Contribution of the Commission consultative des Droits de l’Homme

to the study on article 8 of the Convention on the Rights of Persons with Disabilities

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Human Rights Council resolution 37/22

*Reference: JS/VL/PD*

# Question n°1:

**Does your country have laws, policies, plans, strategies or guidelines at any level of government relating to raising awareness about persons with disabilities, in particular initiatives to:**

* **Foster respect for the rights and dignity of persons with disabilities;**
* **Combat stereotypes, prejudices and harmful practices relating to persons with disabilities; or**
* **Promote awareness of the contributions of persons with disabilities?**

*Answer CCDH:*

First, it is worth mentioning that Luxembourg has signed and ratified the Convention on the rights of persons with disabilities (CRPD) in 2007 and 2011 respectively. The Commission consultative des Droits de l’Homme (CCDH) and the Center for Equal Treatment (CET) are the national independent mechanisms following up on the implementation of the convention and promoting the rights of persons with disabilities. Contrary to the CCDH, the CET can also receive individual complaints. The Ombudsperson is the national independent mechanism for the protection and the defense of the rights of persons with disabilities against violations from a public entity. As such, it can act upon individual complaints or decide to act on its own initiative. However, neither one can represent individuals before the national courts. There is currently no institution or body which can both receive and act upon individual complaints before the courts. The ordinary judicial or administrative procedures are thus the only way for a person with disabilities to enforce his or her rights.

Luxembourg has published its [first national action plan](https://mfamigr.gouvernement.lu/dam-assets/le-minist%C3%A8re/attributions/personnes-handicap%C3%A9es/plan-d-action-du-gouvernement-luxembourgeois-en-faveur-des-personnes-handicapees.pdf) (NAP) (2013-2017) implementing the Convention on the rights of persons with disabilities (CRPD) in 2012, covering also Article 8 of the Convention. It has presented its first [periodic report](https://mfamigr.gouvernement.lu/dam-assets/le-minist%C3%A8re/attributions/personnes-handicap%C3%A9es/premier-rapport-mise-en-oeuvre-convention-des-nations-unies-droits-personnes-handicapees.pdf) on the implementation of the Convention in 2013, and its official report was presented in 2017.[[1]](#footnote-1) The Committee on the rights of persons with disabilities (the Committee) issued its final observations and recommendations in October 2017.

As a follow-up, the Ministry for family and integration organized a [discussion-session](https://mfamigr.gouvernement.lu/dam-assets/le-minist%C3%A8re/attributions/personnes-handicap%C3%A9es/protokoll-diskussionsrunde-4122017.pdf) with civil society and government representatives. The goal of this session was to look at the results of the first national action plan and to present the conclusions and recommendations of the Committee.

Currently, the Ministry for family and integration is leading the drafting process of a new action plan (2019-2024). Civil society, including persons with disabilities, were [involved and consulted](https://mfamigr.gouvernement.lu/dam-assets/le-minist%C3%A8re/attributions/personnes-handicap%C3%A9es/invitation-soiree-d-elaboration-de.pdf) during this process. Several (3) working sessions took place where the participants, divided into 8 working groups on different topics,[[2]](#footnote-2) could propose and discuss about the measures that should be included in the action plan. A final meeting took place in March 2019 during which a single (almost-final) chapter was presented to the public. Civil society, government representatives and persons with disabilities could comment and discuss on the NAP and other issues. However, it was criticized that only one chapter was being presented and that it was not possible to comment on the others. Whereas the Ministry for family and integration has the lead in the drafting process, each Ministry is responsible for its own area and thus needs to approve the measures proposed in the respective chapters of the draft. The final version is expected to be approved by the end of 2019. The feedback was generally positive and the Government was encouraged to maintain its inclusive approach. However, some doubts remain as to the final content of the NAP (there is a risk that the ministries remove some recommendations without any possibility for the civil society to comment), the implementation and the control mechanisms put in place to verify whether the measures are indeed being (correctly) put into practice. It was also recommended to further develop and include the participation of persons with disabilities.

