



**International covenant
on civil and
political rights**

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HUMAN RIGHTS COMMITTEE
Eighty-first session

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

Concluding observations of the Human Rights Committee

BELGIUM

1. The Human Rights Committee considered the fourth periodic report of Belgium (CCPR/C/BEL/2003/4) at its 2197th, 2198th and 2199th meetings, on 12 and 13 July 2004 (CCPR/C/SR.2197, 2198 and 2199). It adopted the following concluding observations at its 2210th and 2214th meetings, on 21 and 24 July 2004 (see CCPR/C/SR.2210 and 2214).

A. Introduction

2. The Committee welcomes the fourth periodic report of Belgium and the written and oral responses given to the list of issues. It appreciates the quality of the information provided, but regrets the shortage of information on how effective the steps taken to implement the Covenant have been. It pays tribute to the delegation for its spirit of openness, and welcomes the constructive dialogue that took place.

B. Positive aspects

3. The Committee welcomes the ratification of the second Optional Protocol to the Covenant, aiming at the abolition of the death penalty.

4. The Committee welcomes the entry into force on 1 May 2004 of the Act establishing a guardianship mechanism for unaccompanied foreign minors, and the assurance that such minors will no longer be held in closed facilities even if they are refused entry into the country.

5. The Committee welcomes the adoption of the Act of 19 March 2004 granting the right to vote in local elections to foreigners from countries other than those of the European Union.

C. Principal subjects of concern and recommendations

6. The Committee is concerned at the fact that the State party is unable to affirm, in the absence of a finding by an international body that it has failed to honour its obligations, that the Covenant automatically applies when it exercises power or effective control over a person outside its territory, regardless of the circumstances in which such power or effective control was obtained, such as forces constituting a national contingent assigned to an international peacekeeping or peace enforcement operation (art. 2).

The State party should respect the safeguards established by the Covenant, not only in its territory but also when it exercises its jurisdiction abroad, as for example in the case of peacekeeping missions or NATO military missions, and should train the members of such missions appropriately.

7. The Committee regrets that Belgium has not withdrawn its reservations to the Covenant, in particular the reservations to articles 10 and 14.

The State party should reconsider its position on this matter.

8. While appreciating the many projects intended to give better effect to the Covenant, the Committee notes with concern that some have been under consideration for many years. It also regrets that several of its recommendations have not been applied.

The State party should make the adoption of projects and the concrete application of laws designed to give better effect to the Covenant a top priority.

9. The Committee is concerned at the impact of the immediate application of the Act of 5 August 2003 on complaints lodged under the Act of 16 June 1993 relating to sanctions for serious violations of international humanitarian law (arts. 2, 5, 16 and 26).

The State party should guarantee victims' acquired right of access to an effective remedy without discrimination of any kind, insofar as the binding rules of general international law relating to diplomatic immunity do not apply.

10. The Committee is concerned at the small number of convictions in criminal and disciplinary proceedings of military personnel suspected of human rights violations during the United Nations operation in Somalia. It does note that the State party has removed the jurisdiction of military courts over acts committed by military personnel in peacetime (art. 2).

The State party should prohibit, and punish effectively, any conduct by military personnel, whether in peacetime or wartime, that is contrary to human rights, in particular the conduct set forth in articles 6 and 7 of the Covenant.

11. The Committee is concerned at the fact that the right to an effective remedy for individuals illegally in Belgium is jeopardized by the fact that police officers are obliged to report their presence. It notes in addition that the lengths of stay authorized to enable illegal aliens who have lodged complaints to complete proceedings to assert their rights under the Covenant remain at the discretion of the Aliens Office (arts. 2 and 26).

Besides adjusting authorized lengths of stay, the State party should devise additional ways of guaranteeing such individuals the right to an effective remedy.

12. The Committee is concerned about the persistence of allegations of police violence, often accompanied by racial discrimination. According to certain reports, investigations are not always thorough and judgements, when handed down, are still mostly of a token nature (arts. 2 and 7).

The State party should put a stop to all police violence and step up its efforts to conduct more thorough inquiries. Actions alleging abuse or violence brought against members of the forces of law and order, and actions brought by the forces of law and order against alleged victims, should be routinely linked.

13. The Committee takes note of the delegation's explanations concerning the independence of the investigative services working for Standing Committee P, but observes that doubts persist concerning the independence and objectivity of those services (arts. 2 and 7).

The State party should adjust the membership of the investigative services with a view to ensuring that they are genuinely efficient and independent.

14. The Committee is concerned by fresh allegations of excessive force being used when aliens are deported, despite the entry into force of new guidelines (arts. 6 and 7).

The State party should put an end to the excessive use of force when aliens are deported. Those responsible for effecting such deportations should be better trained and monitored.

15. While welcoming efforts to combat people-smuggling and trafficking in human beings, the Committee is concerned at the fact that residence permits are not granted to victims of trafficking unless they collaborate with the judicial authorities, and that they are given financial assistance in the event of violence only subject to restrictive conditions. It observes that there are still problems in coping with large groups of intercepted migrants (art. 8).

The State party should continue its efforts, do more to look after the victims of trafficking in human beings as such, and ensure that the victims of people-smuggling are properly looked after. The State party should provide the Committee with more detailed information and statistics on the actual implementation, in the criminal and other domains, of the measures adopted.

16. The Committee again voices concern over the rights of individuals in custody, bearing in mind the requirements of articles 7, 9 and 14 of the Covenant.

