difference between income from work and that from social security is too small
- Persons with disabilities who lose their jobs and receive replacement income also lose part of their integration allowance<sup>261</sup>.

59. The CSNPH takes the view that the integration allowance must be provided unconditionally, and that there should be a sufficient incentive in terms of the level of income from employment in comparison with income replacement which puts persons below the poverty line.

### **Job quotas and persons with disabilities**

60. The concept of 'job quotas for persons with disabilities' aims to require businesses with over x number of employees to recruit a certain percentage of workers with disabilities.

61. At present, Belgian legislation provides for employment quotas in the public sector. The quotas do not apply to the private sector.

### **Quotas in the public sector labour market**

62. Employment quotas in the public sector are based on the federal law and regional decrees and apply to regional and local authorities.

63. The regional regulations vary with regard to certain details and percentages. From the perspective of the ORPD and ASPwD bodies, there have been failures in the implementation of the quotas: the quotas provided for are rarely achieved by the authorities.

64. With regard to the communes, the calculation of the quota is often undermined by the exclusion of a significant number of roles from its scope: police, firemen/paramedics, nurses, etc. It is therefore more difficult to reach the quota provided for in legislation.

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<sup>261</sup> See Article 28 – Standard of living and social protection

65. At present, there no quota for the employment of disabled persons in the education system in the French and German Communities.
66. From the perspective of the ORPD and ASPwD bodies, quotas should be seen in wider context of diversity policy.
67. Public sector jobs are awarded on the basis of competitions or exams. Over the past ten years, the procedures have been made more accessible to persons with disabilities with the implementation of reasonable accommodation measures.
68. However, the ORPD and ASPwD bodies would note that in terms of recruitment, few persons with disabilities who succeed in the examinations are in fact recruited in the public sector.
69. In terms of the federal and regional regulations, the ORPD and ASPwD bodies wish to emphasise that the CARPH <sup>262</sup> is not looking for sanctions to be applied, but advocates a more positive approach. However, it is also worth noting that rules without sanctions are often not applied.
70. Another problem often noted by the ORPD and ASPwD bodies is the fact that once a quota is achieved, and persons with disabilities subsequently leave their jobs, so that the quota is no longer being met, there are no procedures to return to the quota level.
71. Furthermore, the quota is an 'overall' fixed quota: once it has been reached, no further efforts are made.
72. The ORPD and ASPwD bodies take the view that outside the federal state, there is no cooperation body, involving NGOs representing persons with disabilities with a clear mandate and effective means of implementing the quotas.

### **Quotas in the private sector labour market**

73. Contrary to other Member States of the European Union, there is no quota system in Belgium for the employment of persons with disabilities on the labour market in the private sector.
74. Belgium, and its regions, have opted merely to incentivise the recruitment of persons with disabilities.

### **The protected labour market**

75. Besides the public and private sectors, there is also the 'protected' labour market. Although integration into the mainstream labour market is the ideal, the ORPD and ASPwD take the view that it can be a useful employment model.
76. In this regard, the ORPD and ASPwD bodies regret that there are currently three significant barriers in place in the Walloon Region:

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[http://www.fedweb.belgium.be/fr/a\\_propos\\_de\\_l\\_organisation/administration\\_federale/mission\\_valeurs/Ega\\_lite\\_des\\_chances\\_et\\_diversite/personnes\\_handicapees/carph/](http://www.fedweb.belgium.be/fr/a_propos_de_l_organisation/administration_federale/mission_valeurs/Ega_lite_des_chances_et_diversite/personnes_handicapees/carph/)

- The number of subsidised jobs in adapted employment (ETA) <sup>263</sup> is strictly limited by a moratorium. It is therefore impossible for an adapted employment business to take on more persons with disabilities with financial assistance from the authorities. The ETA can do so on the basis of its own funds, but this is rarely the case in reality.
- Part-time work in ETA centres is accounted for on an equal basis with full-time work, which negatively impacts recourse to part-time work. This is a paradoxical and limiting approach: some persons with disabilities for example suffer from low energy levels and would thrive in a situation where they could work part-time.
- There are no policies in place to encourage public authorities to grant public contracts to ETA centres. The European Directive on public procurement <sup>264</sup> provides that contracting authorities can derogate from the principle of awarding the contract to the lowest bidder if the objective is to award the contract to an ETA or a business which employs persons with disabilities.

### **Work and social inclusion**

77. Work is an important pathway to social inclusion.
78. Many persons with disabilities have knowledge and skills to contribute to our society. Prejudice, the easy pretext of the crisis and the absence of reasonable accommodation make access to work impossible for many.
79. For the same reasons, others have never had the opportunity to receive the necessary training in order to enter the labour market.
80. Not having access to employment also means that the person has to resign themselves to living on a disability or unemployment allowance. However, the problems go beyond the financial sphere.
81. The person does not have the opportunity to develop a network based on their job, they do not experience the resulting sense of achievement, or participation in the development of society, cannot hope to participate in consumer society, which, whatever we might think, has become the standard measurement of success, on an equal basis with others<sup>265</sup>.
82. In this regard, the problems are not limited to the person with a disability themselves. In thousands of Belgian families, close family members suffer financially and socially, as they often have to reduce their work commitments or even give up work to care for the person with a disability.

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<sup>263</sup> In the Walloon Region, the concept of supported employment has been replaced by the concept of employment in an adapted enterprise.

<sup>264</sup> Directive 2004/18/EC

<sup>265</sup> See Article 28 – Standard of living and social protection

## ***Recommendations***

1. Develop a harmonised policy for the integration of persons with disabilities into the labour market.
2. Establish regional, local and Community cooperation bodies in order to develop effective employment policy.
3. Support the NGO sector and its role in providing support to find employment and for staying in employment.
4. Support businesses in their efforts to hire persons with disabilities, and offer incentives rather than compensation.
5. The working conditions of persons with disabilities in businesses should not be neglected. "Yes to employment for persons with disabilities - No to poor working conditions"
6. Abolish discriminatory attitudes to recruitment as well as throughout the career of the worker
7. Implement the recruitment quotas of persons with disabilities throughout the public service and adopt legislation in this regard in the regions and communities where it is lacking.
8. Provide information to persons with disabilities upon leaving school so that they can make an informed choice.
9. The authorities must give ETAs a fair chance of being awarded public contracts. They should be equipped with the necessary skills in this regard.
10. The competent authorities should establish cooperation mechanisms: employment for persons with disabilities should only be discussed in terms of integration.
11. The competent authorities should set up campaigns to raise awareness for all business actors promoting the recruitment of persons with disabilities.
12. Quotas: there is a missing piece in the current legislation. An overall quota is in place, and once it has been reached, there is a risk that no other persons with disabilities will be recruited for years to come. Aside from the overall quota, a certain percentage of annual recruitment should be set aside.

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## **Article 28: Adequate standard of living and social protection**

1. Belgium is listed among the leading countries on the human development index (HDI) published by the United Nations Development Programme (UNDP)<sup>266</sup>.
2. This is not to imply that persons with disabilities have an idyllic existence in terms of their standard of living and social protection. Information should always be interpreted in context.

### **Standard of living in Belgium**

3. A person's standard of living is determined by their income. The majority of Belgian citizens depend on the income they earn from their work.
4. Some persons with disabilities have an employment contract which provides them with sufficient income to meet their needs. Thus, they should have a comparable standard of living to persons with an equivalent salary<sup>267</sup>.
5. In reality: The standard of living among persons with disabilities is not comparable others on the same salary. Additional costs are associated with disabilities in Belgium<sup>268</sup>.
6. Furthermore, it is worth noting that it is not the case that there is a job available for every citizen. Thus, the rate of employment among persons with disabilities is much lower than that among the general population: the general rate of employment is approximately 65%<sup>269</sup> whereas the rate of employment among persons with disabilities is estimated at 30 to 40%, depending on the source<sup>270</sup>.
7. An unemployment system has been established in Belgian legislation for persons who are capable of work but do not have the opportunity to work. A disability allowance is also in place for persons who cannot find a job, due to their disability and who are not entitled to unemployment or sickness payments, or where such payments do not reach minimum income levels<sup>271</sup>.

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<sup>266</sup> *Human development report : Sustainability and equity : a better future for all* , New-York, 2011.

([http://hdr.undp.org/sites/default/files/hdr\\_2011\\_en\\_summary.pdf](http://hdr.undp.org/sites/default/files/hdr_2011_en_summary.pdf))

<sup>267</sup> To cover additional costs, legislation has provided for an integration allowance in which a number of problems are involved.

<sup>268</sup> Actes de la journée d'étude (Conference Papers) *Altéo* sur l'emploi des personnes handicapées, 11 May 2011, Ciney. *Une politique de diversité est-elle possible avec des pièges à l'emploi?*, Bruxelles, 2011, p.13 : "for persons in Category 3 or higher, the difference in purchasing power compared between persons with disabilities and others carrying out the same work is €400 net per month. ([http://www.alteoasbl.be/IMG/pdf/Alteo\\_-\\_Actes\\_Journee\\_Emploi.pdf](http://www.alteoasbl.be/IMG/pdf/Alteo_-_Actes_Journee_Emploi.pdf))

<sup>269</sup> <http://statbel.fgov.be/fr/statistiques/chiffres/travailvie/emploi/relatifs/>

<sup>270</sup>

<http://www.senate.be/www/?MIval=/publications/viewPub.html&COLL=S&LEG=4&NR=420&VOLGNR=1&LANG=fr>

<sup>271</sup> Law of 27 February 1987

8. The allocation of disability allowances is regulated by the Law of 27 February 1987. As of 1 April 2013, 316,828 persons were in receipt of the payments provided for under this law. The standard of living among these 316,828 persons corresponds to the payment they receive, either in full, or in addition to another source of income.

### **The payment system fails to ensure independence or a satisfactory standard of living**

#### **General remarks**

9. The disability allowance falls within the remit of the federal state. Persons with disabilities receive one of three payments depending on their age, their level of income and/or independence.
10. As of 1 April 2013, the payments constituted an indispensable source of income for 316,828 persons with disabilities. This tends to confirm that a significant section of the population lives solely on the payments.
11. The ORPD and ASPwD bodies note, with regret, that for many persons, the system does not offer a sufficient level of independence. Worse still, the result is that a large number of persons remain under the poverty line.
12. The 'Handilab' study, commissioned by the federal social security service and carried out by a team from the Katholieke Universiteit Leuven demonstrated that almost 40% of the population in receipt of the payment in Belgium are living below the poverty line i.e. 39.3% are living on an income below the European poverty line, against 14.6% of the total Belgian population<sup>272</sup>.
13. The ORPD and ASPwD bodies would also emphasize that the legislation on social welfare payments is over 20 years old. A number of amendments have been introduced over the years. Such amendments have not always been properly integrated: the legislation has become incoherent, complex and difficult for the public to understand.
14. The ORPD and ASPwD bodies would note that waiting times to process requests for disability allocations are too long and place persons with disabilities in very difficult situations in terms of their income.
15. Finally, persons with disabilities are faced with problems during the medical evaluation of their specific disability<sup>273</sup>.

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<sup>272</sup> Summary of the 'Handilab' study. Position socioéconomique des personnes handicapées et effectivité des allocations aux personnes handicapées, Leuven, 2012, p.18.

[http://www.belspo.be/belspo/organisation/Publ/pub\\_ostc/agora/ragkk154samenv\\_fr.pdf](http://www.belspo.be/belspo/organisation/Publ/pub_ostc/agora/ragkk154samenv_fr.pdf)

<sup>273</sup> Example : it is rare for an eye specialist to be present during the medical evaluation of persons with visual disabilities.

## Income replacement payment

16. As the name suggests, the income replacement payment aims to take the place of the income which the person with a disability should have had access to if they had the opportunity to work.
17. The income replacement payment is insufficient to allow the person to live like a citizen with a decent income. The person has to forego a number of expenses which are considered indispensable to living in dignity, in a socio-economic context, in Belgium.

### Case study

18. In 2010, the KVG and VFG, the two organisations representing persons with disabilities in Flanders worked with the University of Antwerp on a major survey of the income of persons with disabilities and its impact on access to healthcare<sup>274</sup>.