The current/old action plan contains a chapter, which is specifically aiming at raising awareness about persons with disabilities:[[3]](#footnote-3)

* A 2010 campaign about the CRPD aimed at the written press and the TV was foreseen by the NAP. The idea is to show to the public how persons with disabilities have managed to find ways to live their lives autonomously. The main message is to show that persons with disabilities, just like any other citizen, contribute to society and can have an autonomous life – if the environment is adapted.
* Projects aimed at eradicating children’s fears of disabilities are being promoted in order to teach tolerance. Children should learn to respect differences and to acknowledge them as something positive. Inclusive sports activities should be promoted, mixing children with disabilities and children without disabilities.
* Persons with disabilities should be empowered – they need to be aware of their value, they need to believe in themselves and learn how to express their needs. Persons with disabilities must have the possibility, for instance, to participate in elections and must be sufficiently informed on this subject in order to make use of this crucial right. The news have to be accessible to everyone – the press has to be aware of the advantages of using a “*easy language*” and the news on TV have to be subtitled.
* A “competence center” on easy language or a center in charge of the promotion of easy communication should be created.
* All public websites are being restructured in order to become more homogeneous and, as far as possible, accessible to everyone. Documents must be available in easy language and the authors of these websites should have special training. Municipalities and private actors should be made aware of the possibilities of having more accessible websites.
* Sign language should be recognized as an individual and independent language.

As with every action plan, the biggest challenge is to make sure that it does not remain a catalogue of good intentions, but is also turned into practice.

Here are some examples of measures that have been put in place[[4]](#footnote-4) :

* A series of 5 booklets developed together with civil society actors
* Distribution of a calendar to 50.000 household on the inclusion of persons with disabilities in all aspects of life
* Public event “Dizaine du handicap” with information stands, activities, discussions, etc.
* Training for public officials (accessibility, diversity, communication and human rights)
* A publication/booklet on “[Design for all](https://mfamigr.gouvernement.lu/fr/support/recherche.gouvernement%2Bfr%2Bactualites%2Btoutes_actualites%2Bcommuniques%2B2017%2B01-janvier%2B20-design-for-all.html)”. It exists in German, French and in an accessible PDF format
* Competition/Campaign: “*On ne naît pas handicapé, on le devient*” ([We are not born disabled, we become disabled](https://mfamigr.gouvernement.lu/fr/campagnes/personnes-handicapees/on-ne-nait-pas-handicape-on-le-devient.html)). The winning videos of the competition were shown on the main TV station, in cinemas and are available on DVD.
* [Easy to read booklet](https://mfamigr.gouvernement.lu/fr/publications/brochure-livre/minist-famille-integration-grande-region/br-convention-personnes-handicapees-facile-a-lire.html) on the CRPD
* Pilot-project “Hallo Du” aimed at combating stereotypes and fear at primary school level
* The CET, the CCDH and Info-Handicap have organized “empowerment-Meetings. Some ministries have participated in these meetings to discuss with persons with disabilities.
* In 2017, +- 821 persons with disabilities (out of 26.846 employees) were working for the government. This number should be higher – at the very least 5% of the employees should consist of persons with disabilities.
* The competence center for easy language “Klaro” has been put in place in 2012. Its role is to coordinate and support persons with communication difficulties and to give training sessions to the administrations and institutions.
* The legislation on the recognition of the German sign language has entered into force.
* A law on the accessibility of public websites and mobile applications has entered into force.
* Publication of an [Information booklet](https://ccdh.public.lu/content/dam/ccdh/fr/publications/Droits-des-personnes-handicapees/depliant-CRPD.pdf) on the role of the different independent mechanisms of the CRPD and the Ministry for Family and Integration
* A draft legislation on the accessibility of places open to the public (thus also including the private sector, such as restaurants or cinemas) and certain types of houses (new residences of minimum 3 floors and 5 accommodations) is currently going through Parliament.
* A draft legislation on putting in place an assistance service in the workplace for persons with disabilities in the private sector has been voted by the Parliament.
* Prior to the 2018 national elections and the 2019 European Parliament elections, [“easy read” info-sheets](https://elections.public.lu/en/accessibilite.html) were published and distributed to households – in French, German and partly in English. The aim was to enable everyone to participate in the elections.

