



## Parallel report for the Committee on the Rights of the Child



Parallel report by the Combat Poverty, Insecurity and Social Exclusion Service, Myria and Unia, on the fifth and sixth periodic reports submitted by Belgium pursuant to article 44 of the Convention on the Rights of the Child



Service de lutte contre la pauvreté,  
la précarité et l'exclusion sociale

Steunpunt tot bestrijding van armoede,  
bestaansonzekerheid en sociale uitsluiting

Dienst zur Bekämpfung von Armut, prekären  
Lebensumständen und sozialer Ausgrenzung

Brussels, 28 February 2018



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## Combat Poverty, Insecurity and Social Exclusion Service

The Combat Poverty, Insecurity and Social Exclusion Service is an autonomously functioning interfederal public institution. Its primary responsibilities are evaluating the impact of poverty on the effective exercise of fundamental rights and formulating recommendations for the various governments and parliaments in Belgium, in order to improve the conditions for the exercise of these rights.

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Myria, the Federal Migration Centre, is an independent public institution with the statutory mission of informing the public authorities on the nature and extent of migratory flows, ensuring respect for the fundamental rights of foreigners and stimulating the fight against human trafficking and smuggling. It has also been appointed as Independent National Rapporteur on human trafficking.

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Unia, the interfederal centre for equal opportunities, is an independent public institution with expertise on equality and non-discrimination policy. Its mission, based on human rights, is to promote equal opportunity and rights for all citizens and to combat discrimination. Since 2011, Unia has been the independent Belgian mechanism responsible for monitoring the CRPD.

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## Introduction

### National institution for Human Rights

The Combat Poverty Service, Myria and Unia were previously part of the Centre for Equal Opportunities that had been accredited, since 1999, by the United Nations as a National Human Rights Institution (NHRI) with status B. It was re-accredited in March 2010. Since the reorganisation of the Centre for Equal Opportunities, the three institutions no longer have this status, but are in transition, pending a new status for which Unia reapplied in partnership with the two other institutions. The Combat Poverty Service, Myria and Unia are members of the European Network of National Human Rights Institutions (ENNHRI).

The Belgian authorities have made a commitment, towards various international authorities, to set up an NHRI that will meet the criteria established by the Paris Principles. The government aims to have this interfederal institution up and running by the end of the legislature in 2019. For now, no text has been submitted yet.

Thus, in the absence of an NHRI in Belgium, in 2014, the Belgian institutions with a partial or full mandate as an institution responsible for the respect of human rights created a consultation platform. The Combat Poverty Service, Myria and Unia have been involved since its creation. Other members of this platform include the Children's Rights Commissioner (*Kinderrechtencommissariaat* or KRC) and the General Delegate for the Rights of the Child (*Délégué général aux droits de l'enfant* or DGDE). The platform meets monthly to exchange information on relevant issues, pending the potential creation of an NHRI that would play the role of coordinating some of the activities of the structures that have a shared mission of ensuring respect for human rights.

### Content of the report

This is the first time that the Combat Poverty Service, Myria and Unia are submitting a parallel report to the Committee on the Rights of the Child. These three entities hope to draw the attention of the Committee to the progress, sources of concern and shortcomings observed in certain aspects of the Belgian policies towards children in their respective fields of competence. It is based on findings taken from in-depth consultations with a variety of stakeholders, individual cases and advocacy work on structural issues, particularly through the publication of their own reports and studies.

For the sake of convenience for the Committee, the three organisations have limited themselves to complementing the work of the KRC and the DGDE on certain key aspects. This report is also structured according to the same headings as used by the KRC and the DGDE.

## 3. Non-discrimination, the best interest and the opinion of the child

### 3.1. Not all children have the same opportunities

#### 3.1.1 Climate associated with the terrorist attacks/Ethnic profiling

The terrorist attacks committed between 2014 and 2016 in France and Belgium created a climate of profound public anxiety and contributed to the polarisation of society. This climate, which is described in a report published in July 2017<sup>1</sup>, had a visible impact on the work of Unia, particularly through the increase in individual reports associated with this issue received in 2015 and 2016.

Unia received reports involving young people of school age being the targets of insults from other students in their class, combined in certain cases with physical violence, cases of racists harassment at school, or cases in which teachers were guilty of stereotyping or insulting students. Various cases of ethnic profiling were also reported to Unia.

#### **Recommendation**

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*Remain alert to the consequences of measures intended to combat terrorism, which can contribute to creating and reinforcing a climate that encourages the isolation and stigmatisation of certain groups, which can ultimately harm the ability to live together.*

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#### 3.1.2 Police brutality

In addition to situations associated with the post-attack climate, Unia regularly receives reports of police brutality towards young people of foreign origin. A recent example describes a minor of African origin, who was assaulted by the police and was subjected to racist insults during a demonstration that got out of hand in a commercial district of Brussels in November 2017. In general, it is difficult to supply proof of police brutality and its racist character and to secure convictions for these crimes. It would appear that the complacent attitude of certain judges in the face of illegitimate use of violence by certain police officers remains a recurrent problem in Belgium<sup>2</sup>, and this includes when the victims are minors<sup>3</sup>.

### 3.3. The interests of the child do not always come first

#### 3.3.1. The best interests of the migrant child

The regulations on asylum and migration contain certain provisions relating to the consideration of the best interests of the child. However, it is crucial for the rights and best interests of the child to be a key consideration at every step of the migration process, from access to the territory to the process of

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<sup>1</sup> <https://www.unia.be/fr/articles/rapport-unia-mesures-et-climat-consequences-post-attentats>.

<sup>2</sup> ECHR, *Boutaffala vs. Belgium*, 20/07/2017 (no 48302/15).

