

**BELGIUM - COALITIONS OF NGO'S WORKING IN THE FIELD OF
CHILDREN'S RIGHTS SUBMISSION TO THE UN UNIVERSAL PERIODIC
REVIEW 11TH SESSION OF THE UPR WORKING GROUP OF THE
HUMAN RIGHTS COUNCIL MAY 2011**

The NGOs Coordination des ONG pour les droits de l'enfant (CODE)¹ and the Kinderrechtencoalitie Vlaanderen² are networks of 40 associations with the goal of ensuring the sound implementation of the **Convention on the Rights of the Child in Belgium (CRC)**. For a full comprehension of our concerns, we would like to draw your attention to our alternative report (available on our websites), and to mention that the Concluding Observations for Belgium from the Committee on the Rights of the Child can be found at <http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.BEL.CO.3-4.doc>.

1. General measures of implementation

The lack of coordination of policies with regard to the rights of the child: the National Commission for the Rights of the Child (created in 2007) faces important challenges. The NGOs are associated with its work but all the decisions are made by the representatives of the ministers (“members who are entitled to vote”). This deprives the Commission of its own autonomy and real power to influence political decisions affecting the rights of the child.

Lack of data collection: to develop policies tailored to the needs of children and consistent with the Committee's Concluding Observations, it seems important to reiterate the need to collect accurate data by taking into account all children from 0 to 18 years old. Substantial resources must be used and special attention must be given to children of the most vulnerable groups.

Inadequate budgets: budgets allocated to policies of childhood and youth are insufficient under the national budget and do not allow the implementation of a sufficiently ambitious policy for children. Belgium does have a National Plan of Action, but in this Plan too, no mention is made of coordination, of exact timing, of budget allocation and criteria for evaluation.

2. Vulnerable groups of children

Beyond the differences, all the vulnerable groups of children have something in common: high rate of institutionalization ; deprived of their family of origin ; less healthy and have less access to care and health services ; access to education is more difficult for these children (failure at school, relegated to special needs education, etc.), access to recreation, cultural activities is also more difficult ; they are more likely to be victims of violence ; and have no real right to participation.

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2.a Children from poor families

According to data from the Annual Report on Poverty and Exclusion for the year 2009 of the University of Antwerp, 16,9% of children live below the poverty line, which is the 5th worst score in Europe. Among children under 6 years, 18% live below the risk-of-poverty threshold. Poverty is not only an economic issue. It is also a multidimensional complex problem that affects all areas of life. Here are some illustrations:

2.a.1 Access to health care

The living conditions of children living in poverty endanger their physical and mental development. Children from precarious families have poorer health from early childhood on (higher risks of premature birth or having a low birth weight are higher or mortality in the first year of life) Also, young people, according to their social origin, are not equal in health. Young people with low family affluence and those living in a blended family and in a one-parent family are most likely to report that they don't have good health. Children in primary school (6-12 years old) who live with neither parent (e.g. placed in care) describe their health 3,47 times more negatively than children who live with their two parents (2,15 times for blended families and 2,14 times for one-parent families). With regard to access to health care, precarious families encounter various obstacles, including financial reasons (in Belgium, 28,6% of single parent families and 10,7% of couples with children report having had to postpone health care for financial reasons), but also administrative (lack of information and understanding, etc.), cultural (difficulty in relation to the writing), and psychosocial reasons (fear of social control), etc.

2.a.2 School fees, failure at school and being relegated to special needs education

Schools charge fees and the measures taken to improve access to free education remain fragmented. Moreover, too many school dropouts are related to poverty, because of successive failures, the difficulty of meeting the demands of school, difficulties regarding school attendance, misunderstandings between family and school, premature orientation to special needs education, etc. The education indicators confirm that a child living in a very poor district is four times more likely to be oriented to a special needs education than a child living in an affluent district. This risk is increased to eight when we consider only type 1 (mild mental retardation).

2.a.3 Too many children placed in care

Estimates are that 7 to 11% of the placements in care of children under 7 years (with separation from the parents) are related to the precariousness only. However, any separation from his family causes great suffering to any child and there is a danger of weakening the child, since the placement could give rise to new abuse.

2.a.4 Lack of childcare places

It is widely acknowledged that a quality childcare place (during the daytime) in early childhood (0-3 years old children) may represent an important vehicle for the fight against poverty and the premature introduction of inequalities. However, despite the genuine efforts made in the French Community, the right to a quality childcare for all children is far from

effective. Instead, the shortage is felt more strongly, and particularly affects the poorest people in society. Primarily families where both parents work benefit from childcare places.

