



# Report to the Committee on the Rights of the Child

**Report of the Children's Rights Commissioners of the  
Flemish and the French Communities regarding the  
third and fourth reports from Belgium**

Presessional January - February 2010



## List of Abbreviations

Committee:	Committee on the Rights of the Child
CRC:	Convention on the Rights of the Child
DGDE:	Délégué général (de la Communauté française) aux droits de l'enfant
Fedasil:	Federal agency for the reception of asylum seekers
FGM:	Female genital mutilation
K&G:	Kind en Gezin
KRC:	Kinderrechtencommissariaat
NCRC:	National Commission on the Rights of the Child
OEJAJ:	Observatoire de l'Enfance, de la Jeunesse et de l'Aide à la Jeunesse
ONE:	Office de la Naissance et de l'Enfance
SECAL/DAVO	Service des créances alimentaires / Dienst voor alimentatievorderingen

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## Introduction

The Kinderrechtencommissariaat of the Flemish Parliament and the Délégué général de la Communauté française aux droits de l'enfant have the pleasure to present to the Committee on the Rights of the Child their report concerning the five-yearly Belgian report on the implementation of the Convention on the Rights of the Child.

Both the Kinderrechtencommissariaat and the Délégué général aux droits de l'enfant are independent institutions for the defence of children's rights and have been created on a community level. Our existence itself is proof of the Belgian authorities' willingness to respect their obligations regarding the Convention on the Rights of the Child. However, we deplore that our means of action do not cover all children living in Belgium, or all matters treated by the Convention.

When drawing up this report, we decided to start from our work as ombudsperson, since it allows us to receive both complaints and information on the non-respect of children's rights. We also wanted to provide the Committee with elements for a critical analysis of the Belgian report, regarding the concluding observations formulated in 2002. Even if we hoped that the Belgian authorities would see to it that a satisfactory response were given, we still have to conclude that some observations did not take any effect and that in some cases, the situation of the children even became worse.

In matters of juvenile justice for instance, Belgium not only continues to judge certain minors as adults, it also pursues an increasingly severe detention policy that is not conform with the Convention.

In the present report we wished to treat a dozen specific subject matters, in which the rights of the child do not seem to be sufficiently respected and where special efforts still need to be made.

In spite of the different regulations and policies in our two Communities, we wanted to treat some points of consideration that may concern all children living on our territory.

In this era of economic crisis, the question of children's poverty and its implications on the application of the Convention in their daily life seemed of the highest importance to us. Too many children still live in precarious conditions, which puts the recognition and the exercise of their rights into peril.

Starting from our experience, we may state that numerous children's rights are still far from being fully applied in our country. This is especially true for the right to participate, be it in individual decisions or throughout collective policies.

In several other subject matters, notably foreign children and children with disabilities, the principle of non-discrimination that should allow all children to actively enjoy equal rights, is far from being applied.

We hope that our contribution will allow the Committee to better apprehend the children's situation in Belgium and that it will encourage the different Governments in our country to work even more efficiently towards a better respect for children's rights.

# 1 Coordination and surveillance

## Coordination

The intricate Belgian institutional context (Federal state, Communities, Regions) with its fragmentation of competencies certainly puts a restraint on the good coordination of the policy lines concerning children's rights. The report enunciates a multitude of old or new mechanisms, which directly or indirectly help improving the surveillance and coordination of the policies concerning children's rights. However, because of the institutional complexity in Belgium, this enunciation clearly shows the extreme diversity of the situation in function of the levels of competency. And hence, it indicates a certain degree of discrimination. In the Flemish region e.g., we have the Youth and Child Impact Reporting and a coordinating minister for Children's Rights. Both these mechanisms are lacking in the French and German speaking Communities.

The recent introduction of the NCRC, which co-ordinates all levels of power, might partially rectify this state of affairs. In view of the large scope of the assignment, one might wonder whether sufficient human and financial resources have been put at the NCRC's disposal.

Even if we welcome the openness of the NCRC to civil society in their publications, this formal openness still needs to be converted into the decision making process. After all, only the Governments' representatives are qualified to vote. And even if members of civil society have been largely involved in the reporting process, we have to conclude that the report contains only few elements in which their voices are being heard. And though the founding text of the NCRC stipulates that dissenting opinions on Belgium's report formulated within the Commission should be annexed to the report, they do not appear in the official text transmitted by the Belgian authorities to the Committee.

A similar conclusion can be drawn as far as the regions are concerned. Although there exist numerous mechanisms to achieve the implementation of the Convention, those are hardly taken into account in the decision making. In the Flemish administration, the contact points for children's rights, for instance, hardly have any competencies and just take on the assignment without any extra means or time. The setting up of children's rights instruments is too often being seen as the ultimate goal, whilst it should be a starting point.

We may however mention as an example of good practice of collaboration with the civil society, the publication by the OEJAJ of the complete contribution of the co-ordination of the NGOs for the rights of children as an annexe to the three-yearly report submitted by the Government to the Parliament on the application of the principles of the CRC.

We have also noticed that within each of the entities, the co-ordination of policies concerning children's rights (e.g. the explicit appointment of a co-ordinating minister on the highest level) has not been realised yet for all Governments.

## Surveillance, follow-up and control

Concerning the independent institutions for the defence of children's rights, Belgium is still far from meeting the Committee's requests as expressed in their

final observations of 2002. Belgium does have institutions in only two Communities. In the German Community and on the federal level there are no such institutions. Even if some institutions already collaborate, an official and legally recognized formalisation of partnership should be introduced, in order to cover all competencies in children's rights, which are spread over the different levels of power.

Since their foundation, both the KRC and the DGDE have been consulted by legislative organisms, even on a federal level, about several reform projects directly affecting children. The consultations however have not been systematic and simply result from the appreciation of the different Parliaments. Both institutions have acquired undeniable expertise in the field of children's rights. It would therefore seem expedient to foresee a mechanism whereby the different parliaments can systematically inform the KRC and the DGDE when they are examining texts on children's rights. In this manner, the institutions would have the possibility to advise on the impact and the conformity of the legislative reforms with children's rights.