<sup>3</sup> ECHR (GC), *Bouyid vs. Belgium*, 28/09/2015 (no 23380/09).

removal, and this must apply for all authorities and actors involved. In 2015, Myria created a ‘check list’ to help these actors, particularly administrative and judicial authorities, to more effectively take the best interests of the child into account<sup>4</sup>.

This lack of consideration for the child's best interests has been observed in a number of specific contexts:

⊆ ***The right to live as a family***

Through an analysis of the jurisprudence carried out in 2015<sup>5</sup>, Myria determined that the decisions of the Immigration Office to refuse a visa or revoke a residence permit in the context of family reunification do not consistently include motivation in relation to the best interests of the children. The administrative authorities often go no further than pointing out that one or more legal conditions are not (or are no longer) being met, without specifically examining the consequences of the refusal or revocation of the residence permit for the situation of the children concerned<sup>6</sup>.

⊆ ***Arrest and removal***

Myria also has questions about the consideration of the interests of children in the case of the arrest of families of undocumented aliens with children, which can be a particularly traumatic experience for the children. Certain families have described the circumstances of their arrest at home: at dawn, with a large - and therefore intimidating - number of police officers, the use of handcuffs on the parents, without giving them time to pack their bags or say goodbye to neighbours, friends, classmates. The individual cases handled by Myria also included reports of situations in which no specific measures were taken in consideration of the needs of children (food, communication of information in a child-appropriate way, etc.)<sup>7</sup>. Recently, an arrest from an open centre for asylum seekers made headlines because of the use of force in front of the children and the separation of the family during the attempted removal<sup>8</sup>. This attempted removal is currently subject to an investigation by the Comité P (the Standing Police Monitoring Committee).

In addition, a new draft law authorising the arrest of undocumented aliens in their homes has also been the subject of much debate. In January 2018, Myria issued an opinion on this subject in which it specifically emphasises the lack of measures in consideration of the interests of children<sup>9</sup>.

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<sup>4</sup> Myria, *Migration in rights and numbers 2015*, Annex 3 (in French), <http://www.myria.be/files/Migration-rapport-2015-checklist.pdf>.

<sup>5</sup> See Myria, *Migration in rights and numbers*, 2015 (in French), The child's best interests and his/her right to live as a family, pp. 110-114.

<sup>6</sup> See for example: CCE n° 118.470 of 6 February 2014, pt n° 1.3 and the decision of the IO of 17 September 2013, cited in CCE n° 118.470 of 6 February 2014. According to Myria, the situation has not significantly improved since its analysis published in 2015.

<sup>7</sup> See Myria, *Migration in rights and numbers*, 2015 (in French), The child's best interests in the return process, pp. 172-177.

<sup>8</sup> RTBF, Expulsion of refugees: the police in Jodoigne are shocked by the methods of their federal colleagues, [https://www.rtb.be/info/regions/brabant-wallon/detail\\_expulsion-musclee-de-refugies-la-police-de-jodoigne-choquee-par-les-methodes-des-collegues-federaux?id=9781967](https://www.rtb.be/info/regions/brabant-wallon/detail_expulsion-musclee-de-refugies-la-police-de-jodoigne-choquee-par-les-methodes-des-collegues-federaux?id=9781967).

<sup>9</sup> Myria, the necessity and the proportionality of home searches should be re-examined (in French), <http://www.myria.be/fr/droits-fondamentaux/evolutions/communique-la-necessite-et-la-proportionnalite-des-visites-domiciliaires-doivent-etre-reexaminees>.

Myria also noted, particularly through the caselaw of the Aliens Litigation Council<sup>10</sup>, the absence of sufficient motivation concerning the best interest of the child in the context of decisions to remove the families or parents of children who themselves have the right to remain in the country. This is all the more disturbing as the ban on removing foreigners born in Belgium or those who have lived in the country since the age of 12, which was stipulated by law, was abolished in 2017, thus considerably increasing the number of children potentially affected by the removal of their parent<sup>11</sup>. This is particularly due to the fact that there is no real process for guaranteeing that the best interests of the child will be taken into consideration in the event of a removal order.

## Recommendations

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- ***Include, in the Aliens Act of 1980, an across-the-board provision requiring all authorities and courts for asylum and migration to take the child's best interests into account in all decisions (directly or indirectly) concerning them and to listen to the point of view of the children (with consideration of their capacity for judgement) and to properly take this into account.*** Myria regrets that this recommendation, already included in its 2015 annual report, has still not been implemented by the Belgian state, by providing that the interests of the child be fully taken into account in the planning, implementation and evaluation of migration policies and in taking decisions concerning individual cases, by establishing a procedure for determining these best interests, in accordance with the recommendation of your Committee in the General Comment submitted jointly with the Committee for the protection of the Rights of all Migrant Workers and members of their family<sup>12</sup>.
  - ***All actors involved in the procedures for returning undocumented alien families with minor children should be required to undergo specific training on the rights of the child and on how to best respect them in practice.*** Myria has been informed that the actors in the field sometimes lack knowledge of the rights of the child.
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## 5. Family life and alternative care

### 5.1. The social and educational function of child care must continue to come first

#### 5.1.1 Child care for children from families living in poverty

Public services, such as child care, are an important form of support for families with children. However, families living in difficult socio-economic circumstances make less use of these support structures, because of the cost, the registration procedure, the geographical location of the child care initiatives, etc. Furthermore, based on previous experiences with services, parents living in poverty

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<sup>10</sup> See Myria, *Migration in rights and numbers*, 2015 (in French), the best interests of the child in the return process, p. 173.

<sup>11</sup> Law of 24 February 2017 amending the law of 15 December 1980 on access to the territory (...) in order to reinforce the protection of the public order and national security.

