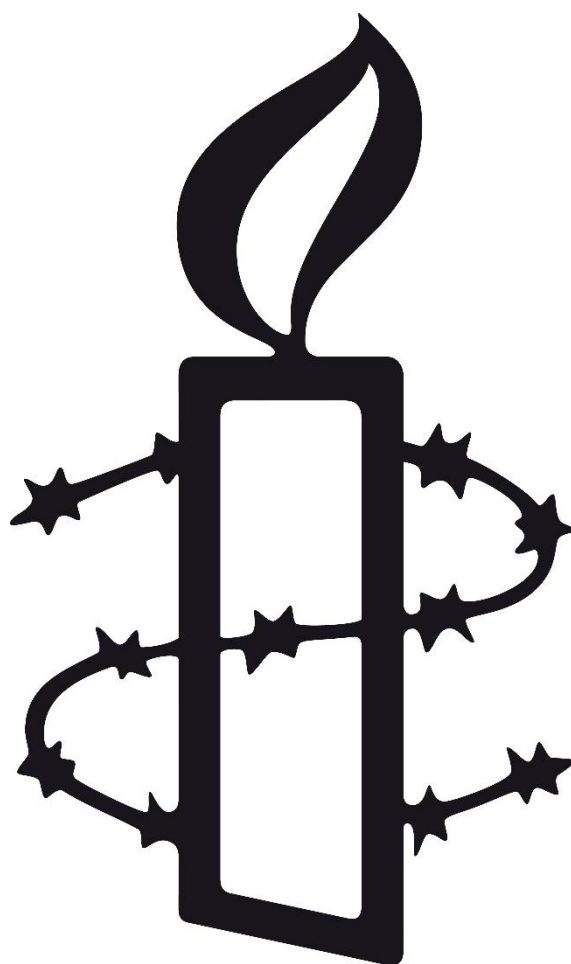


BELGIUM

**SUBMISSION TO THE UN COMMITTEE ON THE RIGHTS OF
PERSONS WITH DISABILITIES
31ST SESSION, 12 AUGUST - 5 SEPTEMBER 2024**



**AMNESTY
INTERNATIONAL**



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In this submission to the UN Committee on the Rights of Persons with Disabilities, Amnesty International highlights human rights concerns in care homes for older people during the Covid-19-pandemic and barriers limiting people with disabilities' ability to live autonomous and independent lives. The text also gives a more general overview of concerns about Belgium's human rights architecture.



1. INTRODUCTION

Amnesty International submits this briefing in advance of the examination of Belgium by the Committee on the Rights of Persons with Disabilities (the Committee) in August 2024.

The briefing highlights human rights concerns in care homes for older people during the Covid-19-pandemic, including older persons with disabilities (Articles 5, 10, 11, 14, 15 and 25 of the Convention on the Rights of Persons with Disabilities (the CRPD)); and barriers limiting people with disabilities' ability to live autonomous and independent lives, and to participate fully in an inclusive society on an equal basis with others (Articles 5, 8, 9, 19 and 20). The text also gives a more general overview of concerns about Belgium's human rights architecture (Articles 1 and 33).

This submission only highlights specific issues and challenges faced by persons with disabilities in Belgium, which Amnesty International has been monitoring through its work. It does not constitute an exhaustive analysis of the implementation of the CRPD and the human rights issues faced by people with disabilities in Belgium.

Some of the issues highlighted in this submission are of particular relevance to older people with disabilities. More people live longer, healthier lives. Old age does not equal impairment or disability. But old age increases the likelihood of developing certain chronic diseases, physical or cognitive impairments, which in combination with societal barriers can result in disabilities.¹ The likelihood of having a disability increases with age. According to numbers by Eurostat, in 2022 in the EU, 52.2% of people over 65 had a disability.²

2. RIGHTS OF OLDER PERSONS, INCLUDING THOSE WITH DISABILITIES, IN CARE HOMES (ARTICLES 5, 10, 11, 14, 15 AND 25)

Amnesty International's report titled "Care homes in the 'dead angle'. Human rights of older people during the Covid-19 pandemic in Belgium" concerns the situation in care homes for older people during the first phase of the Covid-19 pandemic, from March to October 2020.³ Amnesty International documented violations of the rights to life, health, and non-discrimination and restrictions of freedom of movement in long term care facilities for older people, including older persons with disabilities. This submission highlights specific issues from this report.

LACK OF ADEQUATE PREPAREDNESS AND SUPPORT IN CARE HOMES DURING MARCH-OCTOBER 2020

Amnesty International found that although Belgian authorities were aware of the specific risks of Covid-19 for older people, including older persons with disabilities, and more specifically for care home residents, they failed to take swift and sufficient measures to protect care home residents and staff. As highlighted in the report, care homes where older people lived – many of whom had

¹ See also UN Special Rapporteur on the Rights of Persons with Disabilities, *Report to the General Assembly, Special Rapporteur on the rights of persons with disabilities*, 17 July 2019, UN Doc. A/74/186.

² Council of the European Union, "Disability in the EU: facts and figures", Infographics, <https://www.consilium.europa.eu/en/infographics/disability-eu-facts-figures/#0> (accessed on 9 July 2024)

³ The report is available in Dutch and in French: Amnesty International, *Woonzorgcentra in de dode hoek. Mensenrechten van ouderen tijdens de Covid-19-pandemie in België*, November 2020, https://www.amnesty-international.be/sites/default/files/download-files/2024-02/amnesty_international.woonzorgcentra_in_de_dode_hoek.pdf (in Dutch) ; Amnesty International, *Les maisons de repos dans l'angle mort. Les droits humains des personnes âgées pendant la pandémie de Covid-19 en Belgique*, November 2020, https://www.amnesty.be/IMG/pdf/20201116_rapport_belgique_mr_mrs.pdf (in French)

disabilities – had access to far less Personal Protective Equipment (PPE) and resources than hospitals. Although safeguarding hospital capacity was a legitimate policy objective, care homes and care home residents were not sufficiently prioritized, while care homes had to take on additional care tasks which would usually take place in hospitals at any other time. This, together with restrictions on care home residents’ access to hospitals (see below), a failure to ensure adequate testing, structural staff shortages, and insufficient training for care home staff to deal with infectious disease management, negatively affected the rights to life and health for people in care homes, and contributed to an increase of the number of deaths in care homes that could have been avoided.⁴