The surveillance of how the CRC is being applied may also come about through the analysis of the complaints mechanisms that were put at the disposal of children, when the latter esteem that their rights have not been respected. Apart from the complaints that are submitted to the KRC and the DGDE, there are other instances of appeal which receive complaints concerning infringements on children's rights. In this respect, quantitative and qualitative information on the matter is necessary, so that relevant conclusions may be drawn in order to improve children's living conditions.

## 2 Dissemination of the CRC

The CRC stipulates that the States Parties should inform children of their rights by appropriate and active means. In other words, children's rights education is a right for all pupils, not only for the pupils of the secondary, but just as much for the ones in primary schools.

### Curriculum matters

In Flanders, the school curriculum tries to meet this demand first of all through the aims of education. In primary and secondary education, as well as in education for children with special needs, educational aims have been formulated concerning human rights and children's rights in particular.

In primary education, those are to be found in the subject matter Social Sciences.

In secondary education, we have the cross-subject educational aim Teaching a sense of public responsibility and the cross-subject aim Learning to learn.

In primary education, the educational aim Social Sciences includes a section Society, which contains a subsection Political and Legal Phenomena. Here, one of the aims explicitly mentions human and children's rights: 'Pupils are able to illustrate the importance of the fundamental human rights and of children's rights. In this respect, they realise that rights and duties are complementary'.

The link between duties and rights is striking. Behind this link seems to lurk a misconception of the concept 'human rights'. It goes without saying that the idea that a child (or a human being) needs to meet certain conditions before he or she can be assigned a certain right, does not hold. Human rights are unconditional. And accordingly, children's rights can in no way be conceived and given shape, starting from the idea that they are only meant for 'good' children and youngsters who know how to fulfil their duties.

Also, the aims of education in secondary schools suggest a comparable reasoning through the strong embedding of human and children's rights in the attention for public responsibility in the curriculum.

In the French Community moreover, we register the absence of a structurally organised education in children's rights in primary and secondary schools. A Decree from 2007 concerning citizenship in the schools though, anticipates the issue of a manual on citizenship that would deal, among other things, with children's rights. However, the manual is only meant for pupils in the highest classes of secondary education. As a result, many younger children, who would certainly benefit from an education in children's rights, will not be reached.

### Train the trainers

In 2007, the Flemish Government defined the basic competences and professional profiles for teachers. The professional profile distinguishes three levels of responsibility clusters for teachers: a responsibility towards the pupil, a responsibility towards the school and the school community and a responsibility towards society. The professional competence 'The teacher as an educator' contains the section 'Furthering children's emancipation: involvement, children's participation and relational competence'. Involvement and children's participation are explicitly being confessed.

In real terms though, the education in children's rights in the teachers training strongly differs from one kind of training and from one higher institute to another.

We lack a general policy on the matter, which explains the arbitrariness for the time being.

The attention to children's rights in the curriculum of relevant academic programmes, such as medicine and psychology, is still in its infancy. On June 18<sup>th</sup> 2009, the Belgian Chamber of Deputies made a first move by approving a resolution concerning an action plan for children being nursed in hospitals. In the resolution, the Federal Government asks to complete all programmes in medicine and nursing with training in children's rights. Generally speaking, this kind of training in human and children's rights in Belgium is still too fortuitous, too dispersed and far too dependent on the goodwill and the commitment of individuals and NGOs.

Although a few initiatives concerning information and education in children's rights are mentioned in the Belgian report, the absence of a structural policy on the matter clearly appears. Only in the future goals do we find a number of more structural initiatives which the Governments wish to carry through in order to improve dissemination of children's rights, the education in children's rights and the training of professionals who come into contact with children.

### **3 Respect for the views of the child**

Since January 2009, Article 22 bis of the Belgian Constitution recognizes the right of minors to facilities and services and the right to participation, above the already included protection rights. This is an important step forward in the recognition of the rights of all children.

The search for valuable and respectful forms of participation whereby a real impact is possible, needs to be continued. And even if this is a difficult task, it should not prevent the authorities from further and full investment. The structural embedding has not yet been sufficiently pushed through. We need to remain vigilant, in order to dike in abuse of formal structures as an excuse for pretending that children have been heard. Also, children and youngsters should always have the possibility to take their own initiatives, not only within the context of formal structures

#### **In policy**

Many laws and decrees recognize the importance of the youngsters' viewpoints and their involvement in education, youth care, environmental planning and mobility. The implementation however, is still ahead of us. There are insufficient means and methodologies and a lack of time and space for a respectful conversion.

There are numerous initiatives for children's involvement in different fields. In spite of the good intentions, we observe that the impact of children and youngsters is often too limited.

In the French Community, children's local councils shoot up like mushrooms. However, sometimes their guidance and power leave to be desired.

Flanders saw the recent introduction of 'Karuur', an organisation that aims at reinforcing the participation of youth councils, children and youngsters in local policies. In view of the recent introduction, we are looking forward to the good functioning and to the support they will offer to stimulate participation.

#### **In the school environment**

In education, the participation of youngsters has certainly not everywhere become a basic attitude. Participation in schooling is too often put on a par with the creation of pupils' councils. There is insufficient support from the education actors on a structural level, both in Flanders and in the French Community.

In Flanders, we can boast the Forum for Pupils' Participation, but we still do not have an independent centre of expertise on participation in schools, as had been promised in the Flemish Participation Decree (2004).

But some groups are being excluded. Far too often, they are supposed not to have anything to say or not being capable of saying anything, as is deemed to be so in the case of young children (under fives) or children with disabilities. Through an adapted methodology however, each child could give its own point of view based on its own approach.

### **In research**

Children's voices are also more than often missing in research on children. This kind of research may require a different approach, plenty of time and therefore, abundant means. Far too often children are the 'object' of research, rather than being providers of a subjective opinion.

However, we may quote as an example of good practice the initiative of the OEJAJ which in 2008 did research in order to better define the way in which children understand the notion of well-being. This qualitative research was done with 64 children between the ages of 6 and 15. The aim was to collect the evidence of children on their perception and comprehension of well-being and to approach them as competent speaking partners, who would, under the right conditions, be susceptible of enriching the definition of well-being through their own vision of things.