<sup>12</sup> Joint general comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of international migration.

may fear that they will be judged or screened. Because priority is given to parents who are working, or because child care often does not provide a suitable solution to their need for flexible, acute, temporary or part-time care, the most vulnerable families decide that child care is not for them. The shortage of high quality child care and lack of availability further exacerbates this social inequality. However, families living in poverty can only experience the impact and value that child care can have for them once they have actually found a place in a high-quality child care facility.

While the social and educational functions of child care – in addition to the economic function – are increasingly widely recognised, there are parents who do not wish to make use of this support structure. Freedom of choice is a fundamental principle: parents are the first caregivers of their children; the use of child care should not become mandatory.

## Recommendations

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- *Expand the number of child care places and make priority investments in disadvantaged neighbourhoods where fewer child care places are available.*
  - *Invest in high-quality child care that is accessible to all.*
  - *Increase and diversify the offer so that diverse needs, including those of families living in poverty, can be adequately met.*
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## 5.4. Foster care: statutory preference for placement in a family context

### 5.4.1 Importance of the relationship between children in foster care and their parents

It has been scientifically proven that children from families living in difficult socio-economic circumstances are more often separated from their families than others. The right of children to grow up in their families is given less respect when poverty comes into play. Moreover, poverty makes it difficult to maintain the relationship between children and their parents during the foster care process. For many people living in poverty, foster care is a type of care that is even more difficult to bear than having their child staying in an institution. More than with residential care, they experience foster care as a loss of 'parenthood' and feel that the relationship with their child is being taken away from them. The law introducing a legal status for foster care givers<sup>13</sup> – that took effect on 1 September 2017 and which in certain cases allows for the transfer of parental custody from parents to foster care givers – exacerbates this fear among parents living in poverty. Given that being in care, even in a foster family, is always temporary, and that maintaining the relationship between the parents and the child in foster care is essential in order to be able to allow the child to return home, the possibility to expand the parental guardianship of foster care givers is likely to come at the expense of the parents and their relationship with their child. The new law does not take sufficient consideration of the situation of parents living in poverty, the reasons why they make certain choices, the efforts that they make on behalf of their children, the fact that they are not adequately involved in the placement and the difficulties that they experience in maintaining the ties with their child<sup>14</sup>.

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<sup>13</sup> Law of 19 March 2017 amending the legislation with a view to establishing a legal status for foster families, Belgian Official Gazette, 5 April 2017.

<sup>14</sup> Combat Poverty, Insecurity and Social Exclusion Service. (2017). Remarks on the proposed law amending the Civil Code with a view to establishing a legal status for foster families (in French), 13 February 2017.

## Recommendations

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- **To withdraw the articles of the federal law of 19 March 2017 introducing a legal status for foster care givers that weaken the position of the parents, in order to reinforce the position of the parents whose child has been placed in foster care.** Pending the ruling of the Constitutional Court, it is necessary to evaluate the impact of the law on the relationship between the child and his parents. It is important to equally include all actors, parents and children as well, in this evaluation so that, if necessary, the practices can be changed.
  - **To support families in such a way that they can cope with problematic situations without requiring placement of the child.** The case law of the European Court is solid: article 8 of the European Convention on Human Rights imposes positive obligations on the state, inherent to the effective respect for family life<sup>15</sup>.
  - **Invest more in maintaining the mutual relationships when a child needs to be placed in foster care<sup>16</sup>:** guarantee that the foster family lives near to the family home; provide the necessary resources and personnel to allow the meetings between the family members and the foster family to take place under the best possible circumstances.
  - **Determine how these relationships can be effectively maintained in practice and include numbers on returning to the family and on visits during foster care in the youth aid statistics** (frequency and breakdown according to age per type of placement and family situation (including the income level)).
  - **Highlight the importance of the relationship between children and parents during the basic training and continuing education for professionals in the sector.**
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## 6. Disability, health and welfare

### 6.1 Care for children with disabilities

#### 6.1.2. School transport

Unia has repeatedly expressed its concerns to the public authorities about the conditions for transport to and from school for children and adolescents with disabilities, in the different regions of the country. The main problems observed are as follows: the length of the journeys, waiting time, schedules, not enough accompanying supervisors, supervisors who lack sufficient training or have none at all.

Unia points out that these conditions are inflicted on children who are already made highly vulnerable by a disability, or by behavioural difficulties and/or psychological issues.

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<sup>15</sup> ECHR, 16 February 2016, n° 72850/14, Soares de Melo vs. Portugal.

<sup>16</sup> Combat Poverty, Insecurity and Social Exclusion Service. (2013). [Familles pauvres : soutenir le lien dans la séparation](#) + [Video](#).

Practically speaking, for school transport, the reasonable accommodations that should be made for children with disabilities include travel conditions that are adapted to their disability.

## Recommendations

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- *Increase the capacity for supervision and support;*
  - *Arrange journeys that are not excessively long, in order to prevent excessive physical and mental fatigue for these children, but also because, for reasons of hygiene, medical reasons and minimum comfort, they require care and nursing that cannot be delayed.*
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## 7. Education, leisure activities and cultural activities

### 7.4. Guaranteeing equal educational opportunities for all children

#### 7.4.1 Situation of schools as a competitive marketplace and segregation

The Diversity Barometer Education<sup>17</sup>, published in February 2018, is a large-scale study commissioned from various universities that identifies structural processes that give rise to inequalities between students. The study clearly emphasises that in Belgium, despite the quality of education, inequality persists within the system according to the social and ethnic origins of the students, a conclusion that confirms the observations in the field as well as the picture obtained from dialogue with people living in poverty.

