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HUMAN RIGHTS COMMITTEE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Fourth periodic report

BELGIUM

[27 March 2003]

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* The annexes can be consulted at the secretariat of the Human Rights Committee.

Article 1. Right to self-determination

The Belgian Government invites the Committee to consult the core document submitted on 13 April 1994 (HRI/CORE/1/Add.1/Rev.1, 6 April 1995).

Article 2. Non-discrimination

1. The Constitution

1.1 The principle of equality and non-discrimination is enshrined in articles 10 and 11 of the Belgian Constitution. The same principle is again explicitly defined in article 24, paragraph 4, with regard to education. The constitutional language on equality and non-discrimination does not, according to case law, prohibit differences in treatment. Differences are lawful if they are objective and reasonable, due regard being had to the aims and effects of the law. The principle of equality is violated if the means are unreasonable and disproportionate to the end. An extra article, article 23, on economic, social and cultural rights has been added to the Constitution. This guarantees everyone the right to live in accordance with human dignity. Under article 191 of the Constitution, moreover, any foreigner in Belgian territory enjoys the protection accorded to persons and to property, except where otherwise provided by law. The Constitution lays down the basic rules by which the State is governed: the Communities and the Regions must thus respect them just as much as the Federal State. This being so, there is no need for the Communities and the Regions to pass any additional legislation on the subject.

Besides the information given in the third periodic report submitted on 23 August 1996 (CCPR/CE/94/Add.3, dated 15 October 1997), mention should be made of the following new developments regarding the implementation of article 2 of the Covenant.

2. Action to promote equality and combat discrimination taken or under consideration by the Belgian authorities

2.1 An amendment to Title II of the Constitution adding language on the right of men and women to equality and promoting equal access to elected and public office was passed on 21 February 2002 (*Moniteur belge*, 26 February 2002). The Belgian Constitution now explicitly guarantees the principle of equality between men and women, enabling actions to be brought in the event of demonstrable discrimination and legitimizing a policy of positive action. Among other things, the amendment of article 10 and the insertion of an article 11 bis into the Constitution have permitted the passage of a number of bills reinforcing the Act of 24 May 1994 to promote balanced representation of men and women on lists of electoral candidates:

(a) Act of 17 June 2002 requiring equal representation of men and women on lists of candidates for election to the European Parliament (*Moniteur belge*, 28 August 2002);

(b) Act of 18 July 2002 requiring equal representation of men and women on lists of candidates for election to the Federal legislature and the Council of the German-language Community (*Moniteur belge*, 28 August 2002);

(c) Ad hoc Act of 18 July 2002 requiring equal representation of men and women on lists of candidates for election to the Walloon Region Council, the Flemish Council, and the Council of the Brussels-Capital Region (*Moniteur belge,* 13 September 2002).

These three acts require "… the difference between the numbers of candidates of each sex [for election to the various political bodies concerned] to be no greater than one. The top two candidates on each list must be of different sexes". A transitional provision stipulates that the top three candidates on each list for the first full election to each body after the Act takes effect must not all be of the same sex.

2.2 As regards the national level, on 7 December 2000 the Government approved a plan of action against discrimination and tougher action against racism. The objective of the plan is to give everyone the same opportunities in all walks of life. Anyone suffering discrimination is provided with legal means of asserting their basic rights and obtaining stronger protection.

2.3 A bill against discrimination, amending the Act of 15 February 1993 which established the Centre for Equal Opportunity and Action to Combat Racism, was passed by the Chamber of Representatives on 17 October 2002. The Senate passed it on 12 December 2002. The principal features of the bill are as follows:

(a) Definition of discrimination: the grounds for discrimination covered by the bill are sex, supposed race, colour, descent, national or ethnic origin, sexual orientation, civil status, birth, fortune, age, religious or philosophical beliefs, current or future state of health and handicap or physical features.

Direct or indirect discrimination of any kind is forbidden in the following: provision of goods and services; access to employment, unpaid activities and work; appointment to the civil service; reference in an official document or record; the distribution, publication or public display of any text, opinion, sign or other medium that is discriminatory in effect; and access to, involvement in or any other pursuit of an economic, social, cultural or political activity open to the public.

(b) Civil proceedings against discrimination on any grounds. Besides language stating that contractual clauses at variance with the law are null and void, the bill allows civil courts to suspend discriminatory measures; interim relief proceedings can also be instituted, and it is possible to petition for execution of judgement.

As required by the guidelines, the burden of proof is shifted in cases where there is a presumption of discrimination. A worker who lodges a complaint against his employer is accorded the status of a protected worker. If the employer terminates employment or unilaterally alters working conditions in breach of the bill's provisions, the worker can seek to be reinstated or allowed to continue working under the same conditions as before. If the employer does not agree, he must pay compensation of, at the worker's option, either a lump sum equivalent to six months' gross remuneration or the actual damages suffered by the worker. In the latter case,

it is up to the worker to prove the extent of the damage suffered. The Belgian Labour Inspectorate is also empowered to draw up a report on any kind of discrimination or breach of the law on discrimination, and to bring such matters to the attention of the competent authorities.

(c) Criminal punishment of discrimination other than racial discrimination: the ban on discrimination on other grounds is supported by the same protective arrangements as that established in the Racial Discrimination Act, with discrimination serving as an aggravating circumstance. The relevant clauses also provide for the possibility of being stripped of political rights,[1] for associations to be able to institute legal proceedings, etc.

The key element of this bill is a provision under civil law allowing a victim of discrimination to bring swift civil proceedings before the court of first instance and, depending on the circumstances, the commercial or Labour Court. The president of the court of first instance can order that the discrimination should stop and sentence the guilty party to payment of a daily fine for as long as the discrimination persists.

Central to the working of the bill is a mechanism known as a shift in the burden of proof. European directives require member States to make provision in their national legal systems for victims of discrimination to be able to put before the courts or other authorities evidence of direct or indirect discrimination, at which point the onus shifts onto the accused to prove that the principle of equal treatment has not been violated.

3. Action at the European level

3.1 Equality and protection against discrimination is a basic right, central to the smooth working of democratic society. This being so, at an intergovernmental conference held in June 1997 the European Heads of State and Government added a new article 13 to the Treaty establishing the European Community, giving the Community specific authority to take action against any kind of discrimination based on sex, race or ethnic origin, religion or beliefs, disability, age or sexual orientation. On 25 November 1999 the Commission put forward a series of measures to give effect to the principle enunciated in that article. One of them was a draft directive on the enforcement of the principle of equal treatment of individuals without distinction as to race or ethnic origin. The directive (No. 2000/43/CE) was approved by the Council on 29 June 2000. Member States must have incorporated it into their domestic law by 19 July 2003. The purpose of the directive is to establish a framework for action to combat discrimination based on race or ethnic origin so that the principle of equal treatment can apply in member States.

3.2 *Protocol 12 to the European Convention on Human Rights*: Protocol 12 has been signed by Belgium, on 4 November 2000, but not yet ratified. Its chief novelty is that it secures enjoyment of any right set forth by law, without binding the protocol to the domain specifically covered by the Convention (unlike article 14 of the Convention itself, which speaks of all rights set forth in the Convention).[2] Thus it permits recourse to the European Court of Human Rights over a whole series of rights, economic, social and cultural rights among them.

4. Action in the Communities and Regions

4.1 Walloon Region

Under the authority assigned to it to care for individuals, the Walloon Region approves and subsidizes numerous services in a wide range of sectors: adult care centres, women's hostels, family planning and advice centres, support services for families and the elderly, placement centres for foreigners and those of foreign origin, support services for individuals facing trial, helplines and mental health services.

All of the above are open to everyone without any distinction as to race, colour, sex, language, religion, political or other opinions, national or social origins, fortune, birth or any other circumstance. Part of their function is to inform their clients, either directly or through the intermediary of other, specialized services with which they regularly cooperate, of the rights they have, thus helping to give effect to the principle that citizens are equal before the law (such equality being purely theoretical for those who are not even aware of the rules from which they might benefit).

4.2 Brussels-Capital Region

As part of its mandate in the area of health and care for individuals, the French Community Commission has issued a series of decrees to maintain and develop access to high-quality services for the population as a whole: home-help services and centres to coordinate them, palliative and ongoing care, general social support centres, family planning centres, care centres, mental health services and drug addiction services.

Thus the services operating in the Brussels-Capital Region are expected to:

(a) Help ensure that people can afford to see consultants, if necessary making their services available free of charge;

(b) Ensure ease of access to all consultants;

(c) Inform users that their expenses may be covered;

(d) Offer users remedial, therapeutic and preventive care where they live;

(e) Safeguard users' rights, in particular, freedom of choice of service, respect for their ideological, philosophical and religious convictions, and non-discrimination on ethnic grounds.

4.3 Flemish Community

Although the measures described below are not legally required under article 2 of the Covenant, the Flemish Community wishes to submit the following information on the subject of poverty (see, in Annex I, a detailed discussion of Flemish policy on poverty).

The guiding principles of Flemish policy on poverty laid down in the Vlaams Actieplan Armoedebestrijding (Flemish Action Plan to Combat Poverty), which the Flemish Government approved on 23 February 2001, are prevention, inclusion, activation, the exercise of basic social rights, and regard for a point of view to which territoriality, dialogue and participation are central.

(a) Prevention: the objective of prevention is to ensure that each citizen can actually exercise the same rights. This means developing tools enabling administration officials to track down and combat exclusion mechanisms. A report on the effects of poverty can be useful here. Prevention goes hand-in-hand with an integrated approach. Coordinated initiatives in the various political fields and at different political levels should help to shape a comprehensive policy for combating poverty and social exclusion. The deliberate choice of a comprehensive, preventive policy requires heightened cooperation among the various parties involved;

(b) Inclusion: a preventive approach and a comprehensive philosophy are the essential components of a policy of inclusion, together with partnership with target groups and other "hard" and "soft" private-sector players and a solid scientific grounding. These elements must be assembled in accordance with a structural view of poverty in which the social processes of production and reproduction are guided by policy;

(c) Activation: the philosophy behind activation shifts the emphasis from security of income to active involvement in society. A high degree of protection must be matched by a creative contribution to society, without compromising the quality of people's private lives. It implies a proactive or preventive policy emphasizing human investment, appropriate work assignments and individual responsibility. The key issue is the delicate balance between rights and duties, between the roles of the individual and of social institutions, between discipline and enfranchisement;

(d) Basic social rights: these are the touchstone of policy. Although enshrined in the 1994 Constitution, social rights are not readily exercised. Nonetheless, the notion of basic social rights admits of no qualification: it is based on citizenship, human dignity and the satisfaction of basic needs. Ad hoc efforts need to be made to ensure that these rights are enjoyed, especially by the most vulnerable groups;

(e) Territorial dimension: taking a territorial approach affords a means of addressing the localization of certain forms of poverty and social exclusion. Large cities come in for as much attention as rural areas. The problem manifests itself in specific ways in each, and the answering policies must thus be differentiated. In urban policy on poverty, a balance must be struck between the various challenges posed, the most difficult of these being those that fall between a general and a locale-based policy on poverty, between a "remedial" and an "empowering" urban policy, between an "urban" policy and a "suburban" one (relieving some of the pressure on the cities);

(f) Dialogue and participation: if Flemish policy on poverty is to be the result of a partnership between the various social forces involved there must be dialogue between them, and

in particular with the poor themselves. Structured cooperation is needed between the various public and private groups involved (from public services to the field, to "civil society" and the economic sector), the academic world and the poor. Participation and emancipation are the key words here, and political, organizational, methodological, information and research skills complement one another.

Article 3. Equality between men and women

1. Introduction

1.1 Belgium's reservation concerning the transmission of the King's constitutional powers to his male descendants has been withdrawn, there being no further justification for it since the revision of article 85 (formerly article 60) of the Constitution on 17 February 1994. Female members of the royal family are now also eligible for the succession.

1.2 The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, which strengthens existing United Nations mechanisms for the implementation of women's rights, was signed by Belgium in New York on 10 December 1999, and is now in the process of ratification.

1.3 On 6 March 1996, Belgium passed an act relating to monitoring of the implementation of the resolutions adopted at the World Conference on Women (Beijing, 1995). This requires the Government and Ministers or secretaries of State whose terms of reference encompass equal opportunities policy and development cooperation to report to Parliament every year on the policy they have conducted in conformity with the objectives of the Fourth World Conference on Women. Three such reports have been produced so far (see Annex II).

1.4 As these reports show, the Federal Government has embarked on a course of making equality a reflex in all public policy. Progress is slow but real. Every year the reports to Parliament on the follow-up to commitments entered into at the United Nations describe moves to guarantee equality between men and women in all aspects of social life. There is still a long way to go towards full equality, but the Government is acquiring the means to attain this objective. It is integrating the gender perspective into all public policies, undertaking positive action in favour of women, breaking down stereotypes of male and female roles and stimulating public awareness of gender equality issues.

2. Machinery and bodies for the advancement of women

2.1 Federal level

The Equal Opportunities Service established in 1993, which has since become the Department for Equal Opportunities, has pursued its mission of encouraging moves to guarantee equal rights for men and women and coordinating policy to secure better integration of women in all areas of life.

Acting on a proposal by the Deputy Prime Minister and Minister for Employment and Equal Opportunities, Laurette Onkelinx, on 29 November 2002 Parliament passed a bill (DOC 50 1578) establishing the Equality Institute. The Institute, which will have the status of a

public-interest organization, will have substantial resources at its disposal since it will be empowered to bring legal proceedings in cases of sexual discrimination and will be in charge of the equal opportunities budget.

The Council for Equal Opportunity between Men and Women, an advisory body comprising representatives of labour and management, women's organizations, youth and cultural organizations, family organizations, political parties and experts, has also continued to work for the elimination of all forms of direct or indirect discrimination and to bring about equality between men and women.

2.2 Flemish Community

(a) At the legislative level there is a parliamentary committee on social welfare, public health and equal opportunities.

(b) At the executive level:

(i) Within the new Flemish Government which took office in July 1999, responsibility for equal opportunities policy has been assigned to the Flemish Minister of Social Welfare, Public Health and Equal Opportunities. Under this Government, Flemish equal opportunities policy is chiefly targeted on women, homosexuals, immigrants, the disabled and people facing discrimination on account of their age;

(ii) Within the Coordination Department, the "Gelijke Kansen in Vlaanderen" (Equal Opportunities in Flanders) unit has since 1996 been supporting policy preparation for the Minister responsible for equal opportunities. Under this Government, the focus of attention is on "Arbeid en zorg" (labour and social assistance) and "Vrouwen et besluitvorming" (women and decision-making power);

(iii) An interdepartmental committee on equal opportunity was set up in 1996;

(iv) Within the Ministry for the Flemish Community, an Emancipation Service with responsibility for equal opportunities under the Ministry's own personnel policy has been in existence since 1991;

(v) The departments of the economy, employment, internal affairs and agriculture are promoting employment by encouraging availability, entrepreneurship, adaptability and equal opportunities and investing in human resources under the "Europees Sociaal Fonds Zwaartepunt 5" (European Social Fund key element 5), which was launched in 2001;

(vi) Flemish public institutions employ emancipation officers.

(c) At the local level, the provinces and many towns and communes also employ emancipation officers.

3. Statutory guarantees of equality of rights and their effects

The remarks below address, as extensively as possible, the concerns expressed by the Human Rights Committee in its previous concluding observations (proportion of women in the workforce, outcome of measures to promote equality and to combat violence against women - CCPR/C/79/Add.99, para. 26).

3.1 Changes to legislation

A reform of the rules on conferment of surnames is currently under discussion. New legislation will end the current discrimination between men and women as regards the conferment of surnames. Under current Belgian law, if paternal and maternal filiations are established simultaneously, the child automatically takes the name of its father, and this is discriminatory towards the mother.

3.2 Action in the decision-taking domain

3.2.1 Political elections and current composition of the Federal Government

Women made up 39.2 per cent of the candidates, 22.1 per cent of the eligible candidates and 22 per cent of the successful candidates in the legislative elections held on 13 June 1999. They currently make up 23.3 per cent of the Chamber of Representatives, 28 per cent of the Senate and 23.5 per cent of Federal Ministers.

In the communal and provincial elections held on 8 October 2000, the rule laid down in the Act of 24 May 1994 ("On a list, the number of candidates of the same sex may not exceed two thirds of the total comprised by the sum of the seats to be filled at the election and the maximum authorized number of alternate candidates") to encourage a balanced spread of male and female candidates in elections was also observed, to concrete effect. Women made up 42 per cent of candidates in the provincial elections and 40 per cent in the communal elections. The number of women elected at the provincial level rose from 21 per cent in 1994 to 29 per cent in 2000; in communal elections it rose from 20 per cent to 27 per cent.

There are 3 women in the Federal Government, which comprises 15 Ministers and 2 Secretaries of State. Two of them are Deputy Prime Ministers - one is also the Minister of Employment, and the other, the Minister of Mobility and Transport. The third is a deputy to the Minister for Foreign Affairs, and is responsible for agriculture. Women thus make up 17.7 per cent of the Federal Government. For the first time in history, there are two women (40 per cent of the membership) in the inner Cabinet.

3.2.2 Company elections

Although there is no legally binding quota as there is in political elections, the regulations governing company elections do encourage gender parity on the lists of candidates for company elections. Regarding the composition of lists, the circular of 2 June 1999 on elections to works councils and labour health and safety committees stipulates that "… wherever possible, workers'

representative organizations should … ensure that male and female workers are represented on their lists of candidates in proportion to their numbers among each category of workers for which lists are submitted". Candidates' names on voting slips must also be followed by a letter H or F, to show whether the candidate is male or female.

Over 3,000 works councils and 5,000 labour health and safety committees were elected in the year 2000. During the run-ups to the elections, the public authorities and unions ran publicity campaigns calling for more balanced representation of men and women on works consultative bodies. In the elections to works councils, women, who made up 41.37 per cent of the employees concerned, accounted for 27.49 per cent of the candidates and 30.17 per cent of those elected. The situation was slightly better in the elections to labour health and safety committees, as women made up 30.16 per cent of the candidates and 33.45 per cent of those elected, while they constituted to 41.87 per cent of the workforce.

Comparing the situation in 2000 to the elections in 1995, it will be seen that the proportion of women has risen in the workforce, among candidates for election and among successful candidates. In general, women are still underrepresented on works consultative bodies. It cannot be concluded that women did better in the company elections in 2000 than they did on the whole in 1995 because the proportions of female candidates and successful female candidates (except in elections to works councils) are growing less fast than the proportion of women in the workforce. Women are more obviously underrepresented among candidates for election than among candidates elected.

3.2.3 Women on advisory bodies

The Act of 20 July 1990 required at least one man and one woman to stand for each position to be filled on an advisory body. This measure having proved ineffective by itself (women filled 11 per cent of such positions in 1997, i.e. only 1 per cent more than in 1990), it was amended by an Act of 17 July 1997 to incorporate several more provisions, the most important being that no more than two thirds of the membership of an advisory body may be of the same sex.

A report on the representation of women on advisory bodies published in February 1999 shows that 10 per cent of the bodies whose composition is known meet the stipulations on balanced membership laid down by Parliament. Women constitute 18.6 per cent of the total membership of bodies whose composition is known.

A report to Parliament in July 2001 again detailed the representation of women on advisory bodies. It appears that 44.2 per cent of the bodies listed met the two-thirds balance standard required by law, and 28.8 per cent of the positions on advisory bodies were held by women. These findings suggest a marked improvement in the representation of women on advisory bodies between 1997 and 2001.

On 25 January 2002, the Council of Ministers approved preliminary draft legislation to improve the application of the Act of 20 July 1990. The most important new features that the draft, which is now before Parliament, incorporates are a clarification of the scope of the

two-thirds quota, the possibility of increasing that quota by Royal Decree, an official list of the bodies covered by the Act and the creation of a committee responsible for encouraging balanced representation of men and women on advisory bodies.

In the case of communal and provincial advisory councils, it is the Act of 20 September 1998, amending article 120 bis of the new Communes Act and adding an article 50 bis to the Provinces Act of 30 April 1836 which, very like the Act of 20 July 1990 referred to above, seeks to promote balanced representation of men and women.

German-language Community

A female presence on the various councils is encouraged in a targeted fashion:

(a) The decree on the media of 26 April 1999 (*Moniteur belge*, 17 August 1999, p. 27457) calls for equal representation of the two sexes on the Media Council (art. 51, para. 4);

(b) No more than half the voting members on the Economic and Social Council may be of the same sex (article 4, paragraph 2, of the decree of 26 June 2000, *Moniteur belge*, 11 October 2000, p. 34334);

(c) Council for Development Cooperation: parity between the sexes must be observed in the appointment of the president, vice-president, secretary and the five representatives elected by the French- and German-speaking Federation of Development Cooperation Associations (Government order dated 19 December 2001, not yet published);

(d) No more than half the members of the Employment Office board may be of the same sex (article 6, paragraph 4, of the decree of 17 January 2000, *Moniteur belge*, 24 March 2000, p. 9305).

Flemish Community

Three decrees apply: their application is monitored by the Gelijke Kansen in Vlaanderen (Equal Opportunies in Flanders) unit. They are:

(a) The decree of 13 May 1997 pursuant to the resolutions of the World Conference on Women held in Beijing from 4 to 14 September 1995 (*Moniteur belge*, 18 June 1997);

(b) The decree of 15 July 1997 instituting more balanced representation of men and women on advisory bodies (*Moniteur belge*, 2 September 1997);

(c) The decree of 18 May 1999 instituting more balanced representation of men and women on the management and administrative bodies of Flemish Government entities, enterprises, companies and associations (*Moniteur belge*, 29 June 1999).

There is, besides, an enabling decree concerned with the possibility of derogation provided for in article 6 of the decree of 15 July 1997 instituting more balanced representation of

men and women on advisory bodies: the Flemish Government decree dated 18 February 2000 establishing the conditions and procedure applicable to a petition for derogation pursuant to article 6 of the decree of 15 July 1997 instituting more balanced representation of men and women on advisory bodies.

The two decrees on balanced membership were brought together in one in December 2000: the decree of 8 December 2000 (*Moniteur belge*, 13 January 2001) containing a variety of provisions extending until 1 January 2002 the deadline by which the membership of advisory and administrative bodies in Flanders had to be brought into line with the established quota.

Emancipation measures

A number of steps have been taken to promote emancipation. The most important are mentioned below.

(a) The decrees on quotas reveal a positive trend towards balanced representation of men and women on advisory and administrative bodies. Further effort must nevertheless be made to increase awareness, both among women and in advisory and administrative bodies;

(b) A Steunpunt voor Gelijkekansenbeleid (equal opportunity policy support unit) was set up in September 2001 to pursue scientific research for equal opportunity guidance and policy-support purposes. The research it conducts is intended to find out about and shed light on the lifestyles and world views of various target groups, the mechanisms of de facto exclusion and statistics that may explain that exclusion or lack of equal opportunities. Policy indicators will be developed on the basis of its findings;

(c) All target groups can request project subsidies on the basis of the Subsidiegids Gelijke Kansen (Equal Opportunities Subsidy Guide), which is issued yearly;

(d) The Vlaamse Gelijkekansenhuis (Flemish Equal Opportunities House) opened in Brussels on 8 March 2001. Its purpose is to give specific, visible form to the objectives of equal opportunities policy;

(e) “Pluspunt. Gegevens- en adviesbank voor vrouwen met bestuurtalent” (“Pluspunt - an advice and databank for women with administrative gifts”) was set up to mark the decree of 15 July 1997 instituting more balanced representation of men and women on advisory bodies. Pluspunt is a databank containing applications from some 320 women with expertise in a particular field, and can be consulted by advisory councils in search of female staff;

(f) Since 1997, the Flemish authorities have had their own reports on the effects of emancipation. They serve as a tool in inclusion-oriented equal opportunity policy, and offer insight into political intentions and plans. In a variation on the basic theme, a local system of emancipation impact reports was developed by local authorities in 1999 as an audit tool for inclusion-oriented equal opportunity policy.

3.2.4 The Chamber of Representatives adopted an opinion on women and asylum policy (DOC 50 0954/001), on 16 November 2000. In it, the Advisory Committee on Social Emancipation gives a series of recommendations for taking account of the gender dimension while Belgian asylum policy is overhauled. The recommendations are chiefly concerned with general awareness of the human rights violations to which women are subject, training for civil servants, the need for statistics disaggregated by sex, the appointment of female civil servants and interpreters, and the right to an independent asylum procedure that takes account of the lack of respect women suffer.

3.3 Women in the working population

There were 3,769,291 people on the job market in 1970; there were 4,358,594, i.e. roughly 600,000 more, in 1998. This increase in the labour force is due in part to a growth in the population of working age, and in part to the arrival on the job market of a larger number of women. The male working population is shrinking, but the proportion of the female population in or looking for work has risen from 25 per cent to 37 per cent in barely 30 years. Twenty four per cent of women worked in 1970, as against 31 per cent in 1998. The female workforce grew by 450,000 between 1970 and 1998; the male workforce shrank by 350,000. These figures indicate a substantial increase in the proportion of women in the workforce (from 32 per cent to 44 per cent) over the past 30 years. The last finding still indicates that there are more men (58 per cent) than women (42 per cent) in work.

3.4 Women in the public sector

Equality is not yet a fact in the civil service. Although there has been gender parity in public services since 1998, vertical and horizontal divides certainly exist. For instance, although their numbers are rising, women accounted for only 31.2 per cent of grade 1 employees in 2000. The top of the hierarchy in the Federal civil service is still a male bastion, with only 12.7 per cent of women in the two most senior ranks of Federal Ministers in 2000. Women are also overrepresented among contractual workers compared to men. They made up 68 per cent of the contractual staff and 40 per cent of the permanent establishment of the Federal Ministries on 1 January 2001.

The Royal Decree of 27 February 1990 promoting equal opportunities for men and women in the public services (*Moniteur belge*, 8 March 1990), as amended by the Royal Decree of 24 August 1994 (*Moniteur belge*, 15 September 1994), affords the legal basis for positive action in both the Federal and local public services. Each public service is required to draw up an equal opportunities plan, in two stages: producing an analytical report, then drafting the plan itself.

Positive action is undertaken in each public entity under the authority of a “positive action officer”. The Royal Decree of 24 August 1994 amending that of 1990 explicitly states that positive action officers may be relieved of part of their regular duties, depending on the

number of staff at the entity concerned. The main categories of action taken include career measures, efforts to improve the working climate and working conditions, and moves to heighten awareness of equal opportunities for men and women.

There has been a Federal-level network of positive action officers since 1993, exchanging information and planning coordinated events.

Over 10 years since the issuance of the Royal Decree of 27 February 1990, most federal-level bodies have designated positive action officers, drawn up analytical reports and equal opportunities plans, and appointed internal follow-up committees. At the local level, roughly 30 per cent of communes have drawn up plans.

To lend fresh impetus to positive action policy at the Federal level, the *Moniteur belge* of 15 May 1999 published a circular dating from 20 April 1999 entitled "Code of good practice for positive action". The Code is principally designed to fill in gaps in the legislation: it spells out the mission, the means of designation and removal, and the tasks of positive action officers.

Since 2000, equality policy in the public sector has taken a new tack. Besides the specific approach (positive action), an integrated approach has been built into the civil service reform launched at the Federal level in 1999, an approach which allows long-term structural modifications (mainstreaming). The current reform serves as a reminder that equality is not yet a fact in the civil service (women are underrepresented at the highest levels, there is occupational segregation in certain kinds of jobs, women are overrepresented among contractual workers etc.). The view taken at the Personnel and Organisation Federal Public Service (SPF P&O, formerly the Ministry of the Civil Service) is that the composition of the civil service should reflect the make-up of society. For this reason, the issue of gender equality is built into the human resources management policy of the new, modern civil service. It forms part of a broader policy of "diversity management". An office at every SPF P&O service is responsible for integrating gender equality issues into service policy. The action taken addresses various topics: training, career selection and access, pay, reconciliation of work with family life, access for women to decision-making positions and so forth.

In 2002, in order to take gender equality properly into consideration at every stage of the reform of the public authorities, the Minister laid out a four-point strategic objective:

(a) The new organizational arrangements and the goals of the Federal administration's new human resources policy must be read in gender and gender-equality terms;

(b) The job description of every SPF P&O member in a position, during the performance of his/her job, to influence the accomplishment of gender neutrality is to include a "gender and equality dimension" performance target;

(c) An assessment of the impact, in terms of gender and equality, of recruitment and selection procedures is to be carried out;

(d) An assessment in terms of gender and equality of recruitment and selection procedures for applicants for human resources training courses is to be carried out.

There has been no major change in the status of women in the Army since the previous report.[3] On 1 January 2002 there were 3,245 women in the armed forces, including 246 officers and 1,037 non-commissioned officers.

4. Measures to combat violence against women

The members of the Human Rights Committee are invited to refer in addition to the comments under articles 8 and 23 of the Covenant.

4.1 Federal level

4.1.1 Physical, psychological and sexual violence

A number of legislative initiatives have been taken:

(a) The Act of 24 November 1997 to combat violence within couples (*Moniteur belge*, 6 December 1998). This Act introduces into the Criminal Code the concept of a crime against a spouse as an aggravating circumstance in cases involving the offences referred to in articles 398 to 405, which deal with intentional homicide not categorized as murder and with intentional bodily injury. Spouses are defined in a broad sense, to include former partners from whom a person is now separated. The Act allows the Crown Procurator to take cognizance of an offence committed in a person's home, at the victim's request, whether or not the victim is the head of the household. It also allows victim support associations to institute legal proceedings, with the consent of the victim. It should be pointed out that marital rape and rape involving persons of the same sex are offences under the Act of 4 July 1989 which amended certain provisions relating to the offence of rape;

(b) The Act of 30 October 1998 inserting a new article 442 bis in the Criminal Code making harassment an offence (*Moniteur belge*, 17 December 1998). Under this Act, anyone harassing another person is liable to imprisonment for between 15 days and two years or a fine of between 50 and 300 francs, or both. Proceedings may be instituted only if the person claiming harassment lodges a complaint;

(c) The Act of 23 November 1998 granting recognition to lawful cohabitation (*Moniteur belge*, 12 January 1999). Under this Act, a new article 1479 was inserted in the Civil Code enabling justices of the peace, in cases where harmony between two people living together is seriously disrupted, to take urgent interim measures such as exclusion from the common home. In this way the provisions of article 223 of the Civil Code relating to married couples were extended to other couples living together (see section 1 of the comments under article 23 of the Covenant);

(d) The Act of 28 November 2000 on the protection of minors under the criminal law (*Moniteur belge*, 17 March 2001). Among other provisions, this Act strengthens the protection of minors in relation to offences of a sexual nature (prostitution, sexual assault, rape, intentional homicide not categorized as murder and intentional bodily injury) and categorizes as an offence any form of mutilation of the female genital organs;

(e) In parallel to the Act of 7 May 1999 on equal treatment of men and women, which established a link between sexual harassment and discrimination based on sex, a bill on protection against violence and psychological or sexual harassment in the workplace was adopted by the Chamber of Representatives and forwarded to the Senate on 28 February 2002.

4.1.2 Violence and psychological or sexual harassment in the workplace

The problems of sexual harassment in the workplace were addressed for the first time by a Royal Decree dated 18 September 1992, which required all employers in the private sector to amend their workplace regulations and take steps to protect employees against sexual harassment in the workplace (a declaration of principles, designation of a person or office to whom victims can turn in confidence, a procedure for dealing with complaints and a list of penalties).

The Royal Decree of 9 March 1995 instituted protection for staff against sexual harassment in administrative bodies and other departments of Federal ministries, and certain public-interest corporations. Arrangements for providing the Federal public administration with regulations similar to those which had been developed in the private sector were the subject of a circular dated 7 August 1995 (an annex to the Royal Decree of 9 March 1995). On 25 February 1999 the Government of the Brussels-Capital region issued an order for the protection of staff against sexual harassment in the workplace within the ministry and certain public-interest organizations. On 26 July 2000 the Government of the French Community issued an executive decree addressing these problems in relation to the administration of the French Community and its public-interest organizations.

The Act of 7 May 1999 on equal treatment of men and women added a new dimension to protection against sexual harassment in the workplace. A link has now been established between sexual harassment and sexual discrimination, so that all the machinery established in this Act can now be used in cases of sexual harassment (article 5 makes sexual intimidation equivalent to sexual discrimination).

