



**International Convention on
the Elimination
of all Forms of
Racial Discrimination**

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COMMITTEE ON THE ELIMINATION
OF RACIAL DISCRIMINATION

**REPORTS SUBMITTED BY STATES PARTIES UNDER
ARTICLE 9 OF THE CONVENTION**

Fourteenth and fifteenth periodic reports of States parties due in 2004

Addendum

BELGIUM* ** ***

* This document contains the fourteenth and fifteenth periodic reports of Belgium, due on 6 September 2004, submitted in one document. For the eleventh, twelfth and thirteenth periodic reports and the summary records of the meetings at which the Committee considered the report, see documents CERD/C/381/Add.1 and CERD/C/SR.1509 and 1510.

** The annexes to the report may be consulted in the secretariat's files.

*** In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

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Introduction

1. In accordance with article 9, paragraph 1, of the International Convention on the Elimination of All Forms of Racial Discrimination, Belgium has prepared a new report on the legislative, administrative and other measures that give effect at the national level to the international commitments undertaken as a result of its ratification of the Convention.
2. It will be recalled that Belgium's eleventh, twelfth and thirteenth periodic reports, contained in a single document, were considered by the Committee at a public meeting held on 13 and 14 March 2002. The Committee's concluding observations on that report were officially transmitted on 21 May 2002.
3. This document is submitted to the Committee on the Elimination of Racial Discrimination in the spirit of the recommendation made in paragraph 26 of the Committee's concluding observations (CERD/C/60/CO/2), that Belgium should submit its fourteenth periodic report jointly with its fifteenth periodic report, that it should be an updating report, and that it should address the points raised in the concluding observations adopted on 21 March 2002.
4. In this report, Belgium attempts to give detailed replies to the comments made in section C of document CERD/C/60/CO/2, entitled "Concerns and recommendations".
5. The replies to these comments are incorporated in the report.
6. Belgium wishes to take this opportunity to confirm the importance it attaches to the work of the United Nations treaty bodies and to underline the importance of their contribution to the protection and promotion of human rights.
7. This commitment is reflected in the fact that Belgium has during 2006 submitted five country reports, on the International Covenant on Economic, Social and Cultural Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women and the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.
8. At the international level, the Durban World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, held under the auspices of the United Nations in September 2001, was one of the most significant events to have taken place during the period covered by this report.
9. Belgium held the Presidency of the European Union at the time and played an active part in the preparation and organization of the Conference.
10. Since the end of the Conference, Belgium, together with its European partners, has made every effort to ensure a credible and consensus-based follow-up.
11. To that end it hosted and financed the Regional Expert Seminar for Western States on the Implementation of the Durban Programme of Action, in December 2003.

12. Within the framework of the Organization for Security and Cooperation in Europe (OSCE), Belgium organized the Conference on Tolerance and the Fight against Racism, Xenophobia and Discrimination, a topic that will be revisited during its presidency of OSCE in 2006.
13. Belgium was also the first United Nations Member State to welcome, in June 2005, the Working Group of Experts on People of African Descent, a procedure established as part of the follow-up to the Durban Conference.
14. In the course of a week-long visit, the Working Group met with several ministers, including the Minister for Foreign Affairs, the Minister of Justice and the Minister for Social Integration, as well as members of parliament and numerous institutions and non-governmental organizations whose mandates, at both the federal level and the level of the federated entities, cover areas relating to the fight against racism and discrimination. The Group was also able to make direct contact with representatives of civil society and people of African descent.
15. The report of the Working Group, which was prepared after the visit, is attached as annex III.
16. A brochure aimed at raising awareness of the outcome of the Durban Conference among the general public was printed in several thousand copies and has been widely distributed in schools.

ARTICLE 2: POLICIES TO COMBAT RACISM

Legislative developments

A. International commitments

17. Since 2002, Belgium has ratified:
 - The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (6 May 2002);
 - International Labour Organization (ILO) Convention No. 182, concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour;
 - Protocol No. 13 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances (23 June 2003);
 - The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (17 June 2004);
 - The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (17 March 2006).

18. Belgium has acceded to:
- Protocol No. 12 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (4 November 2000);
 - The Additional Protocol to the Convention on Cybercrime, concerning the criminalization of acts of a racist and xenophobic nature committed through computer systems (28 January 2003);
 - The Protocol amending the European Convention on the Suppression of Terrorism (15 May 2003);
 - The Additional Protocol to the Criminal Law Convention on Corruption (7 March 2005);
 - The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (24 October 2005);
 - Protocol No. 7 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (11 May 2005).
19. The majority of these protocols signed by Belgium are in the final stages of the process of parliamentary approval required for ratification.

B. Constitutional and legislative amendments and developments

B.1 Strengthening of legislation against racism in order to improve implementation

20. As part of the plan of action against discrimination (December 2000) and in application of European directives on the matter, two important pieces of legislation have been enacted: the Act of 25 February 2003, on combating discrimination (*Moniteur belge*, 17 March 2003), and the Act of 20 January 2003, on reinforcement of the legislation against racism (*Moniteur belge*, 12 February 2003).