In Belgium, in both the Flemish-speaking and French-speaking school systems, schools essentially function as a competitive marketplace. This situation is driven by aspects such as the fact that parents are free to choose whichever school they judge to be the best and the autonomy of the schools. These two elements, combined with the principle of funding public schools based on the number of students enrolled, contribute to a dynamic of competition between schools.

The way that education is organised according to separate types of programmes (general, technical and vocational) also contributes to the compartmentalisation of students according to their orientation (see the following point). The separation between regular education and special education has a similar effect: students with disabilities, but also many students with a disadvantaged background and Roma students, thus end up being educated in a separate system. Finally, it is not unusual to hear testimonies that report that schools sort students into classes according to the educational 'level' of the students, into strong and weak groups. Cases of sorting students based on ethnic origin have also been reported.

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<sup>17</sup> Diversity Barometer Education, February 2018, <https://www.unia.be/fr/articles/lenseignement-en-belgique-reste-inegalitaire-selon-lorigine-sociale-ou-ethnique-des-eleves>.

## Recommendations

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- *Create a school registration procedure that will contribute to social diversity;*
  - *Encourage schools to value the diversity of their students.*
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### 7.4.2 School orientation and inequality

In both the Flemish-speaking and French-speaking school systems, the mechanisms for orientation start relatively early, compared to the systems in other countries. The statistics are the same, year after year: the majority of the students educated in vocational schools come from more vulnerable socio-economic backgrounds, while the students from affluent backgrounds for the most part receive their education in the general academic programme. The same is true for students in the special education schools, who largely come from disadvantaged backgrounds. The segregated nature of our school system is thus once again made clear. In the sections of the Barometer that address school orientation, a research method was used that brought new elements to light: it shows that the perception of teachers and school directors concerning a student's poor performance, tends to be stereotyped according to their social, national or ethnic origins as well as their gender.

## Recommendations

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- *Promote a positive system of school orientation, by offering more of a common core;*
  - *Raise awareness among teachers and school directors on prejudices and stereotypes associated with certain student characteristics, such as social background, ethnicity or disability and train teachers to work towards inclusive education. More specifically, to work towards education that is more inclusive for students with disabilities and develop a structural approach regarding LGBT youth.*
- 

### 7.4.3. Children from families living in poverty and special education

The overrepresentation of pupils from disadvantaged families in special education schools cannot be attributed exclusively to their specific educational needs. Moreover, this orientation has a determining impact on the pupils' further school careers, their opportunities for further study and prospects for employment.

Inclusive education (which is encouraged by article 24 of the UN Convention on the rights of Persons with Disabilities), is still not reliably guaranteed in Belgium. With the introduction of the 'M-decree' in March 2014, the Flemish Community did, however, take a major step towards inclusive education. Starting from September 2015, the rules for issuing a report recommending a transfer to special education have been made stricter. Thus, a provision became effective prohibiting the determination of the need for special education based strictly on socio-economic or ethnic-cultural characteristics. This provision is both a recognition of the problem and a measure for putting a stop to this practice. Although there has been a certain decrease in the number of pupils in special education at the primary school level, not all parents have equal access to choosing inclusive education. Because children in an

inclusive education setting currently cannot depend on the same degree of care they would have in special education according to the same conditions, parents who opt for inclusion in regular schools have to pay for care that they would not have to pay for in special education schools (occupational therapy, physical therapy, etc.). It is in this sense that inclusion is not experienced equally by all families. As long as the system of special education schools and inclusive schools continue to exist in parallel, a child who is entitled to individual support in special schools must have the same rights in the regular schools.

## Recommendations

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- *Research the reasons why children from families living in poverty are overrepresented in special education schools. Provide for an effective policy of inclusion in the regular schools.*
  - *Reinforce education (both primary and secondary) in order to prevent pupils from falling behind and from therefore being given an unfavourable orientation.*
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## 8. Special protection measures

### 8.1. Children in migration

Since 2010, there have been improvements regarding the rights of children in migration. Thus, alternatives to detention (return houses and home-based follow up to return) have been created for families with children, who are in principle no longer held in closed detention centres. The rights of unaccompanied foreign minors (UAMs) from a member state of the European Economic Area (EEA) have been reinforced. The principle of taking the best interests of the child into account in decisions about returns was added when the return directive was transposed into Belgian law, and this consideration was also recently reinforced in the asylum procedure.

Nevertheless, certain developments, legal provisions and administrative practices continue to raise questions concerning the rights of the child.

#### *8.1.1. The right to live as a family and family reunification*

The right of the child not to be separated from his or her parents is a right guaranteed by the Convention on the Rights of the Child. Applications for family reunification must be reviewed 'in a positive, humane and expeditious manner' and such a request shall entail no adverse consequences for the applicants and for the members of their family (art. 10, 2 CRC). However, this right is not always guaranteed in practice.

#### ⊖ *The lack of a right to family reunification for a parent of a child recognised as a refugee*

The Belgian Aliens Act does not provide the possibility for a parent of a child who benefits from an international protection and is accompanied his/her other parent to benefit from family reunification with his/her child. Through individual cases, Myria has thus determined that there are situations in which one of the parents of a child recognised as a refugee (for example, when the child is recognised for reasons of personal persecution, such as the risk of female genital mutilation, or when the parents are separated) has no legal stay and is not eligible for any residence status, even if this parent maintains family ties with the recognised refugee child. In this case, the parent has no other option than to file

an application for humanitarian regularisation in the hopes of obtaining a residence permit. The outcome of this procedure is uncertain, given that the criteria for regularisation and the processing time are not defined in the law, and that the number of humanitarian regularisations have been very low<sup>18</sup>. Moreover, during the procedure, this parent will have to live as an irregular alien, which means he or she will not be able to work in order to support the needs of the child, and may even be subject to a removal procedure. The child's rights to maintain a personal relationship with a parent and not to be separated can therefore be jeopardised.