19. 24.8% of respondents were living below the poverty line<sup>275</sup> and 30.4% of persons with disabilities decided to forego certain health expenses: visiting the dentist, acquiring visual aids (glasses, contact lenses), consulting their general practitioner, seeking psychological support, etc.

20. The situation is no better in the Walloon Region or the Brussels Region. A previous study carried out by the *Association Socialiste de la Personne Handicapée* (Socialist Organisation of Persons with disabilities - ASPH) in 2005 demonstrated that persons with disabilities who received the income replacement payment had an income of €735.27 per month, whereas the minimum income payment was €772.56. Persons with disabilities in receipt of this payment were clearly under the poverty line.

### Case study

21. A similar study was conducted in 2010 by the ASPH. The study evaluation the standard of living among persons with disabilities and the cost of disability in the Walloon and Brussels Regions<sup>276</sup>.

22. The survey shows that between 17% and 34% of respondents were living below the poverty line<sup>277</sup>.

23. The study shows that many persons with disabilities have to forego medical and paramedical and social services and leisure activities, or postpone them<sup>278</sup>.

<sup>274</sup> Augustyns (N.), Adams (M.), Vriesacker (B.), Janssens (H.) en Van Hal (G.), *Handicap, inkomen en toegang tot de gezondheidszorg. Resultaten van een kwantitatief en kwalitatief onderzoek*, 2010 :

<http://www.kvg.be/index.php?page=32&action=articledata&osn=1&art=27>

<sup>275</sup> *Ibid.*, p.9.

<sup>276</sup> *Coût du handicap, de la maladie : quelques réalités financières et autres*, Bruxelles, 2010 (Observatoire ASPH de la Personne Handicapée): <http://www.asph.be/Documents/analyses-etudes-2010-anysurfer/Etude-2010-cout-handicap.pdf>

<sup>277</sup> The 17-34% range results from the categorisation of the results by age groups, provinces and family situation. It is impossible to aggregate the results.

<sup>278</sup> *Ibid.* p. 45

24. Finally, the results show that a significant percentage of persons are unaware that certain social benefits they are entitled to: between 4 to 40%, depending on the service in question<sup>279</sup>. Significant information and support gaps are apparent.

25. The ORPD and ASPwD bodies have for many years condemned the fact that the amount of the income replacement payment is too low in relation to the income that should be available to a person to have a decent standard of living. The validity of their request has been confirmed by the 'Handilab' survey<sup>280</sup>.

26. The ORPD and ASPwD bodies have called on the competent authorities to raise the income replacement payment to such a level that no person with disabilities will have to live on a monthly income which places them under the poverty line<sup>281</sup>.

27. This is a legitimate, or even a minimum, expectation, in the context of a developed country such as Belgium. In this regard, the government agreement concluded in December 2011 is a step in the right direction. Certain policies developed by the office of the Secretary of State of Persons with Disabilities are also moving in this direction. However, the objective has not yet been met.

### Integration Allowance

28. The integration allowance<sup>282</sup> aims to compensate for the additional costs incurred by persons with disabilities as a result of their disability. Thus, the state has acknowledged that there is a cost associated with the integration of persons with disabilities<sup>283</sup>.

29. From the beginning, the application of the law has failed to reflect the intention of the legislature for budgetary reasons<sup>284</sup>, as allocation of the integration payment is means-tested.

30. Thus, a person with a disabilities who obtains a job with an income above a certain level is not entitled to the integration payment.

31. This approach is in violation of the principles of non-discrimination and equality of opportunity. Furthermore, this approach constitutes a barrier to employment<sup>285</sup>. The principle of equity is also cast aside, as the income ceilings have been set too low.

32. Furthermore, the amounts paid to those in receipt of the integration payment are too low in relation to the additional costs faced by persons with disabilities in everyday life.

33. Another problem in relation to the integration payment is the fact that persons living day and night in state institutions have 28% taken off the payment.

<sup>279</sup> *Ibid.* p. 76

<sup>280</sup> Summary of the *Handilab* project, *Op.cit.*, *Loc.cit.* p.23-24.

[http://www.belspo.be/belspo/organisation/Publ/pub\\_ostc/agora/ragkk154samenv\\_fr.pdf](http://www.belspo.be/belspo/organisation/Publ/pub_ostc/agora/ragkk154samenv_fr.pdf)

<sup>281</sup> CSNPH, *Mémorandum 2011*, Brussels, 2011 : [http://ph.belgium.be/fr/memorandum/Memorandum\\_2011.html](http://ph.belgium.be/fr/memorandum/Memorandum_2011.html)

<sup>282</sup> Law of 27 February 1987.

<sup>283</sup> Summary of the *Handilab* project, *Op.cit.*, *Loc.cit.* p.23-24.

[http://www.belspo.be/belspo/organisation/Publ/pub\\_ostc/agora/ragkk154samenv\\_fr.pdf](http://www.belspo.be/belspo/organisation/Publ/pub_ostc/agora/ragkk154samenv_fr.pdf)

<sup>284</sup> Law of 27 February 1987, Preamble:

[http://www.ejustice.just.fgov.be/cgi\\_loi/change\\_lq.pl?language=fr&la=F&cn=1987022731&table\\_name=loi](http://www.ejustice.just.fgov.be/cgi_loi/change_lq.pl?language=fr&la=F&cn=1987022731&table_name=loi)

<sup>285</sup> Actes de la journée d'étude (Conference Papers) *Altéo* sur l'emploi des personnes handicapées, 11 May 2011, Ciney. *Une politique de diversité est-elle possible avec des pièges à l'emploi?*, Bruxelles, 2011, p.13 ([http://www.alteoasbl.be/IMG/pdf/Alteo\\_-\\_Actes\\_Journee\\_Emploi.pdf](http://www.alteoasbl.be/IMG/pdf/Alteo_-_Actes_Journee_Emploi.pdf))



## **Payments to older persons**

34. The law on disability payments also provides for a specific payment to persons with disabilities over the age of 65 who have not been granted either of the payments cited above, or where the disability appears after the age of 65: support payment for older persons (APA).
35. The objective is the same as that of the integration payment: to compensate for the additional cost associated with the disability. With regard to diagnosis and medical evaluation, the APA is an AI integration payment for persons over the age of 65.
36. The main problem noted by the ORPD and ASPwD bodies is that for budgetary reasons, the legislator has provided for different calculation methods: lower payment amounts for the APA than the AI, different means testing methods, which are often less favourable in the calculation of the APA than the AI, etc.
37. As a result, persons are treated differently, depending on whether the disability has arisen before or after the age of 65. In this regard, persons are not treated fairly.
38. The problem is likely to be exasperated by the fact that the Government Federal Agreement of 1 January 2011 provides for a transfer of the APA to federated entities. Thus, there is a risk that, in the future, payments will vary depending on which region the person is living in.

## **Unequal access to goods and services**

### **Access to consumer goods**

39. In light of the fact that approximately 25% of persons in receipt of a disability payment are living on incomes below the poverty line, it is clear that they are not living on an equal basis with others in terms of access to essential consumer goods such as food, clothes, care, maintenance and hygiene products.
40. If we focus solely on the issue of the poverty line, persons living just above the poverty line tend to be forgotten. Persons living just above the poverty line are also in financial difficulty. A significant proportion of persons with disabilities find themselves in this situation.
41. Finally, the regional authorities are involved in the adaptation of equipment, such as vehicles. However, they do not cover the full cost.
42. As a result, persons who need technical adaptations have to make up the difference with their own income. It is clear that if the person is in receipt of a disability allowance and they find themselves below the poverty line, they will have to forego the adaptations they need.

## Access to housing

43. Access to housing is a central aspect of social integration<sup>286</sup>. The quality of housing available is also integral to quality of life. Many persons with disabilities are faced with significant problems in this regard, it is difficult for them to find housing that meets the expectations, and in particular, their needs.
44. The ORPD and ASPwD bodies regret that the disability allowance is not sufficient to ensure access to housing on an equal basis with others.
45. As is the case for technical assistance, the regional authorities play a role in the adaptation of housing. However, they do not cover the full cost.
46. As a result, persons who need housing adaptations have to make up the difference with their own income. It is clear that if the person is in receipt of a disability allowance and they find themselves below the poverty line, they will have to forego the adaptations they need.
47. Some persons with disabilities are also faced with insurmountable problems in relation to access to their property. Banks refuse mortgages on a regular basis, either because the payments cannot be recovered in the event of default, or owing to prejudices linking disability to other health problems.

## Social benefits

48. Alongside the payment system, federal and federated authorities in Belgium have established a series of specific benefits granted on the basis of disability. For example, additional healthcare payments, the European parking card, exemption from the television tax, tax credits (personal and property tax), tax exemptions, reduced telephone bills, public transport reductions, etc.
49. All these measures have an impact on the standard of living of persons with disabilities. However, it must be noted that many persons who are entitled to such benefits do not have access to them: certain rights are not being enjoyed<sup>287</sup>.
  - Either information is not received, and the communication and information system is at fault.
  - Or the procedures for obtaining such benefits are too complex, burdensome, excessive or inaccessible to persons with disabilities.
  - Or the fact that the person has to make a number of requests results in a stigma as a result of which the person prefers not to ask for 'anything more'.
50. The ORPD and ASPwD bodies would note that some benefits are not being taken advantage of and are therefore failing to meet their objectives, for financial reasons, for example, access to healthcare<sup>288</sup>.

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<sup>286</sup> See Article 19 - Living independently and being included in the community

<sup>287</sup> *Coût du handicap, de la maladie : quelques réalités financières et autres*, 2010, p. 76 : <http://www.asph.be/Documents/analyses-etudes-2010-anysurfer/Etude-2010-cout-handicap.pdf>

<sup>288</sup> See Art.25 - Health

## **Care for children with disabilities**

51. Having a child with disabilities has a significant impact on the standard of living of the family.
52. Legislation on family allowances has provided for additional financial aid to families with children with disabilities, in the form of a top-up to family allowances<sup>289</sup> and others (sickness, unemployment, pensions).
53. However, the ORPD and ASPwD bodies would note that the amount of the top-up payment is not always sufficient to cover all the costs associated with the specific family situation.
54. Care for the child with disabilities will be more difficult depending on the extent of their needs. In many cases, parents have to sacrifice their working life, either partially or completely, in order to care for their child. This leads to a reduction in income, social contacts, etc.
55. The challenges are exacerbated in single-parent families with children with disabilities. Where a child has a severe disability, the single parent, the mother, in general, has to cease all professional activity in order to take care of their child at home<sup>290</sup>. He/she therefore finds him/herself in a situation where employment benefit is their only income. Measures taken to reduce unemployment payments with a view to reducing unemployment give rise to major problems for individuals.
56. In this regard, the ORPD and ASPwD bodies regret the absence of sufficient provisions to allow parents to properly care for their child with disabilities: few suitable services are available to provide care and support in the absence of parents, respite options are still in embryonic form, and the number of places is insufficient. This is true of all regions in Belgium. The problem is particularly acute in the Brussels-Capital Region.

## **Parents with disabilities**

57. Statistical studies carried out by the VFG, the KVG and the University of Antwerp in the Flemish Region and by the ASPH in the Walloon and Brussels Regions clearly demonstrate that persons with disabilities who have children encounter the most severe financial difficulties. In this regard, women with disabilities are often the most vulnerable<sup>291</sup>.
58. The ORPD and ASPwD bodies regret the fact that parents with disabilities do not receive greater attention from the authorities so that they can experience the positive aspects of their role, which would benefit both parents and children.