21. These Acts add the following new elements to the fight against racism:
- Incitement to discriminate, and racist harassment, now constitute forms of discrimination;
 - In employment, discrimination against a group - and no longer merely against an individual - is now punishable;
 - Labour inspectors have been given a specific mandate to monitor compliance with these acts;
 - The mandate and powers of the Centre for Equal Opportunity and Action to Combat Racism now cover:

(a) Non-racial discrimination (though not gender discrimination) and foreigners' fundamental rights;

(b) The handling of complaints with a view to mediation;

(c) The gathering and publication of statistical data;

(d) A duty to inform the centre of complaints of racism handled by the Parliamentary Standing Committee on Police Oversight ("Standing Committee P"; see para. 295 below) or the disciplinary body of the federal and local police (the Police Inspector-General's Office);

- The power to act on de facto discrimination (direct or indirect) through an injunction such as an action for interim relief;
- A racist motive is now an aggravating circumstance in a range of criminal offences. The Council of Ministers decided on 18 March 2005 that every police report should contain a special note on the motive underlying the behaviour giving rise to an offence. Action on such cases would be the responsibility of the reference judge. Circular No. COL/200 of the Association of Appeal Court Prosecutors, promulgating this provision, entered into force in April 2006;
- The burden of proof of discrimination (in civil cases) has been alleviated by admitting evidence collected during tests and statistical data (shared burden of proof);
- Workers who complain of discrimination are now protected.

B.2 Ban on racist organizations and propaganda; influence of xenophobic ideologies on political parties, particularly in Flanders

B.2.1 Withdrawal/suspension of certain civil and political rights, notably the right to be elected

22. The Act of 7 May 1999 amended the Act of 30 July 1981 concerning racism and xenophobia to allow courts to impose an additional penalty on a person already sentenced to a main penalty, by wholly or partly withdrawing certain political rights (the right to hold public posts, employment or office, and the right to be elected) for a period of 5 to 10 years. The suspension now applies to anyone, not only repeat offenders, convicted under the Act of 23 March 1995 on negationism.

23. Nevertheless, this additional penalty remains an option, to be imposed at the court's discretion. One such additional penalty (withdrawal of political rights for 10 years) has been imposed, by the Antwerp Appeal Court on 14 April 2005, on a person who violated the law on negationism (Act of 23 March 1995) and the law on racism (Act of 30 July 1981), on top of a main sentence of one year's imprisonment.

24. In one recent decision (26 April 2006), someone who had appeared on various extreme right-wing parties' lists of candidates, and had distributed a circular denigrating the many nationalities that live together in Belgium, was convicted of incitement to racism and sentenced to a fine and a five-year disqualification from exercising certain civil and political rights, including the right to be elected and the right to hold public posts or employment.

25. The Belgian Parliament currently has before it two bills on the suspension of certain civil and political rights. One of these would introduce an automatic suspension of the right to be elected in the event of a conviction under the above-mentioned acts. The other goes further, not only proposing automatic withdrawal of some of the civil and political rights provided under article 31 of the Criminal Code, but also precluding any consideration of mitigating circumstances or the imposition of suspended or conditional sentences.

26. Moreover, it was envisaged in the Government's programme statement of July 2003 that any conviction for racism or negationism would entail the automatic loss of certain civil and political rights for a specific time. The inner Cabinet reaffirmed that intention on 13 July 2004, when it adopted in principle the federal plan of action on racism, anti-Semitism and xenophobia. Draft legislation on the subject will shortly be presented.

B.2.2 Public funding of anti-freedom parties

(a) Federal level

27. The Act of 4 July 1989 on the limitation and control of expenditure in respect of federal elections and on the financing and accounting transparency of political parties has since 12 February 1999 included a provision under article 15 ter that allows public funding to be withdrawn from political parties which clearly demonstrate hostility towards the rights and freedoms guaranteed by the European Convention on Human Rights. This article required further implementation measures, which were to be established by royal decree following discussion in the Council of Ministers. As a result, 13 October 2005 saw the entry into force of the royal decree of 31 August 2005 regulating the time frame and procedure for dealing with applications under article 15 ter of the Act of 4 July 1989 on the limitation and control of expenditure in respect of federal elections and on the financing and accounting transparency of political parties.

28. Under the Act, a complaint may be brought before the Council of State by a minimum of one third of the members of the electoral commission responsible for monitoring the funding of political parties, where the party fails to respect human rights or engages in racist behaviour. The Council of State is competent to rule on the merits of the complaint.

29. The first complaint under the Act was brought in late 2005.

30. Also of interest at the federal level is another proposal currently before the Chamber of Representatives, which would amend rule 11 of the rules on recognition of political groups to withdraw recognition and the benefits of recognition from a group if one of its members or constituent bodies has been convicted under the acts of 30 July 1981 or 23 March 1995.

(b) *Federated entities*

31. Public funding for political groups within the federated entities is accorded only to political parties constituting a recognized political group and may be withdrawn by the parliaments of the French community, the Walloon region or the Brussels-Capital region if a member of any such group has been convicted under the acts of 30 July 1981 or 23 March 1995, or where the political party itself has been convicted under article 15 ter of the Act of 4 July 1989 referred to above. The regulations of the Flemish parliament also explicitly state that it may withdraw the funding allocated to a party found guilty of racism.

B.2.3 Trial of the former Vlaams Blok party

32. The Act of 7 May 1999 amending article 150 of the Constitution transferred competence to try “press offences” of a racist nature from the assize courts to the criminal courts, which means the criminal courts may henceforth try not only press offences punishable under the Act of 30 July 1981, but also other press offences such as defamation and libel (Criminal Code, art. 443) and negationism (Act of 23 March 1995). This Constitutional amendment has greatly facilitated prosecution.

33. An important aspect of article 150 of the Constitution is the narrower interpretation now given to the notion of “political offences”, which remain subject to the jurisdiction of the assize courts. This, too, has made it easier to mount prosecutions to counter racism, as the trial of the former Vlaams Blok party clearly shows.

