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Human Rights Committee

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Consideration of reports submitted by States parties under article 40 of the Covenant

Draft concluding observations of the Human Rights Committee

Belgium

1. The Human Rights Committee considered the fifth periodic report of Belgium (CCPR/C/BEL/5) at its 2750th and 2751st meetings (CCPR/C/SR.2750 and 2751), held on 14 and 15 October 2010. It adopted the following concluding observations at its 2766th meeting (CCPR/C/SR.2766) held on 26 October 2010.

A. Introduction

2. The Committee welcomes the submission of the fifth periodic report of Belgium and expresses its satisfaction with the dialogue held between the Committee and the delegation of the State party. It appreciates the written replies (CCPR/C/BEL/Q/5/Add.1) that were submitted in advance to the Committee in response to its list of issues. The Committee thanks the delegation for the additional detailed information provided orally during the consideration of the report and for the supplementary information provided to it in writing.

B. Positive aspects

3. The Committee welcomes the ratification of or accession to the following instruments:

(a) The Convention on the Rights of Persons with Disabilities and the Optional Protocol thereto, on 2 July 2009;

(b) The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, on 14 June 2004;

(c) The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, on 11 August 2004; and

(d) The United Nations Convention against Transnational Organized Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the Convention, on 17 November 2005.

4. The Committee notes the sustained attention devoted by the State party to the protection of human rights and welcomes the following constitutional and legislative measures adopted:

(a) Adoption of a constitutional provision enshrining the principle of the abolition of the death penalty on 2 February 2005;

(b) Adoption of a law on 10 May 2007 to combat certain forms of discrimination;

(c) Adoption of a law on 10 May 2007 amending the Act to Suppress Certain Acts Motivated by Racism or Xenophobia of 30 July 1981;

(d) Adoption of a law on 10 May 2007 to combat discrimination between men and women;

(e) Adoption of a law on 10 May 2007 adapting the Judicial Code to legislation designed to combat discrimination and suppress certain acts motivated by racism or xenophobia;

(f) Adoption of a law on 25 April 2007 to insert article 391 sexies into the Criminal Code and amend certain provisions of the Civil Code to make forced marriage a criminal offence and to broaden the grounds for the annulment of such marriages; and

(g) Adoption of a law on 18 May 2006 which provides for the insertion of a new subparagraph into article 417 ter of the Criminal Code which expressly prohibits the use of the existence of a state of emergency as a pretext for torture.

C. Principal subjects of concern and recommendations

5. The Committee takes note of the initiatives taken by the State party and the information provided on steps to give effect to its Views in the case of Nabil Sayadi and Patricia Vinck (CCPR/C/D/1472/2006). It regrets, however, that the State party has not been able to provide it with the information requested on the possibility of granting compensation to Nabil Sayadi and Patricia Vinck.

The State party should consider the possibility of granting compensation to Nabil Sayadi and Patricia Vinck.

6. The Committee regrets that the State party has no mechanism for implementing the Committee's Views (art. 2).

The State party should consider establishing a mechanism for implementing the Committee's Views.

7. The Committee notes with concern that the State party maintains its reservations to article 10, paragraphs 2 (a), 3 and 5, of the International Covenant on Civil and Political Rights, article 14, paragraph 1, and articles 19, 21 and 22, as well as its interpretative declarations concerning article 20, paragraph 1, and article 23, paragraph 2 of the Covenant (art. 2).

The State party should consider withdrawing its reservations and interpretative declarations regarding the provisions of the Covenant.

8. Although the Committee takes note of the information provided by the State party concerning the coordination of different human rights structures and the reasons for the

absence of a national human rights institution, it regrets that the State party has not created a national human rights institution. The Committee is concerned moreover that the proliferation of bodies focusing on the rights of specific groups may militate against greater effectiveness on the part of the State party in fulfilling its obligations under the Covenant and against greater clarity in its overall policy on human rights (art. 2).

The State party should consider creating a national human rights institution in accordance with the Paris Principles (General Assembly resolution 48/134).

9. The Committee notes with concern that domestic violence persists in the State party and that the State party has still not adopted comprehensive legislation on that subject.

The State party should increase its efforts to combat domestic violence by, inter alia, adopting comprehensive legislation to combat domestic violence and ensuring that victims will have immediate access to means of redress and protection.