Even as ombudspeople for children we have to be self-critical. In the future, more efforts will be made to involve minors in our own activities.

Via thematic dossiers we do shed light on the perspective of the minors in question. Until now, we have not furthered youngsters' involvement in our own activities, because we cannot guarantee the necessary guidance for a fully fledged participation.

### **In health care**

As far as health care is concerned, the opportunity for the child to be heard is limited. In 2002, Belgium voted a law on euthanasia, which excludes children from its field of application. The terms of the CRC stipulate the right to protection, provision and participation, but foresee neither a ban on euthanasia, nor an obligation to allow it.

We hope that the position of minors and euthanasia will become debatable. We are of the opinion that reluctance is of the utmost importance in the case of minors who are incapable of informed consent. Euthanasia is hugely based on self-determination and a decision taking by a third party is an extremely complicated matter.

For minors who are capable of a reasonable assessment of their interests, the possibility of euthanasia should not be excluded. We feel that the emphasis should be put on the capacities of the youngsters. Parents should of course be included in the decision process, but should not be given the ultimate decision right.

## **4 A legal position for minors**

According to Belgian law, minors have legal rights, but lack full legal competence: this means that they do have rights, but can seldom exercise those rights autonomously. Moreover, rights of minors are not always regulated in a coherent and consequent manner, which leads to legal insecurity.

### **Right to speak**

The right to speak has not been regulated congruously and is often more a possibility to speak than a right. In this way, the judicial code does not define an age limit for the right to speak, because the age of discernment is required. The judge may also refuse to hear the minor. On the other hand, the law on child protection imposes a summons duty from the age of 12 onwards. As a result, a minor may get a hearing from one judge, whilst another refuses, notwithstanding the fact that the same argument is at stake.

We demand a clear and uniform legislation which effectively guarantees the minors' right to speak. Helpful in this context would be the introduction of a general summons duty from the minimal age of 12 years, analogous with the procedures for the juvenile court and the compulsory information of all minors on the right to be heard in case of legal proceedings affecting them.

Moreover, judges should not have the possibility to refuse if a minor asks to be heard and the right to speak in all procedures affecting the minor should be applied.

We are of the opinion that magistrates should be trained on the adequate context and the modalities to hold conversations with youngsters and on ways to take their contributions into account.

### **Juvenile law attorneys**

When minors are involved in legal procedures they are not guaranteed their own lawyer. In principle, minors may appeal to free legal aid, but they do not have the guarantee that the appointed lawyer is familiar with children's rights or juvenile justice. If minors don't take the initiative, no lawyer is officially being appointed (with the exception of legal proceedings within the scope of youth protection).

We are asking for specific rules for the appointment, the recognition and the continuous training of juvenile law attorneys. A juvenile law attorney should be appointed in each procedure affecting a minor, if or when the minor does not appoint a lawyer him/herself.

The title of juvenile law attorney should be protected; this could be justified through a compulsory multidisciplinary training and continuous further training. Juvenile law attorneys should get compensation for their legal aid, whereby the authorities take charge of this matter by integrating it in the system of free legal aid. And eventually, a network of legal first line aid for minors should be developed.

### **Access to justice**

Minors do not have access to a judge. They cannot start legal proceedings themselves if their legal representatives do not do so. The existing possibilities - such as the appointment of an ad hoc tutor or an action by the office of the public prosecutor - are not sufficient in situations whereby infringements of rights need to be denounced, since the minors are still at the mercy of the adults' goodwill. We therefore ask for an autonomous leave to prosecute for minors. If their legal representatives do not take action, minors should be able to start legal proceedings themselves, with the assistance of a juvenile law attorney, in all procedures where rights or interests of minors are at issue.

## **5 Children and divorce**

More and more children are confronted with divorce, occurring in their circle of friends, their family, a class mate... Approximately 1 out of 4 children goes through a divorce at home. Year after year, questions and complaints about divorce remain the number one at the children's ombudservices. Children experience a lack of information or they receive the wrong information, they are not or hardly involved in what is about to happen, they are not being consulted, they suffer from the negative atmosphere between their parents, they lack care and support and can not take any initiative to question or to change the pronounced arrangements concerning parental access.

Over the last few years, the Flemish authorities have certainly accommodated the lack of information experienced by the children. Furthermore, efforts were made to give children's opinion a chance within mediation. The legislation however is still ignoring too many of the children's difficulties. Legislation on divorce should first of all aim at managing conflicts. Whereas parents may still claim that they can go on living without each other after a divorce conflict, this is much more problematic for children. They can never completely get away from their parents and in most cases, they do not want to either. Legislation should guarantee that children do not get stuck in the conflict between their parents, that their interests are primordial and that their opinion is reckoned within the decision making.

### **New legislation not for the better**

During the term 2003-2007 the legislation around divorce was greatly modified. We deplore that the legislator still disregarded the position of children in a divorce procedure.

In this sense, judicial intervention in a divorce process should not be the first, but the ultimate step. Law suits set people up against each other. A compulsory introduction to mediation could diminish the possibility of defence. And mediation might create more opportunities to hear the child's point of view.

The law still enables forced execution. No form of constraint is in the interest of minors. Physical and psychological force of any kind or shape on a child is inadmissible. Being forced to hand over a child against its will is out of bounds.

Some stipulations of the CRC are being overlooked in the new law. Children are entitled to contact with their parents. In the new law, this has remained the right of the parent. As a result, when a parent has hardly had any contact with his or her child, voluntarily or under constraint, or has not had any contact over a long period and wishes to re-establish relations with the child by starting a legal procedure, the legal authorities tend to consider that the parent actually disposes of a kind of 'unconditional' right to maintain such contacts. The contact is then re-established, if need be with the guidance of a special service providing a meeting room, without beforehand having questioned whether it is in the interest of the child to restore the contact. The child is then confronted with a decision that was often taken without giving the child an explanation on its implications and without having asked the child's point of view. In this kind of situation, an assessment and counselling should be foreseen, before the decision to restore the contact between the parent and the child is taken.