34. On 26 February 2003, the Brussels Appeal Court upheld the criminal court’s ruling at first instance that it was not competent to try the three non-profit associations linked to the Vlaams Blok party that were the subject of a private prosecution brought by, among others, the Centre for Equal Opportunity and Action to Combat Racism for violation of the 1981 law against racism. In its judgement, the Appeal Court found that, if the acts for which the three associations were being prosecuted were proved, they would have been committed by Vlaams Blok, a political party and thus an institution, and would consequently have constituted a “political offence”, which the assize court had sole competence to try. An appeal in cassation was lodged against this judgement by the plaintiffs, the Public Prosecutor’s Office and the Centre for Equal Opportunity and Action to Combat Racism.

35. On 18 November 2003, the Court of Cassation struck down this judgement, recalling that the concept of a “political offence” is clearly defined and that the fact that the offence was committed in order to allow a political party to express itself does not lead to a finding of a political offence within the meaning of article 150 of the Constitution. In this ruling, the Court of Cassation applied a much narrower interpretation of the concept of a “political offence” than the lower courts. It referred the case for consideration to the Ghent Appeal Court, which on 21 April 2004 handed down a final judgement sentencing the three non-profit associations to a fine of €12,394.67 each for violation of the Act of 30 July 1981 (membership of a group inciting racial discrimination; criminal liability of the associations under the Act of 4 May 1999, although this did not apply to the Vlaams Blok since the party had no legal status).

36. The Ghent Appeal Court ruling found that the Flemish nationalist party's propaganda was "a standing incitement to segregation and racism" and noted that the party had not renounced its discriminatory 70-point manifesto. The Vlaams Blok lodged an appeal in cassation against the ruling but on 9 November 2004 the Court of Cassation upheld the Ghent Appeal Court ruling. The Vlaams Blok party was then dissolved and on 14 November 2004 took on a new identity, Vlaams Belang, or "Flemish Interest".

B.2.4 Recent decision against the leadership of an extremist political party active in the French-speaking part of the country

37. On 18 April 2006, the Brussels Appeal Court found the leader of the Front National and his assistant guilty of incitement to racial hatred, discrimination and segregation. The assistant was additionally sentenced to a 10-year suspension of the right to be elected and 250 hours of community work in the foreigner-integration sector. The Court penalized not only the tracts put out by the Front National, but also the party's manifesto. An appeal in cassation has been lodged.

C. Other measures

38. In addition to the measures taken in response to paragraph 14 of the Committee's observations, Belgium has also taken steps to sensitize and train officials in the area of criminal justice, where the Committee had noted deficiencies (concluding observations, para. 19).

C.1 Action to raise awareness among target groups

Awareness-raising and training for criminal justice officials

Awareness-raising for judges and prosecution officials

39. The training course for judges and legal trainees in Belgium includes a module on the suppression of racism and xenophobia. In 2003, the module was given jointly by members of the Centre for Equal Opportunity and Action to Combat Racism, judges, members of the police forces and members of the Standing Committee on Police Oversight. The first part of the module looked at the context in which legislation in the area of equality and non-discrimination has developed. The second part dealt with more effective ways of enforcing the law and the difference the new provisions might make. Case law was discussed and questions raised to allow participants to share their experiences.

40. A course was held in 2005 to familiarize the judiciary with the anti-discrimination laws. Training of this kind is compulsory for all legal trainees. The Higher Council of Justice training subcommittee regularly approves, for the purposes of judges' training and legal trainees' placement, training courses offered by external bodies working on this issue, such as those run by the Association pour le droit des étrangers, the University of Antwerp's Centre for Migrant Studies and the University of Leuven Human Rights Institute.

41. Lastly, the training subcommittee of the Higher Council of Justice is taking an increasing number of initiatives to raise awareness of discrimination, including: (a) preparing special courses, which are decentralized to make it easier to reach the target audience and which attempt to involve all actors; (b) encouraging judges and legal trainees to attend courses offered by other bodies; and (c) incorporating an analysis of the social context into all courses.

Awareness-raising for State officials

42. As regards the police, in accordance with a ministerial decree of 10 December 2002, on general training regulations, Belgian police training covers the provisions of the European Convention on Human Rights, citizens' rights and freedoms under the Constitution and international law, and the role and place of the police in a multicultural society. It also looks at the notion of "police ethics" and emphasizes the way in which culture influences communication with people from other cultures and ethnic groups. Police are expected to know the law on racism and xenophobia and to be capable of taking action and determining the facts in situations of discrimination and/or racism against minorities and individuals. The general training regulations cover topics that tie in with human rights, thereby sensitizing police trainees to this issue.

43. As to prison officers, they are given basic training on entry. As from 1 January 2006, the course lasts six weeks and looks at racism, xenophobia and discrimination in equal measure. Among other things, new entrants are given an explanation of the European regulations on the subject. A new module on knowledge and understanding of other cultures has been introduced.

C.2 Federal action plan

Ten-point federal action plan on racism, anti-Semitism and xenophobia

44. On 14 July 2004, at the initiative of the Ministry of Social Integration and Equal Opportunities and in cooperation with the Ministry of Justice and the Ministry of the Interior, the inner Cabinet adopted in principle a federal action plan to combat racist, anti-Semitic and xenophobic violence. The main objective of the plan is to develop initiatives to combat ideologies, discourse and violence based on racial hatred and anti-Semitism.

45. The plan builds on the recommendations contained in the 2003 report of the European Commission against Racism and Intolerance on Belgium, and on some of the general recommendations on combating anti-Semitism drawn up by the same body in April 2004.

46. The federal plan is administered in coordination with the regions and communities because the federated entities are partly responsible for the application of the law on ethnic discrimination and the promotion of the policy on equality in all aspects of economic, social and cultural life.