Whereas these measures are important steps towards the implementation of the CRPD, some of them still do not fully comply with all of its requirements (yet), and others are still missing. For instance, only websites of the public sector are being made accessible and live news transmissions as well as the educational sector (except essential administrative functions) are excluded from its scope of application. Similarly, the draft legislation on the accessibility of places open to the public contains many possibilities for derogating from the obligations – among others for economic reasons – and no effective control or remedy mechanism is currently planned. The CCDH has issued an [opinion](https://ccdh.public.lu/dam-assets/fr/avis/2019/Avis-final-projets-loi-accessibilite.pdf) on these two legislative proposals – both congratulating the government for these initiatives and issuing recommendations for a more courageous approach that would be fully in line with the CRPD. Unfortunately, regarding the law on the accessibility of public websites and mobile applications, the CCDH’s recommendations have not been taken into account.

Other measures worth mentioning are the criminalization of discrimination based on disabilities or the legal obligation to employ a certain percentage of persons with disabilities[[5]](#footnote-5).

**What are the challenges to implementing the above?**

In general, progress seems to be very slow. Despite the involvement of persons with disabilities in the elaboration process of the NAP, there is still a risk that their recommendations will not be adopted, or if they are, that they will not be implemented (adequately). Common obstacles mentioned by the concerned actors are financial concerns and the amount of work that the measures would require.

It must be noted that there is some political engagement in favor of the implementation of the CRPD and a lot has been achieved in the past years – however, there is also still a lot of room for improvement. Most importantly, there needs to be much more political courage to prioritize the rights of persons with disabilities in order to achieve an inclusive society. Progress in achieving an inclusive society should never be halted or slowed down by arguments based on austerity or economic reasons.

It also seems like the “*design for all*” is only taken into account for legislation or regulation that is specifically aimed at persons with disabilities. Despite the interministerial approach of the NAP, there is still a lack of harmonization and a more general approach seems to be missing.

Finally, the CCDH has also noted that the interest of the media and the press in receiving advice on the topic of awareness-raising is rather limited. In collaboration with civil society organisations and other NHRIs, and with the support of the Government, the CCDH addressed [guidelines](https://ccdh.public.lu/dam-assets/fr/publications/Droits-des-personnes-handicapees/Leitfaden-f%C3%BCr-Medienschaffende.pdf) to the press and media on how to combat negative perceptions, for instance by avoiding certain negative terms in the written press. However, the press was not particularly fond of receiving these guidelines.

# Question n°2:

**What legislative and policy measures are taken to address hate crimes, hate speech and harmful practices against persons with disabilities? In particular, are there legal remedies available for persons with disabilities seeking compensation and reparation? Are there legal provisions to sanction perpetrators, including through criminal law? Please provide information on their application in practice (e.g. cases of persons condemned for hate crimes against persons with disabilities)**

*Answer CCDH:*

The law of [28th November 2006](http://data.legilux.public.lu/eli/etat/leg/loi/2006/11/28/n1/jo) prohibits indirect and direct discrimination, including of persons with disabilities. Harassment is also recognized as a form of discrimination. As already briefly mentioned above, the Luxembourgish Criminal Code punishes discrimination directed at persons (and companies) with disabilities (Art. 454 and following articles).

Minimum sanctions consist of fines between 251 and 25.000 euros and/or imprisonment between 8 days and 2 years. Some examples are :

* Refusal to give access to goods
* Refusal to execute a service or to grant access to it
* Refusal to hire someone
* Punishing or firing someone
* Hate speech and related crimes

Moreover, the Domestic Violence Act (2003) establishes fines and prison sentences for perpetrators of domestic violence. Especially women and children are to be protected by this Act. Unfortunately, there is no reference to persons with disabilities, beyond the sentencing part. Accordingly, there is also a lack of preventive measures.

