



International Covenant on Civil and Political Rights

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Human Rights Committee

Report on follow-up to the concluding observations of the Human Rights Committee*

Addendum

Evaluation of the information on follow-up to the concluding observations on Belgium

Concluding observations (127th session): [CCPR/C/BEL/CO/6](#), 1 November 2019

Follow-up paragraphs: 10, 14 and 30

Information received from State party: [CCPR/C/BEL/FCO/6](#), 31 January 2022

Information received from stakeholders: Association pour la promotion de la francophonie en Flandre and Association de promotion des droits humains et des minorités, November 2022; Federal Institute for the Protection and Promotion of Human Rights and Myria Federal Migration Centre, July 2023

Committee's evaluation: 10 [B], 14 [B] [C] and 30 [B]

Paragraph 10: National human rights institution

The State party should speed up the establishment of the Federal Institute for the Protection and Promotion of Human Rights, in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles), providing it with a comprehensive mandate and with all the necessary resources to carry it out in full, including the possibility to receive complaints. The State party should furthermore encourage the federal authorities and the federated entities to negotiate cooperation agreements so as to increase collaboration between the Federal Institute and sectoral institutions in order to ensure effective protection, in accordance with the State party's obligations under the Covenant.

Summary of the information received from the State party

Belgium has undertaken to put in place a national human rights institution that covers all fundamental rights throughout its territory and that fully complies with the Paris Principles. The establishment in 2019 of the Federal Institute for the Protection and Promotion of Human Rights was a step forward, since it covers all human rights issues that fall within federal jurisdiction. It may obtain inter-federal status at a later stage, thus ensuring full coverage of

* Adopted by the Committee at its 139th session (9 October–3 November 2023).



human rights. The federal authorities and the different federated entities will need to negotiate a cooperation agreement.

Summary of the information received from stakeholders

Association pour la promotion de la francophonie en Flandre and Association de promotion des droits humains et des minorités

The federal government agreement of 30 September 2020 provides for the establishment of a complaint mechanism within the Federal Institute for the Protection and Promotion of Human Rights, but the mechanism has yet to be created. On 1 July 2022, the Flemish government approved a draft decree on the creation of a Flemish institute for human rights, which would thus compete with Unia (formerly the Inter-federal Centre for Equal Opportunities and Opposition to Racism) and the Federal Institute. Various organizations have expressed the concern that this will create unnecessary complexity for victims of discrimination and will make it more difficult to access justice. There is a risk that a competing Flemish authority could thwart the competence of Unia. The Flemish government has also approved a draft decree authorizing it to terminate the cooperation agreement of 12 June 2013 between the federal Government, the Regions and the Communities on the establishment of the Inter-federal Centre for Equal Opportunities and Opposition to Discrimination and Racism in the form of a joint institution.

Federal Institute for the Protection and Promotion of Human Rights and Myria Federal Migration Centre

The Act establishing the Federal Institute for the Protection and Promotion of Human Rights includes the prospect of future expansion to matters at the level of the Communities and the Regions (inter-federalization). Cooperation between the Federal Institute and the Flemish human rights institute is envisaged. As and when the mandate of the Federal Institute is extended to matters under the competence of the Brussels Region, the French and German Communities and the Walloon Region (but not those under the competence of the Flemish Community, which now fall under the Flemish human rights institute), the inter-federalization of the Federal Institute will be asymmetrical. The Federal Institute has a residual mandate and focuses primarily on human rights issues for which no other independent public body is competent. The secretariat of the Federal Institute became operational on 1 February 2021. The budget is allocated annually by the federal parliament and is managed autonomously by the Federal Institute.

Committee's evaluation

[B]

While welcoming the operationalization of the Federal Institute for the Protection and Promotion of Human Rights, the Committee regrets the lack of progress in streamlining competencies and increasing collaboration between the Federal Institute and sectoral institutions and federated entities, notably through the negotiation of a cooperation agreement, with concomitant implications for the effective protection of rights. The Committee requests updated information on measures taken in this regard and on measures taken to establish an individual complaints mechanism within the Federal Institute.

Paragraph 14: Antiterrorism measures

The State party should:

(a) **Facilitate the repatriation of all children born to Belgian nationals who are in conflict zones, respecting the principle of the best interests of the child, and ensure their access to rehabilitation services and care upon repatriation;**

(b) **Make the necessary efforts to ensure that Belgian nationals suspected of acts of terrorism or war crimes are brought to justice in accordance with the rights contained in the Covenant.**

Summary of the information received from the State party

(a) 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 its core. The decision to facilitate a possible return of children between the ages of 12 and 18 is made on a case-by-case basis. To date, all Belgian children over the age of 12 who have met the criteria for repatriation have been repatriated. As at December 2021, there had been three different repatriation operations. A total of 42 children have returned to Belgium, but there are still people who are Belgian or who can reasonably be expected to acquire Belgian nationality in two locations in the north-east of the Syrian Arab Republic who meet the criteria for repatriation. The Belgian Federal Police organize the reception of the mothers and children once they arrive in Belgium. 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. Most of the children who return stay with their grandparents; a small minority are exceptionally placed in other types of care.

(b) No information was provided.

