



## **General comment on articles 4.3 and 33.3**

### **Draft prepared by the Committee**

### **Written submission from the Belgian Disability Forum asbl (BDF) – 15/05/2018**

The Belgian Disability Forum asbl (BDF) wishes to thank the Committee for this General Comment on articles 4.3 and 33.3.

From the BDF point of view, articles 4.3 and 33.3 are key articles as they provide a framework on how participation and consultation of persons with disabilities have to be organised in order to guarantee proper decision making.

Please find here a series of points of attention from the BDF. Do not hesitate to contact the BDF secretariat if you have any question : [info@bdf.belgium.be](mailto:info@bdf.belgium.be).

But, before starting, we will share two technical remarks.

#### **a) DPOs/OPDs**

Throughout the General Comment, we find the expression “disabled persons organizations (DPOs) / organizations of persons with disabilities (OPDs)”. It seems a bit odd as for Belgian non-native speakers it seems to cover exactly the same meaning : organizations that bring together a number of persons with disabilities.

As a matter of fact, it gives the impression that there is some kind of philosophical debate about these two expressions. The fact is that we don't know the first thing about it and members of the government of the States parties could find themselves in front of the same questioning.

If there is indeed an internal debate in the Committee, could you consider giving the pros and cons ? If not, wouldn't it be better to choose between one of the two expressions ? At the minimum it would make the text a bit lighter.

For the following, we will give our input according to the chapters and numbers of paragraphs.



## **b) Reference to the Internet**

It appears that several infrapaginal notes contains "url" that are inactive. For instance, note 2, when copied in a search engine gives the following answer: 404 Page Not Found. Please consider solving these technical problems

## **I. Introduction**

**5.** The BDF appreciates and uses the motto. Now, even where the consultation is legally organized through the "Conseil national des personnes handicapées (CSNPH)" at Belgian federal level, for instance, the reality of politics prevails and advices from CSNPH are not practically taken into account. According to the BDF this reality will not evolve unless the states parties are legally forced to provide a rationale to their decision.

**6.** At this point of the General Comment (GC), the Committee is pointing the historical reality that the views of DPO's were disregarded in favor of the views of "organizations for persons with disabilities" and "experts on disabilities". Since then, especially because of the UNCRPD, things have changed and views of the DPOs are much better taken into account. Wouldn't it be interesting to underline, later in the text, that there must be no competition between these 3 groups : each one has its own role, must remain in the frame of its role and must be understood so by the two others and by the states parties. It's a question of transparency.

**9.** About consultation of DPOs by the Belgian governments in the preparation of their first report, please note that the BDF was consulted but decided not to join the process as the delay to do so was way too short and that it was said that the text could be amended only in very minimal proportions.

**11(a).** According to the Belgian experience, the best example of implementation of participation to political decision process is the model of the "Conseil national des personnes handicapées" <sup>1</sup> (CSNPH) at Belgian federal level. This council is constituted of individuals chosen according to their experience in the disability field. Some are representatives of DPOs, some are representative of service providers, some are academics. The federal State Secretary in charge of disability matters must request the advice of the CSNPH for any change in the legislation regarding allowance for persons with disabilities. Moreover, the CSNPH has the capacity to take the initiative to give advice on every political project having a direct or indirect impact on the life of persons with disabilities. During the year 2017, the CSNPH issued 19 advices <sup>2</sup>. The CSNPH is not perfect. The main problem is that the government receives the advice and decides without having to motivate its decision.

---

<sup>1</sup> <http://ph.belgium.be/fr/>

<sup>2</sup> <http://ph.belgium.be/fr/avis.html>



Nevertheless, the CSNPH is a council where representatives of DPOs have the opportunity to discuss about federal level policy making having an impact on the life of persons with disabilities and build a respectful relationship with some of the policy makers. At Belgian level, the BDF would like to have advice councils functioning on basis of the same principles at each of the 4 "regional governments" and each of the 4 "Community governments". It would be a very positive step forward.

## **II. Normative content of articles 4.3 and 33.3**

### **1. Definition of 'representative organizations'**

**13 & 14.** The BDF agrees with the notion of DPOs that are led by persons with disabilities. Still, it seems difficult for an organization to organize a strict control of the disability status of their membership. Moreover, not every situation of disability is visible. When welcoming a new member, should the DPO request a proof of disability? It would be in contradiction with the CRPD itself. Therefore, the BDF has concern with the second phrase of 14.(a) "Furthermore, a clear majority of their membership is recruited among persons with disabilities" and would like the Committee to consider removing it.

**14(c).** Consider moving the second part of the paragraph (from '...while umbrella DPOs/OPDs...' to '...given State party.') to the 14(b): it goes over "umbrella" and not over "cross disability".

**15.** As usual, there is a gap between the theoretical definition and the ground reality. In Belgium many DPOs have developed activities for their members, such as... travels, sign language interpretation, social or juridical support... They did so because there was a need for it. Practically they developed services for persons with disabilities within the structure of a DPO (led and directed by persons with disabilities). Some even entered in the administration council of 'institutions' or 'sheltered employment companies'. Do we have to underestimate these organizations? What is important about it is transparency. If there is transparency, there will be no risk of conflict of interest.