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<sup>289</sup> The additional payment is called 'top-up family allowances':

[http://www.belgium.be/fr/sante/handicap/allocations\\_familiales\\_majorees/](http://www.belgium.be/fr/sante/handicap/allocations_familiales_majorees/)

<sup>290</sup> On the shortage of places for persons with disabilities in high dependency in Brussels, see the 'Livre Noir' of the GAMP: [http://www.gamp.be/wp-content/uploads/2010/12/GAMP\\_Livre\\_Noir\\_VF.pdf](http://www.gamp.be/wp-content/uploads/2010/12/GAMP_Livre_Noir_VF.pdf)

<sup>291</sup> Augustyns (N.), Adams (M.), Vriesacker (B.), Janssens (H.) et Van Hal (G.), *Handicap, inkomen en toegang tot de gezondheidszorg. Resultaten van een kwantitatief en kwalitatief onderzoek*, 2010 :

<http://www.kvg.be/index.php?page=32&action=articledata&osn=1&art=27>

**and** ASPH, 2010. Coût du handicap, de la maladie : quelques réalités financières et autres, 2010, p. 76:

<http://www.asph.be/Documents/analyses-etudes-2010-anysurfer/Etude-2010-cout-handicap.pdf>

## ***Recommendations***

1. The federal authorities must provide a decent income to persons with disabilities, above the poverty line at the level of the guaranteed minimum monthly income (RMMG).
2. The federal authorities must bring the reform of the payment system for persons with disabilities to completion. Disability payments must ensure that persons with disabilities receive an income above the level of the poverty line. Every person with disabilities must receive a minimum level of income. The income received by the person must offer them the possibility of sufficient inclusion in all areas of life. Disability should not be a synonym of poverty. The reform should be established in close collaboration with the organisations representing persons with disabilities.
3. The competent authorities should integrate the specific needs of persons with disabilities in all policies on the fight against poverty.
4. The federal authorities should adapt the procedures for the application of the Law of 1987 so that the integration payment is granted on an equitable basis, regardless of the income of the individual. The integration payment should be viewed as an individual right, regardless of the family or domestic situation of the individual.
5. The federal authorities should cease to apply the 28% reduction in the integration payment where the individual is living in a state institution.
6. The federal authorities should offer a solution of the problem of waiting times for requests for the disability allowance, or modification thereof.
7. The competent authorities should put in place adequate care and support structures so that families with a child with disabilities can live a dignified life, where each member of the family can develop their life independently.
8. The competent authorities should draw up a strategy to combat poverty effectively and ensure social inclusion for persons with disabilities.
9. The competent authorities should establish support and care solutions specifically for parents with disabilities.

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## **Article 29: Participation in political and public life**

1. See Article 29 addresses participation in both political and public life. The interdependency of these two aspects reflects the reality in Belgium and the need for a complementary approach

### **Right to vote**

2. The right to vote is a basic right in a democratic society. We will distinguish from the right itself and the practical measures that need to be taken to facilitate the exercise of this right.

### **The principle**

3. Under the terms of Belgian law, all Belgian citizens have the right to vote. However, this right may be suspended for persons assigned to prolonged minority status, persons who have been prohibited to do so by a court and detainees, among whom are many persons with disabilities.
4. Many persons with intellectual disabilities would be fully capable of voting with the right accessibility measures and support.

### **Case study**

5. Important pilot projects have been implemented in Belgium by NGOs.
  6. For instance, in the run up to the elections in 2007, in the invitation of 'Handicontact' in Ottignies, the ASPH drew up pedagogical materials and entertainment tools<sup>292</sup>. Persons with disabilities had the opportunity to learn about voting procedures in a facility identical to a polling station, with all the equipment, so that they could vote independently on polling day<sup>293</sup>.
  7. This experience demonstrates that with some organisation and equipment, simulations can help prepare persons with intellectual disabilities to cast their vote.
  8. Unfortunately, NGOs do not have the staff and budget needed to carry out such simulations in all communes in Belgium. This task falls to the competent authorities, have not taken on this role.
9. Depriving a person of an individual right without taking their personal situation or their actual capacity to cast their vote in an election into account, can be deemed to constitute a violation of the principles set out in Article 29 of the UNCRPD.

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<sup>292</sup> <http://bienvivrechezsoi.be/filemanager/file/7%20-%20AA%20-%20Voter%20un%20droit%20pour%20tous.pdf>

<sup>293</sup> Testimonials (2010): <http://www.asph.be/Documents/Divers/interview-vote-2007-handyaloque6.pdf>

10. Belgium is among the small number of countries where voting is obligatory. Rather than the 'right to vote', we may speak of the 'duty to vote'. Thus, the State must make every effort to ensure that it is in fact possible for persons to fulfil their duty, which is not always the case at present.
11. With regard to enforcement of the obligation to vote, the authorities have shown great flexibility, even excessively so. It is very easy for persons with disabilities to be granted a dispensation. The only requirement is to provide a medical certificate to the local commune in order to vote by proxy or to receive dispensation from their electoral duty.
12. Under such circumstances, it is often easier to dispense the person of their obligation to vote than to create the practical conditions under which voting is made truly accessible.

### Case study

13. Cases have been reported<sup>294</sup> in nursing homes and institutions for persons with disabilities where doctors provide the certificates on a systematic basis on behalf of each resident. The administrative department of the institution then dispatched the certificates to the local commune. On polling day, some persons who then make the effort to get to the polling station discover that they are not entitled to vote owing to a medical certificate made out on their behalf. Despite the fact that they had no knowledge of the medical certificate.
14. Among the residents in nursing homes, it is likely that there are some persons with disabilities. This example can thus be extrapolated to persons with disabilities.

15. The source of such an abuse can be easily explained. Many persons living in institutions are also very isolated. It is difficult for the institutions to organise transport on a Sunday<sup>295</sup> to the polling stations. Staff are also required to fulfil their electoral obligation.
16. However, this explanation should not serve to legitimise the situation. It is not acceptable that a person is prevented from exercising their right to vote simply because they have a disability.

### Case study

17. On the date of the local elections in October 2012, on the proposal of the Aînés Advisory Council<sup>296</sup>, an experiment was carried out in a nursing home in Nivelles: a polling station was set up. The residents therefore had the opportunity to fulfil their electoral duty in their place of residence.
18. The experiment will be carefully evaluated by the organisations representing persons with disabilities who may include it among their demands for the coming years. It may be interesting to extend the experiment to institutions for persons with disabilities.

<sup>294</sup> <http://www.molenbeek-saint-jean.ecolo.be/?Modalites-de-vote-pour-les>

<sup>295</sup> In the majority of communes, voting is organised on a Sunday, from 8:00am to 2:00pm.

<sup>296</sup> 2012: [http://www.ucp-asbl.be/IMG/pdf/2\\_0120715\\_UCP\\_Info\\_31\\_web.pdf](http://www.ucp-asbl.be/IMG/pdf/2_0120715_UCP_Info_31_web.pdf) (p.5)

## **Travel to polling stations and count centres**

19. Travel from one's place of resident to the polling stations or count centres has become a minefield.
20. In this regard, persons are first faced with problems which tend to exclude persons with disabilities from all the voting operations
21. If the person is mobile or owns a vehicle that meets their needs, all goes well, in terms of getting to the polling station or the count centre. However, there are seldom enough or even any parking spaces allocated to persons with disabilities<sup>297</sup>.
22. For persons who do not have an independent means of transport available to them, things are much more complicated.
23. As elections are organised on Sundays, public transport<sup>298</sup> operates on the basis of weekend hours, which makes it difficult, if not impossible to reach the polling stations. Transport companies for persons with disabilities do not operate on Sundays. Therefore, individuals cannot make use of them.
24. Even those who present at a polling station on foot or in a wheelchair are faced with barriers: the urban landscape is not always in compliance with planning law and there are many 'behavioural' obstacles such as poor parking, which mainly go unchecked.
25. As a result, persons are obliged to use a taxi service to reach their polling station. First, the cost is prohibitive for many persons. Second, taxi companies do not have sufficient numbers of vehicles available to transport persons with reduced mobility.
26. There are also accessibility problems with the buildings where the polling stations are set up. In general, local schools host the polling stations. While some buildings are accessible to persons with disabilities, others are not (stairs, etc.) or have not been made fully accessible (ramps which do not meet regulatory standards and are therefore unusable).
27. Persons with disabilities also need to be able to find their way to the polling station. Signage is insufficient: there is very little signage and where there is it is often put in place without any real planning or budget. Signage is rarely made accessible to persons with poor sight or intellectual difficulties.
28. While staff in charge of managing the operations in the voting office are available in sufficient numbers to ensure that the voting process runs smoothly, no staff are made available to assist persons with disabilities. Persons who have difficulties finding their way have to rely on the goodwill or other voters in order to find the place where they can cast their vote.
29. Once they enter the polling station, they have to deal with the queues. Queues are rarely organised in such a way as to allow persons to sit down. In this regard, the lack of awareness among those responsible for the logistics of the polling stations is the main problem.

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<sup>297</sup> <http://www.gamah.be/documentation/dossiers-thematiques/elections/07-rapport-final-illustre.pdf> (Federal elections of 2007)

<sup>298</sup> Furthermore, public transport is not particularly accessible, see Article 20, personal mobility.

30. The final obstacle is access to the voting booths. Even though rules have been established in this area, they are not applied correctly on the ground. Many voting booths are inaccessible or poorly equipped with a lack of space, inappropriate height of the table, short chains holding pens in place, insufficient lighting, etc.
31. In view of the obstacles set out above, it is clear that the practical conditions for the participation of persons with disabilities as the basis for representative democracy provided for under the Belgian Constitution have not been fulfilled<sup>299</sup>.

### **Practical aspects of voting**

32. The regulation of the practical aspects of elections falls to the Regional authorities with regard to the regional and local elections<sup>300</sup>, and to the federal authorities for the federal and European elections. The way in which persons fulfil their electoral duty therefore varies depending on the Region in which they are resident. At present, the barriers are similar to those addressed here.
33. The law provides that one in five polling stations must be accessible to persons with reduced mobility. This situation is not satisfactory, every polling station must be accessible to all citizens. At present, there is no inspection or planning to bring polling stations into compliance with accessibility standards.

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<sup>299</sup> Testimonial from an independent wheelchair user (2010): <http://www.gamah.be/documentation/dossiers-thematiques/elections/temoignage-dun-chaisard-autonome>

Testimonial from a blind person (2010): <http://www.gamah.be/documentation/dossiers-thematiques/elections/temoignage-dune-personne-non-voyante>

Testimonial from a deaf person (2010): Testimonial from a blind person (2010): <http://www.gamah.be/documentation/dossiers-thematiques/elections/temoignage-dune-personne-sourde>

<sup>300</sup>

[http://www.verkiezingen.fgov.be/index.php?id=1649&L=0&tx\\_ttnews\[tt\\_news\]=958&tx\\_ttnews\[backPid\]=1622&cHash=f0b29e788d061f90523d2d02868ee368](http://www.verkiezingen.fgov.be/index.php?id=1649&L=0&tx_ttnews[tt_news]=958&tx_ttnews[backPid]=1622&cHash=f0b29e788d061f90523d2d02868ee368)



## Case study

34. In the Walloon Region, based on ministerial guidelines<sup>301</sup>, persons with disabilities or reduced mobility with particular needs must make a request to the commune in order to be 'summoned'<sup>302</sup> to a polling station which meets their 'needs'.
  35. This demonstrates the lack of accessibility in practical aspects of voting.
  36. It is important to emphasise the absurdity of situation. Where a person with reduced mobility is living under the same roof as their son, for example, they would each have to vote in separate polling stations. The son may have to travel to two separate locations, first to cast his own vote, and then possibly to help his parent to cast theirs.
  37. Besides the content of the guidelines, which is open to major criticism, informing persons with disabilities of their right is another problem. How are they supposed to know their rights?
  38. In order to compensate for the lack of information, the Walloon Agency for the Integration of Persons with Disabilities (AWIPH) addresses a letter to every person registered in their database. While this is a useful initiative, persons who are not registered with this agency do not receive a letter.
  39. There is therefore an unknown number of persons who have not been informed of the content of the memo and under which they are obliged to fulfil an electoral obligation.
  40. The Wallonia-Brussels (CAWaB) accessibility organisation published a press release criticising the situation<sup>303</sup>.
41. At present, no systematic review has been carried out of the current situation. Persons with disabilities cannot be sure that they will have the right to cast their vote under appropriate conditions in the polling station of their choice.
  42. The regulations and memos do not set out the basic reasonable accommodation measures which should be put in place in all polling stations to ensure their accessibility: making seats available in the queues, accessible signage, etc.
  43. Practical voting conditions may vary significantly from one commune to another, depending on the level of awareness among the staff responsible for organising the elections. Such disparities should not be present in the voting process, as they constitute a distortion both in terms of equality among citizens in relation to voting and equality between persons with disabilities and others.
  44. The provision of accessible voting documents and ballot papers to persons with disabilities (Braille, large type, easy-to-read version, accessible characters, sufficient contrast, etc.) is far from systematic.