2.a.5 The right to leisure, sport and culture

The latest report of the General Delegate for Children's Rights shows that many parents from low-income families can not afford recreation for their children, particularly the summer camps. Child poverty increases exclusion and misunderstanding. The NGOs noted that when families attain better living conditions (including housing and income), these improvements have a positive impact on their children: they thrive, are less nervous, work better at school, are sick less often, etc.

Main recommendations of the NGOs on child poverty:

- 1) It is essential to ensure that all families enjoy an adequate standard of living. Policies that have an impact on children's rights (housing, employment, education) must be coordinated.
- 2) Appropriate measures should be taken to enable the child to remain in the care of his or her family of origin in the best possible conditions, by allocating resources to support parenting, in consultation with the persons concerned.
- 3) Focusing spending on education services and childcare funded through flexible systems giving priority to vulnerable children.
- 4) Provide free compulsory education ; develop ways to support and remediation in schools, when (and whenever) a difficulty arises ; improve family-school relationships in the sense of a real educational partnership while respecting the role of each ; fight against the dualisation of education, grade repetition and negative orientations.
- 5) Improve support to early childhood.

2.b Children in migration

Foreign children are another vulnerable group in Belgium. We must distinguish between unaccompanied foreign minors (UFM) and minors accompanied by a legal representative.

2.b.1 Separated children or Unaccompanied Foreign Minors (UFM)

Since the 1980s, between 1,000 and 1,500 UFM arrive each year on the Belgian territory from a country outside the borders of the European Union. In addition to difficulties in identification of unaccompanied foreign minors (minority status, age determination, legal representation, etc.), foreign minors, and particularly UFM, are facing major problems: entry and reception, stay procedure, guardianship, home, school and return.

1.Reception : With regard to reception, all the UFM are no longer sent to a centre for observation and orientation upon arrival. For lack of space, they are sent to the wings for adults in other centres of FEDASIL. They are also more likely to be denied a place in a reception centre. Since September 2008, the federal reception network is completely saturated and UFM are placed in centers for adults, hostels or not placed at all (there are an estimated

100 street children). So it happens that they do not benefit from the reception and protection circuit: no shelters, no guardian, no qualitative assistance with the asylum procedure,...

2.Guardianship : Since 2004, the Public Guardianship Office is responsible for the UFM, identifies him and, if he or she is recognized as a UFM, the Office will appoint a guardian. This guardian assists the UFM throughout his stay in Belgium and helps the minor with the legal proceedings, which are often long, difficult and inappropriate to the child's age and experience. This service supports the child in all his efforts and provides assistance in formulating a vision, a durable or long-term solution. The implementation of this scheme is undoubtedly an important step forward in protecting UFM, although several improvements should be made: increased financial means to undertake the tasks of guardianship, better training and better supervision of the guardians, professionalization and higher pay for guardians, greater consideration of the language of the minor at the time of the appointment of the guardian, etc.

3.Stay : During the search for durable solutions, the UFM are only issued with a very precarious residence permit or with an order to leave the territory that can sometimes be extended. The granting of a temporary residence permit is conditioned by the fact of possessing a passport, often difficult to obtain. This situation is greatly harmful to minors, who remain uncertain about their future and the opportunities available to them. NGOs estimate that the Home Office (the authority responsible for residence permits for foreigners) has a very narrow vision of the "durable solution", designed primarily as a return to the country of origin.

4.Education : To be considered as newly arrived persons and have access to transitional classes, one must be a national of a country considered to be developing. This condition therefore excludes a number of UFM from the regular educational system. Moreover, there are not enough transitional classes organized in municipalities where there are no reception centres. Furthermore the certificate of eligibility which enables the student to integrate a level of education corresponding to his abilities is only granted to asylum seeking minors or recognized refugees. This clearly constitutes a discrimination.

2.b.2 Accompanied foreign minors

There is a huge crisis in the reception of foreigners in Belgium. The country suffers from a substantial lack of open shelter structures (the need for 2,000 extra places is identified). Many families are accommodated in very precarious conditions (in hotels, without a hot meal or adequate medical supervision, etc.) or find themselves in the street without any assistance. Finally, it should be noted that, despite the creation of alternative solutions, such as shelters for returnees, the law still allows the detention of families in detention centres for having sought asylum at the border without the necessary documents to enter or stay. These sites are totally unsuitable for children (lack of education, group life, chronic stress, etc.).

Main recommendations of the NGOs on foreign minors:

- 1) Provide more shelters for migrant minors whether separated or with their family.
- 2) Adapt the reception of children according to their individual needs.
- 3) Expand the definition of "newly arrived person" to all foreign minors in the territory to enable them to attend mainstream schools.
- 4) Legally end the detention of foreign children in detention centres for foreigners.
- 5) Grant true residence status to UFM as long as a durable solution in the best interest of the child has not been found for them.
- 6) Increase the financial resources of the Guardianship Service for it to carry out its missions.