## 2. Scope of Article 4.3 <sup>3</sup>

**18 & 19.** The BDF strongly supports the notions of 'closely', 'actively' and 'at all stages' of public decision making. In Belgium, it seems that the two first notions are – slowly - implemented in the processes. But the notion of 'at all stages' remains a key matter. If the consultation comes at the last stage, as it is too often the case, it undermines all the process: the answer of the decision maker is as follow : ' the text submitted is the result of a long negotiation and it's too late to bring key amendments in it...'. According to such behavior, consultation is just 'pro forma', in order to respect the letter of the CRPD, not its spirit.

**20.** The BDF strongly supports the broad interpretation of the quote " ...concerning issues relating to persons with disabilities". In an inclusive society, almost every decision has a potential impact on the life of persons with disabilities...

**21.** The BDF insists on the notion of being consulted timely. This is a key point in consultation. Most of the political decision are a very long process. It's abnormal that DPOs have just few days (in general at the end of the process) to make-up their mind on decisions having an impact on the life of their members. It also make the consultation of their members or experts impossible.

**21.** The BDF welcomes the last sentence as particularly relevant for the consultation process. In a respectful consultation process, the communication must be in both ways. So it must be mandatory for the decision maker to give a proper feed-back to the structure they consulted about how their views were considered and why. Even if the decision doesn't encounter the expectations of the DPO, a proper feed-back will give them elements to be more efficient in the future. Both parties will earn from a positive process. It will also increase respect between the parties and thus contribute to a better quality consultation in the future. As a matter of fact, the request for a due motivation of the decision by the decision maker was a recommendation made by the BDF in its first alternative report.

**23.** The BDF confirms that participation must be considered as a process and not as a one-time event. Participation must thus be organized. This is even more important as long as the society in general is not fully inclusive as it means that all decision making process must pay due attention to organize all the needed support and accompaniment in order to allow full participation.

**18 - 23 – 24.** In these paragraphs, DPOs are not mentioned. Does it mean that the Committee considers that DPOs are not suitable to express the expectations of persons with disabilities in these specific contexts? Shouldn't the Committee consider adapting these paragraphs.

---

<sup>3</sup> Be careful : the numbering of the points passes from 1. To B.

### 3. Article 33.3: The involvement of civil society

**26.** The BDF doesn't understand the meaning of the last sentence: is it possible to put in balance the view of one individual in comparison with the view of one person expressing the view of an organization? We don't see the added value of this sentence to the GC, especially in a section about "involvement of civil society". Please explain.

### III. Obligations of States parties

**29-49.** These paragraphs cover correctly all the scope of the obligations of States parties in order to fulfill duly informed and universally accessible decision making-process.

**36, 38, 46, 57.** It is hazardous to give lists, even with precautions like 'including but not limited...'. Could you explain why the list is not the same in the 3 paragraphs.

**35.** The formulation of this paragraph is a bit confusing, especially in its second phrase. "give priority to views of DPOs/OPDs" : priority on who's views ? As a DPO, the BDF would be happy to have its view given the priority on views of other stakeholders. If the consultation goes over a topic specifically belonging to the disability field. It sounds logical. Now if it's in a more general field, we cannot pretend that our views are of higher value than the views of other stakeholders...

**37.** The scope of this paragraph are confusing for the BDF. Could you, please, give more explanation ?

**38.** This paragraph is of great importance for the BDF: it states that States parties have to adopt legal and regulatory frameworks in order to organize close, full and effective consultation of DPOs. Representative of DPOs must receive all support and reasonable accommodation in order to be able to fully participate. The process must respect a proper timeframe. It seems complete to the BDF.

**43.** Phrase 2 "...States parties should ... pluralism and participation...", could you consider adding the notion of 'independently' In the first part of the phrase ?

**44, 45.** Why don't you mention "public funds" in these lists ?

**44.** If organization receive funding from private companies, they should respect an ethical protocol in order to prevent conflicts of interest, loss of independency...

**47.** The BDF still have concerns with the notion of receiving money from national lottery. It is not because it is organized by the state that a lottery is ethical. Especially, lotteries are making money on the weakest of citizens... Consider suppressing, please.



**48.** The fact this paragraph appears between brackets, does it mean it will not be maintained?

**49.** Foreseen a regular monitoring by independent mechanisms with investigation authority and enforcement with sanction possibilities is OK if sanctions are strong enough to push State parties to effectively consult DPOs.

**54.** For what reasons does the Committee recommend the establishment of specific DPOs of young people? Why not of other sub-groups? Why should the young people sub-structure of a global DPO be less efficient in promoting and defending the views of young persons with disabilities?

**57.** "...persons with albinism, ..." why only these specific sub-groups?

**64.** The BDF welcomes the notion of recognizing persons with disabilities and their families as partners in educational system instead of just recipients.

## **V. Implementation at the national level**

**75(d).** The BDF welcomes the request to have, preferably one single umbrella of DPOs. It is important to have one structured dialogue between DPOs in order to speak in one voice. The duty of such an umbrella should be to bring together the diversity of all the existing DPOs and to come to a synthesis. This is how BDF is functioning until now.