The Amnesty International report also highlighted reports of ill care home residents not being admitted to hospital when this was necessary. A care home director told Amnesty International that the local hospital had let him know that care home residents would not be admitted in order to keep beds available. According to some care home sector representatives, many care home residents who should have been admitted to hospital were not. Another sector representative, however, told Amnesty International that refusal of admission to hospital was very exceptional. Doctors Without Borders reported that the criteria for hospital admission or refusal were often unclear, and some residents in serious condition who wanted to be referred to hospital were not, whereas others were.⁵

Care homes in Belgium are structurally understaffed.⁶ At the start of the Covid-19 pandemic, this was exacerbated because many care home staff members were on sick leave or self-isolating. This increased the pressure on care home staff even more. In April 2020, some care homes had to urgently call on Doctors Without Borders, the army or volunteers. At the same time, care homes were subjected to strict visiting restrictions (see below). Several family members of older persons, including older persons with disabilities, told Amnesty International that, when visits resumed, they discovered their family members had not been bathed, received the wrong medications, or had untreated wounds. They explained that staff did not have enough time to take care of residents, and no one noticed when things went wrong, also because of suspension of routine inspections and visiting restrictions.

For example, a 79-year-old woman told Amnesty International how she kept in touch with her 85-year-old husband via WhatsApp, with the help of a social worker. She noticed how he looked unshaven and unkempt, and how he was losing weight. When she shared her concerns with care home staff, a care worker said: “We cannot help everyone eat every day.” When she offered to come by to feed him, she was refused visits. A man told Amnesty International how his 83-year-old mother-in-law passed away after a short stay in a care home. When visits resumed, he noticed she was in a very bad state. A doctor said she was dehydrated and had not received water for a week and a half. A care worker told the man her colleague was sick, and she had to take care of 20 people by herself. Another care worker told Amnesty International some members of her team were ashamed because they could not take proper care of the residents. Because of high numbers of staff on sick leave, it had even become difficult to let residents drink on a regular basis. As a result, Amnesty International is concerned that older persons, including older persons with disabilities, did not always receive the care they needed in care homes during the restrictions imposed during the Covid-19 pandemic. This appeared to be linked to structural staff shortages, exacerbated by the pandemic, and to gaps in effective oversight of how care homes function by the government.

⁴ Amnesty International, *Woonzorgcentra in de dode hoek* (previously cited), p. 40.

⁵ It is likely that this was because governments, scientific and ethical bodies were outspoken about the need to safeguard hospital capacity – which is an understandable focus of pandemic response – without sufficiently stressing, during the first months of the pandemic, that hospital admission should always be possible when it is in the interest of a patient who expresses the wish to be admitted to hospital. At the same time, there was a lot of public debate about triage protocols and ethical principles. As a consequence, care home managers, doctors and staff may have felt pressure to avoid hospital admission of older people. Amnesty International, *Woonzorgcentra in de dode hoek* (previously cited), pp. 25-28.

⁶ Amnesty International, *Woonzorgcentra in de dode hoek* (previously cited), pp. 18-19.

VISITING RESTRICTIONS DURING THE FIRST LOCKDOWN PERIOD AND THE MONTHS FOLLOWING

From May 2020 until April 2021 (Brussels and Wallonia) or May 2021 (Flanders), in addition to the general “lockdown measures”, visits to care homes by family and friends of residents were suspended. In the months following this first lockdown period, government guidelines left a lot of room for interpretation by care homes. This resulted in a wide array of visiting policies. Some care home directors told Amnesty International they asked visitors to take the necessary precautions. Others limited the number of people residents were allowed to be in close contact with or did not allow close contact at all. Although the directives allowed for family visits in cases of palliative care, Amnesty International has been made aware of cases in which this was not possible. Some visiting restrictions limited or hindered meaningful contact between residents and their family or friends, and precluded them from leaving the care home, even for a walk in a park or in other isolated areas. All family members and care home staff Amnesty International spoke with expressed concern about the impact of residents’ long term social isolation on their physical and mental health and well-being. Amnesty International’s report explained how people in care homes were not always included in the development of these policies, nor in the other (often limiting) measures taken by care homes, impacting their right to freedom of movement and individual autonomy and independence, including the freedom to make their own choices.

When visits were prohibited, many care homes tried to organize alternative means of communication between residents and their families, like phone- or videocalls, window visits and plexiglass boxes. Amnesty International’s research illustrates how these alternative means of communication were particularly difficult for people in care homes with dementia or people with auditory problems.

USE OF RESTRAINTS

Amnesty International has also documented the use of restraints, which may constitute torture or other ill-treatment.⁷ While some care homes allowed people with dementia to move without further restrictions within the dementia ward, others chose to isolate people in their rooms,⁸ sometimes with the doors locked.⁹ Several family members told Amnesty International about the use of mechanical¹⁰ or chemical¹¹ restraints. Sometimes care staff asked the resident and/or family members for consent.¹² However this was not always the case¹³, and some family members told Amnesty International they consented to the use of restraints without being fully informed. The Flemish Ombudsman Service also reported on an increased use of restraints during the Covid-19 pandemic, including testimonies of how a person was bound to a wheelchair all day. The Flemish Ombudsman Service also heard from professional witnesses about how people with anxiety or disorientation were sedated.¹⁴

The Independent Expert on the human rights of older people has expressed concern that “[t]he overuse of medication to control the behaviour of older persons with dementia without a proper

⁷ See also Committee on the Rights of Persons with Disabilities, *Guidelines on the right to liberty and security of persons with disabilities*, September 2015, para. 12, <https://www.ohchr.org/Documents/HRBodies/CRPD/14thsession/GuidelinesOnArticle14.doc> ; Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment, *Report to the Human Rights Council*, 1 February 2013, UN Doc. A/HRC/22/53, para. 63.