Bill for the protection of victims

After a Europe-wide survey showed that growing numbers of employees were suffering violence and harassment in the workplace, a bill to protect the victims of such acts of violence was drafted. This resulted in the Act of 11 June 2002 on protection against violence and psychological or sexual harassment in the workplace. The Act has two main sections: one on prevention and information, and one on penalties. More specifically, preventive steps must be taken in the context of the workplace regulations to protect employees against violence in the workplace, the prevention adviser must be given an advisory and supervisory role (by professionalizing the role of the people to whom victims can turn in confidence), and the role of the workplace medical inspectorate must be strengthened as part of the prevention policy. The section on penalties grants the right to institute court proceedings first and foremost to the person concerned and his or her trade union organization, but also to public and private organizations set up to combat violence and psychological or sexual harassment; it apportions the burden of proof, grants victims against dismissal once they have lodged a substantiated complaint, and protects individuals called upon to testify in such cases.

4.1.3 Information campaigns and studies

Together with these legislative initiatives, information and awareness campaigns and studies of physical and sexual violence are regularly carried out by the appropriate authorities.

In 1988, at the request of the then Secretary of State for the Environment and Social Emancipation, a survey[4] was carried out among a sample group of Belgian women on the nature, scale and consequences of physical and sexual violence. The findings of the survey were shocking. More than half the women questioned had faced some form of violence at some time. The survey was updated and broadened in 1998,[5] so that we have an idea of trends in violence against women over the past 10 years, but also the causes of violence and the numbers of male victims. This survey shows that nearly 50 per cent of women and about 60 per cent of men have already been confronted with one form of physical violence or another. Among the female victims, around 28 per cent of the acts of physical violence are committed by their partners, compared with 2 per cent among male victims. The survey also shows that 43.9 per cent of women and 25 per cent of men have encountered one form of sexual violence or another at some time. For 20.9 per cent of women and 7.7 per cent of men, the sexual violence came from their partner. Moreover, 12.5 per cent of women have encountered a form of very serious sexual violence at one time or another.

In 2001, the Catholic University of Louvain (KUL) and the Free University of Brussels (ULB) carried out a study on criminal policy relating to violence within couples and a study on criminal policy relating to sexual violence. On 2 February 1999, following this study, a large-scale information campaign was launched by the Federal Minister of Employment and Labour, who was responsible for equality of opportunity. The message of the campaign, based on the findings of the study was: "Violence is unacceptable. Break the silence before it breaks you". Meanwhile, information leaflets aimed at victims, entitled "Break the silence before it breaks you. A guide for victims of physical and sexual violence", were distributed on a large scale through pharmacies. Lastly, still in the context of the study, a brochure designed to make doctors aware of the issue of physical and sexual violence and provide them with effective guidance in helping the victims of such acts - "Help them to break the silence. Help for the victims of physical and sexual violence. A brochure for doctors" - was also distributed.

At the end of 2000, the Department for Equal Opportunities produced a brochure entitled "Violence: how to find a way out" for victims of conjugal violence, indecent assault or rape, or sexual or psychological harassment at the workplace, but also anyone who directly or indirectly faces the problem of violence. The brochure contains definitions and extensive practical advice on how to deal with these types of violence. It concludes with the details of a large number of organizations which are active in providing care and help for victims. The brochure was distributed starting in January 2001 through the victim support organizations appearing in the provincial lists of addresses mentioned below and through information services in the communes, public social welfare centres, psychosocio-medical centres, libraries, hospitals and police services.

On 11 May 2001 the Council of Ministers approved an introductory note produced by the Federal authorities concerning the national plan of action to combat violence against women. The first part of this note sets out the background to and operation of the national plan of action. The second part lists the aims of the plan, while the third describes the current state of affairs and

the initial courses of action selected by the Federal authorities. Emphasis is placed not on drafting new laws but on the continued application and improvement of provisions and measures already in place. An outline of existing areas of action is followed by a description of various new or resumed activities or measures.

Efforts to combat domestic violence, more particularly conjugal violence, and trafficking in human beings for purposes of sexual exploitation are two areas which have been given priority. The ministerial departments concerned will cooperate fully as necessary to move forward as expected and attain the targets set. The other areas covered are violence in the workplace, asylum policy, international relations and development cooperation.

On 4 June 2002, a note entitled "National plan of action to combat violence against women: progress report given in the note by the Federal authorities - period from 11 May 2001 to 4 June 2002" was prepared to take stock of measures carried out under the national plan of action.

An awareness creation campaign on violence within couples was launched during the last quarter of 2001. The campaign was aimed at the general public and possible victims. A further campaign was organized in early November 2002.

Lastly, as part of the strengthening of local equal rights policies, specific grants have been allocated to projects concerned with violence against women in the cities and provinces. To ensure that these initiatives are effective and have a sustained impact, the support has been built into existing projects which also cover other areas, such as the "Cities and communes contracts" and the "Security and prevention contracts".

4.2 Communities and regions

4.2.1 French Community

The order issued by the Government of the French Community on protection of the staff of the administration of the French Community and certain public-interest corporations against sexual harassment at the workplace entered into force on 20 August 2000 and provides protection against sexual harassment, defined as "any behaviour with sexual overtones and any other behaviour based on sex which affects the dignity of men and women at work, whether engaged in by superiors or colleagues".

On 15 February 2001 the Government adopted a draft order amending the order issued by the Government of the French Community to protect the staff of the administration of the French Community and certain public-interest corporations against sexual harassment at the workplace so as to cover efforts to combat psychological harassment. Psychological harassment is defined as "any repeated improper conduct taking the form, inter alia, of unreciprocated behaviour, words, actions, gestures or documents which intentionally cause injury to the personality, dignity or mental integrity of an individual, jeopardize his or her employment or adversely affect the working climate".

In June 2001, the French Community launched a campaign to combat domestic violence in general which was carried on Community television services (June 2001 and December 2001). It also participated in the National Campaign to Combat Domestic Violence, targeting young people in particular with an educational and informative leaflet which was distributed in secondary schools, youth centres, etc. between November 2001 and January 2002.

In relation to women's access to decision-making, mention should be made of the decree adopted by the French Community Council on 16 July 2002 to promote balance between men and women in advisory bodies.

Lastly, on 6 December 2001 the Government of the French Community approved a draft order setting up the office of a coordinator for equal opportunities whose remit covers both the Ministry of the French Community and the public-interest corporations of the French Community. The tasks of this office will be to provide advisory opinions on all matters related to equal opportunities, on its own initiative or at the request of the Minister responsible for equal opportunities, and to draw up a plan for promoting equal opportunities containing a section on the current state of affairs and another on proposed action.

4.2.2 Flemish Community

The main contribution made by Flanders to efforts to combat violence against women consists of facilities provided as part of the system caring for victims of such violence.

(a) As part of general social welfare

(i) Independent general social welfare centres (Autonome Centra Algemeen Welzijnswerk): there are some 27 reception centres for women and children with a total capacity of roughly 130 places; nine of these centres accommodate women who have suffered ill-treatment (grants: around €1.4 million).

Current situation at the Tamar shelter in Antwerp: residential care is no longer available at the Tamar shelter - it has been replaced by non-residential care for victims of violence within the family. The aim of this decision is to reach a larger number of women and offer them more services, such as a phone number for the help service to which the victims of violence are transferred by the police. As regards emergency care, the shelter is working in cooperation with the Centrum Opvang Korte Duur (short-term reception centre).

Under a cooperation agreement with the Federal authorities, it is planned that victims of offences can, if they agree, be sent to one of the 13 independent general social welfare centres which offer assistance to victims. These centres themselves contact the victims (grant of around €1.9 million).

Starting in 2003, the "Burgers voor burgers" initiative, for which funding from the Federal Department of Justice will end on 31 December 2002, will receive a grant of €0.47 million from the Flemish Community.

All the independent general social welfare centres provide information, advice and supportive care relating to problems with relationships (grant of around €2.48 million). These centres also play an important role in prevention and in keeping the authorities informed.

(ii) Telephone helplines: the telephone helplines can be contacted at any time of day by dialling 106. They will answer any question on any problem (grant of around €1.36 million). In 2000, the helpline services received a total of 100,941 calls, of which 6,070 related to a victim situation. Of these 6,070 calls, 4,527 (74.6 per cent) came from women.

(iii) Help and information number for immigrants (Medet-phone): an experimental project grant of €0.05 million was provided to an initiative known as "Steunpunt Allochtone Meisjes en Vrouwen" (support unit for immigrant girls and women), in cooperation with the Markant independent general social welfare centre. The aim of this project was to set up a telephone helpline accessible to all in Moroccan, Arabic and Turkish and to make the regular assistance centres more accessible.

(b) Outside the framework of general social welfare

(i) All-round family aid centres: in Flanders six all-round family aid centres have been approved and funded, with a total capacity of around 93,000 days of reception and/or supportive care per year. These are facilities which provide non-residential supportive care or residential or semi-residential reception and supportive care for parents and children and future parents belonging to families which have become dysfunctional to the point where there is a real risk of family break-up. The reception and/or supportive care is always temporary and seeks as far as possible to involve all the members of the family (and thus also the partner) in the process (grant of around €3.59 million);

(ii) Care for victims of trafficking in human beings: three centres receive grants: Surya in Liege, Payoke in Antwerp and Pagasa in Brussels. The Steunpunt Algemeen Welzijnswerk (general social welfare support unit) has recently been allocated resources equivalent to a full-time post for a network designer whose task is to ensure that this target group also benefits from the regular assistance provided in the various sectors mentioned in the agreement (general social welfare, public social welfare centres, basic education, employment assistance, integration). Both Payoke and Pagasa receive additional support equivalent to half a full-time position to provide assistance and supportive care to their clients in the immediate area (grant of around €99,000);

(iii) Confidential advice centres for abused children: grant of around €2.63 million.

(c) Gelijke Kansen in Vlaanderen (Equal Opportunities in Flanders) unit

At the beginning of this parliamentary session, the Gelijke Kansen in Vlaanderen (Equal Opportunities in Flanders) unit funded a number of projects designed to combat violence against women:

- "Zoeken, vinden, werken aan een goede attitude" ("Motief" training centre - "Zijn" training and education unit): a series of training modules relating to violence and ill-treatment within the family intended for students taking advanced paramedical training courses;

- "Refleks Junior": a project focused on training young people aged between 14 and 18 to prevent violence and problem behaviour.

Under the cooperation agreement between the Federal authorities, the Federal entities and the provinces, a sum of €12,394.68 was set aside in 2002 at both Federal and Flemish levels for the work of the provincial coordinators in the field of violence. A similar amount was made available for projects to combat violence against women. Specifically, the following projects were approved by a joint panel at the Federal and Flemish levels:

- Province of Western Flanders: "Naar een integrale aanpak van intrafamiliaal geweld in het gerechtelijk arrondissement Brugge";

- Province of Eastern Flanders: "Implementatie van de Training Resource Package 'Approaching and preventing sexually abusive behaviour in residential institutions for young people' via een train-the-trainer opleiding op Vlaams niveau - pilootproject Oost-Vlaanderen";

- Province of Antwerp: "Intervisie en vorming in het kader van het project Intrafamiliaal Geweld Antwerpen";

- Province of Flemish Brabant: "Vorming rond partnergeweld in het arrondissement Halle - Vilvoorde";

- Province of Limburg: "Witte Lintjes Campagne 2002".

In the light of the Lambermont agreement, the way jurisdiction is shared between the Federal authorities and the Flemish authorities as regards violence against women may be reviewed. In this regard, Flemish equal opportunities policy will play a more active role in the future.

In October 2002, the topic of "violence against women" was placed on the agenda of a meeting with the network of local equal opportunity officials. Initial steps have already been taken in this area to foster cooperation between the provincial coordinators, the Beleidscel Samenleving en Criminaliteit (political unit on society and crime) and the "Gelijke Kansen in Vlaanderen" unit (Flemish level) and the Equal Opportunities Department (Federal level).

A campaign relating to violence in relationships began on 12 November 2002 and will end in December this year. This campaign covers both welfare and equal opportunities.

4.2.3 Walloon Region

Among steps taken more specifically to improve the situation of women, special mention should be made of the following initiatives:

(a) Reception centres for adults and mothers' centres

Among the reception centres for adults so far certified in the Walloon Region, which are designed to provide accommodation and supportive care for individuals in distress, seven are working on a project focused solely on women who have suffered various types of violence. The 13 mothers' centres accept mothers or future mothers, accompanied by their children, who are temporarily unable to solve their physical, psychological or social problems and need accommodation and psychosocial guidance to support them as they learn or relearn to be independent and fit into society. Many women accommodated in mothers' centres have suffered violence of all kinds.

(b) Family and conjugal planning and consultation centres

The purpose of these is to provide a welcome, information, guidance and supportive care for individuals in their emotional lives, sex lives and relationships. Working with a multidisciplinary team composed of a doctor, a legal expert, a social assistant, a psychologist and, where appropriate, a marriage guidance counsellor or sexologist, they are particularly well equipped to help women who have been victims of violence.

(c) Services providing assistance to families and the elderly

This assistance is provided directly in the users' homes. Being required to spend long periods in people's homes, the social workers can uncover situations involving violence against women or elderly persons, many of whom are women.

(d) Social assistance for persons involved in court cases

In 2001, the Walloon Region adopted new regulations on assistance to victims (see the decree of 18 July 2001 on social assistance to persons involved in court cases and the implementing order of 20 December 2001). Female victims of violence, like any other crime victims, may contact psychologists and social workers, who provide the following services free of charge: (i) supportive care throughout the proceedings, to help cope with the consequences of being victimized and, if possible, assist in securing redress; (ii) information to guide the victims in their dealings with the police, the judicial authorities and insurance companies, and in securing State assistance for the victims of intentional acts of violence; (iii) psychological support focused on the direct or indirect consequences of being victimized and coming to terms with the trauma caused by the incident; and (iv) assistance in gaining access to individual help and, where appropriate, medical and psychiatric care.

(e) Telephone helplines and mental health services

These can come to the aid of women disturbed by the violence they have suffered or have to suffer, by lending an ear or providing therapy.

It should also be mentioned that the Walloon Region is very active in the area of assistance to the disabled (for example, through the Walloon Agency for the Integration of the Disabled, and that, by funding a large number of agencies which take care of persons with handicaps, it helps to raise their status in society.

Lastly, it should be mentioned that, in addition to funding the above-mentioned services under specific legislation, the Walloon Region also provides discretionary grants to associations working on ill-treatment or trafficking in human beings.

4.2.4 Brussels-Capital Region

On 12 December 1997 the Board of the French Community Commission adopted regulations governing the allocation of grants to associations engaged in continuing education. The regulations apply to associations fostering creativity, dissemination of information and awareness creation among a female audience. In this way, the French Community Commission encourages bodies engaged in continuing education which seek to promote the social and political emancipation of women, foster political awareness among them and prompt them to play a greater and more effective role in all spheres of society. In this context, training courses focused on active participation by women in politics and decision-making have been organized. These have enabled women to acquire the tools they need to understand the operation of democratic institutions and government machinery and the ins and outs of political economy and public affairs. The Commission gives priority to field activities which fall within the policy guidelines set out by the Board. The stakeholders involved are therefore associations engaged in continuing education which are pursuing initiatives specifically targeted at women.

The French Community Commission has remained alert to the need to provide support for associations which seek to help women and girls to become aware of their social, cultural, economic and political situation and function as active citizens within society. This has led to support for workshops and seminars on the subject of democracy and votes for women and on the situation and role of women in the Catholic, Muslim and Jewish religions, and to funding for lectures and discussions on topics which directly affect women, such as marriage, divorce, children's schooling, excessive debt, health education, women's employment beyond the age of 50, poverty and loneliness. Training has also been organized to encourage women at the local level to gain a better understanding of the challenges arising in society and work as partners with all stakeholders in local life.

5. Examples of court rulings on filiation

Article 319, section 3, paragraph 2, of the Civil Code makes recognition of an unemancipated minor by the father conditional on the prior consent of the minor if he or she is aged 15 or over.

The Court of Arbitration, in its ruling No. 36/96 of 6 June 1996, stated that the fact that unemancipated 15-year-olds may not refuse consent to recognition by a woman, while they may do so in the case of recognition by a man, runs counter to the principles of equality and non-discrimination enshrined in articles 10 and 11 of the Constitution. It added that that situation did not, however, arise out of the provision on which a ruling had been sought, namely article 319, section 3, paragraph 2 of the Civil Code, but from the absence of any comparable proviso in the rules governing maternal filiation.

Under article 312, section 1, of the Civil Code, maternal filiation is in principle established by means of the obligatory inclusion in the birth certificate of the name of the woman who gave birth to the child. Recognition of the child by the mother in the absence of such an indication - a possibility covered by article 313, section 1, of the Civil Code - is thus an exceptional mode of filiation which, in Belgian legislation, and in contrast to the case of paternal filiation, does not require the prior consent of the father or the child and is not subject to any judicial checks.

Article 4. Derogations from the obligations set out in the Covenant

There are no new developments to be reported concerning article 4 of the Covenant. The reader is referred to the third periodic report of Belgium (CCPR/C/94/Add.3, paras. 56-58).

Article 5. Ban on narrow interpretation of the Covenant

The comments on article 5 appearing in the initial report of Belgium (CCPR/C/31/Add.3, paras. 66 and 67) suffice without additional observations.

Article 6. Right to life

1. Death penalty

1.1 As indicated in the third periodic report (CCPR/C/94/Add.3, para. 60), on 10 July 1996 Belgium adopted a law abolishing the death penalty and modifying various penalties (*Moniteur belge*, 1 August 1996). The abolition is absolute and applies to all types of offence, committed in all types of situation, including wartime. The abolition of the death penalty enabled Belgium to ratify three international instruments - the 1957 European Convention on Extradition, Protocol No. 6 to the European Convention on Human Rights[6] and the Second Protocol to the International Covenant on Civil and Political Rights.

1.2 On 3 May 2002 Belgium signed Protocol No. 13 to the European Convention on Human Rights concerning the abolition of the death penalty in all circumstances. Whereas Protocol No. 6 to the Convention, concerning the abolition of the death penalty, does not rule out the death penalty for acts committed in wartime or of imminent threat of war, Protocol No. 13 sets forth the principle of the absolute abolition of the death penalty. In order to become a party to the Protocol, a State must undertake to remove this punishment from its legislation completely and definitively, even for acts committed in wartime or of imminent threat of war. The ratification procedure is under way.

2. Commencement and termination of life

2.1 The law relating to euthanasia was enacted on 28 May 2002 (*Moniteur belge*, 22 June 2002). Under this Act (see annex III), a doctor practising euthanasia does not commit an offence providing he or she complies with as many as possible of the conditions and procedures that the Act specifies. In brief, the patient must be an adult or emancipated minor, who is conscious and under no disability at the time the request is made; the request must be made in a voluntary manner, after thorough consideration and repeatedly, and must not result from external pressure; the patient must be in an irretrievable medical situation and must be experiencing constant and unbearable physical or psychological suffering which cannot be assuaged and which results from a serious and incurable disorder arising from accident or disease; and he or she must comply with the conditions and procedure stipulated in the law. A Federal commission was set up under the Act to check and evaluate its implementation. The commission's tasks include that of checking, in every case of euthanasia, that all the conditions laid down in the law have been respected.

2.2 Further to the comments made in the third report on the establishment of a Consultative Committee on Bioethics (para. 64),[7] besides the Act of 6 March 1995 approving the cooperation agreement setting up the consultative committee, the other instruments of approval should also be cited, viz. the decree of 16 March 1994 issued by the Flemish Council, the decree of 6 December 1993 issued by the French Community Council, the decree of 15 June 1994 issued by the German-language Community Council and the ordinance of 30 March 1995 adopted by the combined assembly mentioned in article 60 of the Special Act of 12 January 1989 relating to Brussels institutions.

2.3 Comment by the German-language Community. Life as yet unborn also enjoys special protection. Article 6 bis of the decree of 9 May 1988 (as amended by the decrees of 7 May 1990, 21 January 1999 and 7 January 2002) sets up a fund for the protection of life unborn, which provides for the funding of assistance for future mothers facing situations of conflict.

Article 7. Prohibition of torture

1. Amendment of legislation, structural and organizational changes

The Belgian authorities are of course concerned to protect the fundamental freedoms and rights of citizens in general, and in their relations with the administration. That is why Belgium is a party to the major international conventions on these matters.[8]

Domestically, Belgium has taken all necessary steps to create and maintain legislation whereby acts of violence, torture and other cruel, inhuman or degrading treatment, whether or not committed by public officials, are punishable.[9]

1.1 Amendment of the Criminal Code

An Act to bring Belgian law into line with the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was adopted by Parliament on 14 June 2002 (*Moniteur belge*, 14 August 2002): the purpose of this Act is to

bring the Criminal Code into line with the standards set out in the Convention; more specifically, it is designed to insert into the Code three new articles which criminalize torture (art. 417 ter), inhuman treatment (art. 417 quater) and degrading treatment (art. 417 quinquies), and also to adapt to the content of these new articles the articles making torture an aggravating circumstance in cases of hostage-taking (art. 347 bis), indecent assault or rape (art. 376), robbery with violence or threats and extortion (art. 473, para. 2) and the theft or extortion of nuclear material by means of violence or threats (art. 477 sexies, para. 2, subpara. 2). Lastly, the Act repeals article 428, paragraph 3, of the Criminal Code, under which the abduction of a minor aged under 12, aggravated by acts of torture, was punishable by 10-15 years' imprisonment, and article 438 of the Code, under which arbitrary or unlawful detention aggravated by acts of torture was punishable by 10-15 years' forced labour, since these provisions no longer have any justification. A new article 417 bis in the Criminal Code contains definitions of torture, inhuman treatment and degrading treatment. These definitions are based in part on the decisions of the European Court of Human Rights relating to article 3 of the European Convention on Human Rights, and in part on Belgian case law.

The reader is referred to the initial report relating to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment, which was transmitted to the Committee against Torture in August 2001 (CAT/C/52/Add.2).

1.2 Police services

1.2.1 Organization of police services

With the Act of 7 December 1998 instituting an integrated, two-tier police service, Belgium radically modified the organization of the police. The authorities have an obligation to watch over public security and uphold the rule of law. The police services play an important role in this regard; as society changes, the police services must also change and undergo reorganization where necessary. The reorganization involves integrating the three existing police services at two levels - the local level and the Federal level. In addition, a series of measures are aimed at facilitating the integrated operation of the new police force: a single set of regulations, harmonized training, development of joint infrastructure, and so on.

The new police force operates under new disciplinary regulations[10] and an independent general inspectorate.[11] This latter is not a disciplinary body but monitors the functioning of the Federal police and the local police as well as the execution of orders, instructions and guidelines. It also carries out periodic audits of the local police and the Federal police. The new disciplinary regulations provide, inter alia, for the preparation of an annual report and the establishment of a databank recording judicial practice in disciplinary matters, which will markedly enhance transparency in disciplinary proceedings.[12]

The regulations governing the new police force will guarantee the application of various principles and thus ensure that police operations are in keeping with universal human values and standards. Thus, police officials must at all times and under all circumstances contribute to the protection of their fellow-citizens and the assistance that citizens are entitled to expect besides, when circumstances so require, helping to uphold the law and maintain public order. They must

respect, and undertake to ensure respect for, human rights and fundamental freedoms.[13] The regulations governing police officials guarantee their integrity. Police officials must avoid any irregularity in the exercise of their functions.[14] Police officials must avoid any behaviour, even outside the exercise of their functions, which may imperil the discharge of the duties of their post or jeopardize its dignity.[15] The Royal Decree determining the legal status of members of the police services sets out regulations governing the new police force.[16]

Code of conduct

The Royal Decree also makes provision for the drafting of a code of conduct for the police services, which will set out all the ethical and professional rights and duties which the members of the police services must respect and fulfil in the exercise of their functions.[17] It will constitute a means of keeping the behaviour of police officers under surveillance, as well as offering a degree of protection against unlawful acts and/or omissions on the part of the authorities and the population. It will have an incentive and standard-setting effect and thus contribute to improving the functioning of the organization and ensuring proper protection of citizens and policemen themselves. Failure to respect the rules may lead to a penalty and/or a warning, while the correct application of these rules will benefit the officer, for example by contributing to a favourable periodic evaluation.

The code of conduct is based on an ethical approach, focusing on the role of the police in society, the legal definition of the police function, the process of adaptation of police officials to their role in society, the role of citizens' constitutional freedoms and rights as the basis for the legal order, the dignity inherent in citizenship and the active role of the police in upholding and protecting citizens' rights and freedoms. These areas will be monitored by a parliamentary commission on police affairs, assisted by Standing Committee P, which is an independent, external monitoring body reporting to Parliament.[18]

1.2.2 Practical measures

On the basis of the recommendations made by the European Committee for the Prevention of Torture (CPT), the Belgian Government has taken a number of steps to counter the unlawful use of force. As explained in this paper, these steps should be viewed in the context of the police reform.

(a) Reform of recruitment and selection of police officers in order to select the most suitable candidates by means of tests based on the techniques of industrial psychology and interviews designed to assess the candidates' communication and orientation skills;

(b) A completely new type of training for all members of the integrated police force, following a multidisciplinary approach (legal, psychosocial and incorporating training in professional practice), in which emphasis is placed on assessing the appropriateness of the use of force and the need for its phased application. Outside teachers and organizations are participating in the training (universities, Council of Europe, League of Human Rights, Centre for Equal Opportunity and Action to Combat Racism) with the aim of developing standards of behaviour that meet the democratic expectations of the public;

(c) Heightened vigilance and surveillance of the actions of police officials, through the organization of external and internal monitoring. Each police service is expected to justify and legitimize its actions on the basis of quality and professionalism, efficiency, lawfulness, morality, sound management and respect for Federal and local plans. Monitoring must be performed in a context of transparency within a structure of internal and external checks.

Without prejudice to supervision of the police by the administrative and judicial authorities, the monitoring machinery is composed of two tiers:

(i) Internal supervision of the local police and the Federal police, carried out by the general inspectorate, which monitors the day-to-day operation of the police services, and in particular the individual performance of tasks by police officials through the handling of complaints; oversees the performance of the tasks of the local and Federal units; and examines management, the effectiveness of operations, the allocation of resources, etc., by means of an audit function;

(ii) External checks, carried out by a centralized, autonomous department which is independent of the structure, policy and activities of the police organization. The Standing Committee on the Supervision of the Police Services currently plays this role, and is responsible for democratic monitoring of the pursuit of the objectives set by Parliament, analysing dysfunctions identified on its own initiative and through internal checks, and formulating recommendations for parliamentary action;

(d) The establishment of an interdepartmental working group (Interior and Justice Ministries) in which representatives of the local police and the Federal police identify laws and regulations relating to police arrests which need to be modified or created and practical steps which are needed to improve the conditions in which arrests are made. The working group will address the following issues:

(i) Measures in respect of persons who have been detained or arrested, namely the legal basis for judicial arrest and administrative arrest, regulations governing searches, the use of handcuffs, notification of third parties, storage of clothes and other items, observation, food distribution, medical care and release;

(ii) Infrastructure, namely the provision of individual and collective police cells, the provision of observation areas, furnishing and equipping in accordance with minimum standards, surveillance of the complex and of persons, and safety and hygiene standards;

(iii) Administration, i.e. registration, the individual file and supervision.

1.3 Prison institutions

Since the previous report was submitted, Belgium has had two visits from the European Committee for the Prevention of Torture (CPT). A first visit took place from 31 August to 12 September 1997, while the second, more recent, took place from 25 November to 7 December 2001. The Committee's reports and the Government's response have been made public.[19] On the subject of prison institutions, CPT first and foremost reiterated its wish to continue and intensify the measures taken to reduce overcrowding and improve prison conditions, since good treatment of prisoners is intrinsically linked to prison conditions and overcrowding in prison institutions.

The initiatives taken in this area by the Minister of Justice between 1996 and 2002 are as follows. They will be set out in greater detail in the comments under article 10 of the Covenant:

(a) The work of the Dupont Commission, established to study the topic of a general policy act governing prison administration and the legal status of prisoners, which examined the internal legal status of detainees;

(b) The work of the Holsters Commission, established to study the courts for the enforcement of sentences, the external legal status of detainees and sentencing, which is examining the external legal status of detainees and the setting and application of sentences from the standpoint of restorative justice designed to re-establish the relationship between the offender, the victim and society;

(c) The efforts which recently culminated in the enactment of the Act of 17 April 2002 introducing community service orders as a penalty in their own right in cases involving correctional offences and minor offences;

(d) The finalization of the report of the proceedings of the Confinement Commission, which enumerates problems and proposals related to the Social Protection Act of 1 July 1964 in respect of socially inadequate persons, habitual offenders and the perpetrators of certain sex offences. In April 2001, the drafting of a preliminary bill on the confinement of offenders suffering from mental disturbance was completed on the basis of the Commission's work. After modification to take account of comments gathered in the field, the bill will be submitted to the Justice Committee of the Chamber of Representatives in the coming months;

(e) Research and development of alternative measures.

Various measures have been adopted which are designed to limit the use of imprisonment, against a background of endemic prison overcrowding. They include the following:

(a) Non-enforcement of sentences involving imprisonment for non-payment of fines or non-compliance with other conditions imposed by a court;

(b) Modification of deadlines relating to eligibility for provisional release;

(c) A bill relating to enhanced surveillance of convicted prisoners who are released from prison, improvement of the situation of the victim when the offender is released from prison, and streamlining of prison capacity;

(d) The introduction and nationwide application of electronic surveillance;

(e) The intensified application of alternatives to pre-trial detention;

(f) Encouragement of the use of such measures as mediation, community service and training;

(g) Regulations governing the early release of aliens placed in administrative detention (see section 1.3 of the comments under article 9 of the Covenant).

Prison infrastructure

Special attention has also been devoted to the infrastructure of prison institutions. Apart from the entry into operation of Andenne prison in 1998 and the construction of Ittre-Tubize prison (entry into operation in June 2002), major renovation work has begun in the prisons of Antwerp, Gent, Forest, Saint-Gilles, Mons, Paifve and Tournai and Nivelles. This work is being carried out for the purpose of improving conditions for prisoners by intensifying efforts in terms of comfort and hygiene. Construction has begun on a new prison at Hasselt.

Prison violence

The problem of violence in prisons, irrespective of its nature and its perpetrators (the prison itself, the prisoners, the staff, etc.), was the subject of a study carried out by the Université Libre de Bruxelles and the Vrije Universiteit Brussel between 1999 and 2000. The findings of this research advocate an all-round approach to the subject, given the multiple facets of the phenomenon. The major elements include the atmosphere within the prisons (staff management) and the shift towards a new philosophy of treatment of prisoners (regime, punishments, surveillance). The Dupont bill, which deals with the internal legal status of detainees, encompasses a set of principles which clarify and redefine the intrinsic aspects of prison life, including in particular the regime and disciplinary aspects (see below). The adoption of this bill will supplement efforts undertaken at the local and central levels to reduce physical, psychological and institutional violence in prison.

2. Government explanation of certain serious occurrences

2.1 Inquiries into the conduct of Belgian soldiers serving in the United Nations Operation in Somalia (UNOSOM II)

The soldiers suspected of conduct which could be termed torture or cruel, inhuman or degrading treatment or punishment during the United Nations Operation in Somalia were called to account before the Council of War. They were found guilty, of the incidents which the Council considered to have been proven, not on the basis of the Covenant but under article 4, paragraph 1, of the Act of 30 July 1981 to suppress certain acts based on racism or xenophobia,

and for breaches of the Criminal Code (intentional bodily injury, premeditated wounding, threatening a child by gesture or symbol, indecent assault, etc.). The figure of 270 files mentioned in the Committee's concluding observations seems high: the Auditor-General to the Military Court has been asked to confirm it.

2.2 Increased police brutality

The yearly reports of the Standing Committee on the Supervision of the Police Services made it possible to get an idea of the supposedly illegal use of force by the police. Standing Committee P has a number of files on cases brought against police officers suspected of illegal use of force, and statements from the police services themselves made under article 26 of the Organisation Act.[20]

The figures from Standing Committee P do indeed show an increase in the number of cases under investigation involving the use of force against individuals. The figure has risen from 77 in 1996 to 111 in 2000. The majority of these cases - some 63 per cent - are still under investigation and thus not accessible to third parties. Only 3 per cent of the cases have led to convictions. The figures available on disciplinary proceedings are also limited and patchy: the reform of the police forces (see above) should bring about changes in this area.

2.3 Repercussions of the Sémira Adamu case

The circumstances of the death of Niger citizen Sémira Adamu while she was being expelled from Brussels to her home country on 22 September 1998 deeply shocked the Belgian public and authorities. The authorities took a variety of steps in the wake of this tragic event.