Furthermore, if a parent decides not to have any more contact with the child, no disposition has been taken to guarantee the right of the child who wishes to maintain those relations.

On many occasions, the present preferential 50-50 custody regulation in the new divorce law does not meet the needs of the child and is not always in his or her interest, and this is certainly true when the child's views are not reckoned with. Problems occur in the case of discordant divorces and when both parents live far away from each other. The preferential regulation chiefly responds to the needs and the demands of the parents, often at the expense of the well-being of the child concerned.

### **The view of the child**

Children have the right to participate. This has legally been converted in the children's right to speak in legal procedures. Children may ask the judge to be heard to in all procedures that affect them. However, it is up to the judge to decide whether the child has sufficient maturity to exercise its speaking right. If the judge refuses to hear the child, he has to motivate his decision. In real terms however, we notice that the right to speak in divorce procedures is not always practised correctly. Too often judges are not inclined to hear children and the reason for the refusal is not or little motivated. In that respect, the 'speaking right' of children is too often a 'favour'. Moreover, the law contains a discrepancy. The law foresees that a judge in Juvenile Court is obliged to hear children from the age of 12 years onwards. No age limit has been defined for other courts. As a result, there is no uniformity in children being heard by judges. Also, the law only regulates the possibility for children to give their opinion. Stipulations on the way judges should hear children have not been included. As a result, the right to speak is often reduced to a contact with the child for form's sake, whereby the opinion of the child still remains underexposed.

### **Financial implications**

The problem of unpaid alimony is another factor that generates and amplifies conflicts, of which the children always are the first victims. To this effect, the SECAL/DAVO (a service for alimony claims), which has been operating since 2004, can claim overdue alimony and/or pay advances. The latter is however limited to people whose income is limited to an amount that is too low. In 2008 moreover, the SECAL/DAVO only treated 30.000 files, whilst 150.000 to 170.000 families are esteemed to be affected by the problem.

Several recommendations are of the order: information needs to be widespread about the existence of the SECAL/DAVO, the service should be given a universal assignment by suppressing the income limit, the administrative work should be simplified by creating a national register that is directly accessible for SECAL/DAVO (and that would contain, among others, the legal decisions concerning the alimony) and an effective cooperation between the States Parties should be guaranteed in case the debtor is a resident in a foreign country. These measures, although having been required regularly for many years, are still not being applied.

## **6 Health and welfare**

### **Mental health care**

Over the past years the offer in youth care services has been diversified and improved. Sectors that used to work separately now have to develop their help in a more integrated manner. However, this turned out to be a slow process since the existent services sometimes have diverging visions and interests, as a result of which the practice of the new working model is not always visible in the field.

Also lacking is an intersectorial gateway to services that are not directly accessible. The idea behind the integral youth care was that minors would no longer slip through the net, but receive specific help for their specific needs. The right to get help has become reality, with the limitation of the availability however. Waiting lists are unacceptably long and often youngsters do not receive the required help, they are driven from pillar to post, with an unnecessary escalation of their problems as a result. On the other hand, we noticed that sometimes, no or inadequate help was offered and that extra means were given to the most radical modules (residential care or cells for young delinquents) rather than to more preventive modules.

Many youngsters do not know the help that is on offer, they do not trust the care centres or communicate bad experiences.

In real terms we noticed that not all youngsters receive the adequate care. Some minors with psychiatric problems end up in closed institutions, together with young delinquents, and receive no correct help, therapy or counselling. Others – especially children and youngsters from underprivileged families - are put into care too quickly and find it difficult to find their way out of the system again.

We therefore recommend that the number of specialised health care centres for children and their capacity should be increased and that the offer is evenly spread over the whole territory.

Children who seek psychological or psychiatric help of their own volition still encounter many problems. Psychologist esteem that a child is entitled to a first opinion, but that further treatment requires the parents' consent. General practitioners more often refer to the 2002 Law on Patients' Rights, which allows certain autonomy to minors capable of a reasonable judgment of their interests. We therefore recommend that the 2002 Law on Patients' Rights should serve as a basis for all professional health carers, so that they are able to offer adequate psychological or psychiatric help.

### **ADHD and Medicalization**

Over the past few years, we witnessed a massive increase in the prescription of ADHD-medication (Attention Deficit Hyperactivity Disorder), with peaks around May and June.

Methylphenidate certainly helps youngsters who have been diagnosed with ADHD, but it remains an amphetamine with numerous behaviour changing side effects. It should certainly not be prescribed without diagnosis, to help youngsters concentrate during exam periods. Administering the drug has become an increased tendency to handle disturbing or turbulent children in a school environment. However, reducing a child to a mere 'symptom' that disappears with the right

medication is unacceptable. Educators should rather lend a listening ear to possible difficulties, whether they are of an educational, emotional, physical or psychological nature.

We therefore recommend that the agreement of a medical consultant is legally required before delivering said medication. The agreement may only be given on the basis of a detailed multidisciplinary report.

### **Day care**

Many parents worry about the lack of such facilities. Moreover, the day care of a child is usually linked to the parents' professional status. Even if the projects for the creation of new places include day care for children of the unemployed, people in training or with short term employment, in practice the places are usually allocated to children of working parents.

Concerning the quality code, the Child & Family government organizations ONE and K&G cannot guarantee its application in all of the facilities, due to their lack of financial and human resources.

We therefore recommend that the number of childcare facilities increases to reach the Barcelona targets and surpass them. Facilities should be widely available and affordable. Childcare is an unconditional right of the child. Childcare services should be streamlined into one integrated system of services of care and education, with qualified staff. ONE and K&G should receive sufficient resources to guarantee an efficient control of the application of the quality code.

## **7 Violence, abuse and neglect**

As a part of our work as ombudspeople for children's rights, we receive numerous complaints about violence victimizing children. The forms of violence are diverse, both in nature (physical, sexual, psychological) and in intensity (cruelty, maltreatment, so-called educative violence) and even the perpetrators differ (parents, children's professionals (teachers, educators), other children, persons unknown).

Even if forms of severe violence seem to draw the necessary attention and result in a reaction towards both the perpetrator (criminal prosecution) and the victim (specific care), numerous forms of violence seem to remain unnoticed.