### Recommendation

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*Provide the possibility for the parent of a child eligible for international protection to benefit from the right to family reunification according to the same conditions as would be the case for family reunification with a Belgian child*

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⊆ ***File the application for family reunification before the UAM has reached the age of 18***

With regard to unaccompanied minors in Belgium who would like to have their parents join them, the application for family reunification must be made before they reach the age of 18, but this can only be done once they have obtained an international protection. This possibility for UAMs to have their parents join them therefore depends on the speed of the asylum procedure. If the asylum is granted after the age of 18, it will no longer be possible for the foreigner, who arrived as a UAM, to be joined by his/her parents. However, it can hardly be suggested that the emotional and material ties are suddenly broken once the child reaches the age of majority. In fact, it regularly happens that asylum is granted shortly before the UAM reaches the age of 18. In this case, the minor and his/her parents who have remained abroad do not have the chance to gather all the documents required or to take all the necessary steps via the embassy, on time. This is especially true as UAMs are sometimes informed very late in the game of their right to family reunification.

### Recommendation

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*Individuals eligible for international protection who have arrived as UAMs should be able to benefit from family reunification if they were minors when they applied for asylum<sup>19</sup>. In such cases, as necessary, it could be required that the UAM indicate at the time of the asylum request that he/she wishes to be joined by his/her parents.*

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<sup>18</sup> Myria, Migration in rights and numbers (in French), 2017, pp. 155-165, [http://www.myria.be/files/chapitre\\_7.pdf](http://www.myria.be/files/chapitre_7.pdf).

<sup>19</sup> This position was defended by the Advocate General Y. BOT in his conclusions on 26 October 2017 in the case C.E.J., C-550/16, A, S. vs. the State Secretary for Security and Justice, particularly with regard to the best interests of the child: <http://curia.europa.eu/juris/document/document.jsf?jsessionid=9ea7d2dc30d66740328e0ae34a388b30991bbef23ae0.e34KaxiLc3qMb40Rch0SaxyMc3b0?text=&docid=196143&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=829687>

⊖ ***Age testing within the framework of family reunification for minor children wishing to join their parent or sibling***

Since 2017 we have observed that admin authorities are more frequently requesting that age testing be carried out on a minor who is staying in a third country and wishes to join his/her family members in Belgium. If the test determines that the child has reached the age of majority, he/she will be excluded from family reunification.

These tests can form an additional obstacle to family reunification because of the high cost of having them performed but also because of the additional travel involved in getting to the place of examination. In Belgium, in practice, these tests are currently based on a single medical examination, the reliability of which is unclear. At present, there is no interdisciplinary approach in which the psychosocial and cultural context is taken into account. Finally, in those cases in which an age test is carried out, it is also not clear how the benefit of the doubt is applied, what possibilities there are for requesting a second opinion and what possibilities there are for submitting an effective remedy against a decision for refusal based on the results of this age determination test. It would seem important for these questions to be answered and for there to be a better framework for this practice. Furthermore, even if the age test were to result in the alien being considered to have reached the age of majority, it is difficult to claim that the emotional and material bonds are broken once the age of majority has been reached.

***8.1.2. Detention of children***

⊖ ***Unaccompanied foreign minors: at the border***

Although UAMs turned away at the border are no longer held in closed centres but rather in open centres called ‘observation and guidance centres’, in accordance with the reception law adopted in 2007<sup>20</sup>, certain problems still arise for those individuals for whom there is doubt as to their status as minors. Belgian law provides that they may be kept in closed centres during the age determination procedure (which must take place within three working days following their arrival at the border, a period which may be exceptionally extended by three working days). It therefore still happens that UAMs are detained in closed centres during this procedure.

**Recommendation**

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*The presumption should be reversed and these aliens should be considered as minors, and therefore not detained during the age determination procedure.*

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⊖ ***No longer placing children in closed centres***

The Belgian government report refers to a law of 2011<sup>21</sup> which introduces a provision<sup>22</sup> into the Aliens Act, on the principle of non-detention of families, but which in reality authorises their detention under

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<sup>20</sup> Art. 41 of the Law of 12 January 2007 on the accommodation of asylum seekers and certain other categories of foreigners.

<sup>21</sup> Law of 16 November 2011, introducing article 74/9 into the Law of 15 December 1980 on access to the territory, residents, establishment and removal of foreigners, with regard to the prohibition on detention of children in closed centres.

<sup>22</sup> Art. 74/8, § 1 Law of 15 December 1980.

certain conditions (in a ‘place adapted to their needs’ and for a ‘limited duration’, concepts that have not been defined).

Thus, we observe that certain families with children are still being held in closed centres, for a brief period, which is generally less than 24 hours, either upon their arrival at the airport border - with a view to refoulement, or before transfer to a family detention unit, or before their forced removal. Thus, in 2015, 79 families, including 120 minors, were detained at the Caricole centre. In 2016, there were 61 families, with 93 children, who were placed in a closed centre under these circumstances.

Moreover, at the detention centre 127bis, located next to the airport, Belgium will soon be opening units designed to detain families with children. The project of installing these housing units for family in a closed centre has been criticised by Myria<sup>23</sup>, as well as by others including the Council of Europe Commissioner for Human Rights<sup>24</sup>.