2.3.1 Guidelines on expulsion (refoulement) and repatriation (see commentary in annex IV on the Federal Police's application of these guidelines)

The guidelines on expulsion (refoulement) and repatriation of foreigners have been completely reworked. On the advice, inter alia, of the commission to review the instructions relating to expulsion.[21] The new guidelines went into effect on 2 July 1999. On the use of coercion, they lay down the following principles:

(a) The use of force is to be governed by the Police Functions Act;[22]

(b) Without prejudice to legal requirements, the means of coercion used must meet the following conditions:

(i) Safety aboard the flight must be considered;

(ii) The health and safety of the passengers concerned by such action must be considered;

(iii) Inconvenience to other passengers must be kept to a minimum;

(c) The use of the following specified means of coercion is strictly prohibited:

(i) Techniques which block the respiratory passages;

(ii) The administration of sedatives or other drugs to control the individual;

(iii) Any restriction on the individual's freedom of movement during the flight which might, in an emergency, make his or her rescue harder or impossible;

(iv) The use of means of coercion to punish the individual concerned.

2.3.2 Specific measures for the Border Control Section of the National Airport security detachment[23]

"Border controller and escort" is a specific occupation in the National Airport Security Detachment. A job description, selection procedure and specialist training programme have been drawn up, the latter being followed by a six-month trial period. At the conclusion of that period, candidates are assessed and permission to take up the job is granted or withheld.

2.3.3 The Sémira Adamu case

The Brussels Council Chamber decided on 26 March 2002 to remand five gendarmes before the correctional court following the death of Sémira Adamu during her expulsion in September 1998. It made no allusion to racism. The case will be tried in late 2002. Pending a court decision, all disciplinary proceedings have been suspended.

3. Medical trials

3.1 Belgian regulations

Regarding the regulation of medical trials, mention should be made of the amendments of 20 October 1994 (*Moniteur belge*, 16 December 1994) and 12 August 2000 (*Moniteur belge*, 29 August 2000) to the Royal Decree of 16 September 1985 concerning the standards and protocols applicable to testing of medicinal products for human use.

A Royal Decree of 12 August 1994 (*Moniteur belge*, 27 September 1994) requires hospitals, as a condition of certification, to set up a local committee on hospital ethics whose responsibilities include issuing opinions on all human trial protocols.

As that decree was shortly to be repealed, the Act of 25 January 1999 (*Moniteur belge*, 6 February 1999) added an article 70 ter to the Hospitals Act. Under that article, every hospital is now required to have an ethics committee, one of whose functions is to issue opinions on all protocols for trials involving humans and human reproductive material. A Royal Decree on the application of the new article 70 ter is now in preparation. For the time being, the Royal Decree of 12 August 1994 governing the composition, operation and mission of hospital ethics committees still applies.

3.2 European Parliament Directive

Directive 2001/20/EC of the European Parliament and Council of 4 April 2001 on the approximation the laws, regulations and administrative provisions relating to the implementation of good clinical practice in the conduct of clinical trials on medicinal products for human use was promulgated to simplify and harmonize administrative arrangements relating to clinical trials of medicinal products by introducing a clear, transparent procedure for clinical trials and allowing the efficient coordination of such trials by the Community bodies concerned. By 1 May 2003, member States are supposed to have passed and published the requisite laws and administrative rules for compliance with the directive. These must be explicitly in force by 1 May 2004. A working group is currently incorporating this directive into Belgian law; the provisions on the conduct of clinical trials of medicinal products have yet to be established.

As the European directive is restricted to clinical trials of medicinal products, proposed draft legislation amending the Act of 25 March 1964 on medicinal products is in preparation. The time frame to be respected also plays a role. While the regulations are being drafted, account is being taken of the fact that in the long run they may be extended to cover clinical trials of items other than medicinal products. General provisions on the protection of the experimental subject (with particular regard to consent and information) and special language to protect minors and adult subjects incapable of giving their own consent to involvement in clinical trials will be added. The requisite language on medical ethics committees, which will have to be brought in and give a favourable opinion before a trial begins, will also be included.

Article 8. Prohibition of slavery and forced labour

1. Trafficking in human beings

Though there is no slavery in the traditional sense in Belgium, it, like many other countries, is having to grapple with the problems of trafficking in human beings and child pornography. A summary of the action taken to oppose trafficking in human beings is given below.

1.1 Action to combat human trafficking

Since 1995, Belgium has acquired a sizeable arsenal of laws and regulations to combat trafficking in human beings. The Act of 13 April 1995 containing provisions to combat the traffic in persons and child pornography (*Moniteur belge,* 25 April 1995) added a specific provision, article 77 bis, to the Act of 15 December 1980 on access to Belgian territory, residence, establishment and removal of foreigners. This makes it a crime to help a foreigner enter or reside within Belgium while exercising any kind of coercion over him or her or taking advantage of his or her particularly vulnerable position due to illegal or insecure administrative status, pregnancy, illness, infirmity or physical or mental disability. The Act of 13 April 1995 also amended a number of articles in the Criminal Code, more specifically to do with prostitution-related offences. Although trafficking in human beings tends to be bound up with sexual exploitation, it also occurs in connection with the smuggling of humans and economic exploitation in clandestine sweatshops, at embassies and in sports clubs. Article 77 bis of the Act of 15 December 1980 was recently amended, by the Minors (Protection under the Criminal Law) Act of 28 November 2000 (*Moniteur belge,* 17 March 2001), to cover the act of

permitting a foreigner to transit through Belgium. The fact of being a minor suffices to demonstrate a "particularly vulnerable position". More recently still, a new paragraph 1 bis has been added to the article, by an Act dating from 2 January 2001, to deal with individuals who rent or sell housing to foreigners, taking advantage of their uncertain situation to make unusual profits.

The article has again been amended by framework legislation dated 2 August 2002 (*Moniteur belge*, 29 August 2002), to allow for the possibility of:

(a) Confiscating buildings sold or rented to foreigners while taking advantage of their uncertain situation to make unusual profits;

(b) Sealing buildings;

(c) Or, with the owners' agreement, making them available to public social welfare centres (CPAS) for restoration and temporary rental.

Since the passage of the Act of 13 April 1995 adding an article 10 ter to the preliminary title of the Code of Criminal Procedure, it has also been possible to prosecute in Belgium individuals who have committed certain offences related to trafficking in human beings or sexual exploitation abroad.

Mention should also be made of the Act of 4 May 1999 (*Moniteur belge*, 22 June 1999), which makes legal entities criminally liable for offences intrinsically associated with the accomplishment of their objectives or the defence of their interests or committed, as the specific circumstances go to show, on their behalf (new Criminal Code, article 5). The new article 7 bis of the Criminal Code spells out the penalties applicable to offences committed by legal entities. This new legislation also applies to trafficking in human beings.

1.2 Assistance to victims of trafficking

Besides punishing the culprits, special attention has been devoted to helping the victims of human trafficking. Victims who agree to cooperate with inquiries are granted special residency status provided they quit the milieu which brought them into contact with trafficking and are taken in hand by a recognized specialist care centre. Once they have residency certificates, they are entitled to work. The procedure for the issuance and renewal of residency and work permits for victims of trafficking is laid down in a joint circular dated 7 July 1994 from the Ministry of the Interior and the Ministry of Employment and Labour. Joint guidelines from the ministries of justice, the interior, employment and labour and social affairs dated 13 January 1997 spell out how the circular is to be applied in practice. A Royal Decree dated 9 June 1999 coordinated the regulations governing the employment of foreign workers and brought them up to date. It establishes that victims of trafficking can, under certain conditions, take jobs in Belgium.

At a meeting in March 2001, the Criminal Policy Unit, in collaboration with the representative of the Prosecutors' Association, made a number of comments on amendments to

the guidelines of 13 January 1997 on aid to the victims of trafficking in human beings. The amendments are designed to increase the likelihood that victims of trafficking who collaborate with the legal authorities will be given a residence permit. Most of the comments have been incorporated into the new version of the guidelines, which is expected to take effect very shortly.

1.3 With a view to the consistent application of the legislation passed to combat trafficking in human beings, the Minister of Justice has put out guidelines on investigation and prosecution policy in cases of human trafficking and child pornography. These took effect on 1 September 1999. They are intended to ensure appropriate information-gathering by the services concerned, the proper circulation of information among the various services and coordinated investigations and prosecutions. This latter task has been assigned to the liaison officers in each judicial district and public prosecutor's office with responsibility for human trafficking (see Annex V for information from the Criminal Policy Unit about the evaluation of these guidelines).

1.4 The Act of 13 April 1995 assigned to the Centre for Equal Opportunity and Action to Combat Racism the task of encouraging action to combat trafficking in human beings. That task was spelt out in a Royal Decree dated 16 June 1995 (*Moniteur belge*, 14 July 1995). It is partly in this connection that the Centre produces an annual public, independent report on the evaluation and outcome of efforts to combat trafficking, which it submits to the Government. The Centre is also responsible for collaboration and coordination among the various specialist centres caring for victims of trafficking. It can, additionally, claim criminal indemnification in cases involving trafficking in human beings.

In December 2000 the Prime Minister set up a task force on human trafficking to define the essence of an integrated policy encompassing both administrative issues and social law, criminal justice and aid for victims. The task force brings together the most important partners in the drive to combat the smuggling of and trafficking in human beings. One proposal from the task force has been to reorganize the interdepartmental unit and update the Royal Decree of 16 June 1995 which brought it into existence. The head of the task force comes from the Criminal Policy Unit, while the interdepartmental unit is headed by the Minister of Justice. The new Royal Decree will also expand the terms of reference of the Centre for Equal Opportunity and Action to Combat Racism.

1.5 It must be emphasized that, in spite of the tools Belgium has forged for combating trafficking in human beings and the close cooperation among the various parties dealing with the problem, field workers decry the lack of money, people and equipment available for dismantling trafficking networks and ensuring that victims can be looked after properly. It is often very hard to obtain statements from victims accusing their exploiters, partly because they fear reprisals against themselves or family members left behind in their home countries. Human trafficking is an international phenomenon involving the country of origin and transit countries as well as the country of destination. Closer cooperation with the countries of origin is therefore a must (see below, Europol and Eurojust).

1.6 The Department of Justice has continued to work in a variety of international bodies to combat violence and trafficking in human beings:

(a) It should be noted that the problem of human trafficking was a priority item while Belgium held the presidency of the European Union. On 28 September 2001, for example, the Ministers of justice and home affairs of the European Union and applicant countries agreed on a series of measures to step up action against trafficking (taking a comprehensive, integrated approach; exchanging information swiftly; modifying legislation; combating corruption; aiding victims etc.). During the Belgian presidency, besides, the Prosecutors' Association assigned the Criminal Policy Unit to draw up a directive against the smuggling of human beings;

(b) During Belgium's presidency of the Union, the Justice and Home Affairs Council decided, as regards efforts to stop sexual exploitation, to extend the mandate of Europol to cover the serious types of international crime listed in the annex to the Europol Convention - which include trafficking in human beings;

(c) The Council also reached a policy agreement on 6 December 2001 on the establishment of Eurojust, whose terms of reference cover the same types of crime and offences as those to which Europol can react. As soon as the agreements are formally adopted, therefore, Europol and Eurojust will be empowered to combat trafficking in human beings;

(d) In late 2000 the Department of Justice completed its preparations for ratification of the European Convention on the Compensation of Victims of Violent Crimes, which Belgium signed on 19 February 1998. The dossier was sent in January 2001 to the Ministry of Foreign Affairs so that the bill could be submitted to the Council of Ministers for adoption;

(e) During the Belgian presidency of the Union, the National Forum for a pro-Victim Policy decided that priority must be given to bringing Belgian legislation and rules into line with the framework decision adopted by the Council of the European Union on 15 March 2001 on the standing of victims in criminal proceedings. A working group has been set up to take stock of Belgian legislation in the light of the Council's decision.

2. Abolition of forced labour

2.1 Prison labour

Under article 30 ter of the Criminal Code, convicted offenders are required to work: this is with a view to their later return to society and training. There is, however, no question of forced labour in Belgium by either individuals in pre-trial detention or convicted criminals. The Death Penalty (Abolition) and Serious Penalties (Amendment) Act of 10 July 1996 did away with the notion of forced labour. In actual fact, the problem tends to be the opposite one, in that not all prison inmates who would like to work can do so, given the difficulties in finding businesses with jobs available for a constantly growing prison population in overcrowded facilities under conditions consistent with the rules on fair competition and with the architectural features and installed infrastructure in prisons mostly dating from the nineteenth century.

Prison regulations require prison inmates to be put to work in conditions as nearly typical as possible of those prevailing on the outside for the same tasks undertaken in proper conditions and in accordance with current technical and health and safety standards. They require prison labour to be organized so as to contribute actively to inmates' re-education and social rehabilitation, with particular emphasis on vocational training. The work available is to be allocated as far as possible in response to inmates' requests, with due regard for their personalities and skills.

2.2 The Council of State was presented in March 1999 with a draft bill to amend the Merchant Marine and Fishing Fleet Disciplinary and Penal Code introduced by Act of 5 June 1928, abolishing forced labour as a punishment so as to bring the Act into line with International Labour Organization Convention No. 105 (Abolition of Forced Labour Convention, 1957) and article 1, paragraph 2, of the European Social Charter. In an opinion handed down in June 1999, the Council of State made a number of technical and legal comments. It also found that it would be helpful to determine clearly whether punitive measures against seamen could be justified if a criminal offence committed by seamen impelled the safety of the cargo. The draft bill was amended appropriately and forwarded by the Ministry of Communications to the competent office at the Ministry of Justice for comment.

Article 9. Right to liberty and security of person

The remarks below will be confined in the main to responding to the Committee's concluding observations on this article (CCPR/C/79/Add.99) after the submission of the third periodic report (CCPR/C/94/Add.3). For the rest, the reader is referred to the reports produced by Belgium following the visits by the European Committee for the Prevention of Torture (CPT) in 1997 and 2001, and parts of the reply by the Standing Committee on the Supervision of the Police Services concerning the application of articles 7 and 9 of the Covenant (see Annex VI). This latter report gave rise to a new working group on police arrests (see above, comments under article 7 of the Covenant, paragraph 1.2.2 (d)).

1. Responses to the Committee's concluding observations on the previous report

1.1 Access to a lawyer during detention

Belgian law does not at present allow detainees access to a lawyer of their choice immediately after arrest. It makes provision for two different kinds of deprivation of liberty by the police, administrative[24] and judicial[25] detention:

(a) Administrative detention is a coercive measure consisting in the withdrawal or restriction of an individual's freedom of movement, for pressing administrative police reasons, in circumstances and subject to conditions laid down by, or by virtue of, the law. It is effected under the supervision of an administrative police officer, may not last longer than necessary and in any event may not extend beyond 12 hours. Any individual subjected to administrative detention may ask for a trusted person to be notified. He or she is also entitled to consult a doctor of his or her choosing, if necessary. The time and duration of administrative detention are recorded in a register which the individual concerned must sign upon arrival and departure. Being able to consult a lawyer is not particularly helpful to an individual in this situation;

(b) In principle, judicial detention is governed by the Pre-Trial Detention Act, and subject to strict conditions.[26] Judicial detention cannot theoretically occur without a mandate from the Crown Procurator and/or investigating magistrate. The Act does, however, specify conditions under which competent police officials can make a judicial arrest without a warrant; law enforcement officers place the suspect at the disposal of the judicial police, who effect the judicial arrest. The judicial police report the arrest forthwith to the Crown Procurator and follow his instructions. All the steps taken are noted in a written record which mentions the exact time of and circumstances of the arrest, the fact that the procurator has been informed and the procurator's decision. Such detention cannot last longer than 24 hours, during which the investigating magistrate must either serve an arrest warrant or have the individual released.

In the event of judicial detention, the right to notify a trusted individual is not automatic. If by so doing accomplices could be given warning, evidence could be destroyed or other crimes could be committed, the competent police officers will draw this to the attention of the judicial authorities, who will decide whether or not the detainee can inform a trusted individual. The investigating magistrate may also decide that the accused may have no contact whatsoever with the outside world for a given period. A judicial detainee cannot consult counsel before being brought before the examining magistrate. The Belgian Judicial Code does indeed acknowledge the right to the assistance of counsel, but only after an individual has appeared before the investigating magistrate.[27]

Mention should be made of the Act of 28 March 2000 introducing an immediate-trial procedure for criminal cases. This requires the case file to be made available to the suspect and counsel as soon as application is made for a warrant for arrest and immediate trial; the suspect is entitled to consult counsel before being brought before the examining magistrate, and to be assisted by counsel during the trial.[28]

Reference should likewise be made to the position recently taken by the Ministers of justice and the interior during the CPT visit to Belgium from 25 November to 7 December 2001. The Minister of Justice undertook to incorporate the basic guarantee of access to counsel into Belgian law once the reform of the police force was complete. The Minister of the Interior agreed that he had no objection in principle to doing so.[29] The matter will be considered separately with due regard for the specific features of each kind of arrest (individual administrative arrest, group administrative arrest, judicial arrest etc.).

Lastly it should be pointed out that the Minister of Justice instructed a commission (the Franchimont Commission) to draw up proposals for a reform of criminal procedural law. The Commission submitted its final report on 17 September. Account should be taken of the substantial work the Commission has done. In drafting a new code of criminal procedure, the Franchimont Commission sought to address concerns relating to four issues: consistency and coordination; readability and transparency; continuity; and innovation.

The draft it produced contains a number of clauses dealing with the presence of counsel. The chapter on pre-trial detention, in article 242, paragraph 8, stipulates that "when a person deprived of liberty must spend the night in a holding cell before being brought before the examining magistrate, he or she may ask to be visited by his or her lawyer or by designated counsel either between 8 and 9 p.m. or between 7 and 8 a.m. the following day."[30] The explanatory memorandum states that "Paragraph 8, providing for access to counsel, is more

original. Yet the entitlement is limited: when a person deprived of liberty must spend the night in a holding cell before being brought before the examining magistrate, he or she may ask to be visited by his or her lawyer or by designated counsel either between 8 and 9 p.m. or between 7 and 8 a.m. the following day. This will probably entail the establishment of a duty-counsel service to cover the visiting hours. The role of counsel in such circumstances will basically be to explain the detainees situation to him or her and to provide general information."[31]

1.2 Right of access to a doctor while in custody

Legislation does not at present explicitly provide for detainees to have access to a doctor. In practice, a detainee is generally entitled to be examined and treated by a doctor of his or her choice. When a detainee cannot or will not choose, the duty doctor is called in.

Article 442 bis of the Penal Code provides that anyone who withholds aid from another person in danger is subject to prosecution. Paragraph 1 of this article reads as follows: "Anyone who fails to assist or to seek assistance for a person in serious danger, whether he has seen for himself the situation of the person concerned or that situation is described to him by those who request his intervention, shall be liable to eight days' to six months' imprisonment and/or a fine of 50 to 500 francs." Obviously, therefore, if a police officer notes that a detainee's condition requires medical treatment, a doctor will be called in.

It should, however, be noted that it is not always physically possible to call in the doctor of a detainee's choosing. In such circumstances the duty doctor is generally called, as he or she is able to provide assistance at night or on weekends or holidays. Similarly, when a person under the influence of alcohol or drugs is detained for committing a crime or offence or for infringing the highway code, the police officer will immediately request the services of a doctor. The police officer is required to be present during the medical examination and the taking of a blood sample. In cases involving drunkenness or drinking and driving, it is compulsory for law-enforcement officers to be present. If a doctor issues a medical certificate, the detainee may ask for the certificate to be put on the file. The file may be consulted by the detainee and his counsel.

The manner in which medical examinations are conducted depends, on the one hand, on police stations' internal regulations, which may be issued by the commanding officer under article 171 bis of the new Communes Act, and, on the other, on the ethical rules which the doctor considers must be observed in the circumstances. Generally speaking, if the doctor agrees and is not at risk, examinations may take place out of the sight and hearing of the police.

Rules in a number of towns and communes require the police, when they detain someone, to take him or her to a hospital for a medical certificate confirming that the individual concerned can be incarcerated. For budgetary reasons among others, however, this has not become uniform practice.

Lastly, article 242, paragraph 7, of the Franchimont Commission's draft code specifies that "the detainee is entitled to ask to be examined by the doctor of his or her choice. If he or she does not have the means to pay, the doctor's fees shall be charged to legal costs".

1. 3 Detention of aliens

1.3.1 Laws and regulations on the detention of aliens in closed centres, and the conditions applicable

Article 74, paragraph 5, of the Act of 15 December 1980 permits aliens not in compliance with the conditions for legal entry into Belgium to be held in a specified place at the border or on similar premises within the Kingdom. Article 25 requires aliens facing expulsion or return to be placed at the disposal of the Government; article 27 allows an alien who has not submitted to a removal order within the time limit to be detained for the length of time strictly necessary for his or her removal.

In exceptionally grave cases the Minister can, if he deems it necessary to protect public order or national security, have an alien escorted to the frontier. The alien is then placed at the Government's disposal for such time as is strictly necessary to enforce removal. An alien subjected to a custodial measure may institute a recourse procedure by lodging an appeal with the Judges' Council Chamber of the Correctional Court in his place of residence or the place where he was found (art. 71, para. 1) or the place where he has been kept. He may lodge an appeal from month to month. The Judges' Council Chamber must rule within five working days of the date on which the appeal is lodged, failing which the alien is released from custody. It hears arguments put forward by the alien or by counsel in his defence and the opinion of the public prosecutor (art. 72, para. 1).

Proceedings are conducted in accordance with the legal provisions on pre-trial detention, except for those concerning the arrest warrant, the examining judge, the prohibition of communication, the warrant of commitment, provisional release or release on bail and the right to examine the official status file (art. 72, para. 4). Counsel for the alien may consult the file at the registry of the competent court during the two working days that precede the hearing and will receive notice to that effect by registered letter (art. 72, paras. 5 and 6).

The Judges' Council Chamber checks whether or not the custody and removal from Belgian territory are in keeping with the law, but may not rule on their advisability (art. 72, para. 2). This entails such things as checking whether the individual concerned was properly notified of the decision, whether the conditions for extending the detention deadline were met and the maximum length of detention has been respected.

These checks are not, however, merely a matter of form. Since reasons must be given for every decision, i.e. the official record must give the legal and factual considerations underlying a decision (article 62 of the Act of 15 December 1980, Act of 29 July 1991 on the formal citing of reasons for administrative acts), the Judges' Council Chamber is chiefly concerned with the reasons for decisions. The Minister or his representative can exercise discretion as regards the use of detention to ensure that a foreigner is removed from Belgian territory; the Chamber thus considers the reasons advanced to justify recourse to detention, and whether such action is proportionate. It also checks whether detention is serving its purpose, since the only purpose of detention is to ensure that the alien leaves the country.

A total of 281 appeals were filed with the Judges' Council Chamber in the latter six months of 2000. The corresponding figure for the first six months of 2001 is 427.

1.3.2 Detention centres for aliens (see also comments under article 10)

The centres for aliens are closed holding centres in which - in an appropriate setting - certain categories of aliens, namely those who cannot be admitted into Belgian territory (persons lacking the necessary entry documents), asylum-seekers, asylum-seekers whose cases have been dismissed, and illegal aliens, may stay while awaiting permission to enter the country or repatriation. Only asylum-seekers at the border and foreigners lacking the necessary entry documents are routinely placed in the closed centres.

Minors in closed centres

Like adults and all asylum-seekers, minors are liable to be confined in closed centres. An alternative to this must be arranged. Minors should not be detained except in the last resort. Yet in the absence of appropriate legislation and facilities, it is not exceptional for minors to be detained in Belgium.

The Royal Decree dated 4 May 1999 states in article 79 that minors within the meaning of the Convention on the Rights of the Child of 20 November 1989 may not be placed in closed centres unless they fall into one of two categories:

(a) Minors apprehended at the border and held pending a decision on their applications for asylum;

(b) Minors accompanied by one or more relatives or legal representatives who are also at the centre. In this case, the minor stays in the same place as one of these people at the centre.

It also stipulates that if there are minors at a centre, facilities must be made available for them to entertain themselves. No provision is made for separating minors from adults.[32]

1.3.3 The Act of 29 April 1999 shortening the administrative detention of aliens illegally in Belgian territory (*Moniteur belge*, 26 June 1999) reduced the maximum length of such detention from eight to five months. Detention for eight months is now allowed only when necessary to safeguard public order, or in the interests of national security. Such detention may start afresh if the inmate refuses to cooperate in the repatriation arranged for him (see, inter alia, Court of Cassation judgement of 28 September 1999).

An alien subjected by administrative decision to a custodial measure may file an appeal with the judicial authorities, in particular the Judges' Council Chamber (Act of 15 December 1980, articles 71 to 74). The Court of Arbitration ruled on 22 April 1998 on the constitutionality of extending detention beyond the initial period of two months, finding that it was not inconsistent with articles 10 and 11 of the Constitution.[33]

Article 10. Treatment of detainees

The comments below both describe new developments on the legislative and policy front and respond to the concerns voiced by the Committee in its previous concluding observations (CCPR/C/79/Add.99, para. 16).

1. Reservations by the Belgian Government

The Belgian Government entered two reservations to article 10 of the Covenant:

(a) Article 10, paragraph 2 (a), under which accused persons shall, save in exceptional circumstances, be segregated from convicted persons is to be interpreted in conformity with the principle, already embodied in the standard minimum rules for the treatment of prisoners [resolution (73) 5 of the Committee of Ministers of the Council of Europe of 19 January 1973], that untried prisoners shall not be put in contact with convicted prisoners against their will. If they so request, accused persons may be allowed to take part with convicted persons in certain communal activities;

(b) Article 10, paragraph 3, refers exclusively to the judicial measures provided for under the *régime* established by the Belgian Act on the protection of minors under the criminal law. As regards other juvenile ordinary-law offenders, the Belgian Government intends to reserve the option to adopt measures that may be more flexible and be designed precisely in the interest of the persons concerned.

As regards the first reservation, the policy bill on prison administration and the legal standing of detainees (document 50-1356, submitted to the Chamber) establishes the principle that accused persons should be kept separate from convicts. The two categories will be subject to different regimes (see above).

As regards the second, there is another significant development to report: the repeal of article 53 of the Act on the protection of minors under the criminal law of 8 April 1965, under which a minor could be subjected to a custodial measure in a detention centre for a period not exceeding 15 days (Act of 4 May 1999). This, combined with the lack of space in special-purpose institutions for juvenile delinquents guilty of violent offences, prompted the Federal Government to create a temporary placement centre for minors guilty of conduct amounting to a criminal offence (see below).

At all events, Belgium intends to respond to the requirements of article 10 as regards minors, prison overcrowding, social rehabilitation and alternative measures with the legislative amendments now completed or in train.

2. New developments in legislation and policy

2.1 Detainees, victims, prison capacity and impunity

2.1.1 Release on parole

The whole concept of parole was overhauled in 1998 with the adoption of two new pieces of legislation: the Parole Act of 5 March 1998 and the Act of 18 March 1998 establishing the

parole boards. Parole no longer falls under the jurisdiction of the Ministry of Justice, but is the responsibility of a board established by each appeal court and consisting of a sitting judge from the lower court and two assessors, one specializing in the enforcement of sentences, the other in the area of social rehabilitation.

Release on parole may be granted after a third of the sentence has been served (two thirds in the case of a repeat offender); the prisoner must submit a social rehabilitation programme demonstrating his willingness to make an effort to reintegrate into society. Before reaching a decision, the parole board hears the prisoner, his or her counsel, the public prosecutor and the prison governor. The victim is also given a hearing on request, provided he or she can demonstrate a legitimate direct interest. The victim may be assisted by a lawyer or a representative of a State body or an association specifically accredited by the Crown.

The conditions imposed on parolees are monitored by a range of bodies:

(a) The parole boards;

(b) The public prosecutor working with the parole board;

(c) The office of the public prosecutor for the district where the parolee wishes to reside;

(d) The police services;

(e) Judicial assistants from the justice centres;

(f) A qualified person or service, if one of the conditions involves guidance or treatment, subject to the agreement of the parole board.

In addition, several new options are now available to some of these bodies:

(a) Revocation of parole, which entails an immediate return to prison;[34]

(b) Review of parole, which allows the existing conditions to be tightened or new ones to be imposed;

(c) Suspension of parole, which entails an immediate return to prison;

(d) Modification of the conditions in the light of changes in the prisoner's situation.

Sex offenders released on parole are subject to special monitoring:

(a) Cooperation agreement of 15 April 1999, between the Federal State and the Joint Community Commission and the French Community Commission, on guidance and treatment for sex offenders;

(b) Cooperation agreement of 8 October 1998 between the Federal State and the Walloon Region on guidance and treatment for sex offenders;

(c) Cooperation agreement of 8 October 1998 between the Federal State and the Flemish Community on guidance and treatment for sex offenders.

2.1.2 Appointment of consultants to prison establishments to help the authorities develop a model of restorative justice in the prison environment: ministerial circular No. 1719 of 4 October 2000, on development of the concept of restorative justice[35] *in the prison environment*

The Ministry of Justice is anxious to move away from a model of justice that is basically punitive and where the State represents the interests of both parties, towards a model in which the parties concerned in an offence can exchange views on how best to redress the wrong caused; in October 2000, therefore, it appointed restorative justice consultants to every prison establishment in the country.

Their mission is essentially a structural one, and consists in helping local prison authorities to gear detention towards restoration. The concept of restoration has various aspects. It refers not only to symbolic and material reparation to the victim but also to the restoration of social ties and the limitation of the damage caused by incarceration. The restorative justice consultants are expected to encourage prison establishments to build a structure that will make it possible to achieve these objectives.

This involves, among other things:

(a) Reworking the prison structure in order to limit the damage caused by imprisonment, with a view to facilitating prisoners reintegration - an essential component of the model; and to accord greater importance to reparation to the victim by, for example, improving the attention and information given to prisoners and the reception given to victims at parole board hearings;

(b) Giving prisoners an opportunity to take the initiative in making reparation to victims (not necessarily their own) and to society. Prisoners are encouraged to step out of their passive role in resolving the conflict and to adopt a more active one during their time in prison;

(c) Making efforts to reduce the risk of secondary victimization by paying close attention to victims' rights, needs and expectations with regard to the execution of their sentences;

(d) Offering victims and imprisoned offenders the opportunity to make contact, directly and/or indirectly, in order to discuss the offence and its aftermath, by providing facilities for mediation between perpetrators and victims.

2.1.3 Draft legislation on closer monitoring of convicted prisoners on leaving prison, improving the victims' situation when the perpetrator leaves prison and optimizing prison capacity[36]

The purpose of this Bill is to implement the Federal plan on security and detention, with the aim of resolving four issues that currently impede the proper execution of sentences:

(a) Closer monitoring of detainees leaving prison: as with parolees, monitoring and supervision of whom are regulated by the Acts of March 1998, it is important to provide a legal framework for the follow-up and monitoring of the other measures that allow convicted prisoners to leave prison before the completion of their sentences - provisional release, part-time release, electronic surveillance, furlough, etc.:

(b) Improved information to victims when perpetrators are released: this has to do with the victims' position when the perpetrators of offences against them come out of prison;

(c) Combating impunity, in certain specific cases: at present, short sentences are often not enforced, which results in de facto impunity;

(d) Controlling overcrowding: the bill sets a national quota (maximum prison capacity as established by the Crown in a decree prepared in the Council of Ministers in accordance with criteria set forth in the bill); and local quotas (maximum capacity of a given prison), which together add up to the national quota. Each local quota will be divided into inmate capacity and reserve capacity (to absorb fluctuations in the daily prison population, prison repairs and incidents that could lead to temporary reductions in capacity),[37] which is set by the Ministry of Justice at between 2 per cent and 8 per cent of the local quota (a margin that should allow for any differences between the justice centres and the prisons).[38]

The bill establishes several mechanisms for dealing with overcrowding. Firstly, there is the "break in sentence", which falls under the jurisdiction of the Ministry of Justice: the prisoner may leave prison for a time but must return later to continue serving his or her sentence.[39] In a series of instances specified in the bill this option is ruled out, and it may have conditions attached.[40] Secondly, there are various mechanisms for placement (who is placed in which prison) and transfer between prisons, two of the responsibilities of the Ministry official dealing with placement (arts. 15 and 16); suspension of short sentences contingent on subsequent resolution, which may be proposed by the public prosecutor's office, and is subject to conditions or electronic surveillance (art. 18); and release on parole (provisional release, conditional or otherwise, under the jurisdiction of the Ministry of Justice) (art. 20).[41]

2.1.4 Proposed legislation governing prison administration and the legal status of prisoners[42]

This proposed legislation incorporates in full the work of the Dupont Commission established on 25 November 1997.[43] It is of vital importance and is currently being discussed by the Justice Commission. The main topics dealt with are:

(a) Basic principles governing the internal legal status of prisoners;

(b) Prison organization in general;

(c) The rules governing the planning of detention;

(d) The principles governing living conditions in prison: physical and social conditions, contacts with the outside, religion and philosophy, work, training and leisure, health, social welfare, judicial assistance and legal aid;

(e) Order and security in prisons;

(f) The disciplinary regime;

(g) Introduction of the right of complaint for detainees, which should, as a matter of priority, make it possible to resolve conflicts through conciliation. Such complaints should be settled by an appropriate body only as a fall-back measure.