### **Violence in leisure time**

For many youngsters, practicing a sport means fun, friends, enjoying oneself, and choosing one's own team or club. Sometimes however, trainers demand a lot of discipline or heavy performances. Reproaches or threats are not uncommon. And when youngsters are kicked out of their team or confronted with physical violence, the fun is miles away.

And yet, many sports clubs have subscribed the Panathlon Code of Sports Ethics: they commit themselves to treat youngsters with respect and to have the youngsters trained by competent people, in a way that is adapted to the youngsters' age, rhythm and potential.

We are of the opinion that the fun aspect of sports should be given more attention. Youngsters should be given the chance to become champions, but also not to excel as champions. Sports clubs need to take the youngsters' complaints more seriously and bare their wishes in mind.

### **Violence at school**

Another one of the top five educational problems announced at our ombuds services is bullying at school.

Prevention and sensitization regarding bullying at schools needs to be supported and elaborated. Schools should develop efficient policies on pestering.

### **Violence at home**

In addition, there is the so-called 'pedagogical smack' which victimizes children in their family environment. Those forms of violence may have short term or long term consequences (risk of 'transgenerational learning'). In 2002 the Committee was concerned that in Belgium, all forms of corporal punishment – even within the family – had not yet been forbidden. In spite of putting forward several bills in Parliament, aimed at modifying the civil code, so that it clearly stipulates that the child is entitled to an education that is respectful of its person, and that a child must never be subjected to any form of physical or psychological violence, the Belgian legal framework has not yet been adapted in that sense.

The question of 'indirect' violence towards children also poses problems. Number of children are exposed to conjugal violence. Children suffer from violence between parents and too often, the suffering of youngsters who live this kind of

situation is denied or hidden. It may be true that all-round initiatives that were introduced to contend with conjugal violence will in fact have a positive effect on the situation of children who are exposed to it, but the matter should get a more specific attention. Awareness campaigns should inform on the complexity of the problem and improve referral to the adequate services.

In the care for children who are victims of abuse and neglect – first-line carers and specialists – are swamped with the number of situations they are confronted with. It is high time that a vast and national action plan is launched in order to combat abuse and neglect. Such a plan implies a significant increase in means for all services that intervene directly, in prevention and coordination as well as in the specific care for the maltreated children.

### **Ritual violence**

In Belgium, female genital mutilation mainly touches girls of Sub-Saharan African or Arabic origins. FGM has direct and indirect repercussions on the girls' health, sexuality and mental state. In spite of the absence of precise statistics, we estimate the number of girls at risk at several hundreds, especially when they visit or go on holiday to their countries of origin, and even in Belgium.

It is deplorable that the law prohibiting such practices remains unknown, even by health carers, and that the problem is minimised due to the lack of sufficient data. We therefore recommend that we dispose of reliable and updated information to better identify the problem. We should focus on informing and sensitizing all health workers (preventive and curative services) and provide them with a clear procedure for further referral, depending on each situation. We must find out why families perpetuate this tradition even in Belgium and the way it is being practised, so that we can elaborate more adequate and efficient prevention.

## **8 Children with disabilities**

### **Insufficient offer in places...**

Numerous files drawn up by both the KRC and the DGDE have to do with the lack of places for children with disabilities. This shortage is not only true in schools for children with special needs, but also in the institutional day care centres and residences.

In special education, the lack of places mainly concerns children with moderate or severe mental disabilities, but equally those who suffer from behavioural and personality disorders and children with a physical handicap.

In the French Community, a study is now being completed to assess the offer in education, which will at least allow us to objectify the situation. The indicated problem however, still needs to be resolved.

The problem is such that it leads schools to give their free places to pupils who correspond best to their criteria, and they almost systematically keep their doors closed for pupils who experience much more difficult situations. As a result, it frequently happens that youngsters remain several years without having had any schooling possibilities, notwithstanding the right to education granted by the CRC.

The problem of the shortage of places at schools is all the more severe since it also concerns day and residential care services, which are private and therefore free to accept a child or not. There too, the children who are most in need of specific care, adapted to their complex situation, always seem the first to be excluded from the system.

### **...and transport facilities**

Another particularly worrisome problem linked to education is the school transport for children with disabilities. It is organised by the authorities in function of where the school is situated and it is the object of numerous complaints at the DGDE and the KRC, complaints coming from the parents as well as the schools. The duration of the transport (which may take over three 3 hours, twice a day) makes all form of family life impossible and causes a considerable fatigue for children who are already vulnerable due to their disabilities. On the other hand, the lack of information of the supervisors (if and when they are present) about certain specificities of the disabilities may lead to relational conflicts, sometimes causing the children to develop real phobia, with absenteeism and even a total lack of schooling as a result.

The experience also shows us that the families hardly have any resort in this kind of situation, since the children rarely possess the necessary capacities to express themselves or to assert their rights. Moreover, although many official associations, advisory bodies and even the DGDE and the KRC have already questioned the authorities on the matter, the system has not yet been sufficiently adapted and the present situation even shows that the problem is getting worse.

## **Social inclusion**

For years, the inclusion of children with disabilities in the every day environment (schools, crèches, youth movements, holiday centres, training, sports or cultural activities) has been the object of numerous debates. Since Belgium ratified the Convention on the Rights of Persons with Disabilities, the country will be forced to make headway with the problem, which is all the more necessary because the present situation is much worse than what we might rightfully expect. Eventually, initiatives are being taken and are multiplied all over the country, but those still greatly depend on the goodwill of some people responsible, who have often been sensitized themselves on a personal level.

This state of affairs cannot go on, and the integration of all children with disabilities in all environments should henceforth receive a legal basis, including the adequate training of all professionals concerned.

In this context we need to mention the existence of a new decree of the French Community (February 5<sup>th</sup> 2009) which aims at integrating children with disabilities into regular education. It is still premature to assess the possible positive impact of the decree, but its text has already been the target of a lot of criticism, coming from the regular as well as the special schools. This state of affairs emphasizes the urgency of a widespread sensitization to the problem that occurs not only in the childhood years, but also in all forms of initial and continuous professional training.