10. The Committee expresses concern that access to certain rights set forth in the Covenant may be hindered by the decisions taken by the community authorities in Flanders concerning issues such as the purchase of communal land, access to services and housing, entitlement to certain social services and exercise of the right to be elected and requiring that persons speak or learn Dutch, which leads to discrimination against certain groups within the population (arts. 2, 17, 25 and 26).

The State party should, in accordance with article 50 of the Covenant, ensure that decisions taken by the community authorities concerning linguistic requirements do not lead to discrimination against certain groups within the population in the exercise of certain rights set forth in the Covenant. It should also foster awareness and the exercise of the right to challenge such decisions among the relevant population groups.

11. The Committee is concerned by the fact that discrimination against persons with disabilities persists in the State party and hinders the full integration of those persons into political, social and economic affairs (art. 2).

The State party should intensify its efforts to combat discrimination, further the integration of persons with disabilities into political, social and economic affairs and adopt measures to facilitate such persons' access to the labour market.

12. Despite various steps taken by the State party to promote equality between men and women, the Committee notes with concern that discrimination against women remains strong and that unequal treatment persists within the socio-economic sphere, society and the labour market and in access to decision-making and promotion to certain posts (art. 3).

The State party should implement all the measures that it has adopted in this sphere, including legislative measures, and evaluate them in order to achieve tangible progress in combating stereotypes, in ensuring the balanced participation of men and women in decision-making and equal treatment and access to employment for women.

13. Although the Committee takes note of the information provided by the State party regarding the rules and conditions governing the use of tasers by the police force, it is concerned by the fact that the use of these weapons can lead to severe pain and life-endangering injury (arts. 6 and 7).

The State party should consider discontinuing authorization to use tasers. While such weapons remain in use, it should intensify its efforts to ensure that the police force adheres to the rules and conditions governing their use. The State party should also assess the effects of these weapons' use.

14. The Committee expresses concern about the reports of excessive use of force by members of the police force, not compatible with the United Nations Principles on the Use

of Force and Firearms by Law Enforcement Officials, particularly when persons are brought in for questioning, and by the fact that complaints against police officers do not always lead to the imposition of commensurate penalties. The Committee is particularly concerned by reports of excessive use of force and preventive arrests during the demonstrations that took place from 29 September to 1 October 2010 in the State party (arts. 7 and 9).

The State party should take all the necessary steps to guarantee that when the members of the police use force they act in conformity with the United Nations Principles on the Use of Force and Firearms by Law Enforcement Officials and to ensure that arrests are carried out in strict adherence to the provisions of the Covenant. The State party should, in the event of complaints of alleged mistreatment, systematically undertake investigations and prosecute and punish those responsible in a manner commensurate with the acts in question. The State party should inform the Committee of the action taken in respect of the complaints lodged following the demonstrations that were held from 29 September to 1 October 2010.

15. Although the Committee takes note of the information provided by the State party concerning improvements in the recruitment of members of the Investigations Service of Committee P, which is responsible for investigating complaints against members of the police force, it remains concerned by the doubts that persist as to the independence, objectivity and transparency of Committee P and as to its ability transparently to deal with complaints against police officers (arts. 7 and 14).

The State party should continue its efforts to guarantee that the members of the Investigations Service of Committee P are completely independent and to ensure that complaints against police officers are handled in a transparent manner.

16. The Committee takes note of the information furnished by the State party regarding the steps taken to protect victims of human trafficking, but is nonetheless concerned by the insufficient means made available to assist victims of human trafficking and by the fact that residence permits are not issued to them unless they cooperate with court authorities. The Committee is also concerned by the fact that the resources allocated for this purpose are still insufficient (art. 8).

The State party should consider amending its laws so that the issuance of residence permits to victims of human trafficking is not conditional upon cooperation with court authorities. It should also give greater assistance to victims of trafficking. The State party should also allocate more resources to programmes and plans for preventing and combating human trafficking.

17. The Committee expresses concern about the fact that access to legal counsel is not guaranteed in all cases within the first few hours after a person has been placed under judicial or administrative arrest or has been taken into police custody. The Committee also notes with concern that the right of access to a doctor is not always specifically provided for when judicial arrests are made (arts. 7, 9 and 14).