Prisoners' external legal status is to be regulated by the Holsters Commission,[44] which is also dealing with the issues of sentencing and establishing courts for the enforcement of sentences. Sentencing and sentence enforcement are one of the priorities of the Federal plan on security and prison policy, which states, in subsidiary draft 90.2, paragraph 7: "With regard to sentence enforcement, the Federal Government intends to establish courts for the enforcement of sentences, which may rule on all matters relating to the internal and external legal status of prisoners. The Federal Government considers that decisions relating to the modalities of sentence enforcement (suspension, temporary break, parole or temporary release) should be made by the courts. Enforcement judges will be assisted by psychological and psychiatric experts and experts in the area of social rehabilitation ...".

2.1.5 Rehabilitation and social reintegration programmes

(a) In order to appreciate the progress that has been made in this area, reference should be made in particular to the 1999 report of the Prison Administration. The report describes a series of initiatives taken to promote reintegration: work in prison, vocational training, training for prisoners, cultural activities, sports in prison, activities to develop affective ties, work with target groups and preparing for release.[45] Other activities are also organized, depending on the prison establishment.[46] These may range from sporting activities to classes leading to a qualification.

The various services of the Prison Administration may run projects and missions, such as the missions conducted by the "Measures" study unit, on maintaining emotional ties during detention: preparation of guidelines stipulating the minimum rules applicable in all establishments.[47] Opportunities for private visits were introduced in July 2000.

Within prisons and detention centres, the Ministry of Justice Psychosocial Service also runs social rehabilitation programmes with prisoners and external judicial aid services. The Prison Administration's Individual Case Service also helps prepare released prisoners for rehabilitation (prison furlough, part-time release).[48] A Ministerial decree of 23 June 1999 directs the Justice Centres to give opinions on envisaged binding legal decisions, provide guidance to individuals on the enforcement of decisions concerning them, and steer them towards the competent persons or institutions.

Responsibility for assistance to prisoners in Belgium rests with the Communities and Regions, in accordance with the Special Act on institutional reforms of 8 August 1980. The Ministry of Justice has therefore concluded various cooperation agreements on assistance to prisoners:

(i) Cooperation protocol of 25 March 1999, between the Minister of Justice and the members of the Combined Board of the Joint Community Commission responsible for assistance to individuals, on social assistance to prisoners and persons subject to a measure or sentence to be enforced within the Community;

(ii) Protocol of agreement, dated 26 March 2001, between the Flemish Minister of Social Welfare, Health Policy and Equal Opportunities and the Minister of Justice, on cooperation in the area of overlap between social welfare and justice.[49]

A number of items of legislation have been adopted in this regard:

(i) Walloon Region decree of 18 July 2001 on judicial assistance to individuals;

(ii) French Community decree of 19 July 2001 on social welfare for prisoners for the purposes of social rehabilitation;

(iii) Flemish Community decree of 11 May 1999, approving the cooperation agreement of 28 February 1994, as amended on 7 July 1998, between the State and the Flemish Community on social welfare to prisoners for the purposes of social rehabilitation. Other initiatives have also been taken within the Flemish Community.[50]

Proposed legislation on the principles governing prison administration and the legal status of prisoners (submitted to the Chamber, document 50-1365) contains various provisions to facilitate the reintegration of offenders, notably the right to training (arts. 74-77).

(b) Clarifications by the Walloon Region on the principle of social rehabilitation of prisoners. The adoption of the decree of 18 July 2001 on judicial social assistance and its implementing order of 20 December 2001 means the Walloon Region now has a regulatory regime that enables it to offer not only assistance to victims (see above) but also social assistance to ex-prisoners, i.e., to individuals on conditional, temporary or final release, including those subject to social protection measures. Social assistance is understood to mean “any individual or group initiative aimed at facilitating active participation in social, economic, political and cultural life, in accordance with human rights, and a critical understanding of social realities, in particular through the development of the capacities of analysis, action and evaluation” (decree of 18 July 2001, art. 2, para. 7).

Under these regulations, 12 services are accredited in the Walloon Region, 1 per judicial district. As well as the operating costs, the Walloon Region also subsidizes specialized social and psychological support staff.

The services offering social assistance to persons involved in court cases have special responsibilities with regard to ex-prisoners:

(a) To facilitate access by beneficiaries to the resources of the personal assistance services;

(b) To facilitate ex-prisoners' integration into or return to society and work;

(c) To sensitize the public at large and the relevant bodies to the problems of dealing with offenders within the community and to the needs of their beneficiaries in terms of equality of opportunity;

(d) To help devise and implement alternatives to detention or activities that will make it possible to avoid custodial sentences.

It should be noted that such social assistance is also available to those accused of an offence, i.e. individuals against whom charges have been brought but who remain at liberty, to those facing proceedings or in a situation where charges are or may become possible, and to convicted persons, i.e., people not in prison who have been sentenced to punishment or to probation under the Act of 29 June 1964 on suspension, stay of proceedings and probation.

2.1.6 Pardon

Pardon is a royal prerogative established in article 110 of the Constitution, allowing remission or reduction of sentences handed down by the courts. Appeals relate mainly to prison sentences, fines and revocation of driving licences, whether enforced or not. According to the Prison Administration report, 70 per cent of such appeals are lodged by non-prisoners. Requests are addressed to the King and transmitted to the prosecutor's office for a report and an opinion. The Pardons Service may obtain additional information through a public inquiry. If, in its opinion, the case so warrants, it may recommend that the King remit the sentence, reduce it - if necessary after a period of probation, which may or may not have conditions attached, such as performing community work, attending a training course or compensating the civil parties - or grant a suspension. In provisional guidelines issued since October 1999, the Minister of Justice has established the various factors the Pardons Service should take into account in reaching a decision. These include the social rehabilitation of the person concerned since sentence was handed down. According to the aforementioned report, the Prison Administration dealt with 3,000 appeals in 1999, out of 4,000 received. Of these, 70 per cent were rejected by Royal Decree.

2.1.7 Coordinated surveillance of community service

The Ministry of Justice's Federal plan on security and prison policy[51] places emphasis on further development of alternative measures. The quest for new alternative measures has given rise to several initiatives that have emerged from mediation and reparation projects. Restorative justice should not only attempt to strike a balance between the interests of perpetrator, victim and society, but also encourage perpetrators to accept their responsibility, by means of professional

guidance, follow-up of a humane and appropriate nature, and monitoring that is effective yet respectful of human dignity, in order to avoid repeat offences. It should also be noted that legislation instituting community service as a penalty in its own right for ordinary or minor offences was enacted on 17 April 2002 (*Moniteur belge*, 7 May 2002).

2.1.8 Electronic surveillance

A new form of detention that responds to the explicit aim of the Minister of Justice to develop measures to minimize as far as possible the adverse effects of imprisonment, electronic surveillance is enjoying a rapid expansion. It makes it possible for sentences to be served in the home or some other environment conducive to reintegration. During the day, prisoners can engage in a variety of activities designed to prepare them for release and help them accept responsibility more easily. This enables them to live in their own environment, go to work and reorganize their lives, all vital factors in effective reintegration. It is an approach that marries the element of surveillance with that of trust between the prisoner and the responsible body. The key aspect is social guidance that allows problems to be detected at an early stage, so that solutions can be found that are appropriate to the particular situation of the prisoner and his or her prospective environment.

There are a number of advantages to electronic surveillance: perpetrators can be encouraged to embark on reparations to their victims; the adverse effects of detention can be diminished; it is a response to prison overcrowding; and, lastly, it may have a beneficial effect on budgets.

2.1.9 Training for the judiciary

This is governed by article 259 of the Judicial Code: the Higher Council of Justice and the magistrates' training service, which is part of the Judiciary Department, shall establish in-service training programmes for judges, interns and judiciary staff.

2.2 Special regimes

2.2.1 Psychiatric illness

A. General

Amendments have been made to the Social Protection Act of 1 July 1964 since 1996:

(a) Minors (Protection under the Criminal Law) Act of 28 November 2000: modifications to the monitoring of sex offenders released on probation; requirement to attend a specialist service for guidance or treatment;

(b) Act of 7 May 1999: introduction of Justice Centres;

(c) Act of 10 February 1998: allows prisoner's lawyer to appeal against rejection by the social protection committee of an application for release;

(d) Preliminary draft legislation on confinement of mentally disturbed offenders is currently under consideration.

Sex offenders receive special follow-up in terms of social protection:

(a) Cooperation agreement of 15 April 1999, between the Federal State and the Joint Community Commission and the French Community Commission, on guidance and treatment for sex offenders;

(b) Cooperation agreement of 8 October 1998 between the Federal State and the Walloon Region on guidance and treatment for sex offenders;

(c) Cooperation agreement of 8 October 1998 between the Federal State and the Flemish Community on guidance and treatment for sex offenders;

B. Psychiatric care in prison establishments

Treatment of prisoners with psychiatric problems, whether under the Social Protection Act or not, is a major concern of the prison administration, which has taken a number of steps to provide such prisoners with an appropriate level of psychiatric care:

(a) Centralization of psychiatric care in a few establishments. The prisoner is given a "classification" within the prison population depending on the seriousness of his or her psychiatric problem. This applies both to psychotic internees and prisoners under constant psychiatric treatment, whom it would be impossible to cater for in an ordinary prison environment, and to prisoners in temporary crisis who need support. Such centralization should make it possible to improve the quality of care since, provided it is accompanied by attractive pay for the professionals involved, it would be an answer to the problem of recruiting staff specializing in these areas;

(b) The "external care circuit" in the Flemish part of the country. This project is based on the idea that certain low- to moderate-risk inmates would be better cared for at a psychiatric hospital than in prison. This has given rise to a cooperation project between the Ministry of Justice and three psychiatric hospitals, which provide care to inmates with a view to gradually returning them to life within society;

(c) A cooperation project between the Ministry of Justice and the Ministry of Health, committing the Ministry of Health to investing in the establishment of special care units at certain psychiatric hospitals.

C. Confinement of mentally ill offenders

(a) This matter is governed by the Social Protection Act of 1 July 1964 as regards defectives or habitual offenders. Decisions about people detained under confinement orders are taken by special committees, chaired by a judge, who is assisted by a lawyer and a physician. The committee determines the place of confinement, either a social protection establishment or an appropriate private institution. It also decides on probationary or final release for internees and authorizes furloughs and part-time releases. Major decisions are subject to appeal to the Higher Social Protection Committee.

It is important to note that, as a result of the critical study of the Social Protection Act carried out by the Confinement Committee established in 1996,[52] consideration is now being given to a preliminary bill on confinement of mentally disturbed offenders. The Confinement Committee's task was to describe the practices in this area and possibilities for future development; its final report was published in April 1999.

The Committee is referred to Annex VII for additional comments by the Walloon Region concerning its two psychiatric hospitals where persons subject to social protection are confined.

(b) Placement of prisoners in prison psychiatric wings before transfer to social protection establishments. In practice it can be seen that transferring inmates to the social protection establishments designated by social protection committees presents a real problem in view of the lack of space in such establishments. In such cases they are placed in prison psychiatric wings, where the special care they should receive cannot always be properly provided. The solution would be to increase the capacity of the Paifve social protection establishment, which is subject to Federal authority, and to centralize resources at a few establishments, as mentioned above, in order to ensure the highest level of care.

A prison research and clinical observation centre was established by Royal Decree of 19 April 1999; the Decree has not yet been implemented. The task of the centre is to conduct tests and clinical examinations of individuals presenting particular problems in diagnostic terms or with regard to personality development, risk of recidivism, or treatment, whether they are detainees awaiting trial, convicted prisoners or individuals in confinement.

2.2.2 Juvenile offenders

Major developments have taken place in Belgium in recent years in the area of protection of young persons. Article 53 of the Act on the protection of minors under the criminal law of 8 April 1965, which allowed juvenile courts to order custody at a detention centre for a period not exceeding 15 days, was repealed by the Act of 4 May 1999 (*Moniteur belge*, 2 June 1999), which entered into force on 1 January 2002. As a result, minors may no longer be imprisoned except in cases where they have committed a serious offence, jurisdiction has been relinquished under article 38 of the Act of 8 April 1965, and they have been sentenced to prison by the ordinary criminal courts.

Article 53 was repealed following the *Bouamar* decision handed down on 28 February 1989 by the European Court of Human Rights which, while it did not find fault with the principle, condemned the (repeated) application by juvenile courts of article 53 of the Act on the protection of minors under the criminal law of 8 April 1965. The reason for delaying the Act's entry into force until 1 January 2002 was to give the French, Flemish and German-speaking Communities time to develop alternatives to this placement measure. Not only has the number of places in closed community institutions been increased, but educational and philanthropic services have also been reinforced, rehabilitation measures promoted and placement of minors in open institutions developed.[53]

These alternative measures have not, however, provided solutions to all situations. In view of the changing nature of juvenile delinquency and the practical problems faced by juvenile courts due to the lack of places in closed community institutions, a political agreement

was reached in late January between the Federal State and the Communities. The Federal Act of 1 March 2002 made it possible to place some juvenile offenders in appropriate closed centres temporarily. Accordingly, a closed centre under the Ministry of Justice has been established in Everberg, with the support of the Communities and on the basis of a cooperation agreement on support and assistance for minors. The agreement will be evaluated in October 2002.

This new placement system, established under the Act of 1 March 2002, differs in its application from that established under the now-repealed article 53 of the 1965 Act. To begin with, the Everberg Centre was purpose-built and equipped to receive juvenile offenders and, with the help of the Communities, to provide individual support and assistance. Thus it is not merely another detention centre where juvenile offenders risk coming in contact with adult prisoners. Secondly, the conditions of placement are more rigorously established upstream. Thus the new law demands "compelling, serious and exceptional circumstances relating to the requirements of public security". In addition, article 4 of the Act provides that the placement must be carried out in accordance with articles 37 and 40 of the Convention on the Rights of the Child, a copy of which must be provided to the person concerned and a receipt obtained. Lastly, although the duration of placement may exceed 15 days, the juvenile court must periodically issue an order extending it, first after five days and then monthly, with a maximum of two one-month extensions. This is a fundamental safeguard.

This particular reform in the area of youth protection must naturally be seen in the context of the reform of the legislation as a whole, which has been under consideration for many years. Opinions have wavered between "punitive" and "protective" approaches to juvenile law and account has been taken of recent developments in restorative justice. Once it had become clear that a purely punitive approach did not work, a "protective" model was introduced in the 1912 legislation on child protection; a social protection element was added alongside the judicial protection element of the law in 1965.

Recently, in order to counter the widespread feeling of insecurity among the population, the Federal Council of Ministers adopted a new policy agreement on the broad lines of reform for this legislation. The first task is to modernize the Act on the protection of minors under the criminal law of 8 April 1965, in part by introducing new measures such as mediation, rehabilitation and community service. Next, the mechanism for relinquishment of jurisdiction and referral to the criminal court or the Assize Court, in cases where minors have committed particularly serious offences after the age of 16 and protective measures have proved ineffective, will be reviewed and supplemented with a social and educational support programme (cf. article 38 of the Act on the protection of minors under the criminal law),[54] to be provided by the Communities. Lastly, a new offence will be added to the Criminal Code in order to punish adults who enlist minors to commit offences, thus evading criminal prosecution.

2.2.3 Detention of foreigners

This is governed by the Act of 15 December 1980 on the entry, temporary and permanent residence and removal of aliens (see article 9, section 1.3). Closed centres have been established specifically to hold foreigners, in accordance with the Act. They are run by the Aliens Office. Their operation is regulated by Royal Decree of 2 August 2002, establishing the regime and

regulations applicable to premises in Belgian territory run by the Aliens Office, where foreign nationals are held, placed at the disposal of the Government and kept pursuant to the provisions cited in article 74/8, paragraph 1, of the Act of 15 December 1980. A ministerial decree of 23 September 2002 (*Moniteur belge*, 23 September 2002) deals with the procedure and operation of the complaints board and the secretariat provided under the Royal Decree (see Annex VII, criticisms by the Centre for Equal Opportunity and Action to Combat Racism).

The centres fall into the following categories:

(a) Centres at the border or in equivalent locations, for asylum-seekers who submit their applications at the border;

(b) Centres for asylum-seekers whose applications have been rejected and who have been issued with orders to leave the country;

(c) Centres for foreigners living illegally in Belgium.

Referral is always arranged as part of the process of repatriation or refoulement of the individual to his/her country of origin or another country.

The Aliens Office also runs a centre at the border for foreigners who do not meet the requirements for entry to Belgium, known as the INAD (passengers refused entry) centre. The Royal Decree of 4 May 1999 did not apply to this centre.

Every closed centre has internal regulations based on the Royal Decree but adapted and modified specifically for its use. The broad thrust of the Royal Decree of 2 August 2002 is as follows:

(a) Life within the centre is based on a group regime. Unlike in prisons, there is no individual cell regime. In principle, the two sexes may not be separated, although the decree stipulates that there should be separate dormitories and sanitary facilities. This choice of group regime in the centres naturally influences people's private lives. The regime aims to promote contact between people who find themselves in the same situation, which is important psychologically for the majority of residents. This arrangement means that each centre must, insofar as its facilities will permit, meet residents' personal requests, from rooms where private visits may take place, to individual rooms where residents can, at their request, spend a few hours, to rooms set aside for worship. The new centres are moving gradually away from the group regime and provide individual rooms. With regard to the possibility that there may be children in such centres, and the comments of the Council of State, the fact that they are not (always) separated from adults may also be considered to be in the interests of the child (same nationality, same language and culture, for example);

(b) The decree clearly establishes the right to legal assistance, and a flexible regime governing access by lawyers to the centres and contact with their clients. It provides for the most extensive contact possible between resident and lawyer. In addition, the lawyer may visit a client at any time of day. Brochures are available, giving legal information on the asylum procedure and on detention and the remedies available;

(c) There is a fundamental right to freedom of worship in Belgium, and the centre therefore offers all possible moral and religious support to residents who declare their membership of a faith and a desire to practise it;

(d) Residents have a right to appropriate medical care at the centres. This presupposes a well-equipped medical service that is always available, both during normal hours and in emergencies. Residents are guaranteed the freedom to choose their doctor.

(e) Each centre has social and educational services. Generally speaking, it is the social service that clarifies residents' situation for them, provides information and assists them at the various stages of the administrative procedure;

(f) Visits to centres: a distinction should be made between inspection visits and visits to residents. Persons wishing to visit a centre itself must be authorized by the centre director. Members of the Chamber of Representatives and the Senate, and of specifically named authorities and bodies, have the right to visit. The right is granted to the listed bodies by virtue of their important role in foreigners' affairs. Two recent additions to the list are the Director-General for Children's Rights and the United Nations Committee against Torture. The Minister may make further additions at any time;

(g) The right to correspondence is in principle unrestricted. Moreover, the centre provides residents, where necessary, with any materials and help they may need. Residents have the right to use the telephone during the day, at times established by the decree and in accordance with the arrangements set forth in the internal regulations;

(h) Non-governmental organizations may organize specific activities for centre residents under certain conditions. The conditions governing the introduction of a given activity have been clarified and the scope of their application has been broadened. The emphasis is on continuing support for residents, taking account of their situation and in full cooperation with the management of the centre. Naturally, each organization may voice its opinion on current immigration policy outside the centre, but activities carried out within the centre may not run counter to that policy.

Article 11. Prohibition on imprisonment for inability to fulfil a contractual obligation

The remarks relating to article 11 made in the initial report of Belgium (CCPR/C/31/Add.3, paras. 217-218) call for no further comment.

Article 12. The right to leave the country

[Introductory note: Certain amendments and clarifications need to be made to the subsection of the third periodic report dealing with the Act of 15 December 1980 on the entry, temporary and permanent residence and removal of aliens (CCPR/C/94/Add.3, paras. 140-145). They are necessitated by the amendments to the Act mentioned in subsection 1 below and appear in subsection 6 below.]

The following comments are intended to supplement the information provided by Belgium in its third periodic report and its latest report on the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD/C/381/Add.1), submitted to the Committee on the Elimination of Racial Discrimination on 12 February 2001 and presented orally in March 2002 (CERD/C/60/CO/2). They relate chiefly to restrictions or conditions on the freedom of movement.

1. Amendments to the Act of 15 December 1980 on the entry, temporary and permanent residence and removal of aliens

(a) The Act of 10 July 1996 amending the Act of 15 December 1980 on the entry, temporary and permanent residence and removal of aliens;

(b) The Act of 15 July 1996 amending the Act of 15 December 1980 on the entry, temporary and permanent residence and removal of aliens and the Public Social Welfare Centres (Organization) Act of 8 July 1976;

(c) The Act of 9 March 1998 amending the Act of 15 December 1980 on the entry, temporary and permanent residence and removal of aliens;

(d) The Act of 9 March 1998 amending articles 54, 57, paragraph 11, 57, paragraph 14 bis, and 71 of the Act of 15 December 1980 on the entry, temporary and permanent residence and removal of aliens;

(e) The Act of 29 April 1999 amending article 77, paragraph 2, of the Act of 15 December 1980 on the entry, temporary and permanent residence and removal of aliens;

(f) The Act of 29 April 1999 shortening the administrative detention of aliens illegally in Belgian territory;

(g) The Act of 27 May 1999 amending article 54 of the Act of 15 December 1980 on the entry, temporary and permanent residence and removal of aliens, article 57 ter of the Public Social Welfare Centres (Organization) Act of 8 July 1976 on, and articles 2, paragraph 5, 5, paragraph 2, and 11 bis of the Act of 2 April 1965 concerning responsibility for the cost of assistance granted by public aid committees;

(h) The Act of 18 April 2000 amending the legislation on the Council of State, which was harmonized on 12 January 1973, and the Act of 15 December 1980 on the entry, temporary and permanent residence and removal of aliens;

(i) The Royal Decree of 26 July 2000 amending the Royal Decree of 8 October 1981 on the entry, temporary and permanent residence and removal of aliens;

(j) The Minors (Protection under the Criminal Law) Act of 28 November 2000;

(k) The Act of 2 January 2000 on social, budgetary and other matters;

(l) The Royal Decree ordering implementation of the Act of 26 June 2000 on the introduction of the euro in legislation concerning the subjects addressed in article 78 of the Constitution which fall under the responsibility of the Ministry of the Interior.

2. Compulsory registration of asylum-seekers in a specified commune

In accordance with the Act of 2 January 2001, on social, budgetary and other matters, foreigners (a) whose asylum applications are at the admissibility stage or (b) who challenge a decision by the Commissioner-General for Refugees and Stateless Persons or one of his deputies in the Council of State, are, as from 3 January 2001, to be placed only in a centre run by the State, another authority or one or more authorities, or in a place where assistance is provided at the request and expense of the State (new article 57 ter, paragraph 1, subparagraph 1, of the Public Social Welfare Centres (Organization) Act). Since 3 January 2001, therefore, all new asylum-seekers have been placed in one of the various open centres listed as places of compulsory registration under article 54 of the Act of 15 December 1980.

3. Proceedings in the Council of State

The new legislation on the Council of State has been designed to cut down on improper and dilatory appeals and to enable decisions to be taken more rapidly and efficiently while still taking account of foreigners' interests. To that end, a Royal Decree of 8 July 2000 establishes a special procedure in the Council of State for challenging decisions relating to the legislation on foreigners. The decree reduces the time limit for lodging such appeals before the Council from 60 to 30 days. The time limit for submission of pleadings has also been shortened and it is now possible to deal quickly with matters requiring only brief discussion.

The amendment has had no impact on the effectiveness of appeals in matters relating to foreigners or the number of appeals submitted to the Council of State. Indeed, the number of appeals has risen considerably, owing to the increase in asylum applications submitted before the end of 2000, ahead of the withdrawal of financial assistance to public social welfare centres in early 2001. This amendment to the regulations has enabled the Council to cope with the increase and take decisions more rapidly, thereby avoiding placing foreigners in a situation of legal uncertainty.

4. Federal Agency for the Reception of Asylum-Seekers

A Royal Decree concerning the structure, organization and operation of the Federal Agency for the Reception of Asylum-Seekers was published in the *Moniteur belge* of 15 October 2001 and a Royal Decree setting out various provisions relating to the staffing of the Agency was published in the *Moniteur belge* of 22 October 2001. The Federal Agency (AFA) is in operation; it was renamed FEDASIL on 28 November 2002.

5. Education for new arrivals

The French Community is making efforts to improve the reception of migrant children. In 1998, at the urging of the Minister of Education, a decree guaranteed all minors the right to enrol in school, whatever the legal status of their presence in Belgium. Since then, not only

asylum-seekers whose applications are being processed, but also illegal aliens can be properly enrolled in the schools they attend without the schools being required to inform any authorities other than the education authorities. This represents a significant step forward - one that was recommended and supported by the Centre for Equal Opportunity and Action to Combat Racism. During the 1999/2000 school year, for example, there were some 1,350 students covered by the decree in the country's various secondary education establishments. Many schools have launched successful initiatives to establish an infrastructure and make special educational provision, frequently without additional specific resources. In practice, the integration of those concerned into schools has run into three main obstacles: (a) the variation in dates of arrival; (b) the need to organize special French and even basic literacy courses; (c) at the secondary level, the lack of entry documentation allowing normal enrolment at the appropriate level.

These difficulties have recently been addressed in a new decree concerning school enrolment for "newly-arrived"[55] pupils that was voted through in June 2001. This is chiefly concerned with easing pupils' entry into the school system by means of transitional classes for which additional resources are provided, and will take effect as of the academic year 2001/2002. The decree is a valuable step towards improving teaching conditions both for the new arrivals and for their teachers. It also reinforces children's rights and the State's responsibility for compulsory education in the light of all other considerations relating to policy on, and effective management of, migration.

6. Amendments and clarifications to the third periodic report (CCPR/C/94/Add.3)

(a) Delete paragraph 140;

(b) Amend beginning of paragraph 141 to read: "The Acts of 10 and 15 July 1996 aim to bring ...";

(c) Amend beginning of paragraph 142 to read: "These Acts, the Acts of 9 March 1998, 29 April 1999, 7 May 1999 and 18 April 2000, and the Royal Decree of 26 July 2000 also aim ...". After the sentence beginning "To extend the offence ...", insert the following sentence: "An exception shall be made for aid or assistance provided to a foreigner for mainly humanitarian reasons.";

(d) Amend beginning of paragraph 143 to read: "Lastly, it is intended that these Acts will update ...";

(e) Insert the following two paragraphs at the end of the subsection:

145 bis. The Minors (Protection under the Criminal Law) Act of 28 November 2000 made various amendments to article 77 bis of the Act of 15 December 1980. Consequently, it is also possible to punish individuals who help foreigners to pass through Belgium. Persons who take advantage of the fact that a foreigner is a minor are also liable to punishment.

145 ter. The Act of 2 January 2001 on social, budgetary and other matters added a new paragraph 1 bis to article 77 bis of the Act of 15 December 1980: "Anyone who, either directly or through an intermediary, takes advantage of the particularly vulnerable position in which an alien is placed as a result of his illegal or insecure administrative status by selling, renting or making available rooms or any other premises with the intention of making an abnormally large profit shall be liable to between one and five years' imprisonment and a fine of 500 to 25,000 francs."

Article 13. No expulsion without legal safeguards

1. Removal of aliens

The legal corpus governing the removal of aliens includes the following instruments:

(a) The Convention of 19 June 1990 applying the Schengen Agreement of 14 June 1985;

(b) The Chicago Convention on International Civil Aviation of 7 December 1944, approved by the Civil Aviation Act of 30 April 1947, which refers to removal;

(c) The Act of 15 December 1980 on the entry, temporary and permanent residence and removal of aliens, as amended by the Acts of 28 June 1984, 14 July 1987, 18 July 1991, 7 December 1992, 6 May 1993, 1 June 1993, 6 August 1993, 24 May 1994, 8 March 1995, 13 April 1995, 10 July 1996, 15 July 1996, 9 March 1998, 29 April 1999, 7 May 1999 and 2 January 2001, by the Royal Decrees of 13 July 1992, 7 December 1992, 31 December 1993 and 22 February 1995 and by the Royal Implementing Decree of 8 October 1981, itself amended on several occasions;

(d) Article 37 of the Police Functions Act of 5 August 1992, which determines the circumstances in which the use of force is authorized;

(e) A protocol of agreement concluded on 24 May 2000 between the Ministry of the Interior and Sabena Airlines on "INADS" (passengers refused entry into the country, who will be returned);

(f) Definitive guidelines on the use of force in the event of removal, also formulated by the Minister of the Interior in 1999;

(g) A ministerial decision of 11 April 2000 regulating conditions of transport on board civil aircraft of passengers posing particular security risks (*Moniteur belge*, 14 April 2000).

The Act of 15 December 1980 provides for four different forms of removal (a generic term) of aliens.

1.1 Refoulement

Refoulement (return) is the administrative decision on removal whereby an alien who has not yet crossed the Belgian frontier is forbidden to enter the territory of the States parties to the Schengen Agreement by the border control authorities, acting on the authority of the Ministry of the Interior. An alien may be turned back if he or she attempts to enter Belgium in one of the circumstances covered by article 3 of the Act of 15 December 1980 on the entry, temporary and permanent residence and removal of aliens, and by article 5 of the Convention applying the Schengen Agreement.

This same Act specifies in article 3 that the rules it sets forth shall apply "unless a derogation is provided for under an international treaty or by law". Accordingly, no refusal of admission can be made in violation of the principles set forth in article 3 of the Convention. In practice, persons who do not meet the legal requirements for admission to Belgium and fear torture in the event of refoulement to another State apply for asylum in Belgium, invoking a fear of persecution within the meaning of article 1 of the Convention relating to the Status of Refugees of 28 July 1951, which is binding on the Belgian authorities and which, in its article 33, prohibits return of a refugee to a country in which he fears for his life or freedom. In application of this rule the Council of State has reiterated on a number of occasions that it is forbidden to return an alien who has been refused the status of political refugee to his country of origin, where there are substantial grounds for believing that he would be subjected to inhuman or degrading treatment (Council of State, 21 June 1991, No. 37.289, *Revue de droit des étrangers 1991*, p. 343).

The third periodic report (CCPR/C/94/Add.3) also needs amending as follows:

(a) Delete paragraphs 150 and 151;

(b) Amend paragraph 152 to read: "Since the entry into force of the Act of 15 July 1996 amending the Act of 15 December 1980 on the entry, temporary and permanent residence and removal of aliens and the Public Social Welfare Centres (Organization) Act of 8 July 1976, an alien attempting to enter Belgium may be turned back on the following grounds:".

1.2 Expulsion

Expulsion is the decision (Royal Decree) whereby the Crown may remove from the territory an alien permanently resident in Belgium or a national of the European Union or European Economic Area to whom a residence permit has been granted, following the opinion of the Advisory Committee on Aliens. The Advisory Committee exists to advise on certain decisions relating to aliens. It is a consultative body made up of magistrates, lawyers and persons concerned with the defence of aliens' interests. Aliens may be expelled only if they have committed serious breaches of public order or national security.

As regards the expulsion of an alien to his or her home country after serving a prison sentence, it is important to point out that some such aliens turn out to have lost all contact with

their countries of origin (they have no close relations left there, do not speak the language and have no social or cultural ties). Accordingly, the Council of Ministers decided on 17 July 2002 that certain categories of people would no longer be subject to expulsion:

(a) Aliens who have lived legally in Belgium for at least 20 years;

(b) Aliens born in Belgium, or who arrived in Belgium before the age of 12;

(c) Heads of household sentenced to terms of less than five years' imprisonment.

1.3 Repatriation

Repatriation is the decision (ministerial decree) whereby the Minister of the Interior may remove from the territory an alien who is not permanently resident in Belgium, after obtaining, where appropriate, the opinion of the Advisory Committee on Aliens. An alien not permanently resident may be repatriated if he has breached public order or national security or has not complied with the conditions imposed on his stay, as provided for in the Act of 15 December 1980 (art. 20).

1.4 Order to leave the country

An order to leave the country is the administrative decision on removal whereby the Minister of the Interior or the Aliens Office requires an alien not authorized or permitted to stay more than three months or to settle in Belgium to leave the country. This decision may be enforced in two ways: voluntarily, in which case the decision generally sets a time limit for leaving the country, varying with the circumstances (article 7, paragraph 1, of the Act), and the alien is able to leave the country at his or her convenience; or forcibly, in certain cases, when the Minister of the Interior or the Aliens Office deems necessary, and the alien is taken to the border of the country from which he or she came or into which he or she may be admitted. The alien may be taken to the border in this way either immediately or after a delay (ibid., para. 3) and in the latter case, may be held for as long as is strictly necessary for the enforcement of the decision.