### Recommendations<sup>25</sup>

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- *No child should be placed in a closed centre, even for a short period.*
  - *The ban on the detention of children in closed centres must be enshrined in the law.*

*The observation of the Committee (Obs. 77), issued during the last review of the situation in Belgium therefore appears to be still relevant.*

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### ≡ *Alternatives to detention*

This observation of the Committee (Obs. 77) also referred to the establishment of alternatives to detention. Although Belgium has since made major efforts towards implementing these alternatives to detention for families with children, Myria has nevertheless observed that there is still room for certain improvements, particularly in the implementation of these alternatives<sup>26</sup> and that the alternative of home-based follow-up to return is worthy of further investment.

### Recommendation

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*Allocate the necessary resources to enable more adequate and extensive implementation of alternatives to detention, such as a home-based follow-up<sup>27</sup>.*

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<sup>23</sup> Myria, *The detention of families with minor children in closed centres* (in French), [www.myria.be](http://www.myria.be).

<sup>24</sup> See Press Release, *Belgium urged not to resume detention of migrant children and to expand alternatives to immigration detention for families with children*, available on [www.Coe.int](http://www.Coe.int).

<sup>25</sup> See Myria, *Migration in rights and numbers*, 2016 (in French), pp. 232-234.

<sup>26</sup> On the functioning of the family units, see especially the assessment by the platform ‘*Mineurs en exil*’ (Minors in exile), in which Myria participates as an observer for the Plateforme mineurs en exil, (*Alternatives à la détention des enfants en famille en Belgique : analyse de la théorie et de la pratique*, December 2015, available on: [www.mineursenexil.be](http://www.mineursenexil.be)).

<sup>27</sup> Myria, *Return, detention and removal of foreigners in Belgium (A return at what cost?)* (in French), p.19, November 2017.

### ⊖ *The separation of families*

Moreover, there is the question of the separation of families in the context of the detention of aliens. An adult member of the family is sometimes detained in a closed centre if he/she has displayed behaviour that is considered problematic, while the rest of the family remains in the family units. This decision is taken by the Immigration Office, and the family does not have the possibility of being heard or contesting this measure. Myria therefore raises the question of whether this practice is compliant with article 9 of the International Convention on the Rights of the Child.

### ⊖ *Monitoring the detention*

Finally, there is the question of monitoring the conditions of detention, as Belgium has not yet ratified the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), which was signed in 2005. Belgium indicated that the procedures for the ratification of OPCAT and for establishing a national prevention mechanism were underway.

### **Recommendation**

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*That Belgium ratify OPCAT and establish a national prevention mechanism*

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#### *8.1.3. Forced removals*

Finally, there is the question of the respect of the rights of the child during removals. Myria does not have accurate statistical information on forced removals, for example regarding the number of children who have been removed with a police escort (including on regular airline flights). The question of the number of children who have been removed by special flight was recently the subject of parliamentary debate<sup>28</sup> following a case of removals that had appeared in the press and related to the removal of families on a high-security flight<sup>29</sup>.

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<sup>28</sup> Joint questions n°15878, n°15887, n°15889, n°15908, n°15933 and n°15947 by W. De Vriendt, N. Lanjri, B. Hellings, M.

De Coninck and E. Kir, *C.R.A.*, Ch., 2016-2017, session of 15 February 2017, pp.20-27.

<sup>29</sup> De Standaard, *Exit Belgium: Hoe kan een militaire vlucht in het belang zijn van het kind?* (Exit Belgium: How can a military flight be in the best interest of the child?) [www.standaard.be/cnt/dmf20170115\\_02675578](http://www.standaard.be/cnt/dmf20170115_02675578).

Number of high-security flights per year with families with minor children, 2013-2016<sup>30</sup>

YEAR	NUMBER OF HIGH-SECURITY FLIGHTS	NUMBER OF FAMILIES	NUMBER OF MINORS
2013	2	2	7
2014	0		
2015	2	2	7
2016	3	3	11

Myria has also highlighted the sometimes traumatic nature of the process of return for children, including removal on special flights<sup>31</sup>. The question arises of the impact or desirability of resorting to special flights for families with children.

#### 8.1.4. Law on fraudulent recognition

Myria is concerned about a new law, adopted on 19 September 2017<sup>32</sup>. This makes the procedure for obtaining recognition of a child out of wedlock considerably more complicated<sup>33</sup>. No fewer than seven types of documents can now be required before issuing a declaration of recognition, particularly the true copy of the birth certificates of the child, as well as those of the two parents (documents that are not always easy to obtain in the country of origin). As suggested by the Council of State<sup>34</sup>, according to Myria, it would be best to limit this to the documents that are strictly necessary to establish the instrument, for example, the proof of the identity of the parents and the consent of the mother. In the interests of the child, the absence of documents cannot form an absolute obstacle to the establishment of parentage.

In addition, this law allows the registrar to initiate an investigation and to refuse to acknowledge recognition if he/she considers that 'it follows from a combination of circumstances that the intention of the author of the recognition clearly solely seeks to obtain material advantage through residence, associated with the establishment of a relationship of parentage, for himself/herself, for the child,' or for the mother. The investigation may last up to 8 months from the date when all of the documents have been submitted, and the law does not provide any measures to prevent the removal of the parent who is staying irregularly during this period. Recognition can be considered fraudulent even if there is

<sup>30</sup> House of Representatives, Full report, Interior Affairs Committee, 15 February 2017 (annex 1) <http://www.dekamer.be/doc/CCRI/pdf/54/ic594.pdf>.

<sup>31</sup> Myria, *Migration in rights and numbers 2015* (in French), Focus: the best interests of the child in the return process, pp. 172-178.

<sup>32</sup> Law of 19 September 2017 amending the Civil Code, the Judicial Code, the Law of 15 December 1980 on access to the territory, residents, establishment and removal of foreigners and the Consular Code, with a view to combating fraudulent recognition, and containing various provisions concerning investigation of paternity, maternity and co-maternity, as well as regarding marriages of convenience and legal cohabitation arrangements of convenience (Royal Decree, 4 October 2017).