2.c Children with disabilities and children in hospitals, including those in psychiatric care

2.c.1. Children with disabilities and children in hospitals, including those in psychiatric care

NGOs wish to emphasize the **right to family life** as well as support for parents. When their child is ill or has disabilities, the parents face many difficulties in reconciling work and family responsibility. We must develop and expand mentoring opportunities at home so that the child has the opportunity to stay home without being hospitalized or placed in an institution. **In terms of participation**, there still is a long way to go. They are rarely heard on their treatment and alternatives to hospitalization/institutionalization. They are not sufficiently informed in an appropriate language. More worryingly, the right to information is lacking for the administration of drugs and the duration of the treatment. To ensure that these children can grow and develop harmoniously, they must also have the **right to play** and participate in cultural activities with other children. This implies “integrated recreation” but in reality, outside contacts are limited and integration projects remain limited and ad hoc.

2.c.2 Children with disabilities

About 10% of children are born with disabilities or developmental problems, which amounts to approximately 2,000 children in Belgium. These children often have little choice in their school and their options. A decree adopted in 2009 by the Government of the French Community proposed a series of measures to promote the integration of disabled children in education, to simplify administrative arrangements and provide assistance to all students with special needs, whether or not they attend special education. We hope that this is a step that will be implemented in practice.

2.c.3. Children in hospitals

NGOs point out that various rights of hospitalized children deserve special attention: while Belgian hospitals that have a paediatric ward provide better care for children (77% of hospitals offer parents the opportunity to spend the night there, and parents may be present when their child is under anaesthesia in 70% of cases), we find that too few parents are informed and make use of opportunities offered to them. This is especially true for parents who are less educated. More worrying, the presence of parents at the time of waking up in the recovery room is still banned in 16% of hospitals, etc. Children are generally satisfied with

the nursing staff but not with the doctors and the emergency department, although these are the gatekeepers of half of all hospitalizations. Lack of participation and tailored information is a real problem (not very accessible language, lack of coordination between different specialists and partners), and lack of children friendly spaces (especially in emergencies). Also, it is unacceptable that children suffer when analgesics are available to reduce pain. Finally, the school is an essential activity for any hospitalized child. Ensuring their right to education is paramount.

2.c.4. Children in psychiatric care

From 2004 to 2007, the number of licensed beds in psychiatric services (K ward) increased from 668 to 695. The children stay for varying periods ranging from 3 weeks to several years. For 2004, a total of 4600 children passed through psychiatric services in Belgium. The issue of child psychiatry is very worrying and must be considered holistically in the light of the Rights of the Child: this is not a matter of right to health, and even less a matter of places available in existing centres. Other rights are concerned: non-discrimination, education, information, family life and personal relationships with parents and relatives, privacy, culture and recreation, participation, etc. The NGOs are particularly concerned that the detention is not a measure of last resort for children who are sent to psychiatric wards and in most cases, children do not know how long their hospitalization will last. The NGOs are also worried that the measures limiting the freedom (including isolation) are used as punishment and not used in exceptional cases for the protection of young children. In addition, drug treatment, which still restricts the physical integrity of children, is the norm and not a measure of last resort. Finally, the NGOs are concerned that life in a K ward is completely cut off from the outside world. The restrictions are not justified and clearly explained. It is not uncommon for children to be required to stay the weekend at the hospital only because they occupy a bed. It is totally unacceptable that the right to see his family is restricted for financial reasons.

Main recommendations of the NGOs on children with disabilities or in hospital, including in psychiatric care:

- 1) The placement or deprivation of liberty should be a measure of last resort. It is therefore necessary to further develop mentoring opportunities at home as well as a reception structure so that the child has a real opportunity to stay with family or be placed in care. Placement must be reviewed periodically.
- 2) Promote effective participation of disabled or hospitalized children in all areas of their life in the family, school, institution, hospital, etc.
- 3) Children must receive appropriate information about their disability or illness and about treatment, including its duration.
- 4) Develop a coordinated policy between the different levels of power that promotes and fosters the integration of children with disabilities in school education and pre-school and play.

- 5) Generalize the presence of relatives at all times of hospitalization, including during the operation and in the recovery room. Humanize the emergency wards and regularly provide adequate information to sick children and their families. Generalize tuition (education) for children in hospitals and the use of analgesics (treatment of pain), also for children who are in end of life care.
- 6) Deprivation of liberty should be a measure of last resort for children in psychiatry. It is the same for the isolation and drug treatments that restrict the integrity of children. Contact with the outside world must remain possible. Education should be a right for children in a K ward.