The third periodic report (CCPR/C/94/Add.3) needs amending as follows:

(a) For paragraph 154, substitute:

"Since the entry into force of the Act of 15 July 1996 amending the Act of 15 December 1980 on the entry, temporary and permanent residence and removal of aliens and the Public Social Welfare Centres (Organization) Act of 8 July 1976, the reasons for which an alien not authorized or permitted to stay more than three months or to settle in Belgium may be served an order to leave the country are the following:";

(b) Continue with the 11 subparagraphs under paragraph 157;

(c) Delete paragraph 156 and the beginning of paragraph 157.

1.5 Personnel and departments responsible for expulsions (see also comments under article 7 of the Covenant)

The expulsion measure is notified by the Ministry of the Interior (Aliens Office department), or on its instructions by a law enforcement officer. Decisions on refoulement (return) are taken by the Aliens Office and enforced at the airport by airline staff, assisted in some cases by the Federal police. The forcible implementation of an order to leave the country is the task of the Federal police (repatriation under escort). Repatriation is accompanied by psychological, medical and social support offered in advance, on departure and, in some cases, during the flight.

Cases of removal (refoulement and the forcible implementation of orders to leave the country) are as a rule entrusted to the airlines. It should be noted that, under article 74, paragraph 4, of the Act of 15 December 1980, a carrier which transports to Belgium a passenger not in possession of the documents required to enter the country (as a rule a valid national passport, together with a visa where applicable), or who falls into one of the other categories referred to in article 3 of the Act, must transport or arrange for him/her to be transported to the country from which he/she came or a country into which he/she may be admitted.

Belgium removed 11,000 aliens by air in 2001 (not counting individuals who returned voluntarily). Four hundred flights escorted by Federal police officers were laid on; there were 14 secured flights (military aircraft specially chartered to return several aliens to a single destination).

On 11 April 2000 the Ministry of Mobility and Transport issued a Royal Decree on the use of force during expulsions. It applies to the Belgian police forces escorting aliens undergoing expulsion, and describes the various gradations in the use of force.

1.6 The Conka ruling

On 5 February 2002, the European Court of Human Rights ruled against Belgium in a case involving the forced removal of Slovak nationals of Gypsy origin (*Conka v. Belgium*), finding it guilty of a violation of the European Convention for the Protection of Human Rights and Fundamental Freedoms (articles 5, paragraphs 1 and 4, article 4 of Protocol No. 4 and article 13 of the Convention read in conjunction with the latter) (see summary of the ruling in Annex VIII).

Among other things, the Court criticized Belgium for the absence of the right to an effective remedy, since application to the Council of State does not suspend expulsion proceedings. On 23 July 2002, the Ministry of the Interior instructed the Aliens Office not to enforce orders to quit the country served on rejected asylum-seekers before the Council of State rules on emergency applications for suspension of those orders. It should be added that the Belgian State compensated the Slovak family. A circular from the Ministry of the Interior will remind those concerned not to resort to “ruses” (luring rejected aliens under false pretences) in order to detain and expel them.

1.7 Removal of unaccompanied minors

See comments under article 24 of the Covenant.

1.8 Number of expulsions (figures are supplied for illustration purposes)

	Refoulement	Order to leave the country	Rapatriation	Deportation
1994	n/a	8 530	1 964	311
1995	1 980	7 898	2 699	803
1996	2 839	8 856	3 794	466
1997	2 645	9 983	3 042	170
1998	3 952	9 309	3 042	212
1999	4 659	11 443	1 802	101

1.9 Regularization of illegal aliens

The Act of 22 December 1999 on the regularization of illegal aliens provided for definitive residence permits to be awarded to aliens in Belgium on 1 October 1999 who:

(a) Were or had been engaged in unreasonably long asylum proceedings (four years, three years for families);

(b) Claimed that for reasons beyond their control it was impossible for them to return home;

(c) Were seriously ill;

(d) Pleaded humanitarian concerns and lasting ties in Belgium, provided that they had spent at least six years in Belgium (five for families), or had not been served an order to leave the country within the previous five years, or had stayed legally in Belgium in some capacity other than that of asylum-seekers awaiting a ruling on the admissibility of their applications, students, or tourists.

Thus Belgium is going through its first regularization exercise for immigrants without proper papers. Article 14 of the Act on regularization stipulates that, unless it is prompted by public order or national security concerns, or an application plainly does not meet the requirements for admissibility, no action will be taken to remove a person from the country between his or her submission of an application and the time when the Minister takes an unfavourable decision on the case.[56]

Article 14. Right to a fair and public hearing

1. Belgium's reservation to article 14

Article 14 of the Covenant deals with the right to a fair trial, and needs to be read in conjunction with article 6 of the European Convention and articles 10 to 14 and 144 to 149 of the Belgian Constitution. The first paragraph lays down the general conditions under which a fair trial should proceed: a competent court, public hearings except in limited cases, the principle

that the judgement should be rendered publicly except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children. Given the somewhat uncompromising terms in which the exceptions to publicly pronounced judgement are couched, Belgium is obliged to maintain its reservation by article 149 of the Belgian Constitution, which requires reasons to be given for all judgements and requires judgements to be pronounced at public hearings. All these provisions are covered by Belgian law.

Article 14, paragraph 5, establishes the right of anyone convicted of a crime to have the conviction and sentence reviewed by a higher tribunal according to law. The implications of this provision can be far-reaching. They might suggest that a yet higher tribunal is required, supposing that a person acquitted in first instance is found guilty by the higher court.

By virtue of their functions, moreover, ministers (see criminal responsibility of ministers) and judges have no recourse to appeal bodies against judgements that may go against them (see the Code of Criminal Procedure, articles 479 to 503). The same is true of individuals who, if they commit a crime, are tried by the Court of Assize.

The Covenant does, it is true, speak of review of conviction and sentence "according to law". This latter phrase can be interpreted two ways, however, to cover the way the right is exercised or the existence of the right itself. Given this difficulty of interpretation, the reservation to article 14, paragraph 5, is better maintained. The paragraph in question does not apply to persons who by law are committed directly to a higher court such as the Court of Cassation, the Court of Appeal or the Court of Assize.

2. Main innovations and reforms

The reader is referred to the three previous periodic reports (CCPR/C/31/Add.3, CCPR/C/57/Add.3 and CCPR/C/94/Add.3), which discuss in detail the conditions that article 14 imposes. Only the main innovations and reforms are described below.

2.1 Independence of the judiciary (para. 1*)*

Reforms have been introduced to make the justice system more independent and efficient: both trial judges (through, among other things, the establishment of the High Council of Justice and the reform of disciplinary law) and the public prosecutor's office (institutionalization of the Prosecutors' Association and better lines of authority).

2.1.1 Establishment of the High Council of Justice

Article 151, paragraph 2, subparagraph 1, of the coordinated Constitution as amended on 20 November 1998 calls for the establishment of a High Council of Justice which, in the exercise of its authority, is required to respect the independence of justices as defined in paragraph 1 of the same article. The High Council is not a part of the judiciary at all, but a *sui generis* entity which - although this is not part of its official powers - as an "intermediary body" provides a link between the judiciary on the one hand and the legislature and executive on the other.

The Council has 44 members, and consists of a French college and a Dutch-speaking college with equal numbers of members. Each college sets up a nominations and appointments committee and an advisory and investigative committee. Each nominations and appointments committee has 14 members - 7 justices and 7 non-justices; the advisory and investigative committees have 8 members - 4 justices and 4 non-justices. The terms of reference of the nominations and appointments committees include nominations and appointments within and to the bench.

Since article 151 of the coordinated Constitution as amended on 20 November 1998 took effect (*Moniteur belge*, 24 November 1998), fundamental changes have taken place, and the nominations and appointments committees have played an important part in them. The first main task of each committee is to put forward one candidate for each appointment as a justice of the peace, court judge, assessor to an appeal court or labour court, judge in the Court of Cassation or member of the public prosecutor's office associated with each of these tribunals (coordinated Constitution, art. 151, para. 3, first subpara, sub-subpara. 1). The committees also designate the *chefs de corps* in each tribunal. Their positions having been turned into limited mandates (art. 151, para. 3, first subpara, sub-subpara. 2), the *chefs de corps* are, terminologically speaking, no longer "appointed" but "designated".

The appointment procedure (and, by analogy, the designation procedure) rests on two pillars, namely central administrative management by the Ministry of Justice and strict fulfilment enforced by deadlines which, if not met, allow the procedure to go ahead by default. It now takes place in three main phases:

(a) An initial round of written opinions (coordinated Constitution, new art. 151, para. 3, first subpara, and Judicial Code, art. 259 ter, paras. 1-3);

(b) Presentation by the competent nominations and appointments committee of the High Council of Justice of a candidate to the Crown (coordinated Constitution, new art. 151, para. 4, second subpara, and Judicial Code, art. 259 ter, para. 4); the committee, in selecting a candidate to present, assess his/her skills and abilities on criteria such as personality, intellectual faculties and professional skills. A candidate can only be presented if he/she receives the support of two thirds of the committee. If the combined committees are together put in charge of presenting a candidate, the two-thirds majority must be obtained in each nominations and appointments committee;

(c) Appointment by the Crown (coordinated Constitution, new art. 151, para. 4, first subpara, and Judicial Code, art. 259 ter, para. 5).

Access to the magistracy

Another important task of the nominations and appointments committees concerns access to the position of magistrate or officer in the public prosecutor's office (coordinated Constitution, new art. 151, para. 3, first subpara.), i.e. the magistracy. Access to the magistracy is governed by two categories of examination:

(a) A competitive examination for admission to the judicial training course is open to legal scholars who have completed their studies and worked as lawyers for a year. The number of places on the course is limited, and set annually by the Crown according to the languages required. After a period of core training, the trainees can opt for a short or a long training course. Including the period of core training just mentioned, the short course takes 18 months, after which trainees can apply for a position of deputy Crown Procurator or deputy junior labour magistrate. The long course lasts 36 months, after which trainees can apply for positions as judges in courts of first instance, a commercial court or a labour tribunal;

(b) A test of professional skills open to legal scholars with some professional experience, to assess whether they have the maturity and intellectual faculties needed to serve as a magistrate. Success in this test, combined with some years of professional experience in the law, affords access to most magistrate-type posts.

2.1.2 Reform of disciplinary law

The disciplining of magistrates, court reporters at the Court of Cassation, legal secretaries, public prosecutors, members of the documentation and concordance service at the Court of Cassation, registrars, their secretaries and staff and secretaries in public prosecutors' offices has been amended by the Act of 7 July 2002 amending part two, book II, title V of the Judicial Code, which is concerned with discipline, and deferring the Act of 7 May 1999 amending the Judicial Code as regards the disciplinary arrangements applicable to members of the judiciary. Apart from the article deferring the Act of 7 May 1999, which took effect the day it was published in the *Moniteur belge* (14 August 2002), the Act will enter into force on the date set by the King, but not later than 18 months after publication.

The Act of 7 July 2002 offers better safeguards for those facing disciplinary proceedings, in part by allowing appeals against disciplinary punishments, granting an opportunity to obtain a copy of the case file free of charge, and introducing a cut-off period beyond which proceedings cannot be launched.

2.1.3. Institutionalization of the Prosecutors' Association

The Prosecutors' Association has become an established institution by virtue of the Act of 4 March 1997, which also created the position of national judicial officer (*Moniteur belge*, 30 April 1997). The institutionalization of the Association marks a turning point in the overall thinking behind the current organization of the public prosecutor's office. A number of tasks and assignments are no longer (not exclusively, at least) entrusted to prosecutors individually but to a body with decision-making powers which has the authority to give instructions to each prosecutor separately. Like each individual prosecutor, the Association operates under the authority of the Minister of Justice. Its tasks are to see to the consistent application and coordination of criminal policy; to see to the smooth overall operation and coordination of the public prosecutor's office; and to honour the obligation to keep the Minister of Justice informed and offer him opinions. In so doing it can call on the assistance of members of the public prosecutor's office working in the appeal courts, known as attending magistrates, who remain attached to their normal offices.

Careful attention needs to be paid to the Royal Decree of 6 May 1997 concerning the specific tasks of members of the Prosecutors' Association pursuant to the Act. Article 143 bis, paragraph 5, subparagraph 4 of the Judicial Code says that for the purpose of fulfilling the Association's terms of reference the King may, after consulting the Association, assign specific tasks to each of its members.[57]

2.1.4 Vertical restructuring of the public prosecutor's office

Several parliamentary commissions of inquiry have identified a number of serious problems with the conduct and coordination of judicial investigations into complex cases and the handling of cases extending across geographical and jurisdictional divides. In response to their recommendations - in particular the recommendations made by the second commission of inquiry into the Brabant killings - the "Octopus" agreement of 24 May 1998 called for the public prosecutor's office to be restructured.

In mid-July 1998 the Octopus partners submitted a bill to the Senate which became the Act of 22 December 1998 (*Moniteur belge*, 10 February 1999) on the vertical integration of the public prosecutor's office, the Federal prosecution service and the Crown Procurators' Council. This piece of framework legislation implies not only the creation of a Federal prosecution service but also a substantial structural reform of the public prosecutor's office.

The Act of 21 June 2001 amending various provisions relating to the Federal prosecution service[58] marks an important first step in this reform of the public prosecutor's office (see annex IX). It took effect on 21 May 2002.

Federal prosecutors have four basic missions under the law:[59]

(a) Prosecuting certain offences (e.g. crimes against the security of the State, organized trafficking in and smuggling of human beings,[60] arms trafficking,[61] serious breaches of humanitarian law,[62] criminal conspiracy and organized crime);

(b) Coordinating prosecutions;

(c) Facilitating international cooperation;

(d) Overseeing the general and specific operations of the Federal police.

It also assigns them a number of specific missions *de lege ferenda* or on the basis of instructions from the Minister or the Prosecutors' Association. Federal prosecutors work exclusively and directly under the authority of the Minister of Justice. They are bound by the criminal policy guidelines laid down by the Minister after he has obtained the opinion of the Prosecutors' Association.

2.2 Trial without undue delay (para. 3 (c))

2.2.1 Mention should be made of the Act of 30 June 2000 adding an article 21 ter to the preliminary title of the Code of Criminal Procedure.[63] The new article states that "… if the

duration of criminal proceedings exceeds a reasonable limit, the judge may convict the accused by simple declaration of guilt or hand down a lesser sentence than the minimum provided for in law …".

2.2.2 The legal backlog in Belgium and current efforts to clear it

The discrepancy between the numbers of cases taken to appeal in various courts and the numbers of judgements the courts hand down is constantly growing. As a result, the legal system is increasingly confronted by the spectre of a case backlog. Parliament has been considering this problem for a number of years now. Various steps have been or are being taken to clear it, prevent any further lag and thus make justice more efficacious. The most essential include:

(a) Act of 9 July 1997[64] ordering steps to clear the case backlog in the appeal courts (see annex IX): the steps this Act calls for can be summarized as follows:

(i) Clearance of the existing backlog. With a view to clearing the case backlog in the courts of appeal, additional chambers in the courts of appeal were created for a period of three years by Act dated 9 July 1997. The chambers, in which deputy judges were to sit, were to concern themselves exclusively with the processing of issues that fell within the definition of the case backlog as given in that same Act. The Act provided for the possibility of extending the operation of the additional chambers by Royal Decree. This happened in 2001 (one year's extension) and 2002 (two years). The description of the issues that could be taken up before the additional chambers was adapted by Act of 29 November 2001;

(ii) Presidency of the Courts of Assize. Under the law, retired members of the courts of appeal can sit as presidents of Courts of Assize. This relieves the court judges of this heavy burden so that they can continue with their ordinary business;

(iii) Appeal: lastly, the Act states that appeals against decisions by the Commercial Court are to be assigned to a chamber with a single judge;

(b) Act of 23 November 1998 on legal aid:[65] Belgium has been reflecting on the need to establish a legal aid system based on voluntary participation rather than the automatic assignment of junior lawyers as in the past, and to take more account of legal aid provided in the form of information before any proceedings are instituted. This led to the adoption of the Act of 23 November 1998 (entry into force on 31 December 1999) adding articles 508/1 to 508/23 to the Judicial Code, which set up "front-line" legal aid, and reorganized "main-line" aid;

"Front-line" legal aid may be defined as legal aid provided in the form of practical information and legal advice, a first legal opinion or a referral to a special-purpose body or organization. It is available to anyone subject to the jurisdiction of the courts. "Main-line" aid

may be defined as legal aid in the form of detailed legal advice or aid during legal proceedings or a trial (including legal representation). It is available to individuals of insufficient means who are subject to the jurisdiction of the courts.

A number of implementing decrees have been issued, the most important being the Royal Decree of 10 July 2001 (superseding that of 20 December 1999), as amended by Royal Decree of 23 April 2002. This sets the conditions for obtaining "front-line" legal aid and some or all "main-line" legal aid and legal assistance free of charge.

(c) The Act of 29 May 2000 establishing a central file of notices of seizure, assignment, cession and collective settlement of debts and amending certain provisions of the Judicial Code is intended to optimize the execution of judgements;

(d) The Act of 20 October 2000 authorizing the use of telecommunications media and electronic signatures in judicial and extrajudicial proceedings[66] is intended to accelerate the pace of justice by allowing evidence and documents to be transmitted by modern telecommunications technology;

(e) The Act of 14 November 2000 amending the Judicial Code as regards intervention by the public prosecutor before the Court of Cassation and in civil proceedings on the merits, and articles 420 bis and ter of the Code of Criminal Procedure,[67] seeks to make trials fairer and bring the parts of the Judicial Code concerned with intervention by the public prosecutor in both civil and criminal proceedings and with participation by the public prosecutor in discussions before the Court of Cassation, together with the rules on the opinion of the public prosecutor in civil cases being discussed on the merits, into line with the practice of the European Court of Human Rights;

(f) A bill to amend the Judicial Code as regards summary injunction to pay proceedings is intended to speed up such proceedings and extend their scope. For the time being this bill is on hold owing to the initiative on the subject taken by the European Union;

(g) A bill to amend the Judicial Code as regards proceedings seeks to speed up civil proceedings and combat the case backlog. The objectives of this huge undertaking include reorganizing the introduction of pleas, improving the allocation of pleas among the courts, simplifying the rules on pleas to the jurisdiction, introducing fixed deadlines for the submission of evidence and conclusions and the scheduling of hearings, reducing proceedings by default, allowing more scope for recourse to conciliation proceedings at the court's suggestion, and introducing penalties for procedural abuses;

(h) A bill to amend the Judicial Code as regards the geographical extent of courts' jurisdiction in matters of provisional attachment and means of execution, and to add to the Code an article 633 bis giving the police courts exclusive jurisdiction seeks a better geographical spread of proceedings relating to the civil consequences of traffic accidents. At present such proceedings are concentrated in the big cities, adding to the case backlog in the court districts concerned;

(i) A bill adding a new chapter VI bis to the Act of 15 June 1935 on the use of languages in judicial proceedings will lay down rules for translators and interpreters called upon to assist in judicial proceedings so as to ensure better communication with individuals facing proceedings who do not speak the language of the proceedings;

(j) The Act of 18 July 2002 replacing article 43 quinquies and adding a new article 66 to the Act of 15 June 1935 on the use of languages in judicial proceedings introduced the following amendments: (i) the language examination for judicial officers is to be adjusted to match the requirements of the position concerned; and (ii) authority to organize such examinations is assigned to the administrator of the Federal Administration Selection Bureau (SELOR). The aim is to match the content of language examinations to the functional needs of judicial practice, i.e. the language skills that judicial officers need in their jobs;

(k) The objectives of the Act of 16 July amending article 86 bis of the Judicial Code and the Act of 3 April 1953 on the organization of the judiciary include doubling, in Brussels and elsewhere, the number of supplementary judicial officers who are not required to be bilingual (they sit in monolingual chambers). Specifically, the number of supplementary judges would increase from 25 to 50 and deputy supplementary judges from 17 to 34.

2.3 Anonymous witnesses (para. 3 (g))

As part of the campaign against various types of organized crime, including trafficking in human beings, a new law on anonymity for witnesses was passed on 8 April 2002 (*Moniteur belge*, 31 May 2002). It will take effect on a date to be fixed by Royal Decree, but no later than 1 November 2002. In essence, the Act allows certain information concerning a witness's identity to be kept secret (partial anonymity), or even in the witness's complete identity (total anonymity) (see annex IX).

(a) Partial anonymity: the arrangements making it possible for a witness to be heard under the cover of partial anonymity remain virtually unchanged. The examining magistrate or trial judge can, if necessary, authorize a witness under threat not to divulge certain information, such as his or her address or occupation: this does not exonerate the witness from the duty to appear at the hearing (Code of Criminal Procedure, arts. 75 bis, 155 bis and 371 bis). Those involved in the justice system (police officers, magistrate, experts ...) and individuals who, in the course of their work and on legal grounds, learn of the circumstances in which an offence has been committed (e.g. bank employees required to transmit certain information to the Financial Data Processing Unit) may also, when they are to be heard as witnesses by the examining magistrate or trial judge, opt to give their business address rather than their private one (Code of Criminal Procedure, arts. 75 ter and 317 ter);

(b) Total anonymity: besides partial anonymity, the Act of 8 April 2002 also allows a witness to be heard under cover of total anonymity. As regards the evidentiary value of testimony so provided, the law now states that convictions cannot be based "exclusively, nor

preponderantly" on testimony provided under cover of total anonymity: such testimony must be "preponderantly corroborated by other evidence" (Code of Criminal Procedure, art. 189 bis, para. 3).

That apart, the arrangements for being heard under cover of total anonymity have not been altered substantially. Total anonymity is always an exceptional measure, to be resorted to only if partial anonymity does not offer sufficient protection, and will be restricted to cases in which evidence is sought of an offence covered by article 90 ter of the Code of Criminal Procedure, one committed by a criminal organization or a serious violation of international humanitarian law. An anonymous witness will perforce be heard by an examining magistrate, either during the investigation phase proper (Code of Criminal Procedure, arts. 86 bis and ter) or by decision of the trial judge (ibid., arts. 189 bis and 315 bis).

The passage of the Act of 8 April 2002 is, without question, an advance on the previous state of the law. Even before proper legal provision was made for them, anonymous witnesses were not unknown under Belgian law and, from this point of view, the establishment of a specific regime offers substantial additional safeguards.

2.4 Procedure applicable to minors (para. 4)

Criminal law applying to juveniles is administered in Belgium at the Federal level. A distinction is drawn between two categories: minors who have committed acts categorized as offences, and minors at risk owing to difficult upbringings. The latter fall within the jurisdiction of the Communities: the Flemish Community, the German-language Community, the French Community and a judicial organization covering the capital, Brussels, and its 19 communes.

2.4.1 Broad outlines of the law on the protection of juveniles

Under article 5, paragraph 1, II, 6° (d), of the special Act of 8 August 1980, only determining "what action may be taken in respect of minors who have committed acts categorized as offences" is a Federal matter. Taking that action is, as in the case of minors with difficult upbringings, a matter for the Communities. As regards minors with difficult upbringings, determining what action the juvenile court may take and legal aid for minors are also matters for the Communities.

The juvenile court has jurisdiction over prosecutions brought by the public prosecutor's office against minors under 18 for acts categorized as offences (*infractions*):

(a) Traffic offences: the ordinary courts have jurisdiction over some offences committed by minors aged over 16 and under 18;

(b) A case can, by substantiated decision, be removed from the jurisdiction of a juvenile court for trial before the competent ordinary court, provided that the minor was 16 or over at the time of the offence;

(c) The protective model is both protective and educative. The only measures that can be applied are custodial, protective or educational action ordered in the interests of the minor concerned. The penalties that can be applied to minors are not criminal. Minors can be:

(i) Reprimanded and, except for those who have reached the age of 18, left in or returned to the custody of their guardians, urging the latter, where appropriate, to keep a closer eye on them in future;

(ii) Supervised by the appropriate social service to ensure that the conditions laid down by the court are respected;

(iii) Placed under the supervision of the appropriate social service or a trustworthy individual or in an appropriate establishment;

(iv) Committed to a public institution for observation and education under supervision;

(d) Cases involving minors are generally heard behind closed doors. The parents are also parties to the proceedings and may, if appropriate, be sentenced to pay costs and damages to any party claiming criminal indemnification;

(e) Minors are not subject to pre-trial detention;

(f) Criminal mediation is possible, and may terminate the proceedings;

(g) General criminal law (e.g. the definitions of offences) and criminal procedure law apply, but at a subsidiary level;

(h) Following the reform of the Belgian State, the social services concerned with juvenile criminal law mostly operate at the level of the Communities.

2.4.2 Recent changes in legislation (see comments under article 10 of the Covenant, paragraph 2.3.2)

A preliminary bill responding to juvenile delinquency is currently under consideration. It is largely the upshot of the report that emerged from extensive consultations by the Commission on the Reform of the Law on the Protection of Minors (the Cornélis Commission) between 1991 and 1996. It also takes up much of the substance of Professor Wargrave's 1998 report encouraging the introduction of reparative mediation into juvenile law, and takes account of proposals in the Federal Security and Prison Policy Plan for combating juvenile delinquency which the Government approved on 31 May 2000.

Article 15. Non-retroactivity

The observations on article 15 in the third periodic report (CCPR/C/94/Add.3, para.182) call for no further comment.

Article 16. Recognition as a person before the law

The observations on article 16 in the third periodic report (CCPR/C/94/Add.3, paras.183 and 184) call for no further comment.

Article 17. Respect for private life

1. Protection against phone tapping

The Act of 30 June 1994 on the protection of private life against the tapping, logging and recording of private calls and communications has been amended by a fresh Act of 10 June 1998 (*Moniteur belge*, 22 September 1998). The main effects of the new Act are as follows:

(a) A new article 46 bis has been added to the Code of Criminal Procedure, establishing a legal framework for the identification of subscribers to and habitual users of telecommunications services and, on the other hand, the communication of information identifying the telecommunications services which a given individual habitually uses or subscribes to;

(b) Article 88 bis of the Code of Criminal Procedure, on call tracking, has been substantially amended to include call localization and extend the jurisdiction of the Crown Procurator in cases of *flagrante delicto*;

(c) Article 6 of the Act adds further offences to the list for which phone tapping is warranted: abduction of minors and a number of specific offences relating to hormones [and their uses in farming];

(d) Procedurally, the new Act does away with the burdensome requirement of full transcriptions of intercepted calls in favour of transcription of those calls and communications that are deemed relevant to the investigation, while at the same time respecting the rights of the defence;

(e) Lastly, for the three types of action that require the assistance of telecommunications network operators or service providers - identification, tracking, localization and tapping - the respective obligations are set out in the Act and will be enlarged upon in a Royal Decree.

2. Personal data

A Royal Decree on the enforcement of the Act of 8 December 1992 on protection of privacy in respect of the processing of data of a personal nature was adopted on 13 February 2001 (*Moniteur belge*, 13 March 2001). It repeals the 15 or so previous Royal Decrees promulgated on the basis of the Act of 8 December 1992, replacing them by a single broad decree. It defines the notions of anonymous data, coded and uncoded data, the conditions under which data collected for a particular purpose can be reused for historical, statistical or scientific purposes, the conditions to be observed when handling sensitive data

(i.e. concerning people's race, ethnic origins, sex lives or religion) and medical and legal records; under what conditions the data processor need not inform an individual that data about him or her are being processed; how individuals can exercise their rights to see and correct information about them that is being processed, and oppose its use for direct marketing; the procedure to follow when an individual wishes to exercise his or her right of indirect access to the police or information services; the procedure that the data processor must follow in reporting on his activities to the Commission on the Protection of Private Life, and what processing operations need not be so reported. The eighth chapter of the Decree deals with the public register on which all reports of data processing made to the Commission must appear.

3. Medical data

3.1 Bill on patient rights

Passed by the Chamber of Representatives on 15 July 2002 (see Annex X), this bill recognizes patients' right to protection of their privacy, especially as regards their state of health, whenever they visit a professional practitioner. Protection of privacy in health matters is thus recognized as a fully fledged right. Interference is prohibited. Pressure on a patient or professional practitioner (from an insurer or employer, for example) to communicate information about the patient's state of health is forbidden. Exceptionally, such interference may be authorized if the following conditions are met. First, there must be provision for it in the law. Next, it must be in pursuit of a legitimate objective, which may be the protection of public health or the rights and liberties of third parties. Third, the interference must be proportionate to that objective.

3.2 Banque Carrefour social security bank

Since the Royal Decree of 4 February 1997 on the transmission of personal data among social security institutions, in certain well-defined instances the transmission of data no longer requires the approval of the Banque Carrefour supervisory board (arts. 2, 3, 4 and 5): between an institution and a subcontracting institution, among institutions belonging to the same secondary network where such transmission is necessary for the accomplishment of their assigned tasks, and between the National Health and Disability Insurance Institute (INAMI) and the National Mutual Society Board where necessary.

3.3 Transmission of hospital records

The Royal Decree dating from 6 December 1994, which specifies the conditions under which hospitals must send patients' medical histories to the Minister responsible for health, has been amended by Royal Decree of 3 May 1999, article 2 of which introduces the notion of a minimum nursing record; this has not had any significant effect on the protection of privacy.

4. Protection of detainees' emotional relationships

The Ministerial circular dated 5 July 2000 on the protection of detainees' emotional relationships with their immediate family and friends lays down rules to ensure a high-quality relationship between detainees and their nearest and dearest, as close as possible to what they

might enjoy outside the prison walls, particularly in the case of visits - both normal and private - between detainees and their immediate circle. This is part of a general effort to reduce the harm associated with detention, but it also encourages the maintenance of emotional links with a view to better readaptation to society after release.

Article 18. Freedom of religion and belief

The following needs to be added to the information supplied in the third periodic report (CCPR/C/94/Add.3, paras. 217 to 234).

1. Representative body for Belgium's Muslim communities

Islam is Belgium's second largest religion, and it took a major step towards equality with other faiths when on 13 December 1998 - 25 years after its official recognition - a general election was held for a secular leader of the Islamic faith and representative of both the Muslim community and the Government. The names of the members of the Executive were announced on 25 February 1999. The Belgian experiment is a first, and could become a model for other European countries to adopt. At a time when Islam has become a focus of xenophobia - "Islamophobia" - an initiative of this kind, which goes against the tide, is both an important gesture on the part of the authorities towards the religious and cultural identity of the Muslim immigrants who make up the majority of the Muslim community, and a means of loosening fundamentalist groups' hold on that community.

The Muslim representative body will be responsible, among other things, for the appointment of teachers of religion to work in the public school system, for the secular administration of religious affairs (appointment of priests, recognition of local communities), for prison chaplains, for cemeteries and for ritual slaughter. The Muslim Executive was recognized by Royal Decree dated 3 May 1999, and its members by Royal Decree dated 4 May 1999 (see Annex XI).

Local communities are at present being granted recognition, but it should be pointed out that as yet no specific application for recognition of mosques has been submitted to the authorities owing to tensions within the representative body. Under the special Act of 13 July 2001 transferring various powers to the Regions and Communities, the power to recognize mosques now belongs to the Regional authorities, not the Federal ones. No mosque had yet been recognized by 1 January 2003.

2. Non-denominational philosophical communities

On 21 June 2002 the King promulgated the Act on the Central Council of Non-Denominational Philosophical Communities in Belgium and its members, and on the establishments responsible for looking after the physical and financial interests of recognized non-denominational philosophical communities (see Annex XI). The Act is in fulfilment of article 181, paragraph 2, of the Constitution, which states that "The salaries and pensions of the representatives of organizations recognized by law that offer moral assistance according to a non-denominational philosophical conception shall be paid by the State; the sums necessary for this purpose shall be included in the annual budget."

Hence Belgium's non-denominational philosophical communities are on the same footing as the recognized religions (Catholicism, Judaism, Islam, Anglicanism, Orthodox Christianity and Protestantism) and the salaries of moral counsellors (members of the Central Lay Council) have been paid by the State since 1 January 2003.

The new Act lays down the criteria and arrangements for giving effect to the new article of the Constitution. The four main features of the text are:

(a) Recognition of a representative organization of non-denominational philosophical communities, the Central Lay Council, embracing 12 lay communities and a Federal secretariat;

(b) Establishment of a special financial and social status for lay delegates (the equivalent of religious clergy);

(c) An obligation on the provinces to cover any deficit run up by lay moral assistance establishments;

(d) Arrangements for amendment, repeal and the transitional period.