⁸ This was confirmed by 9 of the family members interviewed by Amnesty International (Amnesty International, *Woonzorgcentra in de dode hoek* (previously cited), p47); see also the report of the Flemish Ombudsman Service (Vlaamse Ombudsdienst), *Stemmen uit de stilte. Getuigenissenboek residentiële ouderenzorg* [Flemish Ombudsman Service “Voices from the silence. Book of testimonies from residential care for older people”], 3 July 2020, <https://www.vlaanderen.be/publicaties/stemmen-uit-de-stilte-getuigenissenboek-residentiele-ouderenzorg> (in Dutch), p. 21.

⁹ This was confirmed by 4 of the family members interviewed by Amnesty International. Amnesty International, *Woonzorgcentra in de dode hoek* (previously cited), p. 50.

¹⁰ Confirmed by 3 of the family members interviewed by Amnesty International (same source, p. 50).

¹¹ This was confirmed by 3 of the family members interviewed by Amnesty International (same source, p. 50).

¹² This was confirmed by 3 of the family members interviewed by Amnesty International (same source, p. 51).

¹³ This was confirmed by 3 of the family members interviewed by Amnesty International (same source, p. 51).

¹⁴ Vlaamse Ombudsdienst, *Stemmen uit de stilte. Getuigenissenboek residentiële ouderenzorg* (previously cited), p.18.

therapeutic purpose remains a widespread and abusive practice that may lead to health complications and even death by overdose”, and that during the Covid-19-pandemic “the use of psychotropic medication has dramatically increased in a number of residential care establishments, justified by the prolonged social isolation and feelings of loneliness experienced by older residents during lockdowns.”¹⁵

THE IMPACT OF THE COVID-PANDEMIC ON PEOPLE WITH DISABILITIES

People with disabilities, disability rights organizations and Unia – Belgium’s inter-federal equality body and the independent mechanism designated for the protection, promotion and monitoring of the CRPD – have reported on the impact of the Covid-19 pandemic on the human rights of people with disabilities.¹⁶ At the start of the first lockdown, people with disabilities living in institutions were faced with the difficult decision to either stay in the collective facility, subjected to strict lockdown measures for an unknown period of time, or to go back home to live with their families, where they and their family caretakers were often not receiving the support services they needed due to lockdown measures and closure of services.¹⁷

People with disabilities and their representative organizations have raised concerns about lockdown measures having a negative impact on the social and emotional lives of people with disabilities, as well as on their mental and physical health, and about the inconsistent application of lockdown guidelines and differing exit strategies applied by institutions, with some institutions maintaining restrictions longer than others.¹⁸ People with disabilities reported how services became unavailable or more

¹⁵ Independent Expert on the Enjoyment of all Human Rights by Older Persons, *Report to the Human Rights Council - Older persons deprived of liberty*, 13 September 2022, UN Doc. A/HRC/51/27, para. 57.

¹⁶ Early on, several organizations and representative bodies alerted the authorities to the specific impact of the pandemic response on people with disabilities, and issued recommendations: e.g. Altéo, Inclusion asbl, Association Socialiste de la Personne Handicapée, e.a., *Quand les personnes en situation de handicap pourront-elles sortir des institutions (ou y revenir) ?*, 6 May 2020, <https://www.inclusion-asbl.be/wp-content/uploads/2020/05/Communiqu%C3%A9-6-mai-2020-Quand-pourrons-nous-sortir-des-institutions.pdf> ; GAMP, *Crise COVID-19 et handicap de grande dépendance. Note aux gouvernements*, 6 April 2020, <https://gamp.be/2020/04/07/crise-covid-19-et-handicap-de-grande-dependance/>; GRIP vzw, “Covid-beleid en GRIP”, 28 April 2020, <https://www.gripvzw.be/nl/artikel/393/covid-beleid-en-grip/>; GRIP vzw, “10 punten na 10 weken”, 25 May 2020, <https://www.gripvzw.be/nl/artikel/403/10-punten-na-10-weken>; Nationale Hoge Raad voor Personen met een Handicap (NHRPH), *Advies 2020/08 – COVID-19: Patiëntselectie*, 27 March 2020, <https://ph.belgium.be/nl/adviezen/advies-2020-08.html>; NHRPH, *Advies 2020/09: Maatregelen COVID-19-Crisis*, 30 March 2020, <https://ph.belgium.be/nl/adviezen/advies-2020-09.html>; NHRPH, *Advies 2020/13 – Exitstrategie na COVID-19-lockdown*, 25 May 2020, <https://ph.belgium.be/nl/adviezen/advies-2020-13.html>; Noozo – Vlaamse Adviesraad handicap, *Sneladvies Covid-19*, 30 March 2020, <https://www.noozo.be/nl/adviezen/sneladvies-covid-19> Several organizations and academic researchers published extensive reports about the impact of the pandemic on people with disabilities and their human rights, e.g.: Handicap & Santé, *Répercussions de la crise sanitaire sur le secteur du handicap*, 22 May 2023, <http://www.handicap-et-sante.be/page-rapport-covid/> ; Unia, *Covid en mensenrechten: impact op personen met een handicap en hun naasten*, July 2020, <https://www.unia.be/nl/publicaties-statistieken/publicaties/impact-van-de-coronacrisis-op-personen-met-een-handicap-2020> ; Unia, *Covid: een test voor de mensenrechten*, 2020 <https://www.unia.be/nl/publicaties-statistieken/publicaties/covid-19-eeen-test-voor-de-mensenrechten-2020> and Unia, *Covid-19: een test voor de mensenrechten (tweede rapport)*, 2021, <https://www.unia.be/nl/publicaties-statistieken/publicaties/covid-19-eeen-test-voor-de-mensenrechten-2021> ; Hachez, I. and Triaille, L., *Covid et handicaps au prisme des institutions et de la désinstitutionalisation*, Revue Droits fondamentaux et pauvreté 2021/4, https://droitpauvrete.be/wp-content/uploads/2022/12/0140-0180-Covid-et-handicaps-au-prisme-des-institutions-et-de-la-desinstitutionalisation-I.-Hachez_.pdf See also: Associations Solidaris Liège, *Podcasts handicap et confinement*, 3 December 2020, <https://associations-solidaris-liege.be/accueil/esenca/03-12-podcasts-handicap-et-confinement/>