47. There are 10 components to the plan:

I. Implementation of anti-discrimination laws:

(a) Evaluate the coordination of the provisions of internal law deriving from European Union directives;

(b) (i) Strengthen police training;

(ii) Strengthen judiciary training;

(c) Strengthen cooperation between the Higher Council of Justice and the Centre for Equal Opportunity;

(d) Run information campaigns on anti-discrimination laws;

II. Complaints procedures:

(a) Refine terminology to facilitate identification of racist or anti-Semitic motives in certain offences;

(b) Follow up complaints: regular reports by prosecutors on follow-up and analysis of complaints, based on the work of the reference judges;

III. The Internet as a vector for racist and anti-Semitic ideologies: a special unit was set up in March 2005 to monitor racist messages on the Internet as a partnership venture between the Web watchdog Observatoire de l'Internet and the Centre for Equal Opportunity;

IV. Distribution of racist pamphlets: ensure that State enterprises are in a position to refuse to distribute racist pamphlets;

V. Combating prejudice: notably by creating "platforms for democracy" in the major cities to encourage local initiatives to promote "living together"; and by supporting the creation of a resource centre to encourage Jewish-Arab dialogue in particular, for use by educators and associations, and to develop programmes of educational and other activities to enhance intercultural dialogue and dispel prejudices;

VI. The media: evaluate the impact of the recommendations adopted by the Journalists' Association in 1994 regarding people of foreign origin, and of the agreements signed between the audiovisual monitoring authorities, journalists' associations and the Centre for Equal Opportunity;

VII. Police forces:

- (a) Sensitize police forces to the issue of racism and anti-Semitism;
- (b) Make adequate provision for dealing with complaints against police officers in the police internal oversight service, the Standing Committee on Police Oversight or the Police Inspector-General's Office;
- (c) Draw up statistics on action taken on disciplinary complaints; make a quantitative and qualitative evaluation of campaigns to recruit individuals of foreign origin to the federal police;

VIII. State security: raise awareness of issues arising from the spread of ideologies inciting racial or religious hatred under cover of sermons or teaching;

IX. Measures to protect target groups: establish police security measures for the protection of buildings in communities under actual or potential threat from acts of racial hatred;

X. Tolerance barometer: draw up an agreement with university research centres to develop an instrument providing a quantitative and qualitative measure of trends in racist, anti-Semitic and xenophobic sentiment in Belgium.

48. In addition, in February 2004, following a flare-up of anti-Semitism, the Ministry of Social Integration and Interculturalism gave the Centre for Equal Opportunity three tasks:

- To set up a monitoring unit within the Centre, to implement a proactive policy of receiving, examining and systematically following up every complaint of anti-Semitic acts;
- To organize, in cooperation with the Ministry of Justice and the prosecution services, regular consultations with the leading Jewish community organizations on the handling of complaints;
- To coordinate a report by two universities on the nature and extent of the rise of anti-Semitism in Belgium.

49. *French community*: a government programme of action to promote equality between men and women, interculturalism and social inclusion was adopted by the government of the French community on 25 February 2005. This programme of action includes a major component on interculturalism, with a view to its incorporation as a cross-cutting policy in all the French community's areas of competence and action.

50. The promotion of interculturalism in the various areas of competence of the French community has the following aims:

- To encourage social and cultural diversity in and through schools, notably by promoting the training of teachers of Islam in higher education institutions and introducing into history and geography syllabuses courses on immigration into Belgium that highlight immigrants' contributions to Belgian society;
- To develop resources and training on the implications of interculturalism, including by producing an inventory of the instruments and French-language resources available on issues relating to interculturalism and tolerance, in a directory for educators and associations;
- To promote equality in meetings and dialogues between citizens from differing social and cultural backgrounds by, for example, supporting local initiatives to encourage a social and cultural mix in public forums;
- To develop resources on immigration with a view to enhancing recognition of "the other", in part by supporting the production and dissemination of resources, studies and research on the subject of immigration;
- To combat discrimination on grounds of nationality, cultural identity or religious or philosophical beliefs, and associated stereotyping by, inter alia, assessing the situation with regard to discrimination in schools and supporting initiatives to establish information and guidance services for the victims of discrimination, in particular those of foreign origin;
- To develop human, cultural and university cooperation between the French community and other regions and to engage the French community in European and international action to promote intercultural dialogue;
- To establish a mechanism for monitoring and evaluating policies and initiatives to promote interculturalism.

51. The federal Government created the Commission on Intercultural Dialogue in February 2004, to run a project launched by the Prime Minister and the Deputy Prime Minister, who in December 2002 had organized a round table on "Living together better".

52. The purpose of that meeting, which brought together religious authorities and respected thinkers, associations and social partners, was to send a message of peace and dialogue in the wake of dogmatic debate and racist and anti-Semitic violence.

53. The proposals contained in the final report of the Commission on Intercultural Dialogue published in May 2005 centre around one basic policy option: acceptance of the existence - and thus recognition - of the various cultural groups that make up Belgian society, and in particular acceptance of the existence of cultural minorities, who should be treated with dignity and respect. The final report is attached as annex II.

54. Concrete solutions are suggested in a number of areas. Some of these have a symbolic value, such as the adoption of a Belgian citizens' charter (*Être citoyen en Belgique*) and allowing individuals greater flexibility in the choice of public holidays depending on their culture. Others aim to provide the tools required to implement a policy of interculturalism, such as an inter-university centre for research into migration and cultural minorities, a museum of immigration, a Belgian Islamic institute, and an inter-belief study centre to promote dialogue between religious, secular and other traditions.

55. Other proposals provide guidelines for calming conflicts that arise in residential areas, companies or schools. Lastly, attention is drawn to the need to give new arrivals adequate access to classes in the national languages.