<sup>301</sup> [http://elections2012.wallonie.be/docs/circulaire\\_accessibilite\\_bureau\\_de\\_vote.pdf](http://elections2012.wallonie.be/docs/circulaire_accessibilite_bureau_de_vote.pdf)

<sup>302</sup> In Belgium, all voters receive a personal invitation to vote, they are assigned to a particular polling station and can only fulfil their electoral duty in that precise location. The polling station they have to attend is determined based on the location of their home and should not involve significant travel.

<sup>303</sup> [https://8f1dea55-a-62cb3a1a-s-sites.googlegroups.com/site/cawabasbl/documentation/12-07-04-CP-elections-communales.pdf?attachauth=ANoY7cqdcG0WzKy2FQTI2G4H5E17J0nhoTFKA43N\\_-7hAY22Jo8Miz4WF2TWhJhPuiT2u8XhxNLDzET-UIYFcA-755MNw300jkVzOG6lPJC11-2cKbs6VphwdXQe\\_QCgI7ghnplZmOdV8ukJZOndfJZR7PoWYv7mDUIkTmATJlitRQISNs95XYeFIS2-FtWm-PyKOLKup7VmtEBoSH6\\_vcjI4dXxcu1sgGtr7P4ry1twCv9kxPEA957wFCKPLRoLUEQR4OD2jG&attredirects=0](https://8f1dea55-a-62cb3a1a-s-sites.googlegroups.com/site/cawabasbl/documentation/12-07-04-CP-elections-communales.pdf?attachauth=ANoY7cqdcG0WzKy2FQTI2G4H5E17J0nhoTFKA43N_-7hAY22Jo8Miz4WF2TWhJhPuiT2u8XhxNLDzET-UIYFcA-755MNw300jkVzOG6lPJC11-2cKbs6VphwdXQe_QCgI7ghnplZmOdV8ukJZOndfJZR7PoWYv7mDUIkTmATJlitRQISNs95XYeFIS2-FtWm-PyKOLKup7VmtEBoSH6_vcjI4dXxcu1sgGtr7P4ry1twCv9kxPEA957wFCKPLRoLUEQR4OD2jG&attredirects=0)

### **Assistance with voting**

45. The regulations and memos set out the right for every person to receive assistance to cast their vote.
46. In reality, the support on the ground varies. The President of the polling station is responsible for running the station. Therefore, they have the capacity to decide whether or not the request for assistance is legitimate, whereas they do not have the knowledge and capacity required to take such a decision.
47. Similarly, they may decide whether the person can be accompanied by the person of their choice in the voting booth, or whether they must be accompanied by a third-party designated by the President.
48. It is unacceptable for a person who needs assistance to be subject to such arbitrary procedures.
49. Repeated efforts to establish an electronic voting system have met with technical difficulties. Many citizens, in particular, persons with disabilities experience difficulties using electronic voting systems.
50. The machines currently in use do not meet the needs of all groups of persons with disabilities. Touch-screens are not suited to persons with visual impairments and limit the capacity of persons in this situation, as well as those with insufficient control over their movements to vote.

### **Alternative voting solutions**

51. Belgian legislation authorises the use of alternative voting procedures: the postal vote and the proxy vote.

### **Citizen observation**

52. Both at polling stations and count centres, citizens are involved in ensuring that the vote is carried out in accordance with law. In accordance with an approach based on equality, persons with disabilities should be called on to act as assessors.
53. At present, the majority of polling stations and count centres do not meet the minimum accessibility criteria so that persons with disabilities can fulfil this role on an equal basis with any other citizen.
54. Certain citizens are systematically designated as assessors at the polling stations and count centres.
55. Belgium must ensure that voting and the count are organised in such a way that citizens with disabilities can fulfil the role as assessors at both stages of the process.

## **Electoral campaigns - Access to information**

56. Every citizen must have access to information in order to cast their vote based on an informed decision.
57. Unfortunately, persons with disabilities do not have access to information on an equal basis with others. The same applies to electoral information, including the information supplied by political parties, as well as the communication of election results and access to information in general. These issues are set out in the chapter on Article 21.
58. We would mention the fact that political parties often put forward the fact that their communication materials are accessible as a political argument. This is not the case in reality. It is impossible for persons with sensory or cognitive disabilities to have access to electoral information on an equal basis with others.
59. In reality, persons who find themselves in this situation cannot fulfil their duty as citizens.
60. The ORPD bodies do their best to compensate for this lack of information, but do not have the necessary staff or budget to do so fully and effectively, without providing biased information.

## **The right to stand for election**

### **Under the electoral law**

61. Under the terms of the electoral law, every person with disabilities has the right to stand for election, on an equal basis with any other citizen, i.e. European, federal, regional, provincial and communal elections<sup>304</sup>.
62. However, this right may be suspended for persons assigned to prolonged minority status, persons who have been prohibited to do so by law and detainees, among which are many persons with disabilities<sup>305</sup>.
63. Depriving a person of an individual right based on a general rule without taking their personal situation or their actual capacity to stand for election into account, can be deemed to constitute a violation of the principles set out in Article 29 of the UNCRPD.

### **The reality**

64. The electoral system in Belgium is based on 'lists' submitted by political parties (generally referred to as 'parties').
65. The law specifies that the lists must meet all formal requirements (equal numbers of men and women, in particular) and must be submitted in accordance with the official

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<sup>304</sup> Electoral Code, Article 227:

[http://www.ejustice.just.fgov.be/cgi\\_loi/change\\_lq.pl?language=fr&la=F&cn=1894041230&table\\_name=loi](http://www.ejustice.just.fgov.be/cgi_loi/change_lq.pl?language=fr&la=F&cn=1894041230&table_name=loi)

<sup>305</sup> Electoral Code, Article 7:

[http://www.ejustice.just.fgov.be/cgi\\_loi/change\\_lq.pl?language=fr&la=F&cn=1894041230&table\\_name=loi](http://www.ejustice.just.fgov.be/cgi_loi/change_lq.pl?language=fr&la=F&cn=1894041230&table_name=loi)

procedures. Apart from these criteria, parties are free to present the candidates of their choice.

66. The inclusion of persons with disabilities on these lists remains a major challenge in Belgium. At present, the estimated number of persons with disabilities on the electoral lists in Belgium is well below the percentage of persons with disabilities in Belgian society<sup>306</sup>.
67. Furthermore, the order in which the candidates appear on the list plays a major role in the outcome. In this regard, it should be noted that persons with disabilities on electoral lists are rarely shown in a place likely to maximise their chance of getting elected.
68. Furthermore, some organisations of persons with disabilities have the impression that persons with disabilities are not put forward for their abilities, their motivation or the ideas they bring to the table, but rather as a way of exhibiting their disability. This is also part of a general trend towards the personalisation of elections that must be condemned<sup>307</sup>.
69. However, there are also exemplary cases of persons with disabilities who are elected and make a real contribution. Unfortunately, such examples remain the exception.
70. Similarly, the old stereotypes die hard. Persons with disabilities, when included on an electoral list, find that they are 'directed' towards themes associated with disability in the collective imagination, such as accessibility.
71. It is as though a persons with disabilities are not capable of holding the position of Councillor for Education, Minister for the Economy, or a Deputy Member of the Justice Committee of the House Representatives, for example.
72. This state of affairs is indicative of how far Belgian society has to go to achieving inclusion.
73. Parties are among the key features of Belgian political culture: Political life is organised around membership of particular political parties. Political parties are organised in a similar manner to businesses and, while the laws and regulations are effectively voted by the elected representatives, the votes are prepared and negotiated within the parties.
74. The same is true for the preparation of electoral lists. As the sector representing persons with disabilities is advocating for more persons to appear on the lists in 'electable' places, persons with disabilities must be active within the political parties. In this regard, Belgium should take steps towards becoming more inclusive.

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<sup>306</sup> In this regard, there is no data available as persons with disabilities may not wish to be identified as such, see Article 31.

<sup>307</sup> 2009: <http://www.asph.be/Documents/analyses-etudes-2009-PDF-anysurfer/Personnes-handicapees-liste-electorale.pdf>

2012: [http://www.rtb.be/info/belgique/detail\\_communales-le-cd-v-a-gand-fait-entrer-le-handicap-sur-sa-liste?id=7801727](http://www.rtb.be/info/belgique/detail_communales-le-cd-v-a-gand-fait-entrer-le-handicap-sur-sa-liste?id=7801727)

2012: [http://www.standaard.be/cnt/dmf20120709\\_008](http://www.standaard.be/cnt/dmf20120709_008)

## **Participation in political life**

75. Freedom of association is enshrined in the Belgian Constitution. There is a particularly large range of NGOs operating in Belgium. This is the case for the Organisations Representing Persons with Disabilities (ORPD).

## **Funding for organisations representing persons with disabilities**

76. Organisations Representing Persons with Disabilities (ORPD) are sometimes entitled to state funding depending on the nature of the activities which they organise. Funds are attributed at regional level. Funding is available from the Communities, Provinces and at local level depending on the type of initiative. The funding is not provided on a regular basis and renewal depends on a political decision.

77. In general, funding is provided *a posteriori* based on the activities carried out over the previous year. Setting up a new ORPD body implies a minimum level of start-up funding, in order to set things in motion.

78. Furthermore, the ORPD may obtain funding based on responses to calls for projects published by executive bodies (European Commission, Ministries, Municipal Departments), foundations (The King Baudouin Foundation) or state agencies or federated agencies (AWIPH, VAPH, etc.).

79. The total amount of funding allocated to ORPD initiatives is relatively stable, while the number of organisations and their needs are in constant growth. As a result, underfunding of the sector means that the majority of the ORPD bodies are not in a position to apply the principles set out in the UNCRPD:

- Staff shortages mean that sufficient support is not available for activities for persons with disabilities
- Shortage of competent staff to ensure that proper support is provided to persons with disabilities
- Incapacity to translate texts into 'easy-to-read' versions and Braille, and offering sign-language interpretation.

80. The ORPD bodies are faced with a dilemma: they must choose either limit their activities and provide a higher level of quality, and lose funding as they are running fewer activities<sup>308</sup> or maintain the same level of activities to the detriment of respect for the UNCRPD.

## **Involvement of representative organisations of persons with disabilities in the decision-making process**

81. Historically, Belgian NGOs have operated in the context of a pillar structure which has long been part of socio-political life in Belgium. The same applies to the ORPD bodies.

82. The pillar structure means that certain representative organisations which are close to a political party can exert influence on the political choices made by the party, or even on the drafting of certain laws or regulations.

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<sup>308</sup> Grants are attributed based on an ex-post quantitative evaluation.

83. From the end of the 1980s onwards, an increasing number of organisations representing persons with disabilities were set up with no link to any particular political party.
84. Traditionally, the ORPD bodies have sought to influence political choices by lobbying those in a position of power who are most likely to listen to their voice.
85. The development of advisory councils is currently changing the interactions between the sector representing persons with disabilities and the political and administrative world.
86. The organisations representing persons with disabilities place much importance on participation in the work of the structures such as the advisory councils. They see the advisory councils as essential to the participation of persons with disabilities in the political process.
87. The federal structure in Belgium explains the need for an advisory council at each level of authority.