<sup>33</sup> For a more detailed analysis of this law, see Myriadoc 6, *Être étranger en Belgique in 2017*, pp. 4-21, [http://www.myria.be/files/171212\\_Myriadoc\\_6\\_%C3%8Atr%C3%A9tranger\\_en\\_Belgique\\_en\\_2017\\_FR.pdf](http://www.myria.be/files/171212_Myriadoc_6_%C3%8Atr%C3%A9tranger_en_Belgique_en_2017_FR.pdf)

<sup>34</sup> Which calls for restricting the focus to 'documents relevant to the situation of the persons concerned' (Doc. Ch., 2016-2017, n° 2529/001, p. 75).

a biological link between the applicant and the child. Myria strenuously objects to the fact that the law does not provide for the best interests of the child to be considered by the civil registrar, let alone that it be considered a priority concern. The legislator has not followed the remarks of the Council of State on this subject.

## Recommendations

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- *To reserve any conflict concerning parentage for the judicial authorities;*
  - *To eliminate the possibility for registrars to refuse preventively the establishment of recognition, with a view to guaranteeing the right of every child to have his or her parentage on both sides established and to the right to privacy and to live as a family for all concerned.*
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## 8.4. Child begging and the exploitation of child begging

For certain families in highly precarious situations, begging is often the only way to survive. In this regard, Belgian law is clear: passive begging with a child is not punishable. It is in this sense that the decision of the Brussels Court of Appeal of 26 May 2010 should be understood, a decision that appears to have been misinterpreted by the Committee when formulating its previous observations. In such situations, above all, a social policy (including various aspects such as, for instance, compulsory education for children), should be implemented with regard to these families, which is still not often enough the case at present.

On the other hand, both incitement to beg and exploitation of begging (possibly in the context of human trafficking) are punishable. The current legal framework therefore makes it possible to punish instances of exploitation or trafficking, whether they are committed by parents or other persons. Although the exploitation of child begging in the context of human trafficking may appear to be a negligible reality in Belgium, this issue does not necessarily receive the full attention of the authorities. There is little statistical data available on the involvement of the minor victims. Furthermore, begging is sometimes only the visible facet of cases involving a mixture of different forms of exploitation (ex: forced criminality). The adoption of a new directive by the College of Public Prosecutors (COL 20/2016), which entered into force on 1 October 2016, on the policy for investigation and prosecution concerning the exploitation of begging certainly marks progress in this respect. This directive essentially makes a priority of the situation of begging by a minor or with a minor. However, in the field, the first line services need to be sufficiently trained to detect potential victims and treat them as such and not as nuisances for begging. Frontline services also need to be provided with sufficient resources to investigate this type of case, which generally requires significant resources<sup>35</sup>.

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<sup>35</sup> See the 2016 annual report on human trafficking and smuggling by Myria, *Beggars in the hands of traffickers*, esp. pp.23-27, 36-44, 53-59, 214-215: <http://www.myria.be/files/EN-RATEH-2016-DEF.pdf>

## Recommendations

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- *Clarify the final observation from 2010 on the prohibition of begging with children*
  - *Continue efforts to train first line services and magistrates on trafficking and exploitation of begging, paying particular attention to the diversity of Roma communities.*
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## 9. Implementation of the Optional Protocol on the sale of children, child prostitution and child pornography

Progress has been made in terms of legislation and policy on child trafficking (legislative amendments, a new multidisciplinary circular paying particular attention to children, the presence of a youth magistrate at coordination meetings held by the magistrates specialised in the field of human trafficking, training various actors, particularly the youth aid services). However, in the field, many gaps still remain: the police youth brigades are unfamiliar with the indicators of human trafficking, particularly in cases involving a *loverboy*. As a result, they are not always inclined to consider minor aged victims as victims of human trafficking who need special care. These victims are also sometimes stigmatised as problem children<sup>36</sup>. Children forced to commit offences (theft, etc.) are often not identified as victims of trafficking but are treated as delinquents. It should also be noticed that, in the field, police resources are devoted to other priorities. Moreover, despite the Committee's previous recommendation (Obs. 81), there is still no suitable structure for child trafficking victims in Flanders.

## Recommendations

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- *Continue and intensify the training for the first line actors (police, magistrates, guardians, etc.) on child trafficking*
  - *Create a specialised structure for children victims of trafficking in Flanders*
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<sup>36</sup> See the 2015 annual report on human trafficking and smuggling by Myria, *Tightening the links*, esp. pp. 27-36, 160-161: <http://www.myria.be/files/Annual-report-2015-trafficking-and-smuggling-full.pdf>

## Annex : Recommendations

### 3. Non-discrimination, the best interest and the opinion of the child

#### 3.1. Not all children have the same opportunities

##### *3.1.1 Climate associated with the terrorist attacks/Ethnic profiling*

Remain alert to the consequences of measures intended to combat terrorism, which can contribute to creating and reinforcing a climate that encourages the isolation and stigmatisation of certain groups, which can ultimately harm the ability to live together.