The State party should give priority to the amendment of its Code of Criminal Procedure, which has been planned for many years, and guarantee the rights of individuals in detention to notify their immediate families that they have been detained and to have access to a lawyer and a doctor within the first few hours of detention. Provision should also be made for routine medical checks at the beginning and end of periods in custody.

17. The Committee is concerned that foreigners held in closed facilities pending expulsion and then released by judicial decision have been held in the transit area of the national airport under questionable sanitary and social conditions. There are reports of periods of detention extending to several months in some cases. Such practices, in the Committee's view, are akin to arbitrary detention and can lead to inhuman and degrading treatment (arts. 7 and 9).

The State party should put an immediate stop to the holding of foreigners in the airport transit area.

18. The Committee is concerned that, despite the recommendations it made in 1998, the State party has not ended its practice of keeping mentally-ill people in prisons and psychiatric annexes to prisons for months before transferring them to social protection establishments. It reminds the State party that this practice is inconsistent with articles 7 and 9 of the Covenant.

The State party should end this practice as quickly as possible. It should also ensure that providing mental patients with care and protection and managing social protection establishments both form part of the Ministry of Health's responsibilities.

19. The Committee is concerned at persistent prison overcrowding in Belgium, due in part to an increase in pre-trial detention, a rise in the number of long prison sentences and a reduction in numbers released on parole (arts. 7 and 10).

The State party should make greater efforts as part of a policy of seeking a reduction in numbers of detainees.

20. The Committee is concerned at the fact that, nearly seven years after the creation of the Dupont Commission, the State party has still not modernized its prison legislation. It does take note of the assurance by the delegation that a bill on the subject is to be discussed during the present session of the legislature as a matter of priority (art. 10).

The State party should swiftly pass legislation to define the legal status of detainees, clarify the disciplinary regime in prisons and guarantee the right of detainees to lodge complaints and appeal to an independent, readily accessible body against disciplinary punishment.

21. The Committee welcomes the establishment of an Individual Complaints Board to look into complaints from aliens about the conditions under which they are held and the rules to which they are subject, but is concerned that complaints have to be lodged within five days and do not have the effect of suspending expulsion measures (arts. 2 and 10).

The State party should extend the deadline for lodging complaints and give complaints a suspensive effect on expulsion measures.

22. The Committee is disturbed that the rules governing the operation of INAD centres (for passengers refused entry to the country) and the rights of the aliens held there do not appear to be clearly established in law (arts. 2 and 10).

The State party should clarify the situation and ensure that the aliens held in such centres are informed of their rights, including their rights to appeal and to lodge complaints.

23. The Committee is concerned that the ministerial circular of 2002 giving suspensive effect to emergency remedies filed by asylum-seekers against expulsion orders has not been published; this is likely to leave the individuals concerned in a legally uncertain situation (arts. 2 and 13).

The State party should establish clear rules in its legislation to govern appeals against expulsion orders. It should give suspensive effect not only to emergency remedies but also to appeals accompanied by an ordinary request for suspension filed by any alien against an expulsion order concerning him or her.

24. The Committee is concerned that the Act of 19 December 2003 on terrorist offences gives a definition of terrorism which, in referring to the degree of severity of offences and the perpetrators' intended purpose, does not entirely satisfy the principle of offences and penalties being established in law (art. 15).

The State party should produce a more precise definition of terrorist offences.

25. The Committee is concerned that the Ministry of the Interior directive on double penalties, which has not been published, attaches conditions to the expulsion of aliens which make it impossible to comply fully with article 17 of the Covenant, inasmuch as it does not guarantee that aliens the majority of whose ties are to Belgium will not be expelled under any circumstances.

The State party should introduce further safeguards, publish rules to ensure that the individuals concerned are aware of and can assert their rights, and pass a law on the subject as quickly as possible.

26. The Committee is concerned that not a single mosque has yet been granted official recognition in Belgium (arts. 18 and 26).

The State party should step up its efforts to ensure that mosques are recognized and that Islam enjoys the same advantages as other religions.

27. The Committee notes with concern that a number of racist, xenophobic, anti-Semitic and anti-Muslim acts have taken place in Belgium. It is concerned that political parties urging racial hatred can still benefit from the public financing system, and observes that a bill designed to put an end to that situation is still being considered by the Senate (art. 20).

The State party should take all necessary steps to protect communities resident in Belgium against racist, xenophobic, anti-Semitic and anti-Muslim acts. It should have the above-mentioned bill passed as soon as possible, and consider sterner measures to prevent individuals and groups from seeking to arouse racial hatred and xenophobia, in pursuance of article 20, paragraph 2, of the Covenant.

28. The Committee takes note of the new Act designed to boost the protection of children against the various forms of sexual exploitation, but is concerned at the frequency with which cases of sexual violence involving children occur (art. 24).

The State party should take all necessary steps to protect children in all areas in order to put an end to the cases of sexual violence of which they are victims.

29. The Committee sets 1 August 2008 as the date of submission of Belgium's fifth periodic report. It requests that the text of the State party's fourth periodic report and the present concluding observations should be published and widely disseminated throughout the country, and that the fifth periodic report should be brought to the attention of non-governmental organizations working in Belgium.

30. In accordance with rule 70, paragraph 5, of the Committee's rules of procedure, the State party should within one year provide information on its response to the Committee's recommendations contained in paragraphs 12, 16 and 27. The Committee requests the State party to provide in its next report information on the other recommendations made and on the implementation of the Covenant as a whole.