#### Federal state: National Council for Persons with Disabilities

88. The *Conseil Supérieur National des Personnes Handicapées* (CSNPH - National Council for Persons with Disabilities) was created in its current form following the reform of the State in 1980, by the Royal Order of 9 July 1981 establishing a National Council of Persons with Disabilities (MB:12-08-1981) and succeeded the National Council on Disability established in 1967<sup>309</sup>.
89. The Royal Order of 9 July 1981 provides that the Council is responsible for dealing with all the problems in relation to persons with disabilities within federal competence. The Council is required, of its own initiative or on the request of the competent ministers, to issue opinions or make proposals in this regard, including on the rationalisation and coordination of the legal and regulatory provisions.
90. The minister responsible for payments to persons with disabilities is required to seek the opinion of the National Council of Persons with Disabilities on any proposed royal order implementing the law of 27 February 1987 on payments to persons with disabilities.
91. Opinions issued by the CSNPH are made public and are not binding on the relevant minister. In the event that the opinion is not followed, there is no duty to give reasons for the decision.
92. With the ratification of the UNCRPD in Belgium, the CSNPH now has the capacity to improve its legitimacy, both at federal level and at the ministries. There has been a considerable rise in the number of opinions issued. The UNCRPD is therefore having a positive impact.
93. On the other hand, the secretariat of the CSNPH is understaffed. The office does not have the capacity to tackle all the issues that need to be addressed.
94. Paradoxically, the CSNPH is faced with considerable additional responsibilities and a limited workforce.

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<sup>309</sup> Royal Order of 10 November 1967 establishing a National Council on Disability

## Walloon Region

95. On 1 May 2009, the *Commission Wallonne de la Personne Handicapée* (Walloon Committee for Persons with Disabilities - CWPH) was established. With 15 primary members plus 15 additional members, the CWPH is responsible for submitting opinions and reports to the Walloon Council for Social Action and technical opinions to the Walloon Government<sup>310</sup>.
96. Opinions issued by the CWPH are not binding. In the event that the opinion is not followed, there is no duty to give reasons for the decision. Furthermore, the government is not required to request the opinion of the CWPH. It has become apparent on a number of occasions that decisions affecting persons with disabilities have been taken without any consultation. This is a regrettable state of affairs.
97. Officers in the Walloon civil service staff the administrative secretariat of the CWPH. Therefore, the CWPH does not have the necessary workforce to undertake in-depth work on all the areas falling within the competence of the Walloon Region<sup>311</sup>.
98. The CWPH is a relatively new body, and shows potential, but, at present only has the capacity to issue opinions of issues submitted by the authorities which have been brought to the attention of its members. It relies on a proactive approach and the involvement of its members and the organisations which provide it with a mandate. The CWPH does not have the capacity to work proactively on issues of relevance to Persons with disabilities.

## **Brussels-Capital Region**

99. In the Brussels Capital Region, the *Conseil Consultatif Bruxellois Francophone de l'aide aux personnes et de la santé – Section personne handicapée* (Advisory Council in French-Speaking Brussels for Persons with Disabilities and Health - Section for Persons with Disabilities - CCBFPH) was established by the Decree of 5 June 1997<sup>312</sup>.
100. The CCBFPH is composed of 24 official members and 24 substitute members.
101. It issues opinions on all issues affecting persons with disabilities either on the request of the executive body of the French-Speaking Community Commission (COCOF)<sup>313</sup>, or of its own initiative.
102. Opinions issued by the CCBFPH are not binding. In the event that the opinion is not followed, there is no duty to give reasons for the decision.
103. Furthermore, the executive arm of the COCOF is not required to request the opinion of the CCBFPH. It has already been noted a number of times that decisions with a significant impact on persons with disabilities have been taken in the absence of any request for an opinion, or the time-frame in which to respond to the requests is too short to allow for the necessary research to be carried out. This is a regrettable state of affairs.

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<sup>310</sup> [http://www.awiph.be/AWIPH/missions\\_fonctionnement/CCWPH/CCWPH.html](http://www.awiph.be/AWIPH/missions_fonctionnement/CCWPH/CCWPH.html)

<sup>311</sup> See Introductory Chapter on the distribution of competences

<sup>312</sup> Decree by the French Community Commission of 5 June 1997 modified by the Decree of the French Community Commission of 13 May 2004 and the order of the College of the French Community Commission of 28 May 1998 modified by the Order of the College of the French Community Commission of 26 May 2005.

<sup>313</sup> See Introductory Chapter on the distribution of competences

104. At present, the CCBFPH has a secretariat at its disposal manned by a COCOF administrative officer. The staff available are not sufficient to carry out truly proactive work. It relies mainly on the initiative and goodwill of its members and bodies which employ them.

### Testimonial

105. On 18 June 2012, the Office for Assistance with Daily Living (AVJ) received the texts and propositions for orders from the Brussels Region modifying the composition of the boards of the AVJ voluntary organisations.

106. Up until then, half of the board members were persons with disabilities, some of whom were in receipt of AVJ services. The new decree specifies that two-thirds of board members must be recruited from outside the AVJ and that members of the AVJ cannot be appointed to the position of delegated administrator or president.

107. A CCBFPH opinion on the propositions received on 18 June is expected to be issued by 25 June 2012. In four days, it was impossible to inform, meet with and debate the issues so as to inform the CCBFPH of the various issues at stake<sup>314</sup>.

### **Flanders**

108. In Flanders<sup>315</sup>, the government has systematically rejected requests from the sector to set up an advisory council for persons with disabilities.

109. It has been argued that this role is already fulfilled by the Board of the *Vlaams Agentschap voor Personen met een Handicap* (VAPH), where persons with disabilities are represented.

110. The sector representing persons with disabilities has responded that in recent years, the VAPH has only had a limited role in the *Beter Bestuurlijk Beleid* (BBB) regulations and many aspects of policy affecting persons with disabilities do not fall within the remit of the VAPH: employment, accessibility, education, tax exemptions, etc. and there is no advisory body on these issues.

111. As was the case with the UNCRPD, it is indispensable that the obstacles faced by persons with disabilities are addressed within a specific advisory council.

112. In order to fill the gap, the Flemish ORPD bodies set up a the *Niets over Ons zonder Ons* (Nothing about us without us - NOOZO) platform in January 2012, for which a grant was provided for 9 months, which was used to hire an employee to launch the project. In October 2012, concrete results<sup>316</sup> were submitted to the competent Minister who decided not to subsidise the advisory council as proposed.

113. At present, the participation of persons with disabilities in the political decision-making process is limited. Participation is only possible through lobbying by the organisations representing persons with disabilities.

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<sup>314</sup> Autonomia, 22/06/2012 : <http://wal.autonomia.org/index.php?view=article&id=4522>

<sup>315</sup> Note: the Region and Community of Flanders have merged. Regional and Community competences are exercised by the Government and Parliament of Flanders.

<sup>316</sup> [http://www.vfg.be/vfg/standpunten/pages/nietoveronzonderons\(noozo\)eenvlaamseadviesstructuur.aspx](http://www.vfg.be/vfg/standpunten/pages/nietoveronzonderons(noozo)eenvlaamseadviesstructuur.aspx)



### German-speaking community

114. In the German-speaking Community, the 'Forum' for persons with disabilities has no legal status and operates on the basis of a gentlemen's agreement.
115. The authorities in the German-speaking Community have become aware of the gap in this regard and a decree is currently in preparation. At present, we do not have any concrete information or a time-line for the future decree.

### **Community of Wallonia-Brussels:**

116. There is no advisory council in the Wallonia-Brussels Community. The organisations representing persons with disabilities would criticise this state of affairs.
117. In 2009, the Committee for Learning Support for Young Persons with disabilities was established. The Walloon Committee for Persons with Disabilities is represented on this Committee by a permanent member and a substitute member. While progress has been made, persons with disabilities are still in a minority on the Committee.
118. While education is the primary competence of the Wallonia-Brussels Community, it is not the sole competence of the Community. All the competences of the Community should be monitored by an official advisory structure with a view to achieving a more inclusive society.

### **European integration**

119. There is no single competent authority in Belgium on the European Union. While some EU issues fall within the remit of the federal state (foreign affairs, home affairs, justice, etc.) others fall to the Regions (economy, etc.) while still others fall to the Communities (education, etc.).
120. In 2001, ten ORPD bodies established the Belgian Disability Forum (BDF) to act as the liaison between the EU and Belgium. There are currently 19 member associations in the BDF from all sections of federal Belgium.
121. The BDF is officially recognised by the Belgian federal authorities, which support its administrative functioning based on a protocol agreement.
122. The BDF represents Belgium in the European Disability Forum (EDF).
123. Given the influence of European policies on the various levels of authority in Belgium, the BDF maintains close relations with the existing advisory councils.

### **Local level**

124. Belgium is made up of 10 provinces and 589 communes.
125. Under Belgian law, advisory councils may be established in both the provinces and the communes.

126. However, there is no obligation to do so. Whether or not an advisory council is established depends on the commune or province. The ORPD bodies would criticise the fact that this results in inequalities between citizens, sometimes in neighbouring communes.
127. There may even be fundamental differences in terms of the objectives pursued and therefore the results. While some advisory councils operate on a truly participative basis, others are limited to simply being informed.
128. In many cases, issues in relation to disability are addressed in advisory councils for older persons or mobility. This is a positive development in terms of inclusion. On the other hand, the needs of persons with disabilities may fail to be taken into account: inclusion in education has no place in the council for older persons and goes beyond mobility issues.
129. Finally, participation in advisory councils is limited by the skills and capacities of the participants: politicians and civil servants, and persons with disabilities alike may think they have a good understanding of the realities experienced by the other, whereas this is not the case. A methodological approach is needed in this regard. The approach developed by the EDF in its local policy on disability mainstreaming project<sup>317</sup> could serve as a basis in this regard.
130. Overall, Belgium is not fulfilling the recommendations issued by the Council of Europe to Member States based on the CAHPAH-PPL expert group<sup>318</sup>. The recommendation was prepared and voted by the Council of Ministers of the Council of Europe on 16 November 2011, having regard to Article 29 of the UNCRPD. Belgium has therefore approved the recommendations.

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<sup>317</sup> EDF *Mainstreaming du handicap dans les politiques locales*, 2008. : [http://www.edf-feeph.org/Page\\_Generale.asp?DocID=13369](http://www.edf-feeph.org/Page_Generale.asp?DocID=13369)

<sup>318</sup> <https://wcd.coe.int/ViewDoc.jsp?id=1871285&Site=CM#>

## ***Recommendations***

1. A new legal framework on elections must be introduced as soon as possible. The following measures must be eliminated as a matter of priority:
  - the electoral code provides that persons with physical disabilities may be accompanied to vote. This type of 'medical' definition is incompatible with the UNCRPD. There is no mention of assistance for other persons with disabilities.
  - the requirement to provide advance notice of the disability in order to be assigned to an accessible polling station
2. At a minimum, Belgium should apply the recommendations of the Council of Europe drawn up by the CAHPAH-PPL working group. The recommendations were voted on 16 November 2011 by the Member States, including Belgium.
3. The right to vote may only be suspended on the basis of a judicial decision taken in respect of an individual case.
4. Political parties should include a reasonable number of persons with disabilities on the electoral lists.
5. The necessary practical conditions should be put in place to allow persons with disabilities to vote: funding of the necessary support for voting formalities.
6. Minimal accessibility standards should be set out in regulations. Compliance with accessibility standards should be checked by the authority organising the election, i.e. the regions or federal authorities.
7. The President of the polling station or count centre should be made aware of the requirements of persons with disabilities or reduced mobility.
8. The right to be accompanied by the person of one's choice must be guaranteed.
9. With the introduction of electronic voting machines, an in-depth study should be carried out on the needs of voters with a view to introducing various interfaces (Braille, voice recordings) into the system. The call for tenders must be drafted in accordance with the results of the study. This would allow as many voters as possible to cast their vote independently.
10. A sufficient number of parking spaces should be provided for persons with reduced mobility close to the polling stations and count centres.
11. Additional public transport services should be provided on polling day and for the count, so that persons can reach the polling stations relatively easily.
12. A budget should be allocated to pay accessible transport companies to operate on polling day.
13. Taxi costs should be covered in order to pay for the travel expenses incurred to reach the polling station. Management of the system could be assigned to the CPAS, which has the capacity to carry out the necessary social research.