#### 3.3. The interests of the child do not always come first

##### *3.3.1. The best interests of the migrant child*

###### **Arrest and removal**

- **Include, in the Aliens Act of 1980, an across-the-board provision requiring all authorities and courts for asylum and migration to take the child's best interests into account in all decisions (directly or indirectly) concerning them and to listen to the point of view of the children (with consideration of their capacity for judgement) and to properly take this into account.** Myria regrets that this recommendation, already included in its 2015 annual report, has still not been implemented by the Belgian state, by providing that the interests of the child be fully taken into account in the planning, implementation and evaluation of migration policies and in taking decisions concerning individual cases, by establishing a procedure for determining these best interests, in accordance with the recommendation of your Committee in the General Comment submitted jointly with the Committee for the protection of the Rights of all Migrant Workers and members of their family.
- **All actors involved in the procedures for returning undocumented alien families with minor children should be required to undergo specific training on the rights of the child and on how to best respect them in practice.** Myria has been informed that the actors in the field sometimes lack knowledge of the rights of the child.

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## 5. Family life and alternative care

### 5.1. The social and educational function of child care must continue to come first

#### *5.1.1 Child care for children from families living in poverty*

- Expand the number of child care places and make priority investments in disadvantaged neighbourhoods where fewer child care places are available.
- Invest in high-quality child care that is accessible to all.
- Increase and diversify the offer so that diverse needs, including those of families living in poverty, can be adequately met.

## 5.4. Foster care: statutory preference for placement in a family context

### 5.4.1 Importance of the relationship between children in foster care and their parents

- **To withdraw the articles of the federal law of 19 March 2017 introducing a legal status for foster care givers that weaken the position of the parents, in order to reinforce the position of the parents whose child has been placed in foster care.** Pending the ruling of the Constitutional Court, it is necessary to evaluate the impact of the law on the relationship between the child and his parents. It is important to equally include all actors, parents and children as well, in this evaluation so that, if necessary, the practices can be changed.
- **To support families in such a way that they can cope with problematic situations without requiring placement of the child.** The case law of the European Court is solid: article 8 of the European Convention on Human Rights imposes positive obligations on the state, inherent to the effective respect for family life.
- **Invest more in maintaining the mutual relationships when a child needs to be placed in foster care:** guarantee that the foster family lives near to the family home; provide the necessary resources and personnel to allow the meetings between the family members and the foster family to take place under the best possible circumstances.
- **Determine how these relationships can be effectively maintained in practice and include numbers on returning to the family and on visits during foster care in the youth aid statistics** (frequency and breakdown according to age per type of placement and family situation (including the income level)).
- **Highlight the importance of the relationship between children and parents during the basic training and continuing education for professionals in the sector.**

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## 6. Disability, health and welfare

### 6.1 Care for children with disabilities

#### 6.1.2. School transport

- Increase the capacity for supervision and support;
- Arrange journeys that are not excessively long, in order to prevent excessive physical and mental fatigue for these children, but also because, for reasons of hygiene, medical reasons and minimum comfort, they require care and nursing that cannot be delayed.

## 7. Education, leisure activities and cultural activities

### 7.4. Guaranteeing equal educational opportunities for all children

#### 7.4.1 Situation of schools as a competitive marketplace and segregation

- Create a school registration procedure that will contribute to social diversity;
- Encourage schools to value the diversity of their students.

#### 7.4.2 School orientation and inequality

- Promote a positive system of school orientation, by offering more of a common core;
- Raise awareness among teachers and school directors on prejudices and stereotypes associated with certain student characteristics, such as social background, ethnicity or disability and train teachers to work towards inclusive education. More specifically, to work towards education that is more inclusive for students with disabilities and develop a structural approach regarding LGBT youth.

#### 7.4.3. Children from families living in poverty and special education

- Research the reasons why children from families living in poverty are overrepresented in special education schools. Provide for an effective policy of inclusion in the regular schools.
- Reinforce education (both primary and secondary) in order to prevent pupils from falling behind and from therefore being given an unfavourable orientation.

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## 8. Special protection measures

### 8.1. Children in migration

#### 8.1.1. The right to live as a family and family reunification

##### **The lack of a right to family reunification for a parent of a child recognised as a refugee**

Provide the possibility for the parent of a child eligible for international protection to benefit from the right to family reunification according to the same conditions as would be the case for family reunification with a Belgian child

##### **File the application for family reunification before the UAM has reached the age of 18**

Individuals eligible for international protection who have arrived as UAMs should be able to benefit from family reunification if they were minors when they applied for asylum. In such cases, as necessary, it could be required that the UAM indicate at the time of the asylum request that he/she wishes to be joined by his/her parents.

### *8.1.2. Detention of children*

#### **Unaccompanied foreign minors: at the border**

The presumption should be reversed and these aliens should be considered as minors, and therefore not detained during the age determination procedure.

#### **No longer placing children in closed centres**

- No child should be placed in a closed centre, even for a short period.
- The ban on the detention of children in closed centres must be enshrined in the law.

The observation of the Committee (Obs. 77), issued during the last review of the situation in Belgium therefore appears to be still relevant.

#### **Alternatives to detention**

Allocate the necessary resources to enable more adequate and extensive implementation of alternatives to detention, such as a home-based follow-up

#### **Monitoring the detention**

That Belgium ratify OPCAT and establish a national prevention mechanism

### *8.1.4. Law on fraudulent recognition*

- To reserve any conflict concerning parentage for the judicial authorities;
- To eliminate the possibility for registrars to refuse preventively the establishment of recognition, with a view to guaranteeing the right of every child to have his or her parentage on both sides established and to the right to privacy and to live as a family for all concerned.

## **8.4. Child begging and the exploitation of child begging**

- Clarify the final observation from 2010 on the prohibition of begging with children
- Continue efforts to train first line services and magistrates on trafficking and exploitation of begging, paying particular attention to the diversity of Roma communities.

## **9. Implementation of the Optional Protocol on the sale of children, child prostitution and child pornography**

- Continue and intensify the training for the first line actors (police, magistrates, guardians, etc.) on child trafficking
- Create a specialised structure for children victims of trafficking in Flanders