The organization consists of the Federal secretariat for the Central Lay Council, one branch per province and two for the Brussels-Capital region, coordinating moral assistance at the province level, plus a number of subsidiary moral assistance services. Besides providing the lay movement with a legal framework and financing, the Act also confers an air of respectability upon it by acknowledging its social value, like that of other religions.

3. Sects

The Act of 2 June 1998 led to the establishment of an independent centre providing information and advice on pernicious sectarian organizations, and an administrative unit to coordinate action against such organizations. The intention of the Act is certainly not to restrict the right of association or freedom of expression, far less to prevent individual citizens from going with the religious or philosophical trend of their choice. It is concerned with the practices of sectarian organizations when these may be regarded as pernicious, and then only when they are injurious to the individual, human dignity or society. The perniciousness of such practices must be assessed in the light of the principles set forth in the Constitution, the law, decrees and orders, and international human rights treaties ratified by Belgium (see article 2 of the Act). There are thus no restrictions on the individual, only on the activities of sectarian organizations when those activities compromise human values or seek to damage society.

The role of the centre is to amass documentation and serve as a point of contact for members of the public wanting information on sectarian organizations. Every citizen can make a free choice on the basis of the information furnished. This was the reason for establishing a documentation centre. But the centre is also a supervisory body which can give recommendations and opinions, either on its own initiative or at the request of third parties, on the subject of pernicious sectarian organizations. Article 6, paragraph 4, of the Act of 2 June 1998 categorically stipulates that the information provided may not take the form of lists or systematic surveys.

4. Freedom of conscience and education

To the information given in the previous report (CCPR/C/94/Add.3, paras. 224-234), the German-language Community adds the following. Article 24 of the organizational decree dated 31 August 1998 (*Moniteur belge*, 24 November 1998), as amended by decree of 25 May 1999 and 23 October 2000 (*Moniteur belge*, 5 December 2000) and 7 January 2002, states that parents and pupils have free choice of school. Community schools (art. 25) and subsidized communal schools (art. 26) are required to enrol Belgians and legally established aliens living in the German-language Community (community school) or the relevant or neighbouring commune (communal schools). Similar rules apply to subsidized free schools (art. 27), but such schools can turn down a pupil if those responsible for his or her upbringing take issue with the school syllabus.[68] Access to kindergarten, primary and secondary education in an establishment run or subsidized by the German-language Community is free of charge (art. 32). Article 36 lays down pupils' rights, such as the right to be heard, to challenge decisions and to voice opinions without restriction. For refugee and stateless children and children from certain developing countries who do not have a command of the language of instruction, the decree of 17 December 2001 (*Moniteur belge*, 4 April 2002, p. 13981) makes provision for a transitional class (art. 4). If a pupil meets the requisite conditions, the school must admit him or her (art. 7).

Article 19. Freedom of expression

1. Legislative framework and freedom of expression and information in practice

Article 19 of the Constitution guarantees freedom to demonstrate one's opinion on all matters except for the punishment of offences committed while exercising this freedom. Article 25 provides for the freedom of the press and prohibits censorship. Freedom of expression is also enshrined in article 10 of the European Convention on Human Rights. Under both the Covenant and the European Convention, freedom of expression encompasses the right to "receive and impart" information and ideas regardless of frontiers. Duly introduced into the Belgian domestic legal order,[69] these instruments thus form an integral part of the legal system and have binding force. Freedom of expression is an essential value in a democratic society. The European Court resoundingly asserted as much in *Handyside*, which has become a reference on the matter.[70]

The public authorities must thus accept that divergent opinions, including views that may offend, shock or disturb because they are contrary to conventional standards, can be expressed. Given the constitutional principles of equality and non-discrimination, voicing opinions characteristic of different trends within society must be permitted and respected. Nonetheless, the requirements of tolerance and pluralism[71] do have their limits.

Freedom of expression is subject to restrictions such as those laid down in the Constitution, in article 19, paragraph 3, of the Covenant and in article 10, paragraph 2, of the European Convention: "The exercise of these freedoms, since it carries with it duties and

responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society … for the prevention of disorder or crime, for the protection of … morals, for the protection of the reputation or the rights of others …".

While, under the Constitution, in principle only *ex post facto* punishment is allowed through the application of article 1382 of the Civil Code which requires those responsible for causing harm to others to make amends, the European Convention allows the exercise of freedom of expression to be made subject to certain formalities, conditions or restrictions as preventive measures.[72] Great care must nonetheless be taken in applying such preventive measures, which must be backed up with appropriate safeguards and justified on particularly pressing grounds.[73]

Restrictions on the exercise of freedom of expression, whether preventive[74] or punitive and regardless of the action taken by the public authorities, are subject to conditions. Parliament, and the courts and tribunals applying the law, must strike a balance between freedom of expression, respect for the law, tolerance and respect for others.

1.1 Criminal proceedings

The Criminal Code and a variety of individual acts (see below) lay down a number of heads under which, irrespective of any offence against the laws on the press, the expression of an opinion deemed offensive can be punished. There are also separate provisions governing such specific domains as radio and television broadcasting.[75]

In criminal matters, Belgian procedural law always goes beyond the ordinary law, affording a kind of exoneration de facto if not de jure: cases are tried before an assize court jury except for offences inspired by racism (article 50 of the Constitution: the assize courts are never now called upon to try offences of this kind) and cases involving devolving responsibility (Constitution, art. 25, para. 2), exclusion of pre-trial detention (article 8, paragraph 5, of the decree of 19 July 1831 restoring juries) and direct quotation, while a case may be tried behind closed doors only by unanimous decision of the court (Constitution, art. 148, para. 2).

A distinction needs to be drawn between culpable opinions and other breaches of the law which are not expressions of culpable views, as in the following examples:

(a) Publication of a text without indicating the name of the author or printer (Criminal Code, art. 299);

(b) Prohibited advertising for sweepstakes (Criminal Code, art. 303);

(c) Advertising of sexual services (Criminal Code, art. 380 quinquies);

(d) Publication of images which offend against public morals (Criminal Code, art. 383, para. 1);[76]

(e) Refusal to publish a rebuttal (articles 5 and 17 of the Act of 23 June 1961 on the right of reply);

(f) Publication of drawings, photographs or images liable to reveal the identity of minors facing legal proceedings or subject to measures ordered by the juvenile court (article 80, paragraph 2, of the Act of 8 April 1965 on the protection of minors);

(g) Breaches of the rules governing bill-posting.[77]

The substance of the offence has been left undefined: "it relates to all kinds of text, not just newspapers but also reviews and books, posters, tracts, prospectuses and so forth, regardless of their subject matter".[78]

The problem is now taking on a further dimension with the development of information highways. Electronic texts are, in the first place, text, and it would thus appear, without needing to resort to extensive interpretation as in the case of other audio-visual media, that offences committed on networks such as the Internet are subject to the jurisdiction of the court of assize (unless they are inspired by racism).[79]

1.2 Civil proceedings

There have been no significant changes in the legislative framework for civil proceedings. Liability suits against journalists have multiplied in recent years, however. The damages awarded by the courts and tribunals to injured parties are tending to rise (until recently, compensation for moral injury was merely symbolic).

Parliament's original concern as regards devolving responsibility, namely to prevent reporters from being censored by publishers, no longer corresponds to the situation in the marketplace: the tables have been turned in the world of reporting, and the idea that a publisher who may have instigated or inspired a story might be let off is somewhat troubling. Case law here appears to be lumping employers and reporters together, finding against the employer, too, when a reporter is found to be at personal fault.

2. Restrictions on freedom of expression

2.1 Restrictions connected with the suppression of trafficking in human beings and child pornography

2.1.2 It should be pointed out at the outset that since the Act of 1995 all advertising for sexual services involving children carried by any medium including the Internet (Criminal Code, art. 380 quinquies), and child pornography carried by any medium including the Internet (Criminal Code, art. 383 bis) are clearly prohibited. As regards child pornography, the Belgian legislature has decided that not only production and distribution but also possession should be covered. Moreover, Belgian law extends not only to real images, i.e. images of sexual abuse that has actually taken place, but also fictitious images. Belgium consistently stressed the latter two points at all international gatherings where these questions are taken up.

2.1.3 To facilitate action against abuses of the Internet, specifically abuses involving children, a protocol of collaboration was signed as long ago as 28 May 1999 by ISPA (the Belgian Internet service-providers' organization) and the ministers of telecommunications and justice. In

particular, this agreement stipulates that if providers or users detect content which appears to constitute child pornography, that content will be reported to a central judicial police contact point under an agreed procedure.

2.1.4 Mention should be made of the Act of 28 November 2000 on computer crime (published in the *Moniteur belge* for 3 February 2001), which contains new provisions on matters relating to investigations and evidence-gathering on all crimes (including sexual abuse involving children) committed over or on the Internet.

2.1.5 The German-language Community points out that the decree on the media dated 26 April 1999 also contains provisions to protect children: television broadcasters are forbidden to broadcast programmes likely to do severe harm to children's physical, mental or moral development, including those depicting pornography or gratuitous violence (art. 15). Additionally, no advertising may be broadcast during the 10 minutes before the start of a children's programme, during the programme itself or for 10 minutes after it ends (art.7, para. 2).

2.2 Restrictions to combat racism

On the subject of direct and indirect restrictions on freedom of expression, it is appropriate to mention the Act of 30 July 1981 to suppress certain acts based on racism or xenophobia and the Act of 23 March 1995 prohibiting the denial, minimization, justification or approval of the genocide committed by the German Nazi regime during the Second World War.

Other restrictions are more fully explained in the comments under article 20 of the Covenant (the Act of 12 February 1999 on the financing of political parties, and the punishment of racist press offences).

A protocol of collaboration was signed on 7 November 2002 by the Centre for Equal Opportunity and Action to Combat Racism and the (French-speaking) Senior Audio-visual Board. It covers three areas: expertise, exchanges of information and common positions.

At the Community level, it should be noted that television broadcasters approved by the Government of the German-language Community are forbidden to broadcast programmes that break the law or threaten State security, public order or public morals, offend a foreign State or arouse racial hatred (article 15 of the decree on the media of 26 April 1999, as amended by the decrees of 23 October 2000 (*Moniteur belge*, 5 December 2000), 17 April 2001 (*Moniteur belge*, 2 October 2001) and 7 January 2002). The same rule applies to sound broadcasters (art. 34) and, naturally, to the German-language Community's Belgian Radio and Television Broadcasting Centre (BRF). Fines can range between 500 and 500,000 francs or €12.40 and 12,389 (art. 66).

3. Organization and freedom of the media

3.1 Flemish Community

The Flemish Community took up article 2 of the European Union "Television without Frontiers" directive in a decree dated 28 April 1998. The criteria for deciding whether a

particular television channel falls under the jurisdiction of the Flemish Community are now identical to those set out in article 2 of the directive. Such channels may be regarded as Flemish channels.

Programming on channels under the jurisdiction of another member State of the European Economic Area can be distributed by cable once the administrative procedure, which may be regarded as a simple announcement to the Flemish Media Commission, has been complied with. No authorization is necessary for the retransmission of programmes from broadcasters under the authority of the European Community. Any such requirement would be contrary to the directive.

The cable subscription rate in Flanders is extremely high (96 per cent in 1997). Cable television subscribers can at present receive about 30 television channels, including programmes from broadcasters not under the authority of the European Union such as the Turkish channel TNT. The Flemish Media Commission has never yet withheld the authorization provided for in article 112, paragraph 2, subparagraph 6, of the coordinated decrees on radio and television broadcasting of 25 January 1995. Lastly, it must be stressed that cable television transmission systems do not offer unlimited capacity. Thanks to the development of optical fibres and digital television, the range of programmes available is likely to increase substantially in the near future.

3.2 French Community

Since the Court of Justice of the European Communities found against Belgium on 10 September 1996, the French Community has done away with the requirement of prior authorization for the rebroadcast of European television programmes, by means of a draft decree which the Government adopted on 21 September 1998. The requirement is still in effect for channels not under the authority of a Union State: the channel and the Government must strike an agreement to develop an audio-visual product in the French Community and Union States, i.e. an expression of the minority culture. The details of the agreement depend on the nature of the channel, and do not really hamper its distribution. The authorization system is designed to govern the range of programmes made available by cable television companies, which are required to distribute certain channels so as to ensure that the choice of programming is not governed purely by commercial considerations in a country where 95 per cent of households have a cable connection. It is thus possible to prevent competition by channels with sizeable financial backing broadcasting from countries not bound by cultural or other obligations.

A decree dated 25 November 1996 established regulations on audio-visual services distributed by cable. The prior authorization requirement still applies, but it is also possible to obtain authorization by default (if no objection is lodged within a set period) except in the case of tele-marketing and paid broadcasting services.

The Senior Audio-visual Board was set up by decree dated 24 July 1997 to replace the Advertising Ethics Committee. It is an independent authority responsible for monitoring broadcasters within the Community and issuing opinions before broadcasters are allowed to operate.

Lastly, a decree dated 14 July 1997 established new regulations governing the public broadcasting service (RTBF).

4. Freedom of expression of officials of the Federal State

It is established in case law that holders of public office may require prior authorization from their hierarchical superiors before exercising their freedom of expression. Since, however, freedom of expression is an important aspect of public access to administration and the smooth operation of the administration, the rules on the status of public servants (Royal Decree dated 26 September 1994) now grant them considerably greater freedom of expression, accepting that they can speak about matters they have learned about in the course of their official functions and doing away with any prior interference from their hierarchical superiors in such an event. Civil servants are still bound by a duty of loyalty, implying neutrality, disinterestedness and obedience to the decisions of higher authorities.

A small addition has been made to article 10 of the Royal Decree dated 2 October 1937 on the status of State employees: they may not disclose information that might jeopardize the competitive position of the public service for which they work.

Article 20. Prohibition of all war propaganda

Belgium has ratified most of the international legal agreements on action to combat racism and intolerance, in particular the European Convention for the Protection of Human Rights and Fundamental Freedoms, the International Covenant on Civil and Political Rights and the International Convention on the Elimination of All Forms of Racial Discrimination. It has also acceded to article 14 of the latter Convention, recognizing the right of individual complaint. This is incontestable evidence of its determination to be part, both domestically and internationally, of the campaign against racism and xenophobia.

1. Recent domestic initiatives

A number of initiatives have been taken within Belgium in recent years.[80] Special mention should be made of the following.

1.1 Reclassification of racist offences against the legislation on the press

The enforcement of existing legislation on racism (Act of 30 July 1981 to suppress certain acts based on racism or xenophobia and Act of 23 March 1995 prohibiting the denial, minimization, justification or approval of the genocide committed by the German Nazi regime during the Second World War) gives rise to serious problems when such acts are committed through the medium of printed, reproduced or published text (newspapers, periodicals, pamphlets, election leaflets, posters, etc.), since they then constitute offences against the legislation on the press which, under the old article 150 of the Constitution, could be tried only by the Court of Assize. Writers on law described this situation as one of de facto impunity, citing a number of reasons why prosecutors usually decided not to prosecute this type of offence. These included the cost, cumbersomeness and slow pace of assize proceedings owing to special rules of procedure, the publicity involved and appropriateness. It was suggested that racist

offences against the legislation on the press should be reclassified; this would provide a means of rectifying the lack of justification offered for decisions and the absence of a higher court to which cases could be referred.

Article 150 of the Constitution has been amended (*Moniteur belge*, 29 May 1999). The Constitution itself now provides for an exception to the jurisdiction of the Court of Assize in the case of press offences inspired by racism and xenophobia. Since article 150 of the Constitution does not refer to the Act of 30 March 1981, the correctional court may henceforth try not only press offences punishable under the Act, but also other press offences, such as defamation and libel (art. 443 of the Penal Code) and negationism (Act of 23 March 1995), if they prove to have been inspired by racism and xenophobia. It is hoped that this constitutional amendment will make it possible satisfactorily to prosecute those who commit this type of offence.

Between 1981 and 1989 - the period for which statistics are available - 1,266 complaints were lodged; 987 of them were filed without further action. Decisions were handed down on only 43 cases in that time, resulting in 16 convictions, 14 acquittals and 4 dismissals of action. In recent years, however, the number of court decisions pursuant to the Act of 30 July 1981 has increased sharply[81] owing to the amendments to the Act introduced in 1994, the reclassification of racist offences against legislation on the press and a growing awareness of the importance of combating racism and discrimination.

1.2 Financial penalties for anti-democratic parties

The rules on the funding and control of political parties have recently been amended. A new article 15 ter has been added by Act of 12 February 1999[82] to the Act of 4 July 1989 on the limitation and control of electoral expenditure in elections to the Federal Parliament and the financing and open accountability of political parties. The object is not to ban anti-democratic parties, just to rule out public funding for them out of regard for human rights and fundamental freedoms. The parties concerned can go on putting forward electoral lists and programmes. The point is to prevent them from financing their racist tracts with the taxpayer's money.

It has been decided to give the Council of State jurisdiction to hear and rule on any complaint filed by at least five members of the Control Commission. Such a complaint may be filed when the five members consider that, through the intermediary of its members, its candidates or its elected representatives, a political party has clearly and consistently demonstrated its hostility towards the rights guaranteed by the European Convention on Human Rights. The Council of State may in response decide to take away all or part of the party's budgetary allocation. A non-suspensive appeal against the lawfulness of this decision may be lodged in the Court of Cassation. The Act entered into force on 28 March 1999, but the machinery for its implementation must be decided on by a Royal Decree discussed in the Council of Ministers. This Act is without any doubt a step forward in efforts to impose financial penalties on parties whose propaganda is openly racist and xenophobic.

The Council of State issued a very critical opinion of the draft Royal Decree on 8 April 2001. It drew attention to the fact that its rules of procedure under ordinary law cannot apply in this instance owing to the deadlines laid down by the Act, and especially the fact

that, in its view, the Act is insufficiently precise in empowering the King to act on rules of procedure: a legislative amendment is required. The Government's current chosen course is to amend the Act by adding a new paragraph 7 to article 16 of the coordinated laws on the Council of State, repealing article 16 bis and adding a clause on reversion to the courts after judicial review.

1.3 Amendment of the 1981 Act

The Act of 30 July 1981 was recently amended. It provides that an additional penalty - withholding certain political rights for a period of 5 to 10 years - may be imposed by the court on a person already sentenced to a main penalty. The rights concerned are mentioned in article 31 of the Criminal Code. They include the right to hold public posts, employment or office and the right to be elected. Given the background of the Act of 23 March 1995, moreover, it was decided that the ban should apply to all convicted persons, not only to repeat offenders. This additional penalty is an optional one to be imposed at the court's discretion.

1.4 Consciousness-raising and training for criminal justice officials

It should be noted that efforts are being made to increase criminal justice officials' awareness of the need for a uniform policy on the prosecution of persons who commit racist offences. A specific training programme for judges on action to combat racism and xenophobia has been drawn up. The purpose of such training is to make them mindful of the 1981 Act and the development of criminal mediation, and in that connection to provide them with information on the experience gained by the Centre for Equal Opportunity and Action to Combat Racism and special treatment by the criminal justice system of foreigners and persons of foreign origin (based on the results of scientific studies and the available statistical data). Such training has been provided in a decentralized way by the Centre for Equal Opportunity and Action to Combat Racism since 1999.

1.5 Circular on information made available to the press by the judiciary and the police during pre-trial investigations

A joint circular from the Minister of Justice and the Procurators' Association which entered into force on 15 May 1999 applies to the communication of information to the press by the courts and the police in the course of pre-trial investigations. Its purpose is to give practical and uniform substance to the legal provisions contained in the Franchimont Act of 12 March 1998 on the improvement of criminal investigation procedure. It provides, inter alia, that only some data on persons involved in a case, such as their sex, age and, possibly, place of residence, may be communicated on the initiative of the judicial authorities. Personal data such as ethnic origin and nationality cannot be communicated unless they are relevant. The circular helps prevent the stigmatization of minorities and promotes the general policy of combating racism.

1.6 Agreement between the Postal Service and the Centre for Equal Opportunity and Action to Combat Racism to ban certain texts from political parties

Cooperation was recently established by way of a protocol of agreement between the Postal Service and the Centre for Equal Opportunity and Action to Combat Racism on how to

determine whether some material handed over unsealed to the Postal Service for distribution is in conformity with the 1981 and 1995 Acts.[83] In the event of doubt, the protocol enables the Postal Service to halt delivery and, if necessary, ask the Centre for Equal Opportunity and Action to Combat Racism for its opinion. This must be given within 48 hours of the request, but is not binding on the Postal Service. It is up to the Postal Service management to decide whether or not the material in question will be distributed.

1.7 Action to combat racism on the Internet

The new Act on computer crime of 29 November 2000 (*Moniteur belge*, 3 February 2001), which is not specifically designed to combat racism but may find application in racist offences, establishes new safeguards and gives the public prosecutor's office additional powers. Searches may now cover electronic data systems such as Internet computers even if they are not physically in the same place as where a search is being conducted. The Crown Procurator can require the owner or his agent to help find the information sought and block any actionable content. The Act also requires Internet access providers to keep their logbooks (recording which computers accessed which sites when) for 12 months. In other Council of European countries, it appears that such log files are kept for a week at most.

At the height of the Dutroux affair, the judicial police set up an office to which both access providers and individuals can report prima facie illegal content. Initially the office was supposed to be concerned only with child pornography, but its field of operation has been extended to cover all possible types of illegal activity, and hence also racism and discrimination.

The Belgian constitutional system of devolving responsibility for offences against the legislation on the press means that Internet access providers can be held responsible for racist messages on their servers if the authors of those messages are unknown or outside Belgium. The consequence of this extensive liability has been that access providers have taken steps to protect themselves. There is an agreement between the Federal police and ISPA (the Internet service providers' association covering 95 per cent of Belgian providers) under which the service providers undertake to notify the police of racist messages and take action at their request.

Most individual Internet access providers have established their own "acceptable usage policies", codes of good conduct banning racist web sites; access providers can unilaterally rescind contracts and remove dubious content. In so doing they are cleaving to current case law, which holds that they can be held liable for clearly illegal messages of whose existence they were aware: the court system is very ready to believe that it is virtually impossible to check all messages beforehand.

1.8 Criminal liability of legal entities

Legal entities can be held criminally liable under the Act of 4 May 1999 (*Moniteur belge*, 22 June 1999), which states: "Any legal entity shall be criminally liable for infractions intrinsically linked to the accomplishment of its objects or the defence of its interests, and for infractions whose circumstances make it plain that they were committed on the entity's behalf" (Criminal Code, art. 5). The new article 7 bis of the Code sets out the penalties applicable to infractions committed by legal entities.

2. Current bills

2.1 A bill to tighten up the legislation against racism was passed by the Chamber of Representatives on 17 July 2002, further to the note concerning action to combat discrimination and the Centre for Equal Opportunity and Action to Combat Racism adopted by the Government on 17 March 2000. It follows on from a decision by the Council of Ministers on 6 December 2000 approving the bill, which is basically intended to amend the legislation on racism so as to make it more effective.

To indicate that the concept of race has no basis in scientific fact, the word "race" will be qualified by the addition of "alleged". Despicable motives will be regarded as an aggravating circumstance in the case of certain offences (assault, rape, harassment, arson etc.); the penalties will then be doubled. The labour inspectorate will be given new powers to report breaches of the Act of 30 July 1981.

The Act of 15 February 1993 setting up the Centre for Equal Opportunity and Action to Combat Racism will be amended, providing a fuller and more specific description of the Centre's objectives. The Centre will be given certain prerogatives as regards disciplinary proceedings against civil servants suspected of acting in a discriminatory manner. Those prerogatives will be extended to cover the disciplinary regulations for members of the police force.

Lastly, the bill calls on the Minister of Justice to provide the Centre every year with statistics on the enforcement of the law against discrimination and the related judicial decisions.

2.2 The bill to amend article 5 bis of the Act of 30 July 1981 to suppress certain acts based on racism or xenophobia and article 1 of the Act of 23 March 1995 prohibiting the denial, minimization, justification or approval of the genocide committed by the German Nazi regime during the Second World War is intended to strengthen the bans which the two Acts already permit as penalties. Article 5 bis of the Act of 30 July 1981 and article 1 of the Act of 23 March 1995 allow the court to impose such a ban pursuant to article 33 of the Criminal Code in the event of certain specified offences. The planned amendments would make it obligatory for the court to impose a ban on individuals convicted under article 1 (incitement to racial hatred), 3 (membership of a movement) or 4 (discrimination by a civil servant, public official or law enforcement officer in the performance of his duties) of the Act of 30 July 1981, or under article 1 of the Act of 23 March 1995. The bill was approved by the Council of Ministers on 30 November 2001, and is currently under negotiation with civil servants' union representatives.

2.3 Within the Council of Europe, Belgium has been actively involved in drafting a first additional protocol to the Convention on Cybercrime, making racist and xenophobic acts committed by means of computer systems into crimes. The draft has been forwarded to the Parliamentary Assembly of the Council of Europe, which should render its opinion at its September 2002 session prior to adoption of the draft by the Committee of Ministers. The draft would make it obligatory for States to define certain types of behaviour as crimes when

committed by means of computer systems: the distribution of racist or xenophobic material, making racially or xenophobically motivated threats, and gross downplaying, endorsement or justification of genocide or crimes against humanity.

2.4 Against the setting of the recent Israeli-Palestinian conflict, the Belgian Government brought together representatives of the religious communities concerned, the Federal Government, civil society, human rights organizations, representatives of labour and management and the Centre for Equal Opportunity and Action to Combat Racism on 5 April 2002 to agree on a joint statement with a view to "breathing life in a constant, concrete fashion into the dialogue among all the communities in our country".

In the post-11 September setting and the context of the current Israeli-Palestinian conflict, the Centre for Equal Opportunity and Action to Combat Racism has arranged a number of meetings between representative dignitaries from the Jewish and Muslim communities in Belgium so that they can pool their efforts to combat and prevent discrimination, incitement to hatred and racist, antisemitic and xenophobic acts.

As part of its "mutual respect" campaign, the Centre has also set up a web site, http://www.agenda-respect.be. Here visitors can find out about and take part in organized activities, events, training courses and any other activity inspired by a desire to bring together, unite, discuss and exchange with other citizens, professionals, young people, local residents and militants. A calendar of activities taking place in Belgium is available on line and updated regularly, together with a presentation of the public associations and partners working to combat discrimination and promote civil dialogue. The site offers a means of reaching agreement on the terms, both good and bad, that are currently being bandied about: islamophobia, antisemitism, racism, etc. These terms, the senses in which they are used and the strife they imply are all entrées to the site, which provides definitions but also instructional material, organized activities and reading material to reflect on.

2.5 The draft resolution on the outcome of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance held in Durban from 31 August to 7 September 2001, and on Belgium's part in it, was adopted on 18 April 2002.

Article 21. Right of assembly

1. In its concluding observations (CCPR/C/79/Add.99, para. 23) the Committee voiced concern about the distinction made in Belgian legislation between freedom of assembly and the right to demonstrate, which is excessively restricted. It recommended abolition of the distinction.

2. Article 26 of the Constitution states that "Belgians are entitled to assemble peaceably and unarmed, complying with such laws as may regulate the exercise of this right, without being required to seek prior approval. This stipulation does not apply to gatherings in the open air, which remain entirely subject to police regulations". On the basis of the Constitution, a distinction must be drawn between three types of meeting: private meetings in enclosed, covered spaces; public meetings in enclosed, covered spaces; and meetings in the open air.

3. The first two types of meeting referred to in article 26, paragraph 1, of the Constitution are not affected by the Committee's recommendation. Private meetings in enclosed, covered spaces are entirely unrestricted, and cannot be dissociated from the inviolability of the home. Public meetings in enclosed, covered spaces do not require any prior authorization (although it is possible for the administrative authorities to ban them if there are indications that public order might be at risk).

4. The gatherings in the open air covered by article 26, paragraph 2, of the Constitution,[84] however, are entirely subject to the police regulations[85] and this is regarded by the Committee as a restriction on the right established under article 21 of the Covenant. Although the Constitution protects the right of assembly, this is not an absolute right. It may be restricted in the interests of other liberties. The public highway is at the disposal of all citizens, who must be able to use it in all circumstances in complete safety (article 10 of the Constitution).

5. The Constitution thus makes the right of assembly subject to such regulatory measures as may apply. These are proclaimed in the interests of public order, not to limit the exercise of a right but as a preventive measure, to control manifestations of that right. All restrictions on freedom of assembly in the open air are grounded in the need to ensure respect for public order.

6. Article 135, paragraph 2, of the new Communes Act states that it is the task of the communes to allow inhabitants to enjoy the benefits of good policing, including cleanliness, salubriousness, safety and quiet in the streets and public areas and buildings. The communes must take care to quell breaches of the peace … and keep good order in places where many men assemble … Each commune will be held liable for offences committed with the use of open force or violence within its territory by massings or gatherings, armed or unarmed, against people or against national or private property, and for any ensuing damages.[86] This being so, the communes often use specific police regulations to make gatherings and massings subject to prior authorization. The bourgmestre can restrict the right of assembly with preventive (administrative police), regulatory (police regulation) or punitive measures.

7. Any administrative police measures to restrict the exercise of constitutional liberties must be temporary, reasonable, proportionate and be imposed for no purpose other than the maintenance of public order, to the exclusion of aesthetic, economic or moral concerns. A bourgmestre can ban an assembly only on two conditions: that public order is seriously threatened and that the police services would be unable to ensure the maintenance of public order.

8. In conclusion it should be noted that the Constitution, unlike the Covenant, distinguishes between different kinds of meetings. The right of assembly set forth in article 21 of the Covenant admits of very broad interpretation: this is why the Committee regards article 26, paragraph 2, of the Constitution as a restriction on that right. The purpose of the paragraph is not, however, to ban assemblies in the open air. It is only to make such demonstrations, if they are to be held in the open air, subject to certain regulations, namely the requirement of prior authorization, so that the authorities can exercise their right to surveillance and their responsibility in the event of civil disturbances.

9. For one thing, if the authorities withhold authorization they can do so only on grounds of a concern for maintaining public order. For another thing, the authorities must abide by strict conditions in applying any measures to ban demonstrations. They must ensure that the ban falls well within the defining limits of possible civil disturbances.

10. The power of the communal authorities to take such steps as are necessary to keep the peace and maintain public order is not incompatible with the exercise of the liberties guaranteed by the Constitution and the Covenant. In this sense, article 26, paragraph 2, of the Constitution merely conforms to article 21 of the Covenant, which condones restrictions on the right of assembly where these are necessary for national security, public safety, public order, or to protect public health or morals or the rights and freedoms of others.

11. In a ruling handed down on 18 May 1988, the Court of Cassation[87] stated that: "... commune regulations passed in accordance with the law which restrict freedom of assembly in the interests of order, citizens' safety and peace and quiet violate neither article 11 of the Human Rights Convention nor article 21 of the International Covenant on Civil and Political Rights".

12. Lastly, there is no flat ban on meetings, for that would imply that meetings could never be held without prior authorization. The commune council is not required to make gatherings in the open air subject to prior approval from the bourgmestre. In the absence of regulations on the subject, there is no need to seek authorization before holding a meeting, even though the bourgmestre still has jurisdiction to ensure the maintenance of public order.

13. Neither is there any ban on assembly, since not all open-air gatherings are apt to threaten public order. A distinction must be drawn between the right of peaceful assembly and the right to demonstrate, since demonstrations can in certain cases degenerate and lead to incidents or civil disturbance. Such measures as are taken may never be other than temporary, tailored to each case and justified by the circumstances prevailing at the time.

Article 22. Freedom of association

In addition to the information given in the third periodic report (CCPR/C/44/Add.3), note should be taken of the following.

1. Union status of police personnel

Since 1 January 2001 the members of the former police forces (judicial and communal) have no longer been covered by the Act of 19 December 1974 governing relations between the public authorities and the unions of workers employed by those authorities: they and the members of the old gendarmerie now have a different union status as provided for by the Act of 24 March 1999 on relations between the public authorities and the union organizations of police personnel (for the Act and its implementing decrees, see Annex XII). This change is due to the reform of the former police services, which have been replaced by a Federal police service and local police forces.

2. Exercise by the police services of the right to strike

Article 126 of the Act of 7 December 1998 organizing an integrated, two-tier police force governs the exercise of the right to strike. This is subject to two preliminary requirements: submission of prior notice of a strike, and negotiations within the Police Personnel Negotiating Committee. The procedural arrangements are laid down in a Royal Decree dated 23 December 1998 on the implementation of article 126 of the 1998 Act. The competent authorities can decide which functions are vital to the maintenance of a minimum service, and can order police staff exercising or wishing to exercise their right to strike that they must continue or resume working.