¹⁷ Handicap & Santé, *Répercussions de la crise sanitaire sur le secteur du handicap* (previously cited), p. 19; Unia, *Covid en mensenrechten: impact op personen met een handicap en hun naasten* (previously cited), pp. 35-36 and pp. 38-40; Vlaams Parlement, *Verslag van de hoorzitting over de evaluatie en verdere uitvoering van het Vlaamse coronabeleid in het beleidsdomein Welzijn, Volksgezondheid en Gezin: personen met een handicap*, 474 (2020-2021) nr. 1, pp. 6, 15, <https://www.vlaamsparlement.be/nl/parlementaire-documenten/parlementaire-initiatieven/1428296>

¹⁸ Handicap & Santé, *Répercussions de la crise sanitaire sur le secteur du handicap* (previously cited), p. 15, Hachez, I. and Triaille, L., *Covid et handicaps au prisme des institutions et de la désinstitutionalisation* (previously cited) ; Unia, *Covid: een test voor de mensenrechten*, 2020 (previously cited), p. 24; Unia, *Covid-19: een test voor de mensenrechten (tweede rapport)*, 2021 (previously cited), p. 18.

difficult to access, and how general sanitary measures were compounding already existing barriers.¹⁹ There were also reports and concerns about disability possibly being a factor negatively impacting people's access to medical care. There were concerns about the application of "triage" guidelines to people with disabilities, and reports of people with disabilities being refused reasonable accommodations in hospitals.²⁰

Yet, the impact of the Covid-pandemic on the human rights of people with disabilities did not receive much attention in the media and in policy measures.²¹ The impact of the Covid-19-pandemic in institutional settings on people's human rights also added more urgency to the debate on deinstitutionalization.²²

RECOMMENDATIONS TO THE BELGIAN AUTHORITIES

- Ensure that future pandemic preparedness and crisis response efforts and plans take particular care to identify, include and adapt to the specific needs and experiences of people and groups who are marginalized and may face particular risks, or who risk of being excluded in the response, including persons with disabilities and older persons. This includes ensuring that people with disabilities and their representative organizations are consulted and involved in the development and implementation of response measures and plans.
- Ensure people with disabilities and older people have access to the highest standard of health care available on an equal basis with others, and free from discrimination, including in times of crisis.
- Review policy and practice on the use of restraints, isolation and other non-consensual practices on persons with intellectual or psycho-social disabilities, to bring them in line with international human rights law standards.
- Review the institutional model, develop government wide strategies to facilitate deinstitutionalization, and invest in a broad range of home and community-based services enabling people with disabilities to live independently in the community.

¹⁹ Unia, Covid en mensenrechten: impact op personen met een handicap en hun naasten (previously cited), pp. 20-21; Handicap & Santé, Répercussions de la crise sanitaire sur le secteur du handicap (previously cited), pp. 38-47; Vlaams Parlement, Verslag van de hoorzitting over de evaluatie en verdere uitvoering van het Vlaamse coronabeleid in het beleidsdomein Welzijn, Volksgezondheid en Gezin: personen met een handicap, 474 (2020-2021) nr. 1, 7 October 2020, <https://www.vlaamsparlement.be/nl/parlementaire-documenten/gedachtewisselingen-hoorzittingen/1420200>

²⁰ Unia, Covid-19: een test voor de mensenrechten (tweede rapport), November 2021, (previously cited), p. 16; Unia, "Personen met een handicap en ouderen hebben recht op zorg", 10 April 2020, <https://www.unia.be/nl/artikels/personen-met-een-handicap-en-ouderen-hebben-recht-op-zorg> ; Inclusion asbl, ARAPH asbl, Handicap & Santé asbl e.a., "COVID-19. À lui seul, le handicap ne constitue jamais un critère suffisant pour établir la priorité de l'accès aux soins", 7 April 2020, https://www.inclusion-asbl.be/wp-content/uploads/2020/04/Communiqu%C3%A9-Covid-19_VF_ok.pdf ; Nationale Hoge Raad Personen met een Handicap, Advies 2020/08 – COVID-19: Patiëntenselectie, 27 March 2020, <https://ph.belgium.be/nl/adviezen/advies-2020-08.html> ; GRIP vzw, "COVID-19: personen met een handicap en ethische afwegingen bij triage", 31 March 2020, <https://www.gripvzw.be/nl/artikel/387/covid-19-personen-met-een-handicap-en-ethische-afwegingen-bij-triage>

²¹ Handicap & Santé, Répercussions de la crise sanitaire sur le secteur du handicap (previously cited), pp. 17-18; Hachez, I. and Triaille, L., Covid et handicaps au prisme des institutions et de la désinstitutionalisation (previously cited).

²² See, for example: Unia, Covid: een test voor de mensenrechten, 2021 (previously cited), p. 50; Hachez, I. and Triaille, L., Covid et handicaps au prisme des institutions et de la désinstitutionalisation (previously cited); Hachez, I., Marquis, N., (eds.), Repenser l'institution et la désinstitutionnalisation à partir du handicap: Actes de la Conférence Alter 2022, 25 March 2024, <https://books.openedition.org/pusl/29076> ; see also Knapp, M., Cyhlarova, E., Comas-Herrera, A., Lorenz-Dant, K., Crystallising the case for deinstitutionalisation: COVID-19 and the experiences of persons with disabilities, Care Policy and Evaluation Centre at LSE, May 2021, <https://www.lse.ac.uk/cpec/assets/documents/CPEC-Covid-Desinstitutionalisation.pdf>

3. BARRIERS TO FULL AND EQUAL PARTICIPATION IN AN INCLUSIVE SOCIETY (ARTICLES 5, 8, 9, 19 AND 20)

Amnesty International is concerned about the many barriers people with disabilities in Belgium face to exercising their right to participate fully and on an equal basis in an inclusive society. These concerns are further underpinned by the findings of disability rights organizations, representative bodies of people with disabilities, and human rights oversight bodies.