C.3 Integration programmes and policies

C.3.1 Recent developments in integration programmes and policies in the Walloon region

Priorities of the regional integration policy

56. The priorities of the regional integration policy are as follows:

- Renewal of the certification of the five regional integration centres responsible for implementing the policy on integration of foreigners or persons of foreign origin;
- Call for projects to support local social development initiatives;
- Co-financing of projects in priority action areas that have been approved by the Federal Support Fund for Immigration Policy;
- Co-financing of refugee reception projects approved by the European Refugee Fund, on learning the host-country language and on dealing with problems relating to refugees' mental health;
- Co-financing of the Equal-Vitar project (see paragraph 69 below);
- Renewal of the agreement to develop a mediation service for Travellers in the Walloon region;
- Renewal of support for the Walloon Intercultural Association, a forum for reflection and consultation among actors in the field of integration in the Walloon region;
- Support to enable the Federation of Regional Integration Centres to continue publishing a specialist magazine on integration in the Walloon region and to prepare, in 2005, a campaign to publicize foreigners' right to vote in municipal elections;
- Support for research into the knowledge and needs of organizations working with immigrants;
- Support for research into the ageing of the immigrant population.

Integration policies and recent programmes

57. The immigrant integration sector carries out its tasks primarily in the framework of the decree of 4 July 1996, which aims to formulate a coherent policy on the integration of foreigners or persons of foreign origin. The goal is to promote equality of opportunities and a society that respects cultural diversity and is concerned to improve the framework for harmonious coexistence between native Belgians and foreigners or persons of foreign origin.

58. This policy is implemented through the certification and funding of regional integration centres and through subsidies for local projects run primarily by associations that work with people of foreign origin and have a suitable approach and teaching method.

59. The sector also runs projects co-financed by the Support Fund for Immigration Policy, in accordance with the annual circular published by the Prime Minister's Office, and for the past two years has also run several projects under the European Refugee Fund, which is administered at the federal level by the Federal Agency for the Reception of Asylum-Seekers.

60. The sector also implements the French community executive decree of 11 March 1983, on certification of persons offering religious and/or moral assistance to immigrants.

61. On the basis of the legislation mentioned above, the Department of Welfare and Health provides financial support to a range of initiatives and services aiming at the social integration of foreigners and persons of foreign origin. During 2003 and 2004, a budget was established to support cross-cutting initiatives such as the Walloon Region Travellers' Mediation Centre, the Federation of Regional Integration Centres, the Walloon Intercultural Association and the non-profit association Transfaires, which supports joint development projects with countries of origin.

62. The tasks of the regional centres for the integration of foreigners or persons of foreign origin are as follows:

- To carry out activities relating to social and vocational integration, housing and health, preferably on the basis of agreements reached with local authorities and associations;
- To promote training for foreigners or persons of foreign origin and for the staff of services dealing wholly or partly with such persons;
- To collect and analyse statistical data, establish indicators and publish information designed to facilitate the integration of foreigners or persons of foreign origin;
- To provide counselling and guidance for foreigners and persons of foreign origin at all stages of integration, preferably in accordance with agreements reached with local authorities and associations;

- To evaluate local social development initiatives and transmit the results to the Walloon government;
- To promote intercultural exchanges and respect for diversity.

Local social development initiatives

63. Following a call for projects, subsidies are given for local initiatives within the broad framework of the decree of 4 July 1996. These subsidies are discretionary and in many cases are granted as supplements to those awarded by other approved bodies such as vocational guidance institutions, social service centres, adult education institutes or youth clubs.

64. The initiatives supported in this context cover the four main areas defined in the decree:

- Social or intercultural mediation;
- Assistance to foreigners or persons of foreign origin with regard to rights and obligations in all areas;
- Literacy, training and vocational integration;
- Helping native Belgians and foreigners or persons of foreign origin to understand and get to know each other better.

Around 145 projects were approved and subsidized under the scheme in 2003, while in 2004 more than 150 associations had projects approved and subsidized by the Walloon region.

Initiatives financed by the Support Fund for Immigration Policy

65. The purpose of the Support Fund for Immigration Policy is to finance projects within the framework of the policy on the integration of young people of foreign nationality or origin. The fund is a federal one regulated by an annual circular issued by the Prime Minister's Office (*Moniteur belge*, 23 June 2004).

66. The fund itself is financed from the net profits of the national lottery. Staff and running costs of approved projects are co-financed by regions and communities. The fund acts as a catalyst, promoting clearly defined projects for a limited period.

67. Administration, monitoring and evaluation of approved projects are carried out by the Centre for Equal Opportunity and Action to Combat Racism (for projects funded by the national lottery) and by the community and regional authorities (for projects co-financed by those authorities).

68. To be approved, projects must address the priorities established by the Inter-Ministerial Conference on Immigration Policy, namely:

(a) Social and vocational integration, and participation, of young people of foreign nationality or origin;

(b) Investment in infrastructure and the provision of public sports and sociocultural premises to meet the needs of young people of foreign nationality or origin. In 2004, 123 projects were approved in the Walloon region, 53 submitted by the local authorities and 70 by private associations. Of these, 81 were co-financed by the Department of Welfare and Health in the Walloon region and 21 by the Department of Employment. Regional co-financing came from the social welfare sector (€213,500), the health sector (€25,000) and the employment sector (47 employment subsidy (APE) units). With rare exceptions, the projects are run by non-profit associations, public welfare centres (CPAS) or municipalities, in partnership with associations. Particular attention is paid to projects involving specific initiatives for women and/or aiming to increase diversity within the target group;

(c) Projects to counter truancy and dropping out of school, in the form of “homework schools” and/or remedial classes in conjunction with a range of other activities such as creative workshops, self-expression, discovery of the immediate environment and information technology and multimedia workshops.