The Government is putting in more efforts to promote the integration and the ability to cope in their families and in society for children and youngsters with disabilities by offering a Personal Assistance Budget (PAB). The money enables youngsters with disabilities to receive assistance at home, at school and during leisure time. Although the system is commendable in itself, pressure groups complain about alarmingly long waiting lists, as a result of which minors with a great need of assistance cannot be guaranteed the necessary care.

## **9 Children in precarious income families**

Belgium is one of the richest countries in the world. Conclusions based on the SILC-2005 indicate that in the year 2004, 18,6 % of all Belgian children lived in families that had an income at their disposal under the monetary EU-SILC-poverty line.

In order to fully grasp the problem of poverty, there is an urgent need to invest in research on the extent and the impact of poverty on children, and more specifically from their perspective.

In addition to this, we need more family related measures. Family guidance should rather be organised out of a multidimensional approach (financial aid, housing, energy, employment, assistance with the school curriculum,...). Other measures of financial assistance than child benefit should be introduced, which may result in a further reduction of poverty risk for children. Equally, a priority policy is essential to guarantee a better access to child care as a basic need.

### **Poverty and schooling**

Growing up in poverty mortgages the possibilities of a decent education (and hence a better future) for children. More than half of the pupils living in poverty stayed down at least one class in primary and secondary education. More than one third of them repeated two or more forms and one out of three ended up in schools for children with special needs. Only a small number of children of unemployed parents manage to remain in general education.

There is an urgent need of attention to training in poverty issues for all professionals who come into contact with families living in poverty. Particularly teachers and school heads need to be more sensitized and trained towards children in poverty, especially to avoid disparaging practices whereby pupils' degrees or certificates are being withheld because their parents didn't pay some fees. At the same time, staff of the Centre for Pupil Guidance (CLB) needs to be trained and sensitized in order for them to anticipate the questions and problems of families in poverty.

Also in education, we have to denounce that free education is still a myth. Families with a poverty risk urgently need financial support for transport, school equipment, books and compulsory extracurricular activities. For this reason, schools must limit the costs to an absolute minimum, allow advance regulations and be transparent about expenses.

### **The impact on family life**

Poverty also strongly affects the children's right to family life. If the Belgian report mentions that it is excluded that a family's precarious situation may still be the reason for the decision to put children of that family into care, studies prove that in real terms, the poverty in which families live is one of the most recurrent reasons advanced by the social services and the legal authorities to justify putting the children into care.

And even if this argument is not clearly advanced initially, it appears explicitly when the child's return into its family is being considered. Numerous (particularly

costly) placements might be avoided through policies that are willing to support those families. Moreover, during the child's placement, the social services often put little means at the family's disposal in order to allow them to solve their precarious situation. This of course puts a heavy burden on the child's return, especially since the family has to fulfil severe requirements in order to be allowed to welcome the child back in its family environment (adequate housing, financial stability, ...)

### **The impact on health care**

Poverty also has a considerable impact on children's health. Although the access to basic health care seems generally guaranteed, this type of care is regularly being postponed. Not to mention other, often very expensive types of medical care that children should benefit from. Visits to the dentist's, the ophthalmologist or the speech therapist are often not guaranteed for children from poor families who cannot carry such expenses, because they have other financial worries. Even the access to certain hospital services is sometimes refused because of the parents' previous debts. Those situations may considerably affect the children's health.

### **The impact on social life**

Access to leisure activities and the right to free circulation are equally endangered for children from poor families.

Transport costs are often a major problem for those families, even the transport to school. Free public transport (trains, trams, underground, buses) for all children seems an obvious first solution to implement. However, it does not solve all problems, since in certain rural areas, the offer of this type of transport is clearly insufficient and it does not allow families and youngsters to benefit from this possibility that might guarantee them a minimum of social life. Public transport should therefore not only be free, but also extended, so that all children can use it in function of their needs.

For children from deprived families, the access to leisure activities is also compromised of course. The encountered problems go a lot further than the cost of those activities. Next to the financial obstacles and the lack of information on the existing possibilities, the stigmatization of which those children are victims causes real discrimination. Parents refuse to sign up their children for external activities, for fear of having them exposed once more to mockery, rejection and even exclusion. Moreover, in a context where each and every day is a source of serious problems, the necessity to grant children the right to leisure activities seems to be a reality that the parents find difficult to apprehend. It also needs to be mentioned that the abolition of sports cheques in all of the French Community (autumn 2009) constitutes an extra hindrance in the access to leisure activities for children from precarious income families.

## **10 Education**

### **Not enough places for everyone**

The lack of places in primary school and kindergartens that has been latent in Brussels for several years has now become a pressing problem.

This year (2009), plenty of children have not been able to register in kindergartens in their vicinity, whilst this criterion is essential for young children. The problem is particularly awkward in areas with a huge population of foreign origin, where early school attendance is strongly advised in view of a better social inclusion and in order to stimulate the acquisition of the indispensable learning bases to start primary school. This year, most children eventually found a school to attend (sometimes a long way from home), but there is cause for concern for all children who still need to enrol in the course of the present school year.

Moreover, certain forecasts give a consequent increase of the Brussels population over the coming years, which may cause the situation to change for the worse. It is therefore essential that research be organised in order to quantify the actual offer and the demand in the short and medium term. In this way, all children might be entitled to a place in a school that answers their expectations, from kindergarten onwards.

### **Non-respect of the procedures**

Both our organisations regularly receive complaints about the non-respect of some procedures as foreseen in legal texts regulating education. Although this state of things has each time been passed on to the competent authorities, the situation persists, whilst no measures are being taken against the schools in question and no structural answers are being considered.

One of the major problems consists of the non-respect of the enrolment and exclusion procedures. It therefore happens that schools omit or refuse to deliver an attestation for the refused enrolment or the exclusion of a child.

This non-respect of the procedures tramples on the children's right to defence and deprives them of a possible appeal to the re-enrolment commission, which would allow them to get the necessary help when looking for a new school. In this way, the long periods without school attendance could be avoided. As far as the commissions are concerned, it is equally regrettable that in the French Community they remain divided by the school systems. Above all, the commissions carry no further responsibilities once they have suggested a new school, even if that school does not at all correspond to the needs and realities of the pupil. Hence, the enrolment is not at all effective.