BARRIERS TO FULL AND EQUAL PARTICIPATION IN AN INCLUSIVE SOCIETY

Government systems and services which should enable people with disabilities to choose how, where and with whom to live in the community, are not adequate. In the Flemish region, personal budget schemes (“persoonsvolgende budgetten” or PVB) are an important tool for people with disabilities to live more autonomous lives. People with disabilities can use these annual personalized budgets to pay for support services of their choice, for example in their own networks, by personal assistants or professional caregivers. However, over 17,000 adults are on waiting lists for their budget to be allocated or revised,²³ and many people have received less than the budget that was originally allocated to them on the basis of an assessment of their disability needs.²⁴

In Wallonia, though a personal assistance budget (BAP) exists, it has a very limited scope. At the end of 2022, only 513 people received a BAP.²⁵ In Brussels, the BAP system is a limited pilot project.

People with disabilities and their organizations advocate for government investment in a broad, flexible, accessible range of services and support for people with disabilities, and for community services and facilities to be available on an equal basis. They also point to the need to remove barriers caused by attitudes on disability, and barriers to an adequate standard of living, the accessibility of public buildings,²⁶ (social) housing,²⁷ public transportation,²⁸ access to information, including digital

²³ On 31 December 2023, a total of 17.648 persons were registered in the different priority groups: VAPH, *Jaarverslag 2023 – Cijfers - Prioriteitengroepen*, <https://extranet.vaph.be/jaarverslag/2023/pages/25/> (accessed 9 July 2024).

²⁴ People with disabilities and civil society organizations challenged policy decisions that led to this outcome. On 8 January 2024, the Council of State declared the “actualization” of budget categories, which reduced the budgets of thousands of people, violated the standstill principle and was unconstitutional. The Flemish government took action to comply with this judgment. However, there is still no perspective for people who on priority list 2 who received “partial budgets”. For further information see: GRIP vzw, “Raad van State draait de actualisering terug: ‘Budgetverminderingen ongrondwettig’”, 8 January 2024, <https://www.gripvzw.be/nl/artikel/683/raad-van-state-budgetverminderingen-door-actualisering-zijn-ongrondwettig>. VAPH, “Concretisering arrest Raad van State over persoonsvolgende budgetten voor personen met een handicap”, 9 Februari 2024, <https://www.vaph.be/concretisering-arrest-raad-van-state-over-persoonsvolgende-budgetten-voor-personen-met-een-handicap>; GRIP, “GRIP blijft aandringen dat deze regering iedereen in het experiment volledig budget geeft”, 24 March 2024, <https://www.gripvzw.be/nl/artikel/700/grip-blijft-aandringen-dat-deze-regering-iedereen-in-het-experiment-volledig-budget-geeft>; Onafhankelijk Leven, “Deelbudgetten moeten onmiddellijk vervolledigd worden”, 27 March 2024, <https://www.onafhankelijkleven.be/nieuws/deelbudgetten-moeten-onmiddellijk-vervolledigd-worden>. See also: Vlaams Mensenrechteninstituut, *Advies over het persoonsvolgend budget*, December 2023, <https://www.vlaamsmensenrechteninstituut.be/publicaties/advies-persoonsvolgend-budget>

²⁵ Parlement de Wallonie, “Question écrite du 10/11/2023 de François Desquesnes à Ministre Morreale”, 10-27 November 2023, <https://www.parlement-wallonie.be/pwpages?p=interp-questions-voir&type=28&iddoc=124742>

²⁶ See e.g. NHRPH, *Advies 2015/34 – Advies Regie der Gebouwen*, 23 April 2015, <https://ph.belgium.be/nl/adviezen/advies-2015-34.html>; Noozo, *Advies Stedenbouwkundige Verordening Toegankelijkheid*, October 2020, <https://www.noozo.be/nl/adviezen/planmatig-werk-maken-van-een-betere-toegankelijkheid>; Vlaamse Ouderenraad, *Toegankelijkheid van publieke gebouwen: het rapport*, November 2019, <https://www.vlaamse-ouderenraad.be/onderzoek/mobiliteit/toegankelijkheid-van-publieke-gebouwen-het-rapport>

²⁷ See e.g. Hadad, N., Ruts, K., De Decker, P., “Het effect van de wooncrisis op mensen met een handicap wordt vaak vergeten”, 6 June 2023, <https://sociaal.net/opinie/het-effect-van-wooncrisis-op-mensen-met-een-handicap/>

²⁸ See e.g. CAWaB, «Des transports publics pour tous? Une évaluation des arrêts de la STIB à Bruxelles», <https://cawab.be/Le-projet-verifie-les-arrets-de-bus-et-de-tram>; CAWaB, «Accessibilité des transports en commun en Wallonie: lettre ouverte pour une action immédiate», <https://cawab.be/lettre-ouverte-accessibilite-tec>; Nationale Hoge Raad Personen met een Handicap, *Advies 2024/4 Openingstijden van de NMBS-loketten*, 19 March 2024, <https://ph.belgium.be/nl/nieuws/advies-2024-04-openingstijden-van-de-nmbs-loketten.html>; Onafhankelijk Leven, Open brief: is er plaats voor kwetsbare reizigers in de nieuwe dienstverlening van De Lijn?, 28 March 2024,

exclusion, inclusive education and the labour market, all of which hinder the full inclusion and participation of people with disabilities in society.²⁹

BARRIERS FOR OLDER PEOPLE WITH DISABILITIES

In the sociocultural partnership project *Grijs aan Zet*, conducted by Avansa Mid- en Zuidwest, Bataljong and Amnesty International Belgium (Flemish), several older people, including older people with disabilities, shared their stories about the barriers they face to fully enjoy their human rights. They spoke, among many issues, about barriers to choose how, where and with whom to live; a lack of accessible transportation options; digital exclusion; feelings of loneliness; deprivation of legal capacity and guardianship; lack of support for informal caregivers; lack of participation and inclusion in society.³⁰