Transnational initiatives, the Travellers’ Mediation Centre and the Walloon Intercultural Association

Equal-Vitar development partnership

69. This is an experimental project building on a preliminary survey of the situation of Africans in the labour market in Wallonia. The starting point is the notion that it is possible and useful for members of this group to apply their community resources and networks, their special cultural and linguistic knowledge, and their professional and scientific learning and skills to projects targeting their continent or community of origin, or to be carried out in Belgium or from Belgium. Such projects feed into new efforts in the area of joint sustainable development and fruitful North-South exchanges between populations and cultures, based in the South on local development projects and in the North on job-creation initiatives. The project is underpinned by two key concepts: skills application and skills transfer. These two concepts offer an interactive vision of immigration and development cooperation.

Walloon Region Travellers’ Mediation Centre

70. This centre was established in 2001 with logistical support from the Namur Province Intercultural Action Centre and is now an autonomous body with a staff and an operating budget. Its aims include awareness-raising among welfare and employment bodies, local authorities and neighbours’ and residents’ associations with regard to the establishment of encampment areas.

Walloon Intercultural Association

71. In 2004, arrangements were completed for the establishment and funding of a new support structure for the intercultural policy on the integration of foreigners or persons of foreign origin, known as the Walloon Intercultural Association. This is intended as an interface between existing or future policies and action to promote the integration of foreigners or persons of

foreign origin, including Travellers. It comprises representatives of the Walloon government, employers and trade unions, the Union of Cities and Municipalities, private research institutions, university research departments, regional integration centres, regional and local associations and private individuals.

72. The Walloon region programme-decree of 18 December 2003 makes the following provision for the integration of foreigners or persons of foreign origin:

- Submission by the government to the Walloon parliament of an annual report describing initiatives taken in the area of the integration of foreigners or persons of foreign origin and a three-yearly report evaluating the policies implemented in that area;
- Establishment of a Walloon consultative council on the integration of foreigners or persons of foreign origin, in association with the Walloon Region Economic and Social Council.

C.3.2 Integration policy in Flanders

1. Diversity policy

73. In its present form, the policy on minorities (or the policy on diversity, as it is now called) is implemented through the strategic plan adopted by the Flemish government on 24 July 1996 and the decree of 28 April 1998 on Flemish policy on ethnocultural minorities. Given the new issues, new developments and challenges arising out of the diversity policy, the Flemish government decided on 25 October 2002 to update its policy on minorities by revising the associated strategy.

74. The first point to be made is that the Flemish government's policy is aimed at society as a whole and is focused on combating discrimination. The strategy enables the authorities to address themselves to the population as a whole far more than in the past. The intention is to promote "living together in diversity" in all sectors of the population.

75. Secondly, the Flemish government's policy is based on harmonious citizenship that clearly prioritizes the shared values associated with an open, tolerant and democratic Flanders. The diversity policy is explicitly based on the shared values associated with an open, tolerant and democratic society, namely the separation of Church and State, respect for human dignity, the enjoyment of fundamental rights and the equality of all citizens, regardless of their sex, sexual orientation, religion or origin.

76. Thirdly, the Flemish government aims to take a positive approach to diversity and the experience of diversity, without ignoring the misunderstandings and conflicts that diversity can engender.

77. The Flemish government has set itself two strategic objectives in developing diversity: to promote "living together in diversity" among all sectors of the population, on the one hand, and to attain proportional participation and facilitate the emancipation of the ethnic minorities established in Belgium, on the other.

78. The first strategic objective involves enhancing the intercultural skills of political and social institutions, which means building greater diversity into their operations and services and achieving proportionate results for the groups targeted by the diversity policy. In addition, the internal composition of such institutions should reflect the multicultural environment they operate in and exploit the opportunities that such an environment offers to improve both the quality of their operation and their coverage.

79. The second strategic objective assumes that the ethnic minorities legally established in Belgium are groups of individuals with full citizenship, who should have and enjoy access to all political and social institutions - first and foremost in education and employment - in proportion to their relative weight in the target population, and who should be guaranteed proportional participation. The objective sought is the autonomy of ethnic minorities.

80. Achieving proportional participation will require the Flemish authorities to take steps, in their areas of responsibility, to eliminate direct and indirect discrimination and intimidating obstacles, and to combat racism. The Flemish authorities are also taking steps to speedily eliminate delays linked to the ethnocultural context.

81. Facilitating emancipation requires the Flemish government to implement a policy that gives ethnocultural minorities the tools with which to build on their existing capabilities. The Flemish authorities are also encouraging ethnocultural minorities to become involved in action aimed at structural change and to take on certain responsibilities themselves.

82. The Flemish government has allocated some €12 million to the diversity policy.

83. Naturally, participation does not happen only at the government level. Local authorities, too, benefit from the involvement of, and consultation with, residents. Those municipalities that have an integration service are required to consult with fellow-citizens of foreign origin and to involve those communities in policymaking. In most cases this is done through immigrant consultative councils, but other arrangements for participation can also be made.

Reception of illegal residents

84. The decree on minorities of 28 April 1998 states that Flemish policy in this area shall include a policy component addressing reception and guidance for persons illegally resident in Belgium who need help because of their precarious situation. The notion of “guidance” implies that the support given to illegal residents should hold out genuine prospects for their future. The reception policy is an inclusive policy applied primarily in the areas of well-being, health care and education. It aims chiefly at guaranteeing respect for human dignity and fundamental human rights.

85. With a view to ensuring that persons who are illegally resident do not find themselves living in inhuman conditions, the diversity sector will take all necessary steps to guarantee their fundamental rights. In the context of a local reception policy, this refers specifically to the right to emergency medical care (royal decree of 12 December 1996) and the right to education for unaccompanied illegal resident minors (circular of 24 February 2003).