Both our organisations also found that numerous children - especially ones from immigrant or socio-economically underprivileged families - are too soon referred to schools for children with special needs, on the basis of certificates that do not conform to the legal criteria that are normally required. More attention should be given to the respect of those (well stipulated) criteria in order to avoid such aberrations.

### **A statute for pupils**

Pupils still experience problems with school discipline and punishment. In this case, we refer to corporal and humiliating punishment and sanctioning that is not in proportion with the committed facts or the alleged misbehaviour. Moreover,

disciplining does not always seem equally consequent or transparent and some of the pupils' rights (privacy, property, integrity,...) are not always respected. In the case of a conflict between a pupil and the school, the pupils have no access to an external and independent channel in view of an objective and thorough assessment of the possible violations of their rights. The final decision is always left with the school in question or with the school governance. In practice, the school often seems to be both judge and party. Pupils are not sufficiently informed about children's rights in general and their rights at school in particular. Moreover, the pupils' right to participate is not yet a day-to-day reality.

The KRC and the DGDE advocate a clear and coherent statute for pupils, embedded in a decree. The statute should define the pupils' rights and responsibilities for all schools throughout the system. The statute must stipulate that pupils have a say in the matter of everyday school life, it should contain regulations on discipline and sanctioning, privacy, the right to appeal against exclusions and other measures, protective remedies against bullying and violence between pupils and information about how conflicts are prevented and regulated. Furthermore, the KRC and the DGDE plead for the introduction of an accessible authority, independent of the school, where violations of rights may be denounced. Only an independent authority can resolve conflicts in a correct and definite manner, without the pupil or the school having to turn to court to start long and cumbersome procedures.

### **Free education**

It is a myth that education is free of charge. Many parents find it difficult to pay for transport or for all kinds of school equipment. Hence, schools should limit the costs to an absolute minimum; they should allow advance payment regulations and be much more transparent about all kinds of expenditures.

That schools should get more means goes without saying. But especially families with a poverty risk should receive better financial support for school transport, equipment, text books and compulsory extracurricular activities. This target group also needs much higher grants. And finally, the KRC and the DGDE wish to take position against the practices of some schools, whereby pupils' degrees or certificates are being withheld because their parents didn't pay some fees. This means that the children are denied their right to education, without any possible appeal.

## 11 Asylum

### Education

The right to education is a fundamental right that should apply to all children, even foreign, independent of their administrative status. We are pleased to say that our country has adopted a legislation that foresees education, adapted to the situation of newcomers, but we deplore that the law does not concern all children, in spite of the numerous interpellations of the Governments in question.

In the French Community, the specific schooling is not open to certain children, depending on their nationality, their statute or the duration of their stay in Belgium, which results in intolerable discrimination. Moreover, the adaptation period cannot be longer than one year, which is too short for many children. And eventually, the preparation year may be sanctioned by a certificate that permits access to education in function of the level achieved, but only if the child or its legal guardian fulfils certain administrative criteria. We also deplore the considerable lack of such 'bridging classes', as a result of which many children are forced to attend regular schools, without any preparation.

We therefore recommend access to the adapted form of schooling for all foreign children, without distinction, an increase in the offer, the prolongation of the maximal allowed duration and, eventually, the possibility to be referred to a school that only takes the child's possibilities into account and not its administrative status.

### Unaccompanied minors

The quality of the guardian system for unaccompanied minors has not been sufficiently elaborated. Some guardians are professionals, others are voluntary workers. The number of unaccompanied minors per guardian also differs strongly, as a result of which there is a risk that the quality of the guidance is not equally good for all youngsters.

There is not still any multidisciplinary screening of the support and assistance needs of the unaccompanied minors, nor do we have legally embedded rules about their status and their regularisation of residence.

The cooperation protocol between the federal authorities and the Communities on the care for unaccompanied minors still needs to be finalised.

The Dublin Regulation stipulates which member state is responsible for deciding on the asylum application. If another state is responsible for treating the application for asylum, the asylum seeker may be returned to said state and Belgium no longer deals with the application.

The time span, in which the demand for transfer to another state is being examined, is a period of stress, fear and insecurity for a minor. When an unaccompanied minor is being transferred from Belgium to another member state according to the Dublin Regulation, it has not been sufficiently examined whether this transfer is in the minor's best interest. The transfer to another member state does not always occur with a clear guarantee about the quality of the reception in that particular country.

The consideration whether an unaccompanied minor should be allowed to remain in Belgium or not does not often enough occur in the interest of the minors themselves.

Unaccompanied minors who have to leave their reception centre because they have been recognized as being refugees, need further care and assistance. Because of their past as refugees and their uncertain perspectives, specific guidance is needed. Recognized unaccompanied minors do not always have access to special youth care centres. No one knows who or what they can turn to and hence they slip through the net.

If minors receive a legal status, they will be entitled to financial in stead of just material assistance. The transition does not always happen smoothly. Minors might well end up on the streets if Fedasil no longer has a place for them. And this is a risk run by minors who have their parents with them as well as by unaccompanied minors.

### **Vague procedures of regularization**

We still do not have a regularization policy for families with children, based on clear criteria and assessed by an independent commission of experts. Each regularization policy should consider the presence of children and the duration of their stay in Belgium. In July 2009 the Government reached an agreement on the criteria for regularization. School going children and a long-lasting local embedding are important regularization criteria, but the Secretary of State for Migration and Asylum policy still assesses each demand individually.

### **No detention of children in closed centres**

In early October 2008 the Minister for Migration and Asylum Policy decided to no longer detain families. At this precise moment, their deportation happens via return houses. At present, there are nine of those return houses in Zulte and Tubize. The commune of Sint-Gillis-Waas will have four of these houses available by the end of 2009. Just like the Council of Europe's Commissioner for Human Rights, we welcome the minister's efforts to avoid detaining children in closed centres. But we deplore that children are still being locked up when they arrive at our borders and do not get access to the territory. Nor does the Royal Decree on the functioning of the return houses prevent that children are being detained. The text only stipulates the working rules but does not grant the right to live in a return house.