2.d Children within the juvenile justice system

In Belgium, juvenile justice was extensively reformed, the Law of April 8, 1965 on the protection of youth having been amended by the Laws of May 15 and June 13, 2006. The good thing about this reform lies in the fact that the policy of protection of minors which is the prevailing approach to juvenile delinquency in Belgium has been safeguarded. However, it is a hybrid legislation mixing protective measures, sanctions and restorative justice. The criminal approach is preferred: concepts of criminal law for adults are increasingly applied to minors.

2.d.1 The referral of juvenile offenders to adult court

In Belgium, it is still possible to refer a person over 16 years old who has committed a serious crime to an adult court and to have this minor tried as an adult. The legislators have in fact missed the opportunity to simply delete this referral procedure when reforming the 1965 Act, without taking into account the Concluding Observations of the Committee and the final recommendations of the Committee against Torture (CAT/C/BEL/CO/2, § 17). Contrary to an official report from the Belgian State, the creation in an adult court of a separate chamber for dealing with juvenile offenders, composed of judges who have experience in juvenile law and criminal law, does not solve the problem. Indeed, the fact of sentencing a juvenile as an adult is not related to the qualifications of the judge, but to the nature of the law which this minor would be submitted to. However, in this case, the criminal law for adults will always be applied.

2.d.2 Detention

In Belgium, detention is the most common response to the deviant behaviour of a minor, including confinement in prison (thus with adults) or in specialized institutions created specifically for this purpose (public residential institutions for the protection of minors or IPPJ). This is totally contrary to the CRC.

The closed detention centre for juvenile delinquents in Everberg, originally set up in 2002 for a period of 2,5 years, would allow placement of juvenile offenders in jail for a maximum of 15 days. This centre is still in use. The number of youth incarcerated in Everberg is constantly increasing, as well as the length of incarceration. On November 3, 2008, the Federal government and the three Communities have signed a Memorandum of Understanding on the

new federal closed centres for juvenile offenders that expects a significant increase in the number of places. Ultimately, in the French Community, the number of closed centres will increase from the current 85 to 239 (in 2012), nearly tripled in four years ; in the Flemish Community, the number of closed centres will increase from 130 to 266. This general increase in the use of confinement is not justified by the official statistics about juvenile delinquency. The National Institute for Criminalistics and Criminology even specifies that youth crime has fallen slightly since 1968, and also that the juvenile offenders of today are not younger or more violent than before.

In addition, the incarceration aspect of these centres is emphasized. Mr Hammarberg, the Commissioner for Human Rights of the Council of Europe reminds us : “(...)The Commissioner urges the authorities to ensure that alternative penalties and educational measures are fully effective, so as to limit the use of placements in closed centres” (CommDH(2009)14, § 138).

Main recommendations of the NGOs on youth protection:

- 1) Get rid of the law on the referral of juvenile offenders to adult court by guaranteeing the right of children to undergo a treatment that promotes their sense of dignity and personal worth.
- 2) Assess the use of confinement as practiced today and freeze the creation of any new places in closed institutions.
- 3) Engage in significant cultural policies, continuing education and youth, which play a role in preventing crime - an under-recognized role at present.

3. Legal status of minors

For years now, the NGOs have been calling for a stronger legal status of minors. It should be juridically possible for minors to exercise the rights that have been assigned to them through the CRC, especially when there is no one else to defend these rights for them.

3.a The right to be heard

In 2002, the Committee on the Rights of the Child pointed out that Article 931 of the Belgian Penal Code allows arbitrariness and thus fails to guarantee the right to be heard (CRC/C/15/Add.178–21). The introduction in Belgian legislation of the right to be heard is a positive evolution in the juridical recognition of the child as a legal subject. However, clear criteria concerning age limits are lacking and only youth judges are obliged to call and hear children and youngster. The result is a situation of incoherence, arbitrariness and ambiguity in which young people are badly informed about and often denied the right to be heard.

3.b Youth lawyers

In Belgium, children are usually no party in procedures that involve them in a direct or indirect way, e.g. a divorce procedure of their parents. As a consequence, these children do not have the right to a lawyer defending their interests. Even in cases in which they are the

victim of a crime, also when committed by their parent(s), children never have their own lawyer representing them. Since 2005, the “Orde voor Vlaamse Balies” (the organization regrouping all Flemish bars) offers a special training in youth law for lawyers who wish to defend minors and advises that only lawyers who have followed or are willing to follow this training, are allowed to defend minors. However, not all organisations of lawyers follow this guideline, the result being that the quality of legal aid for minors varies from case to case.