86. Because their residence status is often uncertain, the Roma are one of the groups targeted by the reception and support policy. The Roma do not seek caravan sites - in their country of origin they live in houses or apartments - but rather a policy of support and the chance to settle down. The Roma's main problem is their uncertain residence status, for refugee status is granted to only a limited number of them (their applications may not yet have been declared admissible, or they may have been rejected, or they may never have submitted an application). Many of the Kosovar Roma who have been rejected are tolerated despite being illegal residents, under a non-refoulement rule of the Office of the Commissioner General for Refugees and Stateless Persons, which means they cannot be sent back to their country for reasons of their safety. The rule does not, however, confer any automatic right to welfare or any legal right to work.

87. One effect of uncertain or illegal residence status is that the people concerned are less inclined to use basic services. The problem is partly one of fear, but there is also a perception that there is nothing to be gained from any kind of engagement in a society that holds out no prospect of legal residence. An official responsible for the reception and support policy has been assigned to the Flemish Centre for Minorities since December 2001, with terms of reference that include the Roma. However, federal policy is of considerable importance, for the federal State has the power to grant or deny residence and is responsible for deportation policy.

88. Education and health are priority issues for policy on the Roma, given the current situation of this target group and the problems it faces, not to mention the social consequences of those problems.

Travellers and Gypsies

89. Travellers and Gypsies remain in a very vulnerable situation in respect of education, employment and health, and they are included as a target group in the Flemish policy on minorities. The decree of 28 April 1998 on ethnocultural minorities provides for special attention to be paid to this target group, in part through units assigned to do social work in the caravans scattered across the regions. The new strategic plan also embraces encampment policy. By 2010, caravan-dwellers will have an adequate supply of quality sites. This requires the construction of 750 additional sites on residential land and 550 on land set aside for Travellers.

90. The Flemish government will be paying careful attention to Travellers and Gypsies and particularly to school attendance by their children. The social problems in this area will be considered in consultation with the ministers responsible for welfare and education. The Flemish government will be setting targets for school attendance by these children.

91. The Flemish government will also be making efforts to improve employment opportunities for Travellers and Gypsies. This challenge will be addressed not only in cooperation with the minister responsible for employment, but also with the minister responsible for enterprise. Many Travellers and Gypsies are self-employed, depending on their particular milieu and interests.

2. *Civic integration policy*

92. Roughly 20,000 newcomers arrive in Flanders and Brussels every year. Some are fleeing from wars or natural disasters, or from unstable political or economic situations. Others find employment here or come at the request of their companies. Marriage is no respecter of borders, so family members follow. These are people who find themselves obliged to start a new life in a situation where nothing is certain. The Flemish community's integration policy seeks to provide these people with an opportunity to learn Dutch and become familiar with the workings of Flemish society.

93. Integration is regarded as a first, guided step towards becoming a full member of society. It is an interactive process involving a commitment from both society itself and its new citizens. The Flemish government regards integration as a process with mutual rights and obligations. The government has a duty to offer newcomers an integration programme tailored to their needs and wishes. The newcomers in turn commit themselves to active participation in the integration process.

94. Thus the decree on civic integration of 28 February 2003 establishes integration as a right and an obligation, a principle further developed in the enabling decree of 30 January 2004. Starting on 1 April 2004 newcomers registering in a municipality must follow a civic integration programme. The distinction between a right and an obligation is made on the basis of international treaties, including the European Union treaties. New arrivals who register in one of the 19 Brussels municipalities are not subject to this obligation.

New arrivals

95. With the exception of foreigners temporarily resident in Belgium and asylum-seekers whose applications for asylum have not yet been declared admissible, foreigners who meet the following conditions are considered part of the target group for the civic integration policy:

- They have recently, and for the first time, been registered in a Flemish or Brussels municipality; and
- They have attained the age of majority.

96. Consequently, the civic integration policy's target group is very diverse. Newcomers fall into one of the following categories:

- Asylum-seekers whose applications have been declared admissible;
- People with refugee status;
- People forming or reuniting with their family;
- Foreigners whose residence has been regularized provisionally or definitively or is authorized for humanitarian reasons;
- Victims of human-trafficking who are listed in the national register;

- Foreigners in a stable relationship who have been granted a residence permit;
- Nationals of European Economic Area (EEA) member States;
- Migrant workers in one of the following categories:
 - Self-employed (holder of a work permit, or exempt);
 - Member of managerial staff (holder of a work permit B);
 - Sports professional or trainer of sports professionals (B-permit holder);
 - Performing artist (B-permit holder);
 - Foreigner with a B-permit issued on the basis of an analysis of the labour market.

97. Some new arrivals belonging to the target group are required to follow a civic integration programme. On the basis of international regulations and European legislation, EEA nationals, their spouses, their children aged under 21 and their parents are entitled, but not compelled, to follow an integration programme. Newcomers aged 65 and older or who are seriously ill or disabled are also exempt from this requirement. Owing to the special institutional status of the Brussels-Capital region, newcomers living in Brussels are not obliged to follow a civic integration programme.

Referral by the municipality

98. Non-nationals are regarded as “new arrivals” as soon as they register for the first time in a Flemish or Brussels municipality. At that time the municipality tells them that they may follow an integration programme and refers them to the welcome office. A month later, the municipality notifies those for whom it is mandatory that they must follow an integration programme. The municipality also informs child newcomers and their parents about the right to education and the compulsory education system. Owing to the institutional status of the Brussels-Capital region, the 19 Brussels municipalities are not involved in the civic integration policy. Integration policy in the capital is managed by the Flemish Community Commission (VGC). In practice, newcomers are advised by this Commission and the Brussels welcome office.