3. Trade union representation[88]

The Act of 15 January 2002 amended the rules on representativeness conditions and criteria used to determine which union organizations can sit on sectoral committees, special committees and separate special committees and the corresponding joint committees (article 8 of the 19 December 1974 Act on relations between the public authorities and unions of workers employed by those authorities). The amendment makes the inter-occupational nature of trade union organizations even more of a central point than in the past for ensuring representativeness on the sectoral, special and separate special committees. Following the amendment, the trade union organizations sitting on the Federal, Community and Regional Public Services Committee (Committee B) and the Provincial and Local Public Services Committee (Committee C) are regarded as representative for the purposes of sitting on sectoral, special and separate special committees. Formerly, organizations sitting on Committee B or Committee C had access respectively to all sectoral committees or all special and separate special committees if they could show that they represented at least 10 per cent of the staff of the entire Federal, Community and Regional public services or all the provincial and local public services, as appropriate.

The Act of 15 January 2002 did not amend the provisions in the Act of 19 December 1974 (art 8, para. 1, subpara. 1, and para. 2, subpara. 2) allowing a union organization that does not meet the representativeness conditions for sitting on Committee B or Committee C to sit on a sectoral, special or separate special committee if it is defending the interests of all categories of personnel in the services covered by the committee concerned, is affiliated to a union organization established as a national umbrella body, has a dues-paying membership representing at least 10 per cent of the personnel of the services covered by the committee, and has the largest number of dues-paying members among the trade union organizations other than those meeting the representativeness conditions for sitting on Committee B or Committee C.

Article 23. Protection of the family

A number of legislative initiatives on the protection of the family have taken place since the previous report.

1. Act of 23 November 1998 instituting legal cohabitation

The Act of 23 November 1998 (*Moniteur belge*, 12 January 1999), which took effect on 1 January 2000, instituted legal cohabitation (articles 1475 to 1479 of the Civil Code): the shared living arrangements of two people who make a declaration of legal cohabitation. The declaration is made in writing to the civil registrar for the area where they have their shared domicile; the registrar acknowledges it with a receipt. The two parties must be capable of entering into a contract and must not be bound by marriage or other legal cohabitation arrangements. The civil registrar checks to see whether the two parties meet the legal conditions and, if so, enters the declaration into the population register. Legal cohabitation ends when one of the two parties marries, dies or either or both parties so decide. Protection of the family home is governed by the Civil Code. Legal cohabitants must contribute towards the expenses of their life together in accordance with their abilities, and all debts contracted by either one - other than debts disproportionate to the cohabitants' resources - to meet the needs of their life together and any children they raise are equally binding on the other. If relations between cohabitants are seriously strained, either one may apply to the justice of the peace, who will order urgent, temporary measures for a defined period of time regarding the occupation of the common home, the cohabitants, children and their property, and the legal and contractual obligations of the two cohabitants. The same applies in the event of interruption of life together for a limited period.

2. Amendments to the Civil and Judicial Codes regarding divorce

The Act of 16 April 2000 amending article 232 of the Civil Code and articles 1270 bis, 1309 and 1310 of the Judicial Code as regards divorce on grounds of de facto separation (*Moniteur belge*, 19 May 2000) took effect on 29 May 2000; it reduces from five to two years the length of de facto separation required before one can apply for divorce on such grounds. It also reduces to two years (from three previously) the length of time after which separation can be converted into divorce.

3. Mediation in family matters

The Act of 19 February 2001 on mediation in family matters during the course of judicial proceedings (*Moniteur belge*, 3 April 2001) is due to take effect on 1 October 2001; it introduces mediation in family matters during the course of judicial proceedings (Judicial Code, art. 734 bis to sexies). This is a means of conflict resolution based on cooperation among the parties who agree, in the course of proceedings already in train, to the appointment of a third party - a neutral individual whose involvement is confidential - as mediator. The court takes cognizance of a petition regarding the obligations stemming from marriage or filiation, the spouses' respective rights and duties, the effects of divorce, parental authority, legal cohabitation or de facto cohabitation. The objective is to reach partial or complete agreement. In the event of partial or complete agreement, and having sought the opinion of the Crown Procurator pursuant to the law, the court will check whether the interests of the children are protected. The justice of the peace can take any action required to ascertain the family situation, moral and physical circumstances of a minor and the conditions in which the minor is living.

4. Other amendments relating to divorce

The Act of 30 June 1994 amending article 931 of the Judicial Code and the provisions on divorce (*Moniteur belge*, 21 July 1994), combined with the Act of 20 May 1997 amending the Judicial Code and the Civil Code as they relate to divorce proceedings, has completely recast those procedures with a view to simplifying them and rendering them more compassionate (see Annex XIII for details of the procedures and arrangements for protecting children in the event of dissolution of a marriage).

5. Same-sex marriages

Proposed legislation permitting marriage between persons of the same sex and amending certain provisions of the Civil Code was put before the Senate on 28 May 2002 (Doc. parl., Sénat, session 2001-2002, 2-1173/1, see Annex XIII). The Senate voted the text through on 28 November 2002 and forwarded it to the Chamber of Representatives. It was adopted by the Chamber of Representatives Justice Committee on 14 January 2003.

6. Marriages and divorces since 1995

Figures from the National Statistical Institute reveal the following:

	1995[a]	1996[a]	1997	1998	1999
Marriages	51 402	50 552	4S7 759	44 393	44 198
Divorces	34 983	28 402	26 748	26 503	26 489

[a] The greater numbers of divorces in 1995 and 1996 are partly due to the entry into force on 1 October 1994 of the Act of 30 June 1994 amending article 931 of the Judicial Code and the rules on divorce proceedings, which made such proceedings quicker and easier.

7. Limits on the right to marry

7.1 The right to marry and residence entitlement

There is no connection between the right to marry and an illegal alien's residential status. The circular dated 11 July 2001 is emphatic: an illegal alien can contract marriage in Belgium. The right to marry does not, however, exonerate the illegal alien from the entry conditions laid down in article 2 of the Act of 15 December 1980 on Access to Belgian Territory, Residence, Establishment and Removal of Foreigners.

On the question of residence, attention is drawn to the fact that, when applying for residence under article 10, subparagraph 1.1 or 1.4, or article 40, paragraphs 3 to 6, of the Act of 15 December 1980, the papers required for entry into Belgium must be submitted. This means, in concrete terms, that an alien must be in possession of a valid national passport or equivalent to travel document bearing, where appropriate, a visa or equivalent authorization valid for Belgium. If an alien cannot supply these entry papers, his or her application for residence will normally be declared inadmissible.

7.2 Prevention of marriages of convenience

7.2.1 Act of 4 May 1999 amending certain provisions on marriage

The Act of 4 May 1999, published in the *Moniteur belge* on 1 July 1999 and in effect since 1 January 2000, amends certain provisions on marriage.[89] The publication of banns has been replaced by an official declaration of marriage (Civil Code, art. 63).[90] Article 64 (new) of the Civil Code lists the papers to be submitted to the civil registrar on the part of each of the spouses.

The new law affords the civil registrar legal grounds for refusing to celebrate a marriage. Article 167 of the Civil Code says that a registrar can refuse to celebrate a marriage if it transpires that the prescribed conditions have not been met or if he or she believes that to do so would be contrary to the principles of public order. If there is a strong presumption that the requisite conditions have not been met, the registrar may defer the marriage, where appropriate after obtaining the opinion of the Crown Procurator of the judicial district in which the applicants intend to marry, for a maximum of two months following the applicants' chosen date for the marriage so as to carry out further investigations. If the registrar has come to no final decision within the prescribed period, he or she must celebrate the marriage even if the maximum waiting period (six months) has expired. If a civil registrar declines to celebrate a marriage, the parties concerned have a month to appeal before the court of first instance.

Lastly, provision is made for marriages contracted with a view to benefiting in terms of residential status. No marriage exists when, even if formal undertakings to that end have been given, a combination of circumstances makes it plain that the objective of at least one of the spouses is not to establish a lasting relationship but merely to benefit in terms of residential status from the other spouse's status (Civil Code, art. 146 bis). Any marriage entered into in breach of the new regulations can be challenged - by the spouses themselves, by any interested party, or by the public prosecutor (Civil Code, art. 184).

7.2.2 Minister of Justice and Minister of the Interior circulars

Further to the Act of 4 May 1999, the Minister of Justice issued a circular on 17 December 1999[91] clarifying a number of points about the papers to be furnished to the civil registrar and the registrar's decision not to draw up the official declaration if the interested parties fail to produce the papers listed, the registrar's decision not to celebrate the marriage if it transpires that the requisite conditions have not been met or if the registrar is of the view that celebrating the marriage would be contrary to the principles of public order, and the specific grounds for declaring fictitious marriages void.

The circular points out that marriage is protected under article 12 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and article 23 of the International Covenant on Civil and Political Rights, and is not contingent on the residential status of the parties concerned. It adds that a civil registrar cannot refuse to draw up the official declaration and celebrate a marriage solely on the grounds that an alien is in Belgium illegally.

On 11 July 2001, the Minister of the Interior issued a circular on the papers to be submitted in order to obtain a visa for the purpose of contracting marriage in Belgium or obtaining a family-reunification permit following a marriage abroad.[92] This must be read in conjunction with the circular dated 17 December 1999 from the Minister of Justice. It confirms that the right to marry an illegal alien is guaranteed. Its purpose is to provide some clarifications on the consequences of the new marriage procedure in Belgium, on applications for residence by foreign spouses and, as above, on the papers to be submitted.

On 25 July 2002, the Court of Justice of the European Communities found against the Council of State in an appeal to have the circulars of 28 August 1997 and 12 October 1998 struck down. The Court held that the circulars were contrary to a number of European directives on freedom of movement and freedom to settle. The Minister of the Interior thereupon issued a circular dated 21 October 2002 (*Moniteur belge*, 29 October 2002) partially rescinding the circular of 28 August 1997 and wholly rescinding that of 12 October 1998.

In short, an illegal (non-European Union) alien who marries someone legally resident in Belgium no longer needs to return to his or her country of origin to apply for a family reunification visa. Application for residence can validly be made in Belgium. For more details, see the text of the circular.

8. Initiatives in the Flemish Community

A number of initiatives have been taken in the following areas (for more details, see Annex XIII).

(a) The Flemish long-term-care insurance scheme, launched on 1 October 2001, under which people facing a long period of severely reduced independence can have the costs of care and non-medical services - up to a yearly maximum amount - met by an insurance scheme;

(b) Educational support (see decree dated 19 January 2001 on the organization of educational support activities with a view to the optimal development of children and young people by providing financial backing for entrepreneurs offering educational support activities);

(c) Comprehensive family support;

(d) Home care (see decree dated 14 July 1998 approving and granting subsidies to social welfare associations and entities for home-care-related purposes).

Article 24. Protection of the child

The Committee is referred to the second periodic report on the rights of the child (CRC/C/83/Add.2) and the oral presentation given in Geneva on 23 May 2002 (CRC/C/15/Add.178). Some points do, nevertheless, deserve repetition in this report and its annexes (see Annex XIV, overall policy context for the rights of the child in the Flemish Community).

1. New constitutional provision

On 23 March 2000 the Belgian Parliament passed a new constitutional provision (art. 22 bis) on the rights of the child with a view to guaranteeing respect for children's moral, physical and sexual integrity as recommended by the National Commission against Sexual Exploitation of Children. Given growing violence against children and others, it was important to affirm the right to non-violent relations in the country's basic law as a democratic expression of the desire to affirm the importance of that right.

Various international provisions, among them articles 2 (right to life) and 3 (prohibition of torture and inhuman or degrading treatment or punishment) of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 and the Convention on the Rights of the Child of 20 November 1989, are directly applicable in Belgian law; still, it was thought appropriate to add them in more general terms to the Constitution and list them among Belgians' fundamental freedoms. The new provision gives concrete expression to the desire to acknowledge that children have rights under the Constitution; the Communities are required to uphold this principle in their decrees.

2. Protection against sexual exploitation

In order to strengthen the protection of children, in particular against the various forms of sexual exploitation, an Act on the protection of minors under the criminal law was adopted on 28 November 2000 (*Moniteur belge*, 17 March 2001). This Act, which entered into force on 1 April 2001, introduced various amendments to the Act of 13 April 1995 on provisions to prosecute and punish trafficking in human beings and child pornography. A number of elements are taken into account. The Act on the protection of minors under the criminal law includes provisions strengthening the protection of children against the various forms of sexual exploitation, abduction, neglect and abandonment. It revises and seeks to rationalize penalties and aggravating circumstances related to the age of the victim in cases of sexual abuse and serious ill-treatment. Worthy of note is the introduction of a specific article on the sexual mutilation of women and young girls, which clearly lays down that such practices are inadmissible and allows for the possibility of fitting punishment.

The Act also extends the notion of trafficking in human beings to cover exploitation of a victim's minor status; it extends to minors aged 16-17 the protections provided for those under 16 in the areas of exploitation of debauchery, prostitution and child pornography. It is also intended to continue efforts to prevent recidivism by sex offenders. It clarifies and tightens up the arrangements prescribed by the Act of 13 April 1995 concerning sexual abuse of minors which ban persons convicted of immoral acts from working in any area involving children, and extends the requirement of a prior opinion from a specialized sex offender counselling and treatment service, and supervision of the counselling or treatment received by the individuals concerned, to circumstances other than release on parole.

The better to take account of changing family arrangements, the Act enlarges the coverage of the existing aggravating circumstance - violence committed by parents against their minor children - to encompass the actions of any adult who cohabits occasionally or habitually

with the victim. It institutes a limited, conditional right to speak out for those normally bound by professional codes of confidentiality in order to afford minors better protection against ill-treatment and abuse. The principle of extraterritoriality, which is intended, inter alia, to allow prosecution of "sex tourism" and human-traffic networks, has been made more flexible with the withdrawal of the requirement that criminal proceedings must be instituted in both countries concerned, and now covers immoral acts against minors aged over 16.

Lastly, the Act contains specific wording on the subject of audio-visual recordings of hearings for when minors who have suffered or witnessed a variety of offences must testify. A recording may be ordered by the Crown Procurator or the examining magistrate if a child has suffered or witnessed rape, indecent assault, corruption of minors, pimping, child pornography or deliberate assault. The recording can be produced in court instead of the minor being present to testify. The Act specifies who is authorized to conduct and attend such hearings, and defines the legal standing of the recorded cassettes. A ministerial circular giving effect to the principles set out in the Act was issued on 16 July 2001, standardizing the use made of audio-visual recordings when testimony is taken from minors.

3. Child abuse

A working group on child abuse was set up in November 1998 and is still in operation. As child abuse falls within the realm of welfare, psychology and medical care as well as the law, the initial purpose of the group was to define the missions, defining characteristics and limits of each realm clearly. The group is now considering possible concrete action to improve cooperation between the two with a view to dealing more effectively with the phenomenon of abuse: guidelines on criminal policy, administrative instructions, cooperation agreements and changes to legislation.

3.1 A cooperation agreement on aid to victims between the State and the Flemish Community was approved by decree dated 15 December 1998. It calls for harmonization and collaboration among the three sectors concerned, namely the Flemish Community as regards victim help centres, the Ministry of Justice as regards dealings with victims by public prosecutors' offices and the courts, and the Ministry of the Interior as regards police services. Under article 9 of the agreement, the police, public prosecutors' office and court personnel are required, when they come across minor victims of domestic abuse or violence, to steer them towards a centre for abused children or to give them the name and telephone number of the nearest centre if they refuse to get in touch with one directly.

Since 15 March 2001, the Flemish Minister of Social Assistance, Health Policy and Equal Opportunities has been sponsoring a child-assistance project at welfare centres which are also responsible for providing aid to victims. The project has the following operational objectives:

(a) To give the target group of child victims of crimes and lethal road accidents and/or their close relatives the recognition they need;

(b) To organize a first line of legal assistance for this target group;

(c) To prevent the children from being labelled "psychiatric cases";

(d) To give paid workers and volunteers helping victims the skills they need to support the children, both individually and as a group;

(e) To make parents aware that children can also react normally to abnormal situations;

(f) To alert teachers, teaching them to recognize children's signals and guide them appropriately;

(g) To investigate the issue of surviving children;

(h) To set up a pilot discussion-group project with the children in collaboration with existing parents' associations.

In late 2001 the project led to the publication of a booklet entitled *Kinderen slachtoffer van een schokkende gebeurtenis* ("Child victims of traumatic events"), which seeks to draw attention to the process by which children can get over traumatic experiences and to propose a method for people working or living with such children.

3.2 On 16 March 1998 the French Community adopted a decree on aid for abused children which is intended in part to prevent sexual abuse of children and provide aid for victims. By decision dated 8 June 1998, the Government of the French Community established the Observatory on Children, Youth and Assistance to Young People. The Flemish Community set up a Commission on the Rights of the Child by decree dated 15 July 1997.

4. The Internet

The Act of 28 November 2000 on computer crime (*Moniteur belge*, 3 February 2001) contains new measures relating to investigations and evidence-gathering in connection with all crimes (including sexual abuse involving children) committed by means of or over the Internet.

5. Guardianship

The Act of 29 April 2001, which took effect on 1 August 2001, reformed Belgium's rules on guardianship as laid down in articles 389 to 475 of the Civil Code and 1232 to 1237 of the Judicial Code. The main features of the reform are: retention of parental authority in the event of both parents dying; abolition of the family council (but close family may be consulted when necessary); greater responsibilities for the justice of the peace; appointment of the guardian by the justice of the peace, with due regard for the circumstances of the case and the interests of the minor; establishment of the right to decline guardianship; modernization of administrative arrangements; greater responsibility for the tutor-dative; and greater regard for the person of the minor.[93] Guardianship is now established if both father and mother are dead, legally unknown or incapable, other than for a brief period, of exercising parental authority. The minor is more closely involved in the establishment and operation of the guardianship arrangements. From the age of 12 on, he or she is given a hearing in proceedings relating to him or her personally, and from 15 onwards, in proceedings concerning his or her property. The interests of the child are a

priority. If they so dictate, the justice of the peace may order guardianship to be transferred from the place of the child's domicile to that of the guardian's domicile or residence. The justice of the peace may take any action necessary to ascertain the minor's family, moral and physical circumstances and living conditions.

6. Repeal of provisions on declaration of abandonment and transfer of parental authority

The Act of 7 May 1999 repealing declaration of abandonment and transfer of parental authority (*Moniteur belge*, 29 June 1999) took effect on 9 July 1999. Under the former article 370 bis of the Civil Code, the juvenile court could declare that a child in whom the parents manifestly took no interest and who had been taken in by a person or institution was abandoned. The court appointed a guardian to see to the child's adoption. Alternatively, if a child's parents manifestly took no interest in it the court could, without declaring the child abandoned, entrust it to a family member who offered to take it in or declared a wish to adopt it (Civil Code, former article 370 ter). Children declared abandoned or entrusted to a relative could be adopted without the consent of their fathers and mothers and without the parents' views being sought. As these provisions did not accomplish their intended objective (encouraging the adoption of children placed in institutions), they were repealed by the Act of 7 May 1999.

7. Adoption reform

On 17 July 2001 the Government submitted a bill on adoption reform (Doc. parl., Chambre, session 2000-2001, Nos. 1366/001 and 1367/001) to the Chamber of Representatives. The Chamber plenary voted it through on 16 January 2003. The bill is designed to recast adoption as set forth in articles 343 to 370 of the Civil Code. The reform has two objectives:

(a) To amend Belgian law so as to permit the implementation of the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption of 29 May 1993;

(b) To close certain loopholes in the current law, modernize the right of adoption and add some new features (see, in Annex XIII, a number of rulings in adoption cases finding violations of constitutional provisions. The situations to which they refer will be taken up in the bill). The new features include allowing adoption by unmarried, unrelated individuals of opposite sexes with a permanent emotional attachment who have been living together for at least three years at the time when adoption proceedings commence; the stipulation that the adoption of a child must be grounded in the best interests of the child as assessed in the light of children's basic rights enshrined in international law; a requirement that the biological parents must be informed of the consequences of their assent and the adoption, and given advice and information about ways of solving the social, financial, psychological and other difficulties with which their situation confronts them; the introduction of an assessment by the competent court of the skills and suitability of would-be adoptive parents - in the case of intercountry adoptions, this assessment is part of a separate set of proceedings from the adoption proper; a requirement that would-be adoptive parents must be given some preparation before their suitability is assessed; abolition of the act of adoption and the official endorsement procedure in favour of a single judicial procedure handled by the juvenile court in the case of minors and the court of first instance in the case of adults; the lowering to 12 years of the age at which a child must consent

to its adoption and particular attention must be paid to its views; allowing, in cases of single adoptions, the adoptee's surname to be preceded by that of the adoptive parent; a clarification of the effects of full adoption of a child by a parent's new spouse or live-in partner; allowing a person to be adopted again after a single or joint adoption if there are very serious grounds for doing so; and the introduction of adoption review (for single or joint adoptions), a procedure allowing adoption to be terminated if especially serious circumstances (kidnapping, sale or trafficking in children) are demonstrated or the interests and rights of the adopted child have clearly been spurned.

It should be made clear that the Community services will be consulted during the court's social investigations. The jurisdiction of the Communities in matters of training for adoptive parents and post-adoption follow-up is to be extended.

8. Foreign minors

The issue of foreign minors[94] arriving in Belgium unaccompanied by a legal representative (father, mother or guardian) has become very alarming in just a few years.

8.1 Unaccompanied foreign minors not seeking asylum

Not all unaccompanied minors necessarily apply for asylum. If they do not, they either make an application under the Act of 15 December 1980 on the entry, temporary and permanent residence and removal of aliens, which is not for asylum (e.g. seeking residence on the grounds of family reunification, guardianship or adoption) or request application of the service note of 1 March 2002 on the handling of case files relating to residence by unaccompanied minors.

8.2 Unaccompanied foreign minors seeking asylum (compliance with articles 2 and 3 of the Convention on the Rights of the Child)

Although there are not at present any regulations dealing specifically with minors seeking asylum, or more particularly unaccompanied foreign minors, it must be understood that minors are treated differently when their asylum requests are considered.

An application for asylum from an unaccompanied foreign minor is taken up as a matter of priority by an official specializing in registrations, interviews and decisions involving minors. When the minor is interviewed, the examiner adapts the way the questions are asked and the interview methods used (drawings, etc.) to suit the minor's age, discernment and maturity, using a special question form. If the minor is not of an age to be able to express its feelings, information is sought from the individuals accompanying and looking after it.

Officials at the Aliens Office and the Office of the Commissioner General for Refugees and Stateless Persons (CGRA) assigned to handle minors' cases have been given training in the problems associated with unaccompanied foreign minors and how to handle their applications. CGRA officials have also been trained in interview techniques and in the minors' psychology and intellectual development. Aliens Office personnel will take the same training courses

in 2002. With a view to providing more thorough training for these specialized officials, CGRA and the Aliens Office will put on a training course in 2002 on minors' sociocultural backgrounds. It should also be understood that the officials have been given specific notes and prompt-cards on the points to be taken into consideration when they conduct interviews and take decisions relating to minors.

Minors are assisted by interpreters whenever necessary. They are told what their situation is, and what kind of proceedings are taking place. Account is taken of their discernment and maturity at the various stages of the asylum proceedings. A minor may be accompanied by any member of a host family or extended family. This individual is not present at the interview, but is interviewed as an accompanying adult so that his or her reliability may also be assessed. In the event of doubts as to the genuineness of alleged family ties, the administration can call on the authorities responsible for the protection of minors to check how genuine the ties are and, if they prove false, take steps for the minor's protection. If the minor is accompanied by a legally appointed guardian, the guardian is entitled to be present when the minor is interviewed unless the minor expresses a wish to the contrary.

It should be understood that the CGRA Coordinator and specialist officials contact the specialist staff at the Refugee Office (asylum proceedings) or the Unaccompanied Minors Office (handling unaccompanied minors' residence files, checking on the placement situation of minors in Belgium, tracking down their families, cooperating with the police and judicial authorities and Child Focus in inquiries involving minors), and vice versa, for information about minors' circumstances.

8.3 Guardianship of unaccompanied foreign minors

Belgium is currently setting up a specific regime for the representation of unaccompanied foreign minors. Title XIII of the framework legislation of 24 December 2002 includes a chapter 6 entitled "Guardianship of unaccompanied minors" (see Annex XIV), whose entry into force depends on the passage of a Royal Decree. The objective is to bring Belgian law into line with the resolution passed on 26 June 1997 by the Council of the European Union (JOCE, 19 July 1997, C221/23-26). The legislation calls for the creation within the Ministry of Justice of a Guardianship Service responsible for overseeing specific guardianship arrangements for unaccompanied foreign minors who are applying for refugee status or are in Belgium or on the border without the requisite permits, access or residence papers. Among other things, the Service will be required to check whether a minor meets the legal conditions for being afforded protection and, if so, to appoint a guardian for him or her. The authorities must give priority to processing applications, given minors' special needs and vulnerability, and the best interests of the minor must be a prime consideration. The guardian appointed will be responsible for representing the minor in all legal transactions and proceedings required by law for aliens entering, residing, settling in and departing from Belgium. He will also have specific authority to attempt to trace the minor's family. He will make all appropriate suggestions in seeking a long-term solution in the child's interests. The guardian will perform his duties under the supervision of the Guardianship Service and the justice of the peace.

8.4 Unaccompanied minor victims of trafficking in human beings

Unaccompanied minor victims of trafficking in human beings are subject to the circular dated 7 July 1994 on the issuance of residence permits and occupation (work) permits to foreign victims of trafficking in human beings and the guidelines of 13 January 1997 to the Aliens Office, public prosecutors' offices, police services, welfare law inspectorate and welfare inspectorate on aid to victims of human trafficking.

It should be understood that minor victims of trafficking in human beings are a constant source of concern, both because of their steadily rising numbers and because of the networks in which some of them end up. A survey by the International Organization for Migration (IOM), *Trafficking in unaccompanied minors for sexual exploitation in the European Union*, describes in detail this problem as currently encountered in Belgium, the Netherlands, Germany and Italy. On the ground, prostitutes are becoming visibly younger, although Belgium can take advantage of relatively good legislation on the subject (including the Act of 13 April 1995 containing provisions to combat the traffic in persons and child pornography, the Act of 13 April 1995 concerning sexual abuse of minors and the aforementioned circular of 7 July 1994 and guidelines of 13 January 1997).

The better to protect unaccompanied foreign minors from trafficking networks, those operating in this area (including Child Focus and the Brussels Public Prosecutor's Office) are arguing for specific regulations on such minors to be drafted, for magistrates and police officers to be given training on the regulations governing human trafficking and the problem of unaccompanied foreign minors, and for the creation of special reception centres run by the three specialized reception centres to make good the shortcomings in reception and staffing at the existing facilities. The new centres should, it is thought, provide minors with socio-psychological care and offer legal assistance if their interests have to be defended in judicial proceedings; their ultimate objective should be the reabsorption of the individuals concerned into society, either in Belgium or in their home countries.

9. International kidnapping of children

Being particularly alert to the difficult question of international kidnappings of children, the Department of Justice has promoted concerted action both internationally (Hague Conference on International Private Law, Council of Europe, European Union) and nationally (priority treatment for applications, monitoring of Belgian and foreign case law and practice, cooperation among the various Belgian entities involved) to boost efforts to combat the phenomenon. Rapid pooling of information, cooperation over procedures (civil, criminal and diplomatic) and collaboration among the various parties dealing with international kidnappings (the Ministry of Justice, judicial authorities and lawyers, the Ministry of Foreign Affairs, police services, Child Focus) appear to be becoming major focuses of Ministry of Justice action.
On 28 November 2001, for example, the Ministry of Justice, the Prosecutors' Association and Child Focus signed a new protocol governing cooperation between Child Focus and the judicial authorities and by Child Focus and the judicial authorities with the Ministries of Justice and Foreign Affairs in cases of international kidnapping of children. The protocol calls for systematic reciprocal exchanges of information among the bodies concerned and collaborative meetings on individual cases.

The protocol also calls for the Ministry of Justice to request the Prosecutors' Association to designate one reference magistrate per Court of Appeal catchment area or even per judicial circuit to deal with international kidnappings of children. Appointing magistrates on the ground, close to events, who can relay concerns about international family relations to all their colleagues dealing with the housing and personal relations of children from broken homes, seems preferable to centralizing authority in a special-purpose tribunal far removed from concrete situations and judicial practice.

Increased cooperation among all those involved will also make it possible to develop an integrated databank, since the Ministry of Justice has since 1998 kept accurate, up-to-date statistics on the situations it deals with.

10. Conformity of Belgian legislation with the Convention against Torture

It should be pointed out that the Act to bring Belgian legislation into line with the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984 also reformed the Criminal Code, adding new, explicit crimes of torture, inhuman and degrading treatment.

11. Action at the international level

Reference should be made to the adoption, at Belgium's urging while it held the Presidency of the European Union, and based on the encouraging results obtained by Child Focus, of a resolution by the 15 Union member States to promote cooperation among police services, judicial authorities and non-governmental organizations working on the ground to trace disappeared or sexually exploited children.

On the subject of the European approach to the sexual exploitation of children, child pornography and standardized definitions of offences and the related penalties, reference may be made to the draft framework decision that was under negotiation. Belgium as President of the Union always gave this draft the priority it needed in the relevant European working group and within the Article 36 Committee and the Justice and Home Affairs Council. The negotiations resulted in agreement on definitions only. The work will be pursued with the same vigour under the Spanish Presidency.

The following should also be noted:

(a) The ratification on 8 May 2002 of ILO Convention No. 182, Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, done at Geneva on 17 June 1999 (German-language Community: ratification by decree dated 8 October 2001);

(b) The ratification on 6 May 2000 of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict of 25 May 2000.

Lastly, Belgium intends to ratify other international instruments:

(a) The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography: Belgium signed this on 6 September 2000, and ratification is in progress;

(b) The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, which supplements the United Nations Convention against Transnational Organized Crime: Belgium signed this on 12 December 2000, and ratification is in progress.

Article 25. Right to participate in public affairs

1. Right of foreign nationals to vote and stand for election

In accordance with the obligations of the member States of the European Union under the Treaty of Rome and the directive adopted by the Council of the European Union on 19 December 1994, Belgium had to adapt its domestic legislation in order to enable foreign nationals of another member State to take part in local elections.

The incorporation of this directive into domestic law required an amendment of article 8 of the Constitution, which was done on 11 December 1998[95] so as to allow nationals of European Union member States to vote and stand in elections to the European Parliament and local elections as required by article 8 B of the Treaty on European Union.

The Act of 27 January 1999[96] established the right of nationals of European Union member States to vote and stand as candidates in the communal and district council elections held on 8 October 2000. The new wording of article 8 of the Constitution expressly states that the right to vote may be extended by law to foreign residents of Belgium who are not nationals of a European Union member State.

A bill to give the right to vote in communal elections to non-European foreigners was rejected by Parliament after a lively debate in January 2000.

2. Public grants to political parties

See above, comments under article 20 of the Covenant.

3. Electronic voting

Since the introduction of electronic voting, steps have been taken to boost voter confidence in the system:

(a) The Act of 18 December 1998[97] established a college of experts, appointed by the various legislative bodies, to verify electoral operations conducted electronically;

(b) The Act of 12 August 2000[98] now permits voters to see their votes after confirmation;

(c) In 1998 it was decided to extend electronic voting to roughly 3,250,000 voters, 44 per cent of the electorate. The system was used for the elections to the European Parliament, the Chamber of Representatives, the Senate and the Regional Councils on 13 June 1999, and for the municipal and provincial elections on 8 October 2000.

4. Access to jobs in the civil service

The federal, community and regional civil services are open to citizens of the European Union on the same conditions as to Belgians, apart from the conditions relating to respect for the exception made in article 48, paragraph 4, of the Treaty of Rome of 25 March 1957. Given the vagueness of the notion of an exception, however, the Regional Ministers responsible for the civil services have sent interpretative circulars to their respective administrations (see Annex XV): circular WEL-97/04, dated 25 June 1997, of the Government of the Flemish Region; the circular dated 18 December 1997 of the Government of the Brussels-Capital Region; and the circular dated 1 March 1999 of the Government of the Walloon Region.

The Centre for Equal Opportunity and Action to Combat Racism, in collaboration with the public authorities concerned, has produced a brochure, *L'accès des étrangers à la fonction publique* ("Access to the civil service for foreigners") for Federal, Regional, Community and communal departments, and a leaflet, *Fonctionnaires de nationalité étrangère, c'est désormais possible* ("Foreigners in the civil service, it is now possible") for the benefit of foreign nationals (see Annex XV).