14. The police should ensure that parking regulations are respected at the polling station to ensure that persons with reduced mobility can avail of the parking spaces assigned to them and that footpaths are free of obstacles.
15. Provide for a person responsible for welcoming persons with reduced mobility in each building where elections are organised.
16. The ministerial memo issued to the communes should include a full list of all the logistical measures to be taken to ensure proper accessibility on polling day and at the count.
17. Access to electoral information should be offered to all citizens on an equal basis. Information on voting procedures and the manifestos of the parties and candidates should be available in various formats: printed, Braille, audio, video, electronic, sign-language, easy-to-read language. Budgets must be provided for this purpose.
18. The authorities should build the capacity of the advisory councils, either by allocating additional funding, or by making additional staff available. "Nothing about us without us"
19. Provide sufficient funding to the ORPD bodies in order to ensure that they can meet the requirements of the UNCRPD.
20. Each level of authority in the Belgian federal state must have a specific advisory council on the issues with a specific impact on persons with disabilities.
21. Establishing local advisory councils should be made obligatory and its operating procedures should ensure a minimum level of capacity.
22. The authorities responsible for organising the elections should be required to publish indicators on the actual exercise of electoral rights by persons with disabilities.
23. A budget should be set aside for sign-language interpretation for each level of authority in order to provide deaf persons with an opportunity to participate in civic life.

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

1. Overall, accessibility standards leave much to be desired in the area of culture and recreation, leisure and sport, transport and access to facilities.
2. We wish to draw attention to the fact that persons with disabilities faced with obstacles to travel are obliged to focus their efforts on certain activities, to the detriment of others. Obstacles in daily life - education, health, employment - make it difficult, if not impossible to invest the time, energy and money in overcoming obstacles to participation in self-development activities<sup>319</sup>.
3. Many persons with disabilities only have limited access to leisure activities of their choice, on an equal basis with other citizens. There are limited accessible options and time available to persons with disabilities, in comparison with others.

### **Accessibility of infrastructures**

4. The accessibility of cultural, recreational, sports and leisure activities is guaranteed under regional regulations.
5. However, the implementation of the regulations is inadequate in relation to construction of new infrastructures, as specifications are not followed and there are no real sanctions in the event of non-compliance<sup>320</sup>. This is even the case for state-funded infrastructures.
6. There are still major barriers in terms of ensuring compliance of existing infrastructures. Many buildings such as libraries, sports complexes, and entertainment venues were built over 25 years ago. They were not designed in accordance with later regulations and compliance in the absence of binding obligations, budgets and awareness, only partial efforts are made to comply with the regulations, if any.
7. In this regard, it is shameful that the fact that a building is 'listed' is often used as an argument to avoid compliance. In many cases, the listing only applies to part of the building and compliance can in fact be achieved with a proper survey of the building and analysis of the various possible options<sup>321</sup>.

### **Accessibility strategies**

8. There are no overall implementation strategies in place in the area of culture, tourism, recreational and creative activities and sport. We have used the term 'strategies' in the

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<sup>319</sup> See the case-study in Article 24 on the transport difficulties encountered by some children with disabilities travelling to school.

<sup>320</sup> See Article 9 – Accessibility

<sup>321</sup> *Patrimoine : Affaire classée ?* Conference of 27 April 2012: <http://www.gamah.be/documentation/dossiers-thematiques/patrimoine/patrimoine-affaire-classee-actes-du-colloque>

plural form , as separate strategies must be developed in the three regions with responsibility in this regard.

9. Access to infrastructures is difficult, if not impossible for the following categories of persons:
  - persons using mobility equipment (wheelchairs, scooters, zimmer frames),
  - persons with mobility difficulties, who do not use equipment,
  - persons with difficulties finding their way: audio-description, tactile footpaths, signage.
10. We would draw attention to the fact that signage is often insufficient, particularly where unique signage is developed on the basis of aesthetic criteria, rather than general standards, which do not even exist at present. These problems result in confusion and safety issues for persons who have the capacity to live more independently if information was standardised on a systematic basis.

### **Accessibility of television programmes**

11. In a world where television plays an important role in society, access to television programmes leaves much to be desired. This is a major barrier to participation in culture and recreation, leisure and sport for some persons with disabilities, particularly for deaf and blind persons.
12. It is also worth noting that few persons with disabilities have any opportunity to appear on-screen<sup>322</sup>. Are persons with disabilities not capable of providing commentary on sports events of the works of the *Théâtre Royal de la Monnaie*<sup>323</sup>?
13. Journalists make requests on a regular basis to be put in contact with persons with disabilities who can offer testimonials. Faced with a person with disabilities who does not meet their expectations for television or radio, if the disability is clearly visible on the face, or the person has difficulties with elocution, the testimonial is not broadcast. Showing persons with disabilities often involves challenging media 'standards', and the media have little inclination to do so.
14. Much progress remains to be made in terms of the participation of persons with disabilities in television.
15. With regard to the audience, it is regrettable that the possibilities offered by television are underused in terms of ensuring wider access to entertainment, as well as cultural and sports information.
16. In this regard, subtitling is almost non-existent in French-speaking Belgium.
17. Sign-language is rarely used, and only for particular programmes in French-speaking Belgium. Three different types of television channels should be distinguished.

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<sup>322</sup> CSA *Barmoeter*, 2013 (pp. 51-53):

[http://www.csa.be/system/documents\\_files/2006/original/Baromètre%202013.pdf?1363332910](http://www.csa.be/system/documents_files/2006/original/Baromètre%202013.pdf?1363332910)

<sup>323</sup> See Article 8 on raising awareness

- state television channels which only provide sign-language interpretation for a small number of programmes
  - commercial channels which never provide sign-language interpretation
  - community channels, which do not provide sign-language interpretation, due to a lack of funding
18. Sign-language is also used on television channels in the Flemish Community, not on the actual television channels, but on the website.
19. The absence of subtitling gives rise to problems, particularly in terms of awareness: the presence of subtitles on the screen is a way of showing to everyone that for some persons, sound is insufficient.
20. Programmes in simplified language are not available in any of the language communities in Belgium.
21. At present, little attention is given to the accessibility of media for blind and visually impaired persons. Technology is available, but is rarely used due to a lack of impetus and funding.

### **Access to tourism**

22. The number of accessible tourism destinations leaves much to be desired in the Walloon and Brussels Regions. Entry, moving about, and access to toilets along with access to information are all problematic.

### **Case study**

23. For instance the Grand-Place in Brussels is quite inaccessible.
24. The French-language Tourism Office (BIT) located on the ground floor of the Brussels City Hall is inaccessible to persons with reduced mobility due to the steps at the entry point.
25. Reasonable accommodation could be made to remedy this problem at a low cost. The work has not yet been carried out.

26. Regional regulations <sup>324</sup> on mobility in pedestrian areas provide that there must be space for wheelchairs. However, it is common for cafés and advertising to encroach on the footpath, making it difficult or even impossible for persons with disabilities to pass. The same is true for construction and roadworks.
27. Inspections are rarely carried out and there is no follow-up in terms of raising awareness or sanctions
28. Access also has to be paid for by persons with disabilities. In this regard, it is worth noting that major attractions such as museums and historical sites offer reductions to persons with disabilities.

<sup>324</sup> <http://www.gamah.be/documentation/reglementations>

29. However, it is worrying that they are not offered automatically to those who are entitled to them, in the absence of any recognition, on a voluntary basis if necessary <sup>325</sup>.
30. Similarly, persons with disabilities cannot enforce their right to a reduced price when abroad, as there is no recognition of their disability in this regard at European Union or global level. This is the case, in spite of the fact that disability knows no borders.
31. Tourism also implies travelling abroad. Persons with disabilities encounter a wide array of problems when they wish to travel abroad and in many cases, they do not have the opportunity to travel on an equal basis with others.
32. Such inequalities are particularly apparent with regard to airplane travel. Despite the existence of a specific European Directive<sup>326</sup>, persons with disabilities are still faced with significant barriers.
33. Among the barriers encountered by persons with disabilities on a regular basis are:
  - Refusal to board persons with disabilities on the same plane, beyond a certain quota. Such refusals are incompatible with the Directive, but are generally due to safety regulations applied by the airport emergency services.

#### Case study

In May 2012, four young deaf persons booked a flight to travel abroad. Two days later, they received a cancellation notice because no more than two deaf persons were allowed to travel on the same plane, in accordance with fire regulations.

Following the intervention of the Centre for Equality of Opportunity and Combating Racism, a solution was found. However, the issue took up much time and energy for the individuals, and caused them a great deal of stress<sup>327</sup>.

- Risk of damage to mobility equipment<sup>328</sup>. Mobility equipment has to be placed in the hold during the journey, but are generally loaded and unloaded without due care, resulting in damage.
  - Wheelchair users whose equipment has been damaged miss out on their holiday or cannot participate in professional activities as planned. It is worth noting that no insurance company in Belgium is prepared to cover damage to mobility equipment during air travel<sup>329</sup>.
34. The tourism sector in Europe has suffered relatively little from the impact of the economic crisis and has even continued to grow<sup>330</sup>. However, in Belgium, no significant progress has been made in terms of the accessibility of tourism infrastructures: investment is falling short of potential.

<sup>325</sup> In this regard, the Belgian Disability Forum, in collaboration with the European Disability Forum (EDF) has requested the creation of a European mobility card. The government agreed to this project on 1 December 2011, under the 'Handipass' initiative.

<sup>326</sup> Regulation (EC) n°[1107/2006](#) of the European Parliament and of the Council of 5 July 2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air

<sup>327</sup> <http://www.diversite.be/passagers-sourds-sur-un-vol-europ%C3%A9en>

<sup>328</sup> By mobility equipment, we are mainly referring to wheelchairs and scooters.

<sup>329</sup> <http://www.senate.be/www/?MIval=/Vragen/SVPrintNLFR&LEG=5&NR=2711&LANG=fr>

<sup>330</sup> [http://epp.eurostat.ec.europa.eu/statistics\\_explained/index.php/Tourism\\_trends](http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/Tourism_trends)



## **Culture**

35. There is currently a lot on offer in terms of culture in Belgium.
36. However, it is difficult for persons with disabilities to attend events, particularly for deaf and blind persons, due to accessibility, transport and signage problems, and the fact that staff are not trained to deal with persons with disabilities<sup>331</sup>.
37. The high cost of attending cultural events is also a major factor in view of the income of many persons with disabilities<sup>332</sup>.
38. Apart from ensuring that cultural events are accessible to all, there should also be room for events specifically adapted to the needs of persons with disabilities.
39. Finally, it appears that persons responsible for scheduling events do pay enough attention to including artists with disabilities in the general programme<sup>333</sup>.

### Case study

40. The performance by Serge Van Brakel, in Paris and Belgium, with sign-language translation<sup>334</sup>.

### Case study

41. Music festivals have become a major part of cultural life in Belgium. It is interesting to note that organisers are aware of the need for the festivals to be accessible. Accessibility measures are often planned in cooperation with persons with disabilities<sup>335</sup>.

## **Recreational and creative activities**

42. Children and young persons with disabilities do not have access to the same recreational and leisure activities as their peers<sup>336</sup>.
43. Bodies organising such activities often state that they are not in a position to take on a child or young person with disabilities due to a lack of resources. 'Resources' should be understood in broad terms: the infrastructure, competent staff in sufficient numbers, and funding.
44. Children and young persons with disabilities are therefore obliged to look to 'special' organisations in order to participate in recreational and creative activities. The ideal of inclusion is a long way off.