The civic integration process

99. The civic integration process comprises a training programme and individual guidance through the process for newcomers. The training programme may be in three parts: Dutch as a second language, social orientation and vocational guidance. The idea is to enable newcomers to learn to find their own way around in Belgian society as quickly as possible.

100. The aim is also to meet newcomers’ needs and wishes to the extent possible. Most newcomers are anxious to find employment as soon as they can. They regard Dutch-language lessons as the best means of doing so. These are also the key to communication in their new environment.

101. The social orientation lessons deal with the way Belgian society operates and is organized. They cover, for example, Belgium's political structure, the work of the municipalities, the Post Office and the health insurance funds, social rights and obligations, waste-sorting, etc. Vocational guidance helps newcomers to choose their future options in Belgium: employment, training, further education or voluntary work.

102. Not all newcomers qualify for the full programme or for guidance. The integration policy target group is highly diverse, and so is the integration process itself. With a team of partners, a programme can be tailored to meet newcomers' needs, and the welcome office, the *Huis van het Nederlands* (Dutch Language House) and the Flemish Employment Office (VDAB) each have their own part to play.

The welcome office

103. The welcome office is responsible for organizing newcomers' civic integration programmes. In this initial integration process, newcomers have their first chance to become acquainted with Flemish society and to learn Dutch.

104. The Flemish community has eight accredited welcome offices. In addition to those in Ghent, Antwerp and Brussels, there is one in each Flemish province. They are expected to serve all the municipalities in their operational area.

Dutch Language House

105. The Dutch Language House offers adult non-native speakers information on courses in Dutch as a second language in their municipality or region. It consults with participants to establish which education-provider (e.g., a basic education centre or centre for adult education) best suits their individual needs.

Flemish Employment Office

106. Newcomers wishing to find employment as soon as possible will get support from the Flemish Employment Office (VDAB) once their civic integration programme gets under way.

Reception classes for children

107. Newly arrived immigrant children are also included in the integration policy target group. Compulsory education and the right to education apply to them, like any other minors. These reception classes provide an opportunity for them to learn Dutch and catch up on other subjects where necessary.

C.3.3 Integration policy of the French Community Commission

Brussels-Capital region

108. The programmes to encourage social integration and community coexistence are still in operation, but a decree to coordinate and develop them further was passed on 13 May 2004.

109. The decree in question is the decree on social cohesion, a term that denotes the full panoply of social measures designed to ensure that every individual or group, regardless of national or ethnic origin, cultural, religious or philosophical background, social status, socio-economic standing, age, sexual orientation or state of health, enjoys equality of opportunity and conditions, and economic, social and cultural well-being, so that everyone can be an active and recognized member of society.

110. These measures concern in particular the fight against all forms of discrimination and social exclusion, through the development of policies on social integration, interculturalism, sociocultural diversity and the coexistence of the various local communities. They are implemented in part through community action in neighbourhoods and by networking.

111. The decree on social cohesion is due to enter into force on 1 January 2006.

112. In addition to this specific legislation, the French Community Commission includes provisions in all its health and welfare legislation prohibiting all discrimination based on ethnic origin or on any other grounds. Compliance with this provision is one of the conditions for certification of the health and welfare associations approved and subsidized by the French Community Commission.

ARTICLE 3: CONDEMNATION OF RACIAL SEGREGATION AND APARTHEID

113. There is no system of racial segregation or apartheid in Belgium. For many years, Belgium's policy has been to condemn such practices. It unconditionally condemns any policy, practice or ideology inciting racial hatred or intolerance.

ARTICLE 4: CONDEMNATION OF ALL RACIST PROPAGANDA AND RACIST ORGANIZATIONS

114. See paragraphs 17 to 112 above.

ARTICLE 5: PROHIBITION OF RACIAL DISCRIMINATION IN ALL ITS FORMS

A. Updating of provisions relating to certain foreigners living in Belgium

115. Since the previous report, the Act of 15 December 1980 on the entry, temporary and permanent residence and removal of aliens has been amended several times. These amendments are broken down according to topic and described below.

1. *Litigation involving foreigners: reduction of time limits for lodging an appeal, submitting pleadings and requesting further steps in proceedings in order to expedite the proceedings and to prevent their use as a delaying tactic.*

116. Article 30 of the laws on the Council of State, which were harmonized on 12 January 1973 and amended by the Act of 18 April 2002, authorizes the King to establish by decree, after consultation with the Council of Ministers, special rules of procedure for litigation involving foreigners in order to process the large number of appeals in that area.

The royal decree of 22 July 1981, which sets out the procedure to be followed by the administrative section of the Council of State in appeals against decisions issued pursuant to the Act of 15 December 1980, was repealed by royal decree of 9 July 2000, with effect from 1 August 2000.¹

117. The time limits for lodging an appeal, submitting pleadings and requesting further procedural steps were reduced in order to expedite the proceedings and to prevent them from being used as a delaying tactic. The effectiveness of appeals in litigation involving foreigners is not tied to the traditional 60-day deadline, as is amply demonstrated by the success of extremely urgent summary proceedings. Moreover, the 30-day deadline for lodging appeals is found in other special proceedings, and in fact is longer than that established for some of them. This deadline is also the same as, or longer than, deadlines applicable to litigation involving foreigners in other States of the European Union.

2. *Provisions on the protection of minors under criminal law*

118. Article 77 bis of the Act of 15 December 1980 was amended by the Act of 28 November 2000.² Pursuant to this amendment, a person may be considered as being in a particularly vulnerable situation as a result of his or her “status as a minor”. In addition, