



**International Covenant on
Civil and Political Rights**

Distr.: General
14 February 2022
English
Original: French
English and French only

Human Rights Committee

**Information received from Belgium on the follow-up to the
concluding observations on its sixth periodic report***

[Date received: 31 January 2022]

* The present document is being issued without formal editing.



1. In the context of its concluding observations on the sixth periodic report of Belgium, the Committee requested Belgium, in accordance with rule 75 (1) of its rules of procedure, to provide information on the implementation of three of its recommendations by 8 November 2021.
2. Belgium has the honour of sending the following reply.

Recommendation 10: Federal Institute for the Promotion of Human Rights

3. Belgium has undertaken to put in place a national human rights institution that covers all fundamental rights throughout its territory and that would comply with the Paris Principles and result in it being awarded category A status.
4. The establishment in 2019 of the Federal Institute for the Protection and Promotion of Human Rights was a step forward, since the Institute covers all human rights issues that fall within federal jurisdiction and may obtain inter-federal status at a later stage, thus ensuring full coverage of human rights (including at the level of the federated entities).
5. Within the framework of the establishment of a national human rights institution, it would also be possible for federated entities to establish their own human rights institutions.
6. In any case, the federated entities and the federal Government need to agree on a shared vision. The federal authorities and the different federated entities will need to negotiate a cooperation agreement.

Recommendation 14: Repatriation of all children of Belgian foreign fighters

7. The Belgian policy on the repatriation of children of foreign combatants with Belgian citizenship was updated in March 2021, with the best interests of the child at the centre of its approach. The policy establishes four conditions for repatriation, which remains voluntary:
 1. Children and their mothers;
 2. Of Belgian nationality, under the age of 12, or children who can reasonably be expected to acquire Belgian nationality;
 3. Who are in Syria or Iraq, in territory not under the control of Islamic State, Al-Qaida or other jihadist groups, given the operational challenges that would involve;
 4. If the child was born abroad and no official papers are available, a DNA test is in principle required to determine the child's biological link to a Belgian parent:
 - For children between the ages of 12 and 18, the decision to facilitate a possible return is made on a case-by-case basis. So far, all Belgian children over the age of 12 who met the criteria for repatriation have been repatriated.
 - The best interests of the child are at the centre of the Belgian repatriation policy.
 - There are currently no known cases of Belgian children (of any age) in Iraq.
 - A threat analysis is carried out by the security services regarding the mothers in order to prepare the appropriate follow-up:
 - If the mother has already been convicted in absentia, she must serve her sentence. Children up to 3 years old can stay with their mothers in specially adapted prison wards. Regular contacts are ensured between older children and parents in detention.
 - If the mother has not been convicted, the mother (considered as a foreign terrorist fighter (FTF)) will be presented to the appropriate judicial authorities who will decide whether or not to prosecute her and will take a decision on the possibility of pretrial detention.
8. To date (December 2021), there have been three different repatriation operations. All repatriations have been voluntary:
 - A total of 42 children have so far returned to Belgium. Of this group, 25 came from Turkey, with the use of the Hotspot procedure (administrative return)

- Repatriations:
 - 6 children through repatriation from north-east Syria in the summer of 2019
 - 1 child through repatriation from north-east Syria in December 2020
 - and 10 children and 6 mothers from north-east Syria in June 2021

9. Currently, (in December 2021), there are still people who are Belgian or who can reasonably be expected to acquire Belgian nationality at two locations in north-eastern Syria who meet the criteria for repatriation: 5 mothers and 22 children.

10. Upon return:

- The Belgian Federal Police will organize the reception of the mothers and children once they arrive in Belgium, where it will then be the communities that ensure that the children receive continuous care and support, unless the parent has already been convicted in absentia.
- A road map has been drawn up to allow for rapid, well-prepared and integrated action, in clear partnership with the different actors, in the event of a child's return. The youth protection services are responsible for the follow-up of the children upon their arrival in Belgium. The Belgian authorities (the family court and guardianship service of the Federal Public Service for Justice) are responsible for decisions on the guardianship of children. Most of the children who return stay with their grandparents, and a small minority of children are exceptionally placed in other types of care.
- The communities are responsible for ensuring the welfare of young people. Therefore, the legal framework may vary slightly, depending on the language group to which the child belongs.
- Emphasis is placed on educating and assisting the children with their recovery, taking into account their needs and the rights of the child. An explicit choice was made to give priority to working with youth in a multi-agency and multidisciplinary approach, with a particular focus on safety. The same principles that apply to child protection work (additional activities, client participation, reintegration-oriented networking) apply to this group.