3.c Acces to the judge

The right of minors to initiate a legal procedure has not yet been recognized unanimously. Evidently, problems arise when the legal representatives of minors fail to undertake action or have interests that are opposite to those of the minor whom they represent. The NGOs have always considered the access to the judge as a principle of justice and therefore criticize the fact that Belgian law continues to regard minors as principally incapable of being party in a legal procedure.

Main recommendations of the NGOs on the legal status of minors:

- 1) Adapt article 931 of the Penal Code in order to meet the terms of article 12 of the CRC. Ideally, the judge should be obliged to call the minor, but the minor should not be obliged to answer the judge’s summons.
- 2) Minors should receive legal aid from a qualified youth lawyer in any case that directly or indirectly involves them.
- 3) Minors should have access to the judge in any case that directly or indirectly involves them.
- 4) Plans to establish a family court include measures such as the hearing of minors and legal aid by qualified lawyers. The NGOs ask the authorities to consider the above-mentioned demands in the further development of these plans.

4. Images of children and use of public space

Negative images of young people predominate their representation in the media (e.g., the media coverage of juvenile delinquency). The NGOs also notice a growing intolerance and even moral panic towards children and youngsters, especially in relation to their use of the public space.

Main recommendations of the NGOs on images of children and use of public space:

- 1) Make the growing intolerance towards children and youngsters, the discrimination and the stereotypical images a policy priority.
- 2) Accurate and correct representation of children and youngsters in the media as well as special caution for negative and stereotypical images.
- 3) The NGOs recognize the attention that local authorities have paid to public places for youth activities and ask that these efforts will be continued.
- 4) Investigate of the effects of the administrative sanctions.

5. Participation and information

The NGOs believe that the existing structures of participation need to make place for a true culture of participation. First, the NGOs believe that by focussing only on the opinion of children, one risks denying certain groups of children their right to participate because they are thought incompetent of forming their own opinion. Secondly, the NGOs want to emphasize the importance of adapting formal instruments of participation to children without, however, limiting the objects of participation to typical children's themes.

Main recommendations of the NGOs on participation and information:

- 1) Provide more resources for initiatives that help creating a true culture of participation, including the adaptation of formal instruments of participation to children. The NGOs also ask that the coordinating minister for children's rights receives an adequate training in these matters in order to be able to take on a sensitizing role towards his fellow ministers.
- 2) Give more resources to support (informal) participation in daily life and to expand good practices. Especially: the development of training programs for all people who work with children; the expansion of good practices of participation in projects of town and country planning; the support of student participation; the implication of children in the development of educational objectives.
- 3) Adapt the Law on the Rights of the Patient in order to allow minors to give an informed consent or refusal on their treatment.
- 4) Guarantee the participation of children in vulnerable situations by providing additional conditions such as a climate of understanding, enough time and awareness of the existing differences and the risk of dependence.
- 5) Invest in the promotion and distribution of suitable information on children's rights in a way that is accessible and understandable for children.

6. Violence against children

Violence against children is a complex problem demanding a multifaceted response coming from different policy domains and directed to different settings in which children appear. The recommendation formulated in the 2006 UN study on violence against children has known little implementation in Belgium.

Main recommendations of the NGOs on violence against children:

- 1) Create a adequately coordinated national action plan, including realistic goals, unambiguous deadlines and systemic evaluation, to stop all violence against children.
- 2) Put up large campaigns against the use of violence against children and to promote values of non-violence.
- 3) Give adequate and suitable information on the different forms of violence.

- 4) Develop alternatives for residential placement. Additional attention must go to children in vulnerable situations.

6.a Corporal punishment

Using violence in educating children teaches them that violence is an acceptable strategy to resolve conflicts. The message brought by the authorities is ambiguous: on the one hand they want to encourage positive and non-violent education through sensitizing campaigns; on the other hand they lack the courage to state that non-violent education should be the norm. The campaigns against violence can be a helpful instrument towards the introduction of a prohibition by law.

Main recommendation of the NGOs on corporal punishment: Add an article 371bis to the Civil Code: “Art. 371bis. A child has the right to care, safety and a good education. A child should be treated with respect for its personality and particularity and should not be subject to any humiliating treatment, nor any form of physical or mental violence.”

6.b Violence caused by road accidents

The NGOs demand that the authorities recognize road accidents as a form of (physical and mental) violence against children. Violence caused by road accidents interferes with the physical and personal integrity of children and is still severely underestimated.

Main Recommendation of the NGOs: Adapt road infrastructure to the perception of children and develop safe routes to places frequented by children.