“I now have my own, beautiful flat, and I can count on the care home staff for my daily care, so that is truly unique. (...) I did have to give up my freedom. I used to get up at 5 AM, but now the earliest I can get assistance to get out of bed is at 7.30 AM. (...) In the mornings I try to limit [drinking]. This way I avoid having to use the bathroom at noon. Because, when they are busy handing out meals, they cannot help me to use the bathroom, of course I understand that. And as soon as I notice I have to use the bathroom, I have to notify them as soon as possible, because we only have one hoist per floor, so it can take a while before someone gets here.” – ‘Marie’, 67, has used a wheelchair her whole life. After a fall at 65, she saw no other option but to move from her own flat, where she received services at home, to a flat in a care home for older people.³¹

“I have lived here for years without ever seeing anyone, other than my caretaker and my nurse. (...) [the monthly lunches in the village restaurant] are amazing. I can’t move independently so I always need someone to accompany me. That doesn’t always work out. And it’s not just me. I know many older people who would like to come to the lunches, but they can’t find transportation.” – Sytske, 70, has limited mobility due to a muscular disease. She lives alone in her apartment.³²

AGE LIMITS EXCLUDING OLDER PEOPLE WITH DISABILITIES FROM INTEGRATION AIDS

Age limits still exclude people who do not acquire or request recognition of their disability before the age of 65 from financial assistance for integration aids, such as aids facilitating communication, or adaptation of cars or homes. The Special Rapporteur on the Rights of People with Disabilities considers such age limits “problematic, as disability programmes tend to promote more social inclusion and participation than older persons’ programmes, which rely heavily on the medical model.”³³ Unia, the National and Flemish representative bodies for people with disabilities and the Flemish Council for older people have all called for an end to these discriminatory age limits.³⁴

<https://www.onafhankelijkleven.be/nieuws/open-brief-is-er-plaats-voor-kwetsbare-reizigers-in-de-nieuwe-dienstverlening-van-de-lijn>

²⁹ See e.g. Absoluut vzw, Dito vzw, Kando e.a., “Dakanwel! Oproep tot een inclusieve samenleving”, www.dakanwel.be (accessed 9 July 2024); Altéo, *Priorités d’Altéo pour une société inclusive. Elections régionales et fédérales du 9 juin 2024*, <https://www.alteoasbl.be/memorandum-2024.htm?lng=fr>; CAWaB, *Les trois priorités du CAWaB pour une société accessible*, <https://cawab.be/Les-prochains-gouvernements-viseront-ils-enfin-une-societe-reellement>; GRIP vzw, *Verkiezingsdossier 2024*, July 2023, <https://www.gripvzw.be/nl/artikel/641/hoe-kan-de-volgende-regering-aan-inclusie-werken>; Inclusion asbl, *Mémorandum 2024-2029. Non à la ségrégation, oui à l’inclusion!*, <https://www.inclusion-asbl.be/memorandums/memorandum-2024-2029-non-a-la-segregation-oui-a-linclusion/>; Onafhankelijk Leven vzw, *Verkiezingsmemorandum 2024, Bouwstenen voor een inclusieve samenleving*, https://www.onafhankelijkleven-be.cloud.glue.be/volumes/general/Verkiezingsmemorandum-2024_finaal2024.pdf; Unia, *Bevraging van personen met een handicap over de naleving van hun rechten*, December 2020, <https://www.unia.be/nl/publicaties-statistieken/publicaties/bevraging-van-personen-met-een-handicap-over-de-naleving-van-hun-rechten-2020>

³⁰ A selection of stories were published, along with expert commentary: De Jaegere, A., Vanhee, M. and Van Leuven, N. (red.), *Grijs aan Zet* [Grey at Play], Maklu, 2023.

³¹ “Marie – 67 jaar”, De Jaegere, A., Vanhee, M., Van Leuven, N. (red.), *Grijs aan Zet*, (previously cited), pp. 110-111.

³² “Sytske – 70 jaar”, De Jaegere, A., Vanhee, M., Van Leuven, N. (red.), *Grijs aan Zet*, (previously cited).p. 36.

³³ UN Doc. A/74/186, para. 25.

³⁴ Noozo, *Advies hulpmiddelen voor plus 65-jarigen*, 8 December 2021, <https://www.noozo.be/nl/adviezen/advies-hulpmiddelen-voor-plus-65-jarigen>; Unia, *Individuele integratiehulp voor personen met een handicap: een*

RECOMMENDATIONS TO THE BELGIAN AUTHORITIES

- Implement policies to ensure that persons with disabilities can access the full range of their rights and remove barriers hindering the full inclusion and participation of people with disabilities in society. These policies should be developed in consultation with persons with disabilities and their representative organizations and should be adequately funded.
- Take measures to allocate sufficient funds to support the services people with disabilities need to live independently in the community, including a full range of in-home and other community services. Involve people with disabilities and their representative organizations in the development of these policies.
- Amend provisions excluding or restricting the access of older persons with disabilities to individual integration aids on the basis of age.

4. HUMAN RIGHTS OVERSIGHT (ARTICLES 1 AND 33)

This Committee,³⁵ other treaty bodies and civil society organizations have repeatedly expressed concern at the absence of a national human rights institution in full compliance with the Paris Principles. Similarly, Belgium has yet to ratify the Optional Protocol to the Convention against Torture, which the state signed in October 2005 and requires the establishment of a national preventive mechanism³⁶ that can monitor all places where people are deprived of their liberty.

Since the last review in 2014, there have been important changes to the human rights monitoring mechanisms, in particular at the federal level and at the Flemish regional level.