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<sup>331</sup> Gamah. *Cécité, surdit  et culture* (pp. 7-17) : <http://www.gamah.be/aires-libres/aires-libres-03-juin-08.pdf>

<sup>332</sup> See Article 28 – Standard of living and social protection

<sup>333</sup> [http://lib.ugent.be/fulltxt/RUG01/001/789/184/RUG01-001789184\\_2012\\_0001\\_AC.pdf](http://lib.ugent.be/fulltxt/RUG01/001/789/184/RUG01-001789184_2012_0001_AC.pdf)

<sup>334</sup> [http://www.lavenir.net/article/detail.aspx?articleid=DMF20130408\\_00293503](http://www.lavenir.net/article/detail.aspx?articleid=DMF20130408_00293503)

<sup>335</sup> <http://www.intro-events.be/fr/>

<sup>336</sup> [http://www.bruxelles-integration.be/pdf/res\\_peda/rapport\\_de\\_recherche.pdf](http://www.bruxelles-integration.be/pdf/res_peda/rapport_de_recherche.pdf)

45. Only a limited number of organisations obtain funding for their activities. With a limited number of activities available to them, children and young persons with disabilities often have to travel further. Furthermore, subsidies for the transport of persons with disabilities with a view to participating in leisure activities are almost non-existent. As a result, additional costs are incurred by participants in such activities. As a result, many young persons find that they have to abandon the idea of participating in an activity.
46. The situation is even worse for adults with disabilities as the range of activities available is even narrower. In general, the activities for persons with disabilities funded as such are the only option. Persons with disabilities still have to cover the additional costs associated with participation in such activities. Travel is also a problem here.
47. A growing number of communes are organising cultural excursions for older persons. Unfortunately, it is rare for persons with disabilities to have the opportunity to participate: the transport vehicle or the site visited may not be accessible, competent staff may not be available in sufficient numbers to provide the necessary support.
48. Theme parks offer a wide range of activities. Unfortunately, they are not particularly welcoming to persons with disabilities.

#### Case study

49. For instance, a complaint was submitted against Plopsaland: the organisation was approached and the issue was discussed, the response was 'You can access the attractions, but at your own risk'.<sup>337</sup>

#### **Sports activities**

50. Participation in sports activities is essential to a balanced lifestyle.
51. However, many sports facilities do not meet accessibility standards (even recent buildings). Very few swimming pools are equipped with equipment to facilitate access to the pool for persons with reduced mobility. Only a small investment would be required and pools could be used for a much wider population than persons with motor disabilities given the role which swimming can play in the rehabilitation process.
52. Some sports facilities only allow persons with disabilities to access the pool when accompanied by another person, even if the person is perfectly capable of using the pool independently. This constitutes a barrier to independent living.
53. In general, staff in sports facilities do not receive training on dealing with disabilities and do not have sufficient awareness of specific needs of persons with particular disabilities.
54. With regard to sports clubs, it is rare for persons with disabilities to have an opportunity to practice sport in this context. For persons with disabilities, sports can only be organised by specific clubs, which are often organised at inconvenient times. As the

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<sup>337</sup> <http://www.diversite.be/plopsa-vers-une-meilleure-politique-dacc%C3%A8s-pour-les-personnes-handicap%C3%A9es>

majority of sports facilities are at maximum occupancy, it is difficult for new special clubs to find suitable times.

55. There is very little public funding available for sport, either in Flanders or in the Walloon Region. The vast majority of persons with very severe disabilities are active in such leisure clubs.
56. Thus, sport plays a major role in social integration for a significant number of persons who are potentially discriminated against, which is unfortunately the case for persons with disabilities.

### **Culture and deaf persons**

57. Language is among the primary means of communicating culture, and sign-language should therefore be officially recognised by the public authorities<sup>338</sup>.
58. However, this recognition does not extend to status as an official language. Thus, there is never any obligation to provide sign-language interpretation. Sign-language does not receive the support it deserves with a view to facilitating inclusion in society for persons with hearing impairments who use it to communicate.
59. Furthermore, there is a severe shortage of sign-language interpreters<sup>339</sup> in relation to the needs of deaf persons, and their aspirations to fully participate in a wide range of cultural, recreational, creative, leisure and sports activities.
60. There are significant organisational problems with official sign-language training courses leading to a qualification and there are fewer and fewer candidates for such courses.
61. Finally, the organisations representing deaf persons have noted that the authorities have regularly failed to consult them. Sign-language interpreters are often provided for events without consulting the 'target' group. After the event, it emerges that there were no deaf persons present. The sign-language interpreter was hired for nothing. This is even more regrettable in the light of the shortage of interpreters.

### **Cultural products and intellectual property**

62. Intellectual property legislation still gives rise to a number of problems in relation to access to reading material for persons with disabilities. At present, the number of novels, guide-books, accessible books in electronic format is still quite low.

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<sup>338</sup> [http://www.ffsb.be/sites/default/files/publications/memorandumFFSB\\_02.pdf](http://www.ffsb.be/sites/default/files/publications/memorandumFFSB_02.pdf) ;  
<http://www.fevlado.be/upload/content/file/Fevlado/Dossiers/Profiel%20lesgevers%20VGT.pdf>

<sup>339</sup> See: Article 24 Education

## **Recommendations**

1. Legislative work should begin on intellectual property rights for persons with disabilities in order to get access to books in electronic format (literature, guide books, etc.).
2. Conditions on subsidies for accessible television programmes should be included in contracts for managing public television channels.
3. The competent authorities should carry out an in-depth study on the expectations of tourists with disabilities and with reduced mobility who visit Belgium with a view to directing the necessary investment to this sector which has continued to thrive despite the economic crisis.
4. The competent authorities should ensure proper compliance with the regulations on mobility and urban planning
5. The competent Minister should bring the 'Handipass' project into force in Belgium, and use their position to promote the project throughout Europe.
6. The competent authorities should put in place the practical conditions for the development of recreational and organisational activities which are accessible to all, in accordance with an inclusive approach: subsidies, training staff, etc.
7. The competent authorities should take measures to end arbitrary decisions with regard to persons with disabilities boarding planes. In this regard, the EC Regulation n°1107/2006<sup>340</sup> should be enforced.
8. Any project to fund sports facilities should be subject to the acquisition of equipment to facilitate effective participation of persons with disabilities.
9. Standards should be developed and applied across the board to all tourism, cultural and sports facilities so that persons with disabilities can access them independently.
10. The competent regional authorities should put in place sufficient funding for sign-language interpreters so that persons with disabilities will have the possibility to thrive in the area of culture, recreation and sport.
11. The competent regional and community authorities should implement all the necessary resources for accessible self-development activities so that persons with disabilities can take part in a location close to their home.
12. The necessary subsidies should be made available to state television channels in order to increase the number of programmes broadcast with sign-language interpretation or subtitling.
13. The competent authorities should resolve the conflict between the EU directive on air passengers with disabilities and the safety regulations for emergency and evacuation operations in airports.

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<sup>340</sup> Regulation (EC) n°[1107/2006](#) of the European Parliament and of the Council of 5 July 2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air

14. The competent authorities should take all the necessary measures to ensure that wheelchairs brought on board airplanes are insured against damage due to handling.
15. The competent governments must address the issue of the professional recognition of sign-language interpreters. Sign-language courses such be overhauled and sufficient financial resources should be provided to make the profession attractive.

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## **Article 31: Statistics and data collection**

1. At present there are no general statistics on the situation of persons with disabilities in Belgium.
2. The federal state in Belgium does not have the necessary statistical data available to offer effective human-rights monitoring for persons with disabilities.
3. Therefore, sufficient data is not available to monitor disability.

### **Causes**

4. There are a number of useful databases available on various types of disabilities. Statistics are available from each database, but there is no common source of data. Existing statistics have been extrapolated in accordance with the rules governing each body. Furthermore, each set of rules is geared towards a specific objective and particular definitions of disability.
5. The absence of coordinated statistics cannot be justified solely on the basis of the distribution of competences and the various definitions of disability. It is well-known that information technology systems, where they exist, are incompatible with one another.
6. It is clear that the technical aspects of this issue could have been managed a long time ago. Unfortunately, it must be acknowledged that there is no real political will to find a solution to this problem at present.

### **Consequences**

7. The disparity between statistics has the effect that any data collection is limited to a specific field related to a single level of authority. Furthermore, the aggregation of data sourced from various authorities could result in significant errors, as individuals may be counted twice.
8. The same could also occur even within a single level of authority.
9. Serious work must be initiated, in cooperation with all the players in the various authorities, with a view to working towards harmonisation.
10. As a result, it is currently impossible to develop an overall approach to the policies for implementation in terms of disability. It is therefore difficult to take informed decisions on disability policy, and even more so to evaluate the results.
11. The statistical approach is necessary and the current situation puts Belgium at odds with its international obligations under the UNCRPD, as well as in relation to the European Union legislation and major international organisations such as the World Health Organisation (WHO) the Organisation for Economic Cooperation and Development

(OECD), for example, the work of which and the recommendations of which are based on unreliable statistical data.

### Case study

12. For instance, the Paragraphs 166 and 167 of the Official Report on the implementation of the UNCRPD in Belgium refers to existing statistical tools in the Flanders and Brussels Regions. There is no mention of the statistical tools in the Walloon Region.<sup>341</sup>

13. As is mentioned in the official report, the Centre for Equality of Opportunity and Combating Racism has developed a system for signalling individual files (METIS). This specific tool was developed by an independent body.

14. Ideally, statistical data would be approved along with other available statistical data. Here we are also faced with a similar problem.

### **Broken promises**

15. In declarations made in 2006 and 2011, the federal government announced that a working group would be established within the inter-ministerial conference on the coordination of statistical tools. To date, such announcements have not led to any concrete results.

16. Given the lack of political will in this regard, the ORPD bodies would also raise questions about the capacity of the cooperation mechanism to lead to the progress predicted in the official report (Paragraph 164), and concrete progress on the collection of statistics.

### ***Recommendations***

1. In order to establish a reliable statistical tool, the federal government should get to work on a project to coordinate and harmonise the definition of disability in each entity of federal Belgium, ideally that in the UNCRPD, and systematically use International Classification of Functioning, Disability and Health (ICF) as a basis for an decision making on disability in Belgium.
2. The competent federal Minister should coordinate a project with a view to combining the statistical data on persons with disabilities at the various authorities and semi-state bodies.
3. All Belgian policy drawn up in supranational institutions should be managed at federal level.

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<sup>341</sup> AWIPH: <http://www.awiph.be/documentation/etudes/index.html>

**ETNIC:** <http://www.etic.be/index.php?id=statistiques>

IWEPS: <http://www.iweps.be/search/node/handicap>

4. The OPRD bodies should be consulted on the manner in which statistical data are collected, validated and approved.

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## **Article 32: International cooperation**

1. At present, the agency for development cooperation has not included the criteria ensuring that the rights of persons with disabilities are taken into account in the procedures for the allocation of development aid. In reality, neither the ORPD nor the ASPwD bodies have been consulted with regard to international cooperation, either at federal, regional or local level.
2. Few development cooperation projects are directly oriented towards the rights of persons with disabilities. To the knowledge of the BDF, only Handicap International and the *Platform Handicap en Ontwikkelingssamenwerking* (PHOS)<sup>342</sup> have developed such projects and obtained funding for this purpose from the Agency for Development Cooperation<sup>343</sup>.
3. The ORPD and ASPwD bodies are rarely made aware of the existence of Belgian cooperation projects on disability. In any case, they have not been consulted on such projects.
4. With regard to developing countries, the BDF does not have any information indicating whether persons with disabilities are viewed as a specific target group in countries in receipt of Belgian development aid.
5. The ORPD and ASPwD bodies are not involved in the process for the attribution of development aid at federal level. This is at odds with the 'Millennium Development Goals'.
6. Apparently, there are a small number of projects on disability, but as the sector has not been informed, the question arises as to disability is integrated into bilateral funding systematically. The same applies to development projects for regional funding, which do not consult the ASPwD bodies.
7. The official report indicates in Article 170 that the Walloon Agency for the Integration of Persons with Disabilities (AWIPH) was consulted. It is important to note that the AWIPH is a regional agency and is therefore part of the public service. Even though the representatives of persons with disabilities sit on the AWIPH management committee and other regional agencies, such agencies are not representative of persons with disabilities. The AWIPH is not an ORPD or an ASPwD.

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<sup>342</sup>

<http://www.phos.be/FR/index.php??97caf400d04a671ce434d38b294350869e5e5dbd=mv2vdqa0amdophafj2uqg5rdh6>

<sup>343</sup> The BDF also participated in two exchanges programmes established by Handicap International: in Laos in 2011 and in Morocco in 2013. The latter focused specifically on drafting national alternative reports.