The State party should take all the necessary steps to guarantee access to legal counsel within the first few hours after a person is deprived of his or her liberty, whether by being placed under judicial or administrative arrest or by being taken into police custody, and to guarantee the right of access to a doctor on a systematic basis.

18. The Committee expresses concern about the conditions in Belgian prisons and particularly about prison overcrowding, which stands at a rate of 150 per cent in some facilities, by the dilapidated condition of prison buildings and by the fact that persons subject to different custodial regimes are not always separated from one another. The

Committee also expresses concern that the provisions of the Dupont Act under which prisoners may lodge complaints have not yet entered into force (arts. 7 and 10).

The State party should take all steps necessary to improve prison conditions and, in particular, to address overcrowding. In addition to building new facilities, the State party should make more frequent use of alternative, non-custodial penalties, such as electronic monitoring and parole. It should also make a greater effort to separate persons subject to different custodial regimes from one another. Lastly, the State party should expedite the entry into force of the provisions of the Dupont Act under which prisoners may appeal to complaints boards to be established for that purpose.

19. The Committee remains concerned about the practice of holding persons suffering from mental illness in Belgian prisons and prison psychiatric wards and the length of time that they must wait before being transferred to social protection establishments (arts. 7, 9 and 10).

As the Committee recommended in its previous concluding observations, the State party should put an end to its practice of keeping mentally-ill people in prisons and psychiatric annexes. It should also increase the number of beds available in social protection establishments and improve living conditions for patients.

20. The Committee notes with concern:

(a) The reports of the use of excessive force against foreign nationals who are subject to a deportation order in closed centres or during their expulsion; and

(b) The difficulty that such persons have in lodging a complaint because of their legal status and the fact that their complaints are unlikely to be heard by the complaints board, whether because they are charged with resisting arrest, or because their expulsion sometimes interferes with the gathering of evidence and the prosecution of those responsible (arts. 2, 7, 10 and 26).

The State party should take all the steps necessary to prevent the use of violence against foreign nationals subject to a deportation order; it should ensure that in the event of mistreatment they are able to lodge a complaint with the complaints board, whose mission is to prosecute and punish those responsible.

21. The Committee expresses concern about allegations that deportation operations are not properly monitored by the relevant oversight bodies and that those bodies are not independent (arts. 2, 7 and 13).

The State party should ensure that the relevant oversight bodies monitor the deportation of foreign nationals more closely and should ensure those bodies' independence and objectivity.

22. The Committee expresses concern about the resurgence of anti-Semitic and racist acts and about the increase in Islamophobic remarks and acts in the State party. The Committee is particularly concerned by the spread of this phenomenon in the media and the Internet, in particular, and by the increasingly widespread use of Islamophobic rhetoric by, among others, political parties that receive public funding. The Committee regrets to note that a bill to prohibit neo-Nazi demonstrations was not adopted by the Chamber of Representatives and has expired (arts. 2 and 20).

The State party should intensify its efforts to combat anti-Semitic, racist and Islamophobic acts by investigating such acts and by prosecuting and punishing those responsible for them. It should also continue its efforts to take effective action against the spread of this phenomenon in the media, particularly the Internet. Lastly, the State party should consider the possibility of resubmitting the bill designed to prohibit

neo-Nazi demonstrations and should consider discontinuing public funding for political parties that propagate hate, discrimination or violence.

23. The Committee notes with concern that, although the Youth Protection Act of 8 April 1965 was amended in 2006, it still provides for referral orders whereby minors between the ages of 16 and 18 may be tried as adults (arts. 14, 24 and 26).

The State party should review its legislation with a view to preventing minors between the ages of 16 and 18 from being tried as adults.

24. The State party should widely disseminate the text of its fifth periodic report, its written replies to the list of issues drawn up by the Committee and the present concluding observations in its official languages.

25. In accordance with article 71, paragraph 5, of the Committee's rules of procedure, the State party should provide, within one year, additional information on the current situation and the action taken to implement the recommendations made by the Committee in paragraphs 14, 17 and 21 above.

26. The Committee requests the State party to provide information on the action taken in response to the Committee's other recommendations and on the application of the Covenant as a whole in its sixth periodic report, which is scheduled for submission by 31 October 2015 at the latest.