Summary of the information received from stakeholders

Federal Institute for the Protection and Promotion of Human Rights and Myria Federal Migration Centre

In October 2022, after the last large repatriation, the French Community Delegate-General for Children's Rights and the Belgian chapter of the non-governmental organization Defence for Children International called on the Government to repatriate "without delay" the estimated 17 Belgian children that remained in Syrian camps. That is not the total number of Belgian children remaining in the north-east of the Syrian Arab Republic, as it does not include children whose nationality is difficult to establish, children living outside those camps (including in prison) or mothers and their children who refused repatriation, among other reasons, because the mothers would be certain to be separated from their children upon arrival in Belgium. The actual number could be significantly higher; according to the French Community Delegate-General for Children's Rights, up to 120 children remain in the region. The difference made between children under and over 12 years old is not compatible with the obligations of Belgium under international law. The State should actively seek out and repatriate boys aged over 12 who are held in the deradicalization centers run by the Kurdish authorities. Children aged over 12 who are in camps should not be subject to the repatriation rule on a case-by-case basis; given the time spent in camps, they should be repatriated as a priority. The State should increase its proactive efforts to locate and identify the 120 minors believed to be in the area and draw up a repatriation and protection procedure for these potentially Belgian children. The State immediately separates children from their mothers upon their return, creating lasting psychological damage. To reduce this damage, the State should improve the information given to mothers about arrival at the airport and future separation from their children due to their transfer to a prison. Adequate communication tools should be developed, underlining that mothers' separation from their children will be temporary and that contact with them will be maintained during their incarceration. Given that repatriation is conditioned upon a mother's agreement, the mother needs to receive clear information about the sentence she will receive and the care her children will receive from specialized services.

Committee's evaluation

[B]: (a)

The Committee takes note of the State party's updated policy on the repatriation of children born to Belgian nationals who are in conflict zones and welcomes the repatriation of a significant number of children and their mothers under the policy. The Committee requests additional information on the compatibility of the case-by-case assessment for children over the age of 12 with the State party's obligations under the Covenant. The Committee also requests additional information on steps taken to identify and repatriate the remaining children in such circumstances, including boys over the age of 12 held in deradicalization centres run by the Kurdish authorities. The Committee requests specific information on

measures taken to ensure that mothers receive clear information about the conditions in which their repatriation would be implemented, including judicial proceedings they would face, conditions of access to their children in the case of pretrial detention or incarceration, and the care and rehabilitation services that would be provided for their children.

[C]: (b)

The Committee regrets the absence of information on measures taken to ensure that Belgian nationals suspected of acts of terrorism or war crimes are brought to justice in accordance with the rights contained in the Covenant. It reiterates its recommendation.

Paragraph 30: Refugees, asylum-seekers and non-refoulement

The State party should:

- (a) **Prohibit the detention of migrants, especially families, pregnant women and children, and develop alternatives to detention, in conformity with its obligations under the Covenant and the principles of the best interests of the child and family unity;**
- (b) **Adopt legislation on statelessness for the granting of citizenship or residence permits to persons recognized as stateless in the State party.**

Summary of the information received from the State party

(a) The integrated case management procedure was introduced on 1 June 2021. It involves accompanying persons who have an irregular status, have received a return decision and for whom a deadline for return has been set. The procedure will be implemented by the staff of the newly created department on alternatives to detention, which is responsible for developing and applying alternative measures to avoid detaining persons whose status is irregular. To this end, 85 officials are currently being recruited. The new framework will have a broader list of target groups and will no longer focus exclusively on families with minor children. Special care will be provided to women, particularly pregnant women. The detention of pregnant women is always subject to review if the pregnancy involves complications. A pregnancy free of complications does not necessarily preclude detention and removal.

(b) The State Secretary for Asylum and Migration already undertook in his 2020–2021 policy note to address the issue of the right of residence of stateless persons who, for reasons beyond their control, are unable to return to their country of origin. As the objective is to create legal certainty for stateless persons, a separate right of residence for stateless persons will be established in the Foreigners Act.

Summary of the information received from stakeholders

Federal Institute for the Protection and Promotion of Human Rights and Myria Federal Migration Centre

Although the current federal Government has made a commitment not to detain minors, there is no legal provision that forbids that practice. Moreover, persons with an irregular status who declare that they are minors can be detained during the age determination procedure. The continuing practice of detaining applicants for international protection at the border raises concerns. There should be more guarantees in place to ensure that detention is used only when other, less coercive, measures are insufficient and alternatives to detention should be made available on a large scale. In mid-2021, the use of alternatives to detention was expanded with the introduction of integrated case management. Although that is a positive development, it is regrettable that the case management is not performed by independent case workers. The current legal basis for alternatives to detention does not offer sufficient legal certainty. Although, in principle, participants are not detained while they participate in case management, it is unclear whether integrated case management leads to a reduction of the number of detained persons annually.

Committee's evaluation

[B]: (a) and (b)

While welcoming the expansion of the use of alternatives to detention, the Committee requests additional information on measures taken to provide legal certainty in this context, and on the impact of the integrated case management procedure, introduced in 2021, on the number of persons held in immigration detention annually. The Committee regrets that no legislative measures have been implemented to prohibit the detention of migrants, especially families, pregnant women and children. It reiterates its recommendation in this regard.

The Committee takes note of the State party's policy objective to establish the right of residence for stateless persons in the Foreigners Act and requests updated information in this regard. The Committee also requests information on legislative measures taken with regard to granting citizenship to persons recognized as stateless. It reiterates its recommendation in this regard.

Recommended action: A letter should be sent informing the State party of the discontinuation of the follow-up procedure. The information requested should be included in the State party's next periodic report.

Next periodic report due: 2026 (country review in 2027, in accordance with the predictable review cycle).