FEDERAL LEVEL

Amnesty International cautiously welcomed the creation of the Federal Institute for Human Rights (FIRM-IFDH) in 2019, which became operational in 2021.³⁷ The FIRM-IFDH is not fully compliant with the Paris Principles as it has not been given “as broad a mandate as possible.”³⁸ The institution’s mandate is restricted to cover “fundamental rights that fall under federal competency” and to issues that are not “dealt with by sectoral institutions for the promotion and the protection of human rights”.³⁹ Amnesty International also regrets that the FIRM-IFDH has not been mandated to establish

discriminerend systeem, 11 October 2021, https://www.unia.be/files/Documenten/Aanbevelingen-advies/2021_290_Aanbeveling_individuele_integratiehulp_voor_personen_met_een_handicap.pdf ; Vlaamse Ouderenraad, *Een leeftijdsonafhankelijk en efficiënt hulpmiddelenbeleid*, 28 March 2012, <https://www.vlaamse-ouderenraad.be/sites/default/files/downloads/2018-05/Standpunt%202012-1%20Een%20leeftijdsonafhankelijk%20en%20efficiënt%20hulpmiddelenbeleid.pdf>

³⁵ Committee on the Rights of Persons with Disabilities, *Concluding observations on the initial report of Belgium*, 28 October 2014, CRPD/C/BEL/CO/1, para. 48-49.

³⁶ “one or several visiting bodies for the prevention of torture and other cruel, inhuman or degrading treatment or punishment”, Article 3 OPCAT.

³⁷ Belgium – Federal, *Loi de 12 mai 2019 portant création d'un Institut fédéral pour la protection et la promotion des droits humains* [Law of 12 May 2019 on the creation of a federal institute for the protection and the promotion of human rights], <https://www.ejustice.just.fgov.be/eli/loi/2019/05/12/2019012931/justel>. For further information on Belgium’s Federal Human Rights Institute, see Amnesty International, *Belgium: Submission to the United Nations Human Rights Committee* (Index 14/1041/2019), 13 September 2019, <https://www.amnesty.org/en/documents/eur14/1041/2019/en/> and Amnesty International, *Belgium: Submission to the UN Committee Against Torture, 71st Session, 12-30 July 2021* (Index 14/4290/2021), 15 June 2021, <https://www.amnesty.org/en/documents/eur14/4290/2021/en/>

³⁸ Point 2 of the Principles relating to the Status of National Institutions (The Paris Principles). Adopted by General Assembly resolution 48/134 of 20 December 1993, <https://www.ohchr.org/en/professionalinterest/pages/statusofnationalinstitutions.aspx>

³⁹ Belgium – Federal, Law of 12 May 2019 (previously cited), Article 4 §1.

an individual complaints procedure. The FIRM-IFDH was accredited with B-status by the Global Alliance of National Human Rights Institutions (GANHRI) in 2023.⁴⁰

With the law of 21 April 2024, a federal preventive mechanism against torture and other ill-treatment was established as an autonomous body within the FIRM-IFDH. The mechanism has a coordinating and residual mandate (meaning it is charged with the tasks of a Preventive Mechanism “for which no specialised body is competent”⁴¹) and must work in collaboration with other (again, federal) ‘specialised’ institutions. The new mechanism is an important step towards the establishment of a national preventive mechanism as stipulated in OPCAT.⁴²

However, due to the intricacies of the Belgian state structure, several more legislative steps will be needed to ensure coverage of all places where people are deprived of their liberty and access to those locations and people. These steps include a change to the Cooperation Agreement that established Unia; the adoption of new cooperation agreements with the federated entities (probably⁴³ excluding Flanders) to ‘inter-federalise’ the scope of the mechanism and a *sui generis* solution for the Flemish competencies which will likely require changes to the decree of the Flemish Human Rights Institute and a form of collaboration between the Flemish Human Rights Institute and FIRM-IFDH.

Without these steps, ratification of OPCAT remains unlikely and the work of the preventive mechanism would be limited to federal competencies and may thus exclude for instance visits to and recommendations about children deprived of their liberty and people with dementia in closed dementia wards.

FLEMISH LEVEL

The Flemish government’s decision in 2021 to withdraw from Unia, Belgium’s inter-federal equality body that is also the independent mechanism designated to promote, protect and monitor the implementation of the CRPD, was widely criticized by civil society organizations,⁴⁴ including due to

The law does not specify the intended institutions nor which rights would thus fall outside of the mandate of the FHRI. The preparatory works indicatively list: (1) the inter-federal equality body [Unia](#) (with B-status NHRI-accreditation); (2) the federal migration centre ([Myria](#)), (3) the national [Combat Poverty, Insecurity and Social Exclusion Service](#); (4) the federal [Institute for the Equality between Women and Men](#); (5) the (federal) Data Protection Entity (DPA); (6) the (inter-federal) [National Commission on the Rights of the Child](#); (7) the (federal) [Standing Intelligence Agencies Review Committee](#) (Committee I); (8) the (federal) [Central Monitoring Council for the Penitentiary System](#); (9) the Flemish Children’s Rights [Commissioner](#) and (10) General ‘[Délégue](#)’ for the rights of the child for French speaking Belgium, (11) Ombuds-services at [Federal](#), (12) [French Speaking Community](#) and Walloon region and (13) [German Speaking Community](#) level. Source: La Chambre, *Preparatory works to the Law of 12 May 2019* (DOC 543670/001), <http://www.dekamer.be/FLWB/PDF/54/3670/54K3670001.pdf>

⁴⁰ FIRM-IFDH, “FIRM-IFDH internationally recognized as a national human rights institution”, 5 March 2023, <https://federalinstitutehumanrights.be/en/news/firmifdh-internationally-recognized-as-a-national-human-rights-institution>. See also the SCA’s recommendations on the subject in: GANHRI. *Report and Recommendations of the Session of the Sub-Committee on Accreditation (SCA)*, February & March 2023, <https://ganhri.org/wp-content/uploads/2023/04/SCA-Report-First-Session-2023-EN.pdf>

⁴¹ Belgium – Federal, Law of 12 May 2019 (previously cited), (new) article 8/4 §3 1°.