Recommendation 30: Detention for reasons related to immigration

Detention of migrants

11. With regard to the detention of migrants, when it assumed office in September 2020, the Belgian Government undertook to no longer detain minors at closed centres and to develop additional alternatives to detention. This was reiterated in the 2020–2021 policy note of the State Secretary for Asylum and Migration. Since then, a new department called Alternatives to Detention has been set up.

12. Prior to the creation of the new department, alternatives to detention were already being used:

- For families with minor children:
 - Support for the return home of families who have received a decision denying them residence/international protection
 - Placement of families in accommodation facilities (open houses located in the municipalities), from which return is organized, or a follow-up is ensured for the (new) procedures (often linked with applications for international protection at the border)
- For all persons with an irregular stay:
 - Extension of time limits of orders to leave the territory (return decisions), to organize voluntary return, or for (temporary) reasons leading to a suspension of the return (for example, for medical reasons, to obtain travel documents, etc.)

- The SEFOR procedure (<http://www.sefor.be>): raising awareness of the possibilities of return among persons who have received a negative decision (with the possibility of extending the order to leave the territory) through interviews at the level of the municipalities or via brochures made available to the persons concerned
- For certain categories of persons, house arrest can also be used, but this option is rarely invoked, as it involves special arrangements and monitoring, in cooperation with several authorities (which is not always easy to arrange)

13. The ICAM (integrated case management) procedure was introduced on 1 June 2021. It involves accompanying persons whose status is irregular and who have received a return decision, and for whom a deadline for return has been set. This procedure will be implemented by the staff of the Alternatives to Detention department. To this end, the recruitment of 85 accompanying officials is under way.

14. This new framework will have a broader list of target groups. The focus is no longer exclusively on families with minor children, but also on individual foreigners residing at a known address, which may be a private residence or a shelter. In addition, persons who are apprehended and who have no known address, but who are not held for forced removal, are also included in the target group.

15. The new department is responsible for developing and applying (new) alternative measures to avoid the detention of persons whose status is irregular. The main measure consists in this service having ICAM case workers who guide persons with irregular stays towards a sustainable future. In this proactive framework, the focus will be on stimulating active participation and on providing tailored and group-targeted case work, with special attention paid to vulnerable persons or groups.

16. As far as family unity is concerned, the Immigration Office takes it into consideration in its decisions, by evaluating compliance with article 8 of the European Convention on Human Rights and taking into account the Convention on the Rights of the Child. In addition, an interview or a questionnaire, within the framework of the right to be heard, guaranteed by article 41 of the Charter of Fundamental Rights of the European Union, gives every foreigner with an irregular status the opportunity to explain why a return is not possible. The only exceptions to the principle of family unity are related to serious problems of public order or national security, which may result in the separate removal of persons who commit such offences.

17. Special care is provided to women, and in particular to pregnant women. Regarding the detention of pregnant women, it is always subject to review if the pregnancy has complications. A pregnancy free of complications does not necessarily preclude detention and removal. After 24 weeks, removal can only take place if the person in question does not oppose it. In such a case, the removal must be voluntary. From 34 weeks onwards, removal is no longer possible. In the case of a high-risk pregnancy or in other cases where it is deemed necessary, the gynaecologist, in consultation with the centre's physician, decides on the stage of pregnancy from which removal must no longer be carried out. In any case, organizing a pregnant woman's return depends on her medical condition and the progress of the pregnancy.

Persons recognized as stateless

18. With regard to stateless persons, the State Secretary for Asylum and Migration had already undertaken in his 2020–2021 policy note to address the issue of the right of residence of stateless persons who, for reasons beyond their control, were unable to return to their country of origin. In his 2021–2022 policy note, the State Secretary specifies that over the past year, the various options have been considered with a view to making a coherent proposal to the Government. Thus, all the previous opinions were analysed by civil society, and the migration and asylum services were heard.

19. As the issues raised in the survey on international protection often overlap with those of the statelessness assessment, the role and expertise of the Office of the Commissioner General for Refugees and Stateless Persons (the single body responsible for assessing applications for international protection) are specifically analysed.

20. The objective is to create legal certainty for stateless persons by not allowing their right of residence to be subject to the discretionary power provided under article 9 bis of the Foreigners Act, which provides for the possibility of humanitarian regularization of a foreigner's status. To this end, a separate right of residence for stateless persons will be established in the Foreigners Act.