Civil society organisations have stressed out the following issues:

“*The Domestic Violence Act stipulates that the Ministry of Justice, the police, the prosecutor and victim support services provide statistics each year. However, only sex, age and the relationship between perpetrator and victim are held back. Indicators on disability are not used.*

*Governmental awareness-raising campaigns against domestic violence do not specifically mention or address women and men with disabilities. Structures and services designed to assist and support victims of violence or abuse do not have special protocols concerning persons with disabilities and general or women and girls with disabilities specifically.*

*In the event of violence or abuse there is the alternative of filing a complaint with the police and possible court proceedings. However for persons with disabilities living in isolation, not provided with alternative means of communications or living with high support needs, this is rarely a real alternative. Furthermore individual complaints with the police do little to prevent violence and abuse.*

*Since 2012, the Ministry for Family and Integration has been making efforts to improve the situation, in cooperation with DPOs. Some of the most urgent problems, such as lack of staff and the absence of participative advisory boards have begun to be addressed. Although these efforts are welcomed, further legal, structural solutions need to be found.”[[6]](#footnote-6)*

It is noteworthy that the Center for equal treatment (CET) and the Ombudsperson can receive individual complaints and assist persons with disabilities. The CET can advise and inform potential victims about their rights. The Ombudsperson is only competent if the discrimination is emanating from a public actor. In that case, it can launch a mediation process and/or issue recommendations. However, neither one can represent private individuals in Court.

Moreover, there is no specific or particularly accessible procedure available for persons with disabilities. They thus have to follow the ordinary procedure before a criminal, civil or administrative court.

[Two NGOs](http://sante.public.lu/fr/publications/g/guide-handicap-chap9-fr-de/guide-handicap-chap9-fr.pdf) have received an endorsement from the government to, under certain circumstances, assist potential discrimination victims or to exercise their rights before the courts. As an example, “Info-Handicap” has a legal information service where persons with disabilities can receive free advice from a lawyer. However, this is just a “one-time” consultation – the NGO cannot cover all the expenses, which a legal action entails, nor the lawyer’s fees for the proceedings. The NGO can help with the application for obtaining financial legal assistance.

The CCDH has criticized the lack of an independent institution in charge of the defense of the rights of the persons with disabilities in its study on the institutional landscape in Luxembourg.[[7]](#footnote-7) It is very difficult for a potential victim to find out which institution, NGO or administration could assist her or him.

It is also worth mentioning that the [draft legislation](https://www.chd.lu/wps/PA_RoleDesAffaires/FTSByteServingServletImpl?path=EA29B1AE274309346B2D02F248EE22831BDF338218F29B5A5449E04FC538C7872A150D0D097D5DBB2DBFA5DB55B3B582$D01DC27D2FEB8554796E947458EBDB6E) on the accessibility of places open to the public is, in its current form, going to criminalise the unjustified denial of reasonable accommodation as well as the failure to comply with the general accessibility criteria. The CCDH has welcomed these sanctions, which would contribute to the enforcement and, as a consequence, greater awareness of the importance to create an accessible environment and the rights of persons with disabilities. However, the CCDH also criticized in its [opinion](https://ccdh.public.lu/dam-assets/fr/avis/2019/Avis-final-projets-loi-accessibilite.pdf) that once the initial building autorisation has been issued, there will be no subsequent control to verify whether or not the accessibility criteria has indeed been respected – thus weakening the abovementioned sanctions.

# Question n°3:

**What steps have been taken to establish standards and/or good practices on the representation and portrayal of persons with disabilities in broadcast media, including codes, guidelines and other measures (legal, co-regulatory or self-regulatory)?**

**In addition, what legal framework, measures or good practices exist to regulate social media in accordance with Article 8 and human rights standards on freedom of expression?**

*Answer CCDH:*

In collaboration with civil society organisations and other NHRIs, and with the support of the Government, the CCDH addressed [guidelines](https://ccdh.public.lu/dam-assets/fr/publications/Droits-des-personnes-handicapees/Leitfaden-f%C3%BCr-Medienschaffende.pdf) to the press and media on how to combat negative perceptions, for instance by avoiding certain negative terms in the written press. However, these guidelines were generally not well received by the target audience.

The CCDH is not aware of any particular legal framework regulating social media.

It must be noted however that a new legislation has been adopted which obliges the public sector to make some of their internet websites and mobile applications accessible. (Also see the answer to question n°1)

# Question n°4:

**Please provide information on the existence and implementation of the programs and activities, including successful examples of campaigns, related to raising awareness about persons with disabilities and their rights, and combating negative attitudes including through initiatives of:**

* **Training, including human rights education;**
* **Research, including studies on perception and attitudes;**
* **Survey and data collection.**

**Please indicate their objective, scope, target audience, impact (including available data), partners and participants, particularly the participation of, and role of persons with disabilities and their representative organisations, and any key factors of success.**

*Answer CCDH:*

Apart from the answers already given to the first question, unfortunately the CCDH cannot give in-depth information on these programs and activities – the government and civil society would be better placed in this regard.

As an example, there were a series of events “*Semaines de sensibilisation aux besoins spécifiques*” (Awareness raising weeks) organized by the “Participatory Committee” of the City of Luxembourg in collaboration with NGOs and others partners.[[8]](#footnote-8) There were information stands, activities, conferences, film projections and expositions raising awareness about every-day life of persons with disabilities and their needs. There were also dinners/lunches in the dark. The idea was to exchange between persons with disabilities and the public.

Moreover, the CCDH would like to reiterate the position of civil society organisations which has been expressed in its shadow report on the implementation of the CRPD in 2016:[[9]](#footnote-9)

“*A national campaign to raise awareness about the CRPD among the general public was organized in 2009. In 2016, however, the Convention and its content remain little known. Even some DPOs and individuals with disabilities interviewed in the context of this alternative report were unfamiliar with the CRPD.*

*The majority of awareness-raising actions listed in the State Report were organized by DPOs or other private organisations. In many cases State support limited itself to funding for costs of flyers or TV Spots. Regular, governmental, awareness raising campaigns must become a priority. Some types of disability are yet to be covered, especially ‘invisible disabilities’ such as intellectual and psychosocial disability.*

*Children without disabilities are unfortunately rarely in contact with children with disabilities in daily life as the education system is segregated. It is important to raise awareness very early in life, to fight discrimination and to further inclusion, but there are currently very few initiatives to this effect.*

*A person with a physical disability who regularly reads stories in preschools and kindergartens on a voluntary basis reported very positive experiences. Children were initially shy or even scared, but quickly opened up to their story reader and even asked questions about his impairments.*

*The role and responsibility of the media also needs to be reconsidered. The community of DPOs and affected persons want to raise awareness about stereotypes and negative portrayals of disability used by the media. Phrases such as “confined to a wheelchair” remain of standard use when portraying persons in a wheelchair, for example. Journalists often use the word “blind” instead of “without consideration” (“a contract was signed blindly”), which inadvertently feeds prejudices about blind persons. As a result, disability still resonates with “inefficiency”, “suffering”, “compassion” and so on in the heads of many. Journalists, editors and persons in charge of mass media need to be targeted by State’s awareness raising measures and guidelines as to appropriate portrayal of persons with disabilities.*

*Not only mass media needs targeted awareness raising and training. As mentioned before there is a great need for awareness-training in all areas of work dealing with or in touch with persons with disabilities. Particularly health personnel, education personnel, judiciary personnel and police officers need to be made aware of, and trained on, the rights and needs of persons with disabilities.”*

# Question n°5:

**Please provide information on the role of persons with disabilities and their representative organisations, including children with disabilitites, in the design, implementation, monitoring and evaluation of all measures relating to awareness raising. Please provide detail on concrete mechanisms and activities undertaken for consultation and active involvement (e.g. regular meetings, online consultations, etc.).**

*Answer CCDH:*

The CCDH is not in the position to provide adequate information on the concrete participation and role of persons with disabilities in the design, implementation, monitoring and evaluation of measures relating to awareness raising.