4.1 Relaxation of nationality requirements in the Brussels-Capital Region

In accordance with its authority, the Government of the Brussels-Capital Region issued an order on 11 July 2002 which was voted through by the Regional Council on 5 July 2002 and took effect on 2 August 2002, relaxing the nationality requirements for access to jobs in the regional civil service. The order settles a matter raised in article 39 of the Belgian Constitution. Article 2 of the order reads: "Citizens of other than Belgian nationality who are not nationals of the European Union or the European Economic Area may be admitted, in the services of the Government of the Brussels-Capital Region and the public-law legal entities dependent thereon, to civilian offices not requiring, directly or indirectly, the exercise of public authority, and to positions not concerned with safeguarding the general interests of the State or other public authorities."

For the time being, the Brussels-Capital Region is the only one to have taken such an initiative. The Federal, Flemish, Walloon and Community civil services are still open only to nationals of a European Union member State on the same conditions as to Belgians, apart from the conditions relating to respect for the exception mentioned above.

5. Emergency medical care

5.1 Preamble

The concept of emergency medical care was introduced into the Belgian legal order by Royal Decree dated 12 December 1996 (see Annex XV), which is based on article 57,

paragraph 2, of the Public Social Welfare Centres (Organization) Act of 8 July 1976. Article 1 of the Act of 8 July 1976 states that "Everyone is entitled to social welfare. The aim of social welfare is to permit everyone to live in a manner befitting the dignity of the human person", making no distinction between foreigners from the European Economic Community, foreigners from outside the Community, and Belgian nationals. Article 57, paragraph 1, of the Act also says that "The task of the public social welfare centre is to provide individuals and families with the assistance due from the local community. The centre not only provides palliative or curative help but also preventive assistance. The help provided may take the form of material aid or social, medical, medical-cum-social or psychological assistance."

The Act of 30 December 1992 split article 57 into two paragraphs, one establishing the general rule, the other governing assistance to illegal aliens, which is restricted to emergency medical care.

5.2 Current situation

The Royal Decree of 12 December 1996 (*Moniteur belge*, 31 December 1996) on emergency medical care provided by public social welfare centres to aliens illegally in the country defines what is to be understood by "emergency medical care" and describes what action the State may take. It has been in effect since 10 January 1997. It emphasises the strictly medical nature of the care and specifies that it may be provided either on an outpatient basis or in a care establishment, and covers preventive and therapeutic care. It also says that a medical certificate alone will attest to the urgency of the care, that such a certificate may be drawn up by any approved medical practitioner, and that the doctor alone can assess whether the care is urgent.

To receive emergency medical care, two conditions must be met: the alien must be in the country illegally, and must be in straitened circumstances, the latter point being determined by decision of the public social welfare centre concerned. The costs of the emergency care will be reimbursed within limits laid down in article 11, paragraph 1, of the Act of 2 April 1965 on the costs of assistance provided by public social welfare centres, i.e. within the limits of the care and medical supplies on the official lists of the National Health and Disability Insurance Institute (INAMI).

Three circulars (see Annex XV) provide the context for the Royal Decree of 12 December 1996: one relates to public social welfare centres, one to doctors, dentists, nurses, midwives, physiotherapists and health-care institutions, and the third to pharmacists.

Although the Royal Decree and circulars represent a considerable improvement for the individuals concerned, it must be said that they are not seen in the same light by those who prescribe and dispense care, nor by the public social welfare centres. This may create problems on the ground and discrimination against people seeking emergency medical care, depending on the commune they live in. To deal with these problems and the questions raised by the professionals in the sectors concerned, the Centre for Equal Opportunity and Action to Combat Racism and several non-governmental organizations have jointly petitioned the Minister for Social Integration for a clarification of the circulars, for all concerned with the provision of

emergency medical care to be informed, and for the public social welfare centres to standardize their practice on the subject. The Minister has undertaken to produce a draft circular with a view to clarifying the notion of emergency medical care.

Article 26. Prohibition of all discrimination

See comments under articles 2 and 3 of the Covenant.

Article 27. Minorities

1. Ethnic minorities

The French and Flemish Communities are, broadly speaking, pursuing policies of integration and of action to combat racism and xenophobia, respectively. There are two related approaches.

1.1 The French Community bases its ideological approach on the Latin model. The cultural acclimatization of all individuals towards a single concept of citizenship is the ultimate goal. Everyone is considered to be an individual to be placed on an equal footing with all others, and the main strategy consists of integrating the victims of social exclusion.

1.2 In certain aspects, the Flemish Community draws more on the Anglo-Saxon model. In this sense, integration implies that people from minority groups can express their group culture and ethnicity, that groups can and should differ from one another and that this cultural diversity is an enrichment to society. Flanders lays heavy emphasis on the cultural dimension of integration.

The notion of "ethnic and cultural minorities" is a complex one, encompassing the following target groups: "allochthons" (immigrants), people of recognized refugee status, new arrivals speaking foreign languages (asylum-seekers and individuals arriving for purposes of family reunification or family establishment), nomads (travellers and gypsies) and people living illegally in Belgium. They may have been born in Belgium, have acquired Belgian nationality by naturalization, or be foreign nationals. They may hold permanent residence permits, temporary ones or none at all. The categories listed above all belong to the target group of ethnic and cultural minorities provided that they are badly off or in uncertain circumstances.

The aim of the minorities policy in Flanders is to enable ethnic and cultural minorities to play their full part in society. The first thing to do to accomplish this is to adopt a positive attitude towards ethnic and cultural diversity and respect human dignity and fundamental human rights.

Minority policy is guided by the decree of 28 April 1998 on Flemish policy towards ethnic and cultural minorities. This states that minority policy is not incidental to overall policy but, on the contrary, an integral part of it. Every sector must check to see whether minority groups have the same access to the services on offer as the rest of the population. If not, any ad hoc measures necessary must be taken to permit such access. Policy must also be put into effect in close collaboration with the target groups.

The decree also sets up a legal framework within which the non-affiliated sector can be accorded official approval and granted subsidies. This sector (combining a variety of public and private initiatives) is the Flemish authorities' partner in the execution of minority policy on the ground. The decree emphasizes the involvement of target groups themselves in policy implementation. A forum bringing together ethnic and cultural minority organizations was set up in 2000 to promote communication with target groups and their associations and involve them more closely in Flemish minority policy. Together, the forum and the non-affiliated sector uphold the interests of the target groups and act in a reporting role vis-à-vis the authorities.

As regards the right of assembly, since the powers associated with the admittance and integration of immigrants were transferred (ad hoc Act of 8 August 1980), the Flemish Government has pursued a policy of fostering and supporting associations of members of minority groups within their own communities.

On political rights specifically, the non-affiliated sector and the forum are working together to extend their social and political scope so as to embrace the right to vote in municipal elections for individuals who are not nationals of a European Union member State.

The Flemish Government has been spurred by respect for human dignity and fundamental human rights to take a series of steps to benefit needy people living illegally in Belgium. Besides the right to education for juveniles, the Government guarantees the right to health care, housing, food, (vocational) training and welfare assistance. This policy course is still at the exploratory stage.

Greater attention is being paid to ensuring that unaccompanied foreign minors are properly looked after. In the light of the agreements between the various levels of authorities involved, the Flemish Community is responsible for looking after such minors (a) arriving or living in Flanders and (b) not engaged in asylum proceedings. The minors are normally put up in residential establishments designed especially to help young people, or in general welfare institutions. Nevertheless, the number of places available is at present inadequate, and action must be taken to remedy this.

't Huis ("the house") in Alost is an exclusively residential establishment reserved for unaccompanied foreign minors, with room for 15 inmates, who are often the victims of human trafficking and sexual exploitation. It is a half-way house: it steers minors towards family reunification and repatriation, or prepares them for and guides them to the sustained support they need by way of normal residential accommodation, placement in families, supervised housing and so forth.

2. Linguistic minorities

The German-language Community comments: linguistic minorities are afforded special protection in education: at the pre-school and primary levels, communes in the German-language Community can teach classes in a different national language if a request to that effect is made by at least 16 individuals bringing up children who have no school available within four kilometres. The commune is required to accede to such a request (Act of 30 July 1963, art. 6). Under article 8 of the same Act, classes may also be taught in French (or, in "French-speaking" schools, in German) from the third year of primary school onwards.

Furthermore, by virtue of article 69 of the Act of 31 December 1982, government services are subject to the coordinated laws on the use of languages for administrative purposes (Acts of 18 July 1966), which call for linguistic facilities for French speakers.

3. National minorities

On 31 July 2001 Belgium signed the Council of Europe Framework Convention for the Protection of National Minorities. On doing so, it entered the following reservation: "The Framework Convention shall apply without prejudice to constitutional provisions, safeguards and principles or to the legislative standards that currently govern the use of languages. The Kingdom of Belgium declares that the notion of national minority will be defined by the inter-ministerial conference on foreign policy."

The Flemish position vis-à-vis the Framework Convention can be found in Annex XVI.

Notes

[1] Those found guilty of discrimination can be sentenced to be stripped of such rights under article 33 of the Criminal Code. The various rights of which they can be stripped are listed in article 31 of the Code.

[2] "The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

"No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1."

[3] The Royal Decree of 13 November 1991 laying down the rules applicable to the evaluation of the physical attributes of certain applicants to and trainees in the armed forces was, however, amended by Royal Decree dated 14 March 2002.

[4] Vanderwege, R., Bruynooghe, R. and Opdebeecck, S., *Ervaringen van vrouwen met fysiek en seksueel geweld. Prevalentie en gevolgen* (Brussels, Inbel, 1988).

[5] Bruynooghe, R., Noelanders, S. and Opdebeecck, S., *Prévenir, subir et recourir à la violence* (Limburgs Universitair Centrum, Diepenbeek, 1998).

[6] Ratified on 10 December 1998, entered into force on 1 January 1999.

[7] The Committee was set up on 13 January 1996 and has issued 19 advisory opinions.

[8] The Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 and approved by the Act of 13 May 1955. On 23 July 1991 Belgium ratified the European Convention for the Prevention of Torture and Inhuman or Degrading

Treatment or Punishment of 26 November 1987 (entry into force on 1 November 1991), which established a Committee for the Prevention of Torture (CPT) that can visit any place within the jurisdiction of a signatory State in which individuals are deprived of liberty by a public authority (premises of the communal police and gendarmerie, custodial centres for foreign nationals, and prisons). The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted in New York on 10 December 1984, was ratified by Belgium on 25 June 1999, following signature.

[9] The Belgian Criminal Code sets out penalties for murder in its various forms (arts. 393-397); intentional homicide not categorized as murder and wounding with intent to harm (arts. 398-410); homicide and excusable assault (arts. 411-415); homicide and justified assault (arts. 416 and 417). The Police Functions Act of 5 August 1992 addresses in a general manner the issue of the use of force by the authorities in general and the police in particular. The relevant articles embody a number of principles which govern the use of force by the authorities. First, the principle of legitimacy itself, meaning that the use of force must answer a lawful purpose. Next, the principle of necessity, meaning that the force must be necessary to achieve the intended purpose; the principle of proportionality, meaning that the use of force must be proportionate to the purpose and the circumstances; lastly, the principle of prior warning, except where such a warning would render the use of force ineffective.

[10] Act of 13 May 1999 relating to the disciplinary regulations applicable to members of the police services, as amended by the Act of 30 March 2001 and the Act of 31 May 2001.

[11] Act of 7 December 1998 instituting an integrated two-tier police service, title V, the general inspectorate.

[12] Act of 13 May 1999, op. cit., articles 65 bis to 65 quinquies.

[13] Act of 7 December 1998, art. 123.

[14] *Ibidem*, art. 130.

[15] *Ibidem*, art. 132.

[16] Royal Decree of 30 March 2001.

[17] *Ibidem*, art. III.V.1.

[18] The Police and Intelligence Services (Monitoring) (Organization) Act of 18 July 1991, as amended by the Act of 1 April 1999 and the Act of 20 July 2000.

[19] The reports on the CPT visit in 1997 are the following: (i) CPT report of 18 June 1998 to the Belgian Government following its visit to Belgium (CPT/Inf (98) 11); Interim report by the Belgian Government to CPT dated 31 March 1999 (CPT/Inf (99) 6); Follow-up report by the Belgian Government to CPT dated 12 July 1999 (CPT/Inf (99) 11).

[20] The Police and Intelligence Services (Monitoring) (Organization) Act of 18 July 1991, article 26, requires police services to declare serious offences committed by their members to Standing Committee P.

[21] The commission to review the instructions relating to expulsion was set up by government order on 4 October 1998 as a multidisciplinary body. It submitted its final report to the Government on 21 June 1999.

[22] In particular the principle of legitimacy, i.e. that force must be used to a legitimate end. Also the principles of appropriateness, i.e. that the use of force must be necessary to attain the end in view, and proportionality, i.e. that the violence must remain proportional to the end sought and the circumstances.

[23] The National Airport Security Detachment is, as a unit of the Federal Police, a section of the Airport Police. Its responsibilities specifically include border control and escorting persons being expelled from Belgium.

[24] Police Functions Act, op. cit., articles 31 to 33.

[25] Ibid., art. 15.

[26] Pre-Trial Detention Act, 20 July 1990, arts. 1 and 2.

[27] Ibid., art. 20.

[28] The question then arises of whether this does not result in discrimination, within the meaning of articles 10 and 11 of the Constitution, between a person detained on an ordinary arrest warrant and brought before the examining magistrate and a person who comes before the examining magistrate only to be served with a warrant for arrest and immediate trial. If it is not to be regarded as discriminatory, any distinction made must be based on an objective criterion and reasonably justified. To be reasonably justified, the means employed must, among other considerations, be proportionate to the end pursued. The objective criterion justifying the distinction is the difference in kind between the two kinds of arrest warrant. An ordinary arrest warrant is an investigative device, whereas a warrant for arrest and immediate trial is the prerequisite for being summoned by the Crown Procurator for immediate trial and thus amounts to committal for trial on the merits. The presence of counsel at this stage is quite another matter from having access to counsel during normal pre-trial detention. The terms of the warrants are also different in the two cases: an ordinary arrest warrant is valid for five days and can be set aside by the examining magistrate at any time; a warrant for arrest and immediate trial is valid for seven days and cannot be set aside by the examining magistrate once the suspect has been summoned. This difference in the rules is a second justification for the difference the Act establishes as regards access to counsel.

[29] See the 2001 CPT report, p. 26, para. 54.

[30] Commission on Criminal Procedure Law and Ghent and Liège Universities, *Code of Criminal Procedure, explanatory memorandum and preliminary draft*, 2000-2001, p. 394 (in French).

[31] Ibid., p. 151.

[32] See the report of the Director-General for Children's Rights of the French Community, 15 December 1999. See also the expert evaluation submitted on 24 September 1999 by the ULB Guidance Centre (Mental Health Service) in connection with *Awada v. the State*, pp. 24 to 29.

[33] Principles of equality and non-discrimination.

[34] The parole board may revoke parole if the prisoner is charged with new offences or fails to observe the conditions of parole; if the prisoner is convicted of a crime or offence committed while on parole; or if there is a serious risk to the physical integrity of third parties, provided there is no appropriate alternative.

[35] Restorative justice is based on the principle that an offence triggers a conflict between the perpetrator, his or her victim(s) and society, and that it is necessary to repair this disrupted relationship by encouraging communication between all parties, notably through mediation procedures. The approach is one of voluntary participation by those involved, on the basis of respect for, and a balance between, the interests of each party: "Restorative justice is meaningful only in contexts where such interaction and cooperation are welcomed by the parties, i.e., where the sensibilities of each party will be respected." The aim of restorative justice is to take a forward-looking approach to the problem and seek a solution that will satisfy both perpetrator and victim and meet both parties' expectations.

[36] Submitted to the Chamber of Representatives: document 50 1521/001, 22 November 2001.

[37] Bill on closer monitoring of convicted prisoners leaving prison, improving the victim's situation when perpetrators leave prison and optimizing prison capacity, Explanatory memorandum, p. 43.

[38] Ibid., art. 13.

[39] Ibid., Explanatory memorandum, p. 56.

[40] Ibid., art. 21.

[41] Ibid., Explanatory memorandum, pp. 46, 49 and 54.

[42] Submitted to the Chamber of Representatives: document 50 1365/001, 17 July 2001.

[43] Royal Decree of 25 November 1997, establishing a commission responsible for drafting a Basic Act governing prison administration and the legal status of prisoners, *Moniteur belge*, 9 January 1998; Royal Decree of 10 February 2000, extending the work of the commission responsible for drafting a Basic Act governing prison administration and the legal status of prisoners, *Moniteur belge*, 29 February 2000; Final report of the commission responsible for drafting a Basic Act governing prison administration and the legal status of prisoners, Chamber document 50 1076/001, 2 February 2001.

[44] Royal Decree of 27 June 2000, on the establishment of a Commission on Courts for the enforcement of sentences (ref. 12), external legal status of prisoners and sentencing, *Moniteur belge*, 13 July 2000; Royal Decree of 19 April 2001 amending Royal Decree of 27 June 2000 on the establishment of a Commission on Courts for the enforcement of sentences, external legal status of prisoners and sentencing, *Moniteur belge*, 30 May 2001; Royal Decree of 12 July 2001 extending the work of the Commission on Courts for the enforcement of sentences, external legal status of prisoners and sentencing, *Moniteur belge*, 27 July 2001.

[45] Prison Administration, Annual Report 1999, pp. 120 ff.

[46] Ibid., pp. 40 ff.

[47] Ibid., p. 21.

[48] Ibid., p. 22.

[49] This protocol of agreement covers the following, inter alia: Justice Centres, guidance and treatment for sex offenders, social welfare and social services for prisoners, alternative measures and sanctions for adults, confinement, and the handling of juvenile crime.

[50] On 8 December 2000, the Flemish Government approved a strategic plan to extend and improve aid and services for prisoners. The Flemish Community's intention is to safeguard the rights of all prisoners and their immediate social circle to comprehensive high-quality aid and services, in order to permit their full and harmonious development within society. The basic idea is that, though prisoners may lose their freedom, they retain their other fundamental rights. The strategic plan is currently being implemented in a pilot region (five prison establishments in Antwerp and North Campine). The Flemish Minister for Social Welfare is the coordinating minister. The Flemish Ministry of Social Welfare subsidizes the Judicial Aid Centres, each of which is part of a general social welfare centre. The Judicial Aid Centres offer assistance to prisoners at an early stage, support them during their detention and reintegration and also support their families. It is also sponsoring a research project into reparation-based detention and subsidizes teams at general social welfare and mental health centres offering guidance and treatment for sex offenders.

[51] According to subsidiary draft 90.2, paragraph 1, on sentencing and sentence enforcement: "... We intend ... to continue to support alternative penalties and the development thereof. One of the first things to be done is to carry out a thorough evaluation of ongoing projects and the relevant funding policy". Elsewhere in the plan, the Minister states that, "In the future it will be necessary to devise an effective, practicable method of measurement and monitoring ... in order to form an idea of the aims and concrete outcomes of projects submitted, prior to their approval by the Minister of Justice ... The evaluation and monitoring commissions will be expected to apply that method of measurement and monitoring ...". The Minister states, in the Federal plan on security and prison policy, that "a thorough evaluation of the legal framework, content and outcomes of the existing subsidy systems should be carried out. A subsidy policy that is clearly defined by the federal authorities and the Communities and Regions will help in implementation of a comprehensive security policy in which each authority has its own responsibilities".

52 The Committee's main recommendations are as follows:

(i) The confinement of a mentally disturbed offender must remain subject to proof of the acts with which he is charged, the persistence of his mental disturbance and also the danger he poses to society;

(ii) The new act should provide expressly that confinement can be ordered only if the offender poses a danger to society (danger defined as "risk of relapse");

(iii) The act should, in addition to placement under observation, provide for other forms of multidisciplinary and unidisciplinary assessments;

(iv) A new structure should be put in place for Belgium's eight psychiatric annexes, which to this day have never fully carried out their mandate of placing arrested persons under observation. The annexes should be responsible only for problem detainees;

(v) The composition of the social protection committees should be reviewed;

(vi) An inmate may be definitively released only after receipt of a psychiatric report re-evaluating his mental state and the danger he poses;

(vii) Adequate medical structures should be created for the treatment and follow-up of inmates;

(viii) The extension of confinement beyond the duration of a convicted person's sentence should be subject to a fresh judicial decision and should no longer depend on the decision of the Minister of Justice;

(ix) The status of recidivists, habitual offenders and certain sexual offenders placed at the Government's disposal should no longer be governed by the Social Protection Act. Under the Social Protection Act, such persons are not offenders with a mental disturbance that justifies their confinement.

53 Beginning in 1999, the French Community has taken a series of steps, as part of its policy in the administration of community youth protection institutions, in response to the measures on behalf of juvenile offenders. For example, whereas in July 1999 there were 27 places available in the closed sections of such institutions, from 2001 onwards there have been 50. This was the figure suggested by the Community Youth Assistance Council in the late 1990s, which the Council itself confirmed in an opinion of 3 December 1999, following promulgation of the Act of 4 May 1999 repealing article 53. The educational programmes of these State institutions were revised to focus more closely on the individual and broaden the range of responsibilities. Post-institutional follow-up services within the institutions themselves have been established or strengthened, including for those leaving closed sections, in order to give the youngsters concerned the best possible chance of social reintegration.

The Flemish Community, for its part, has expanded the capacity of closed community institutions by 16 places for boys, and 20 open places have been converted into 20 closed places. In this way, the capacity of closed community institutions for boys has increased overall by 36 places, thereby more than doubling, from 30 to 66 places. In view of the conversion of open places to closed places, staffing teams have also been reinforced. In addition, more appropriate care and treatment for juvenile offenders with serious psychiatric problems are to be developed as part of a cooperation project between the De Kempen community institution and the Geel State psychiatric hospital. The range of subjects taught and training courses offered in the community institutions is also to be greatly improved in qualitative and quantitative terms. Although a closed place in a community institution is the alternative to referral to the De Grubbe closed centre in Everberg, a placement of that kind cannot be the last stage in an approach based on individual well-being. Young people must be able to move on, as soon as possible, from a placement in a closed institution to a programme based on social integration or reintegration. In principle, as soon as their behaviour makes it possible to apply alternatives that entail fewer restrictions on their liberty, they should, as appropriate, be able to benefit from all elements of the infrastructure or all private-sector services. Capacity in the private sector was expanded in 2001 by 287 places, residential, semi-residential and ambulatory.

54 Currently, a juvenile court may relinquish jurisdiction on any case involving a minor aged 16 or over and refer it to the public prosecutor's office; the latter may, if it considers educational measures inadequate, refer the case to the court dealing with minors. In such circumstances, a minor may be liable to imprisonment.

55 "New arrival" means any minor who has not completed secondary education; who has been in the country less than one year; and who is either an asylum-seeker (or accompanying an asylum-seeker), stateless, or a national of a developing country or a country in transition officially in receipt of aid from the OECD Development Assistance Committee.

56 Altogether 36,910 cases had been filed by 31 December 2001. Final decisions: 31,130 (84 per cent); cases pending, 5,780 (16 per cent). The cases settled include 22,800 regularizations, 4,817 rejections, 3,183 cases closed for administrative reasons (as no longer applicable: applicant granted refugee status, married, deceased, application abandoned, etc.) and 230 cases turned down on public order grounds. Among the pending cases, 130 are under consideration, 178 unfavourable decisions are awaiting signature, there are 60 medical files and 1,244 cases are under consideration by the Aliens Office on public order grounds. Unfavourable decisions on public order grounds: 1,500. Cases with the Ministry of the Interior: 500. Cases before the judicial authorities: 834.

57 "Assigning specific tasks" means that each prosecutor in the Association is responsible for preparing and following up on specific subjects by, for example, gathering and collating all the information and documentation necessary. The objective is also to prepare better for and cope better with matters arising during the formulation and coordination of criminal policy by sharing jobs out (and saving time).

58 Act of 21 June 2001 amending various provisions as regards the Federal prosecution service, *Moniteur belge*, 20 July 2001.

[59] Judicial Code, art. 144 bis, para. 2.

[60] Act of 15 December 1980 on access to Belgian territory, residence, establishment and removal of foreigners, article 77 bis, paragraphs 2 and 3, meaning common involvement or involvement in the direction of an association or a related activity (whether or not the guilty party was a ringleader).

[61] Act of 5 August 1991 on the importation, exportation and transit of weapons, munitions and material intended particularly for military use and related technology.

[62] Act of 16 June 1993 on the punishment of serious breaches of humanitarian law, arts. 1 and 2.

[63] *Moniteur belge*, 2 December 2000.

[64] *Moniteur belge*, 13 August 1997.

[65] *Moniteur belge*, 22 December 1998.

[66] *Moniteur belge*, 22 December 2000.

[67] *Moniteur belge*, 19 December 2000.

[68] On the express condition that the pupil meets the appropriate admissions criteria for the level of schooling concerned.

[69] Belgium ratified the European Convention on 14 June 1955 (*Moniteur belge*, 19 August 1955) and the Covenant on 21 April 1983 (*Moniteur belge*, 6 July 1983).

[70] "Freedom of expression constitutes one of the essential foundations of (such) democratic society, one of the basic conditions for its progress and for the development of every man. Subject to Article 10 (2), it is applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no democratic society." European Court of Human Rights, *Handyside v. UK*, 7 December 1976.

[71] S.-P. de Coster, "Avant les élections … De l'extrême droite, de la liberté d'expression et de ses limites", *J.P* No. 284, 1995.

[72] See M.F. Rigaux, "La licéité des restrictions et des interventions préventives - Quelques réflexions", *Rev.trim.dr.h.*, 1993, pp. 57-67.

[73] Velu, J. and Ergec, R., " La Convention européenne des droits de l'homme ", *R.P.D.B.* (Bruxelles, Bruylant, 1990), and Pettiti, L.E., "La Convention européenne des droits de l'homme", article-by-article commentary (Economica, Paris, 1995), pp. 365-418.

[74] (a) This applies to the exercise of freedom of expression "in the open air", which may be subject to preventive police arrangements very similar to those that tend to be adopted for the exercise of freedom of assembly. Such arrangements must be justified by the need to maintain order, keep the peace and ensure safety on the public highway; they must not be discriminatory, and must be limited in duration and physical extent (see commentary on article 21). (b) Another, more controversial, instance of preventive restrictions is preventive intervention by an interim relief judge in the exercise of freedom of the press, to ban an article or broadcast, normally on grounds of encroachment on someone's rights as an individual, e.g. a breach of the right to privacy or a slur on someone's honour or reputation. Those judges who do allow preventive intervention under article 568 of the Judicial Code will impose only the most limited controls, and will take action only in the event of a flagrant attack, i.e. a manifestly illegal and wholly unjustifiable encroachment upon someone else's rights. They will not act in cases where there merely appear to be sufficient grounds for complaint. This is easy to understand: if a judge is to intervene as a matter of urgency, anticipating as it were a judgement on the merits, he must be virtually certain that the application is well-founded. Since, moreover, what is at stake is one of the most basic of democratic freedoms, even if the judge finds that there is a flagrant attack he will weigh up the various interests involved with due regard for the pre-eminence of freedom of expression. He will also allow a ban only if he is sure that it will attain its objective, and will take care not to encroach upon the jurisdiction of the court trying the matter on its merits ex post facto.

[75] [This footnote is missing from the original text - ed.]

[76] Cass., 9 January 1973, *Pas.*, 1973, I, p. 455.

[77] Cass., 9 October 1985, *Pas.*, 1986, I, p. 131.

[78] F. Tulkens and M. van de Kerchove, *Introduction au droit pénal* (Story-Scientia, 1993), p. 196.

[79] This view is shared by P. De Hert and K. Bodard, "Internetmisdaad: een uitdaging? - Situering van de problematiek aan de hand van (kinder) pornografie", *A.J.T.-Dossier*, 1996-1997, No. 7, pp. 122-124. See also J. Velaers, *De beperking van de vrijheid van meningsuiting* (Antwerpen, Maklu, 1991), pp. 517-521.

[80] For fuller information the Committee is referred to the most recent report on Belgium's compliance with the International Convention on the Elimination of All Forms of Racial Discrimination (CERD/C/381/Add.1).

[81] The law against racism has been applied much more extensively in the courts during the years 1995 to 2000 than over the 15 previous years (with twice as many decisions between 1995 and 2000 as in the 15 years previously). Grounds for conviction included the following: (i) "Dirty Jew, go back to Israel" (Brussels correctional court, 20 April 1983);

(ii) "*Raton*" ("Wog") (Charleroi correctional court, 23 December 1987); (iii) Making entry to a dance hall conditional on presentation of a Belgian identity card (Termonde correctional court, 21 October 1986); (iv) Refusal by a cafe owner to serve drinks to a person of Moroccan descent (Liège, 11 March 1988); (v) Apartment rentals restricted to "natural Belgians" only (Antwerp correctional court, 21 June 1996); (vi) A commune councillor taking the oath of office in the manner of a Hitlerian salute (Brussels correctional court, 15 July 1996); (vii) Use of the term "negro", recently condemned by the appeal court in Liège (18 October 1999); (viii) Convictions under the 1981 Act were also handed down in 1998 against a number of paratroopers guilty of racist acts during operation "Restore Hope" in Somalia in 1993; (ix) The use of racist terms on the Internet was condemned by the Brussels correctional court on 22 December 1999 shortly after racist offences against the legislation on the press were reclassified; and (x) The courts found against "Final Conflict" under the law against negationism in November 2000.

82 *Moniteur belge*, 18 March 1999.

83 Protocol of agreement dated 2 February 1999 between the Postal Service and the Centre for Equal Opportunity and Action to Combat Racism.

84 A gathering or massing is a meeting of people for an illegal purpose, with the intention of sowing disorder or resisting authority, in open, unenclosed areas to which the public has free access (G. Plas, *Le droit de réunion, le maintien de l'ordre public et les autorités de police administrative* (UGA, 1999), pp. 15 and 79).

85 The word "regulations" ("lois") must be interpreted broadly; it covers police regulations and orders issued with a view to upholding the peace and public security (G. Plas, op. cit., p. 36).

86 Decree dated 10 vendémiaire of the year IV (2 October 1795) on the communal police.

87 Court of Cassation, 18 May 1988, Pas. 1988, 1, 1139.

88 To grasp the extent of the amendments referred to below, it will be helpful to remember that:

(i) Sectoral committees are negotiating committees set up for the Federal community and regional public services;

(ii) Special committees are negotiating committees set up for provincial and local public services;

(iii) Separate special committees are negotiating committees set up for teaching establishments run by provincial or local authorities;

(iv) Committee B is the competent negotiating committee if a proposed measure affects staff covered by at least two sectoral committees;

(v) Committee C is the competent negotiating committee if a proposed measure affects staff covered by at least two special or separate special committees;

(vi) Committee A is the competent negotiating committee for, inter alia, proposed measures affecting both staff of the Federal community and regional public services and staff of the provincial and local services.

(vii) To be considered representative for the purpose of sitting on Committees A, B or C, a trade union organization must meet a series of conditions (article 7 of the Act of 19 December 1974): it must operate nationally, defend the interests of all categories of personnel and be affiliated to a trade union organization represented on the National Labour Council. The National Labour Council is the highest joint body in the system of collective private-sector labour relations.

89 Act amending certain provisions on marriage.

90 Article 63, paragraph 1, subparagraphs 1 and 2, states that persons desiring to contract marriage are required to make a declaration to that effect, by submitting the papers specified in article 64, to the civil registrar for the commune in which one of the intending spouses is listed in the population register, the register of aliens or the pending register on the date when the official declaration is made. If neither intending spouse is listed on one of the registers mentioned above, or if the current residence of either or both does not, for good reason, correspond to the listing, the declaration may be made to the civil registrar competent for the current place of residence of one of the intending spouses.

91 Circular concerning the Act of 4 May 1999 amending certain provisions on marriage. This superseded the circular dated 1 July 1994 on the conditions under which a civil registrar may refuse to celebrate a marriage and items 1 to 3 of the circular dated 28 August 1997 on the marriage banns procedure and the papers to be submitted in order to obtain a visa for the purpose of contracting a marriage in Belgium or to obtain a visa for purposes of family reunification on the strength of a marriage contracted abroad.

92 This circular superseded items 5 to 7 of the circular dated 28 August 1997.

93 The Act also somewhat affects parental authority and the rules governing temporary administration of property belonging to an adult.

94 "Unaccompanied foreign minor" here means any person under 18, unaccompanied by a person exercising parental authority or guardianship under the law of the minor's country of origin, who is a national of a country not belonging to the European Economic Area.

95 *Moniteur belge*, 15 December 1998.

96 *Moniteur belge*, 30 January 1999.

97 *Moniteur belge*, 31 December 1998.

98 *Moniteur belge*, 25 August 2000.

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* The annexes may be consulted at the secretariat of the Human Rights Committee.