### **Fedasil in crisis**

Due to the lack of places in the Fedasil network, numerous families are at present detained in transit centres (hotels, emergency reception centres) or, if the hotels' capacity is exhausted, left in the streets. Although the law is binding on the matter for Belgium, those families do not benefit from any type of adequate social, legal, medical or psychological aid. The children have no room to play or have leisure activities and do not go to school. In order to cater for all their needs, their parents dispose of 6 Euros per person and per day, allocated in the shape of a paper that can only be exchanged for food. It is therefore not possible to obtain nappies, milk powder for the babies, clothes or toys.

The number of children exposed to such degrading treatments does not cease to increase with the arrival of new asylum seekers. It is high time that Belgium eventually faces its responsibilities to welcome those people with respect for their rights and that it ensures them the indispensable aid and protection.

## **12 Children in conflict with the law**

### **Relinquishment of jurisdiction**

In its final observations on the first two Belgian reports, the Committee expressed its concern that youngsters under 18 could be tried as adults. It therefore recommended explicitly that Belgium should ensure that this no longer happened.

The Belgian Youth Protection Law has been reformed in 2006. The reform did not meet the wishes of the Committee, since Belgium maintained the principle of relinquishment of jurisdiction. This means that under certain conditions that are surely more strict than beforehand, youngsters who were older than sixteen at the time of the offence, may be judged in an court of common law according to adult penal law.

At this moment, these minors are sentenced by a specific chamber of the Juvenile Court, composed by magistrates who took a training in juvenile matters. However, this adaptation of the procedure does not alter the general principle according to which those minors are still judged under adult penal law.

Moreover, the law now stipulates that those youngsters will, after a possible sentence, no longer be confined to prisons for adults, but rather to a closed federal centre for juvenile delinquents. Although this innovation may seem positive, we nevertheless fear that because of this adaptation an increasing number of youngsters might be transferred to adult courts. The first available statistics prove in fact that, although the objective conditions for a transfer have become more severe, their number has not yet diminished.

A further worry concerns the fact that the minors may already be referred to a closed federal centre during the procedure. This possibility of precocious confinement resembles preventive detention for minors, which is in conflict with Article 40 of the CRC.

### **Increasing number of closed institutions**

The CRC states explicitly that the detention of a child shall only be used as a measure of last resort and for the shortest appropriate period of time. Notwithstanding this, we found that the authorities foresee a long-range plan focussed on the extension of the number of detention places for minors.

In 2002 and during the previous assessment of the Belgian report, the Committee expressed its concern about the detention possibilities for minors as created by the Law of March 1st, 2002. At that time, the closed federal centre in Everberg only held 20 places that would complete the ones in the Communities' public institutions which already allowed placement in a closed centre. Although the statistics did in no way show an increase in juvenile delinquency, Belgium still decided to substantially augment the number of places in closed centres. Between now and 2012 and depending on the announced projects, the creation of new centres would result in 302 detention places for minors, which equals an increase by more than 1500 %. Without counting the already existing places in the Community institutions, that are also increasing.

The rising number of detention places is a worrying evolution. A decent juvenile sanction policy should give precedence to alternative measures. The reform of the Youth Protection Law of 2006 aimed to diversify the measures which magistrates could take against minors, with detention remaining the exception. However, we

have to conclude that as far as the applied policies are concerned, Belgium seems to essentially favour detention, since the State has considerably increased the number of places in closed institutions, without releasing equivalent means for other measures.

The justification for the extension of the number of places is mainly based on the fact that the facilities for youngsters in detention are complete. The question why there are no places left is completely being ignored. It appeared from a question in parliament that the greater part of the youngsters who are being detained in those facilities experienced a problematic educational environment and would therefore benefit more from a more adequate offer. Even youngsters with psychiatric problems are sometimes detained in the Communities' institutions, due to the lack of an adequate care system. This often happens to non-delinquent youngsters who, because of their escalating problems, can no longer be cared for in the home environment and are refused access to an open place within the youth care facilities. A positive action would be to invest in solutions for those youngsters. However, this specific problem has not been included in the debate on the extension of the number of places.

### **The legal position of minors in detention**

Both the KRC and the DGDE are concerned about the legal position of minors in detention. Youngsters who are detained in the Communities' institutions, juvenile prisons and forensic child psychiatry are in a very weak legal position. Depending on the institution, there are internal rules or none at all. Youngsters detained in the Flemish Community public institutions may appeal to the 'Decree on the legal position of minors in integral youth care'; for youngsters in the closed institutions within the youth care system of the French Community, there are some guarantees to be found in the decree on youth care. The juvenile prison of Everberg has its own internal regulations and youngsters in forensic youth psychiatry can only appeal to the Law on Patients' Rights. Nevertheless, we found that youngsters in those different institutions have similar problems. This leads to an unequal treatment of minors and a lack of legal certainty.

We also stated that there is not always an external inspection that can supervise the rights of minors and the living conditions within the institutions. This is namely the case of the youth prison in Everberg and of the Flemish Community institutions.

We therefore plead for legally embedded, coherent and clear legal regulations for minors in detention. The statute should determine the youngsters' rights for all facilities with a closed regime, independent of the kind of institution or the competent authority. The statute should deal with participation rules, definitions of privacy, the right to appeal against sanctions, respect for the family, the right to information, the right to aid and assistance and the right of complaint. A possible option would be the extension of the decree on the legal position of minors in Integral Youth Care within the Flemish Community to all institutions for youngsters in detention. At this time, the decree is only applicable to the institutions of the Flemish Community.

Moreover we plead for the existence of an accessible instance, independent of the institution, where violations of rights may be denounced and that supervises the living conditions of minors in detention.

A legal position for minors in detention becomes all the more urgent, in view of the present social evolutions. We already referred to the increase of the number of places for youngsters in detention. Another evolution is the tendency to

increasingly make use of methods such as 'time-out' for the temporary detention of minors in a closed setting. The legal framework for those types of detention is not always clear and may lead to banalising the detention of youngsters.



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