However, from the CCDH’s perspective, the elaboration process of the future NAP can be mentioned as a positive development, where civil society organisations and persons with disabilities were participating in the working groups. These were in charge of making proposals for the NAP. Nonetheless, the ministries have the last word regarding the final content of the NAP. More details have been provided in our answer to question n°1.

Organisations representing the rights and interests of persons with disabilities can also advise legislative proposals. For instance, regarding the draft legislation on accessibility of places open to the public, ADAPTH has been involved in the drafting process. ADAPTH is a consulting NGO specialized on questions related to the “design for all” – it is the national competence center for the accessibility of buildings. Other organisations working in the field of disabilities have also been consulted.

Furthermore, it must be noted that in their shadow report in 2016 to the government’s report on the implementation of the CRPD, civil society organisations have pointed out that “*there has been a declining trend in the consultation and meaningful participation of persons with disabilities and their representative organisations since the 2011 Action Plan. Persons with disabilities and DPOs are not yet systematically involved in CRPD implementation measures and all other measures that might affect them. The 2011 Action Plan had a 5-year span. It is unknown what further plans Government has for implementation, consultation and participation. This lack of transparency leads to a feeling of uncertainty in the disability community*.”[[10]](#footnote-10)

1. The full report of the government can be accessed in English under this link: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/201/46/PDF/G1520146.pdf?OpenElement>. [↑](#footnote-ref-1)
2. Awareness raising; Equal conditions for the recognition of the legal personality; Autonomous life and inclusive society; Freedom of expression and opinion and access to information; Education; Health; Employment; Participation in the political and public life. [↑](#footnote-ref-2)
3. The full NAP can be read here (in French): <https://mfamigr.gouvernement.lu/dam-assets/le-minist%C3%A8re/attributions/personnes-handicap%C3%A9es/plan-d-action-du-gouvernement-luxembourgeois-en-faveur-des-personnes-handicapees.pdf> [↑](#footnote-ref-3)
4. The full report on the implementation of the action plan made by the government can be accessed here (in French): <https://mfamigr.gouvernement.lu/dam-assets/le-minist%C3%A8re/attributions/personnes-handicap%C3%A9es/bilan-plan-d-action-2013-2017.pdf>. [↑](#footnote-ref-4)
5. The government, municipalities, public establishments and the national railways company have to employ at least 5% persons with disabilities. For the private sector, employers with more than 25 employees need to hire at least 1 person with a disability; from 50 employees onwards there have to be 2% of persons with disabilities ; and from 300 employees onwards this number goes up to 4%. [↑](#footnote-ref-5)
6. Shadow report of civil society organisations, <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCRPD%2fCSS%2fLUX%2f26160&Lang=en> [↑](#footnote-ref-6)
7. Document de réflexion de la CCDH, Droits des personnes en situation de handicap : Les institutions et organismes de défense des droits des personnes handicapées, <https://ccdh.public.lu/dam-assets/fr/avis/2018/6-architecture-institutionnelle-personnes-handicapees-version-finale.pdf>. [↑](#footnote-ref-7)
8. For more information about the 8th edition of this event which took place between the 27th and 12th of June 2019, click here : <https://www.vdl.lu/fr/la-ville/engagements-de-la-ville/actions-sociales/personnes-besoins-specifiques/semaines-de-sensibilisation>. [↑](#footnote-ref-8)
9. The entire report (in English) can be accessed under this link: <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCRPD%2fCSS%2fLUX%2f26160&Lang=en> [↑](#footnote-ref-9)
10. 2016 Shadow report of civil society organisations on the implementation of the CRPD : <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCRPD%2fCSS%2fLUX%2f26160&Lang=en> [↑](#footnote-ref-10)