## ***Recommendations***

1. From the point of view of states providing development aid, agencies should take account of the rights of persons with disabilities in all projects funded.
2. 'Disability' should be integrated in all development aid projects.

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## **Article 33: Application and monitoring at national level**

1. From the time of signature of the UNCRPD in Belgium, the BDF has been of the view that Article 33 is key to the Convention. The way in which Article 33 is applied will determine the extent to which all the other articles are implemented successfully.
2. The BDF has spared no effort to ensure that monitoring under Article 33 is put in place. The need for concrete involvement in the structures representing persons with disabilities where this is provided for in the text of Article 3.
3. Thus, the BDF has systematically put forward its radical interpretation of Paragraph 3 of Article 33. From the perspective of the BDF, the monitoring function covers Article 33 in its entirety.
4. In this regard, the drafting of the first official Belgian report is hardly an example of good practice. In Paragraph 175, the official report indicates that the associations of persons with disabilities have contributed to drafting the first report at COORMULTI meetings<sup>344</sup>, the wording is ambiguous and misleading: the ORPD and ASPwD were not actually involved.
5. Only certain ASPwD bodies were invited to participate in a COORMULTI meeting, for which there has been no follow-up. The official report also only mentions the National Council for Persons with Disabilities (CSNPH), whereas, with the exception of Flanders, there are other official advisory bodies.
6. At federal level, it is true that the CSNPH is responsible for dealing with all the problems in relation to persons with disabilities that fall within federal competence<sup>345</sup>. The CSNPH may issue opinions on its own initiative on any issue in relation to which the federal state is competent which affects the lives of persons with disabilities.
7. Overall, the ORPD and ASPwD bodies would note that, while things look good paper, in practice, there are problems, and the State has not put in place the resources and tools needed to ensure that civil society can participate.
8. The CSNPH is not being consulted systematically on all the decisions that impact persons with disabilities. Even when the CSNPH is consulted, if the authority decides not to follow the opinion, they do not have to give reasons for their decision.

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<sup>344</sup> The Coormulti unit of the Foreign Affairs Federal Public Service is responsible for coordinating and preparing meetings of the international organisations of which Belgium is a member, with a view to developing a systematic approach and ensuring the coherence of Belgian policy.

<sup>345</sup> Royal Order of 9 July 1981 (M.B. of 12 August 1981)

## **Contact points**

9. Given the institutional structure in federal Belgium, a decision was taken to create one contact point per federal or federated authority. Each entity retains the discretion to set up the contact point in any department as they see fit.
10. While it is not easy for persons on the outside to navigate the institutions, this is the reality with which persons with disabilities in Belgium are faced with.
11. Various approaches are taken in this regard: the contact point is either established in a department specifically dedicated to disability, or in a general department, or even in a department dealing with 'equality of opportunity'.
12. At present, it is too early to evaluate the effectiveness of the contact points. However, the ORPD and ASPwD bodies would note the following:
  - The various contact points were not accompanied by the necessary processes and bodies to ensure real participation of persons with disabilities and the representative organisations with a view to identifying gaps in the application of the Convention<sup>346</sup>.
  - There is little awareness of such contact points among the 'end users' - persons with disabilities.

## **Cooperation body**

13. Given the variety of contact points, it made sense to establish a cooperation body.
14. Over a two year period, the cooperation body produced the official report for Belgium and responded to the request from the ORPD and the CSNPH to plan two meetings per year. Apart from the CSNPH, the ASPwD has not come across any other cooperation body in the federal authorities.
15. The cooperation body also disseminates a quarterly newsletter in which it provides an update on its activities.
16. It is still too early to evaluate the effectiveness of the cooperation body, particularly as certain bodies have not been consulted. However, the ORPD and ASPwD bodies would note the following:
  - The type of information exchanged between the cooperation body and the ORPD and ASPwD bodies has been very general up to present and does not provide sufficient understanding of the issues in relation to the application of the Convention.

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<sup>346</sup> To date, the Walloon Council for Persons with Disabilities (CWPH) has only been contacted once by the Walloon Region contact, without any concrete results. The ASPwD at other levels of authority have never been in contact with the corresponding contact points.

## **Independent body**

17. Discussions on establishing an independent body have been ongoing for some time now.
18. The ORPD and ASPwD bodies regret that their role is limited to the following three steps:
  - Before the beginning of the process, the ORPD and ASPwD bodies indicated that they would like to see an independent body established in accordance with the 'Paris principles', and that they wish to participate in the negotiation process.
  - At the beginning of the process, the ORPD and ASPwD bodies were informed of the fact that their expectations would be taken into account in setting up the independent body.
  - At the end of the process, the proposition for the structure of the independent body was submitted to the National Council of Persons with Disabilities, who indicated their approval subject to certain demands in relation to the Presidency of the Support Committee, which should be assigned to the ASPwD and ORPD bodies, and that they should hold the majority of the seats on the Committee.
19. The involvement and participation of persons with disabilities and their representative organisations is very limited, drawing merely on traditional 'cooperation' procedures: campaigning, opinions, decisions. This process fails to achieve the true meaning of the sentence "civil society... shall be involved and participate fully in the monitoring process".
20. It would make sense to involve persons with disabilities and/or the representative organisations in the entire negotiation process, not only when it comes to formalising decisions which have been discussed and prepared in their absence.
21. Thus, the end result corresponds to the 'mountain' of demands from the various State bodies, but fails to meet the requirements of the Convention. The approach is at odds most important article in terms of implementation, and fails to comply with the principles of involvement and participation, which is a real innovation on the part of the Convention.
22. One year on, the Support Committee is the only way for persons with disabilities and their representative organisations to get involved in the application and monitoring process.
23. The ORPD and ASPwD bodies take the view that this important body must achieve the necessary degree of stability to ensure that it can function properly.
24. With regard to the work by the independent body, the ORPD and ASPwD bodies are surprised to note that the independent body has issued opinions on issues unrelated to the UNCRPD.
25. This is the role of the federal and federated advisory councils. It is surprising to see the 'independent body' taking on the role of the structures representing persons with disabilities. It appears that the independent mechanism is, itself, at odds with the spirit of the Convention which is aimed at ensuring the participation of persons with disabilities.

## ***Recommendations***

1. Persons with disabilities and their representative organisations should be offered the opportunity to be fully involved and to participate in all the bodies set up under Article 33: contact points, the cooperation body, the promotion body, monitoring the Convention, the independent body.
2. Clarification is needed on the roles of each participant.

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## Annex 1: List of abbreviations

AFrAHM	Association Francophone d'aide aux handicapés mentaux
AG	Assemblée générale
AGCD	Agence de Coopération au Développement
AHVH	Association des Hémophiles et Malades de von Willebrand, asbl - Vereniging van Hemofilielijders
AI	Allocation d'intégration
ALTéO	ALTéO asbl (Mouvement social de personnes malades, valides et handicapés)
ANAHM-NVMG	Association Nationale d'Aide aux Handicapés Mentaux asbl - Nationale Vereniging voor Hulp aan Verstandelijk gehandicapten vzw
ANLH	Association Nationale pour le Logement des Personnes Handicapées, asbl
AP3	Association de parents et de professionnels autour de la personne polyhandicapée asbl
APA	Allocation pour l'aide aux personnes âgées
ASBL	Association sans but lucratif
ASPH	Association Socialiste de la Personne Handicapée asbl
ASPwD	Advisory Structures of Persons with Disabilities
AVJ	Service d'aide à la vie journalière
AWIPH	Agence wallonne pour l'Intégration des Personnes handicapées
BAP	Budget d'assistance personnelle

BBB	Beter Bestuurlijk Beleid
BDF	Belgian Disability Forum asbl
BIT	Office Bruxellois Francophone du Tourisme
BuO	Buitegewoon Onderwijs
CA	Conseil d'administration
CAA	Compétences Acquisées Antérieurement
CAPAH-PPL	Comité d'Experts sur la participation des personnes handicapées à la vie politique et publique (Conseil de l'Europe)
CARPH	Commission d'accompagnement pour le recrutement de personnes avec un handicap dans la fonction publique fédérale
CAWAB	Collectif accessibilité Wallonie-Bruxelles
CCBFPH	Conseil Consultatif Bruxellois Francophone de l'aide aux personnes et de la santé – Section personne handicapée
CDS	Commissions de défense sociale
CEOR	Centre for Equality of Opportunity and Combating Racism
CHP	Centre Hospitalier Psychiatrique
CIF	Classification Internationale du Fonctionnement, du Handicap et de la Santé
COCOF	Commission Communautaire Francophone
COCOM	Commission Communautaire Commune
CPAS	Centre public d'action sociale



CPT	Comité européen pour la prévention de la torture et des traitements inhumains ou dégradants
CRP	Centre Régional de Soins Psychiatriques
CSA	Conseil Supérieur de l'Audiovisuel
CSNPH	Conseil Supérieur National des Personnes Handicapées
CWATUPE	Code wallon d'aménagement du territoire, de l'urbanisme et du patrimoine et de l'énergie
CWPH	Commission Wallonne des Personnes handicapées
EDF	European Disability Forum asbl
EDS	Etablissements de défense sociale
ETA	Entreprise de travail adapté
FEVLADO	Federatie van Vlaamse Doven en Slechthorende vzw
FFSB	Fédération francophone des sourds de Belgique asbl
FIDH	Fédération Internationale des Ligues de droits de l'homme
GAMAH	Groupe d'Action pour une Meilleure Accessibilité pour les Personnes Handicapées
GAMP	Groupe d'Action qui dénonce le Manque de Places pour personnes handicapées de grande dépendance
GON	Geïntegreerd onderwijs
IDH	Indice de développement humain
IEFH	Institut pour l'égalité des femmes et des hommes

INAMI	Institut National d'Assurance Maladie-Invalidité
ION	Inclusief Onderwijs
KVG	Katholieke Vereniging Gehandicapten vzw
LCM-ANMC	Landsbond der Christelijke Mutualiteiten Alliance - Nationale des Mutualités Chrétiennes
MB	Moniteur belge
MS-Liga	Ligue belge de la sclérose en plaque asbl - Nationale Belgische Multiple Sclerose Liga vzw
NGO	Non-governmental Organization
NOOZO	Niets Over Ons Zonder Ons
NTIC	Nouvelles Technologies de l'Information et de la Communications
OCDE	Organisation du Commerce et du Développement Economique
OIP	Observatoire International des Prisons
OMS	Organisation Mondiale de la Santé
ONU	Organisation des Nations Unies
ORPD	Organisations Representing Persons with Disabilities
PAB	Persoonlijke assistentiebudget
PHARE	Service Phare - Personne Handicapée Autonomie Recherchée
PHOS	Platform Handicap en Ontwikkelingssamenwerking

PMR	Personnes à Mobilité Réduite
PNUD	Programme des Nations unies pour le développement
RMMG	Revenu minimum mensuel garanti
RRU	Règlement régional d'urbanisme
SAJJNS	Services d'accueil de jour pour jeunes non scolarisables
SAPH	Structures d'Avis des Personnes Handicapées
SISP	Sociétés immobilières de service public
SNCB	Société Nationale des Chemins de Fer Belges
SPF	Service public fédéral
STIB	Société des Transports intercommunaux de Bruxelles
TAP	Tribunal d'application des peines
TEC	Société wallonne de transport en commun
TVA	Taxe sur la Valeur Ajoutée
UNCRPD	United Nations Convention on the Right of Persons with Disabilities
UNMS-NVMS	Union Nationale des Mutualités Socialistes - Nationaal Verbond van Socialistische mutualiteiten
VAPH	Vlaams agentschap voor personen met een handicap
VDAB	Vlaamse Dienst voor Arbeidsbemiddeling en Beroepsopleiding

VFG	Vereniging Personen met een Handicap vzw
VGT	Vlaams gebarentaal
VHG	Vereniging Personen met een Handicap vzw
WAI	Web accessibility initiative