⁴² For an overview of other legislative steps taken towards the ratification of the OPCAT, see: Amnesty International, *Belgium: Submission to the UN Committee Against Torture, 71st Session, 12-30 July 2021* (Index: 14/4290/2021), 15 June 2021, <https://www.amnesty.org/en/documents/eur14/4290/2021/en/>

⁴³ See below for changes in Flanders which make inter-federalisation to include Flemish competencies politically unlikely.

⁴⁴ For instance: De Standaard, “Een waakhond zonder tanden kan niet bijten”, 16 December 2021, https://www.standaard.be/cnt/dmf20211215_98150376; PAL NWS, “Middenveldorganisaties hekelen Vlaamse spoedexit uit Unia: “Opnieuw een punt uit 70-puntenplan gerealiseerd””, 6 July 2022, <https://palnws.be/2022/07/middenveldorganisaties-hekelen-vlaamse-spoedexit-uit-unia-opnieuw-een-punt-uit-70-puntenplan-gerealiseerd/>; Vlaamse Jeugdraad, Advies Vlaams Mensenrechteninstituut, 2 February 2022, <https://vlaamsejeugdraad.be/nl/adviezen/advies-vlaams-mensenrechteninstituut>; SERV-Commissie Diversiteit, Advies oprichtingsdecreet Vlaams Mensenrechteninstituut, 1 February 2022, <https://www.serv.be/diversiteit/publicatie/advies-oprichtingsdecreet-vlaams-mensenrechteninstituut>; NOOZO, Advies Vlaams Mensenrechteninstituut, 1 February 2022, <https://www.noozo.be/nl/adviezen/advies-vlaams-mensenrechteninstituut>; See also: LEVL, Middenveld geeft juridische mogelijkheden nieuw Vlaams Mensenrechteninstituut een dikke onvoldoende, <https://levl.be/press/middenveld-geeft-juridische-mogelijkheden-nieuw-vlaams-mensenrechteninstituut-eeen-dikke>

concerns over the effectiveness of oversight, the further fragmentation of human rights oversight mechanisms and the potential differences in protection against discrimination and other human rights violations.

Taking up all ‘Flemish’ tasks of Unia, including those in execution of article 33 of the CRPD, a Flemish Human Rights Institute was established which was given a general (as far as Flemish competencies are concerned) mandate to promote and protect human rights.⁴⁵

The creation of the Flemish Human Rights Institute undoubtedly includes opportunities and could strengthen protection in certain regards, for instance if the innovative complaint procedure is further strengthened and proves effective. However, the unilateral Flemish exit from Unia and the fragmentation of discrimination monitoring that it entails, causes risks that will require close attention in years to come, especially as monitoring is structured differently in the rest of the country.

HUMAN RIGHTS COST OF INEFFECTIVE OVERSIGHT

Belgium thus continues to fail to live up to its commitment to establish effective, independent human rights mechanisms that protect, promote and monitor the states’ obligations.

Sectoral and largely general human rights institutions now form a rich but very complex and fragmented tapestry of institutes with differing mandates, reporting lines, legal bases and varying levels of compliance to the principles relating to the status and functioning of national institutions for protection and promotion of human rights.

It is clear that a more effective form of oversight, would help to address some long-standing human rights concerns. Especially pertinent for this Committee, Amnesty International’s research and that of other organizations suggests that lack of effective oversight was an important factor in the failure to respect the human rights of older people, including older persons with disabilities, during the first phase of the Covid-19 pandemic. For instance, a preventive mechanism as foreseen in the OPCAT could have played a crucial role in preventing, monitoring and addressing the human rights impacts of lockdown measures in residential care homes, institutions for people with disabilities, psychiatric hospitals and other closed settings.

The (partial – excluding Flanders) inter-federalisation of the Federal Human Rights Institute is the next logical step on Belgium’s long road to a National Human Rights Institute that is fully in line with the Paris principles. This entails adopting cooperation agreements between the communities, regions and the federal level, thus enabling FIRM-IFDH to cover regional competencies – similar to Unia’s competency at present. Further strengthening of the mandate of FIRM-IFDH is also needed, in particular GANHRI’s recommendations with regard to the strengthening of the investigative powers.

The cooperation agreement establishing the ‘inter-federal’ Unia needs to be adapted to enable its integration into the preventive mechanism in line with the obligations from OPCAT that was established at federal level. This legislative opportunity should be seized to also strengthen Unia’s mandate and to expand the investigative power and to ensure resources are adequate.

RECOMMENDATIONS TO THE BELGIAN AUTHORITIES

- Reform the Federal Human Rights Institute so that Belgium has a national human rights institution that is fully compliant with the Paris Principles, including by ensuring that all human rights issues are within its mandate, including regional competencies and transversal issues.

[onvoldoende/](#) (accessed 9 July 2024); UNIA, “Personeel van Unia schrijft open brief: “Als experts inzake mensenrechten zijn we zeer bezorgd””, 14 March 2022, <https://www.dewereldmorgen.be/artikel/2022/03/14/het-personeel-van-unia-spreekt/>

⁴⁵ Belgium – Flemish Region, Decree of 28 October 2022 establishing a Flemish Human Rights Institute (*Decreet tot oprichting van een Vlaams Mensenrechteninstituut*), https://etaamb.openjustice.be/nl/decreet-van-28-oktober-2022_n2022042669.html

- Ensure the Federal Human Rights Institute is mandated to establish an individual complaint procedure and ensure that adequate funding and resources are provided to take up that role.
- Ensure cooperation and coherence between the Federal Human Rights Institute and sectoral and regional institutions, including the state's inter-federal equality body Unia and the Flemish Human Rights Institute.
- Ratify the Optional Protocol to the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, without further delays and without any reservations.
- Finalise as a matter of priority the establishment of a National Preventative Mechanism (or collaborating group of mechanisms) that can monitor all places where people are deprived of their liberty. The NPM should be in full conformity with the provisions of the Optional Protocol and with the Guidelines set out by the UN Subcommittee on the Prevention of Torture (SPT), including with regard to independence, capabilities, resources, access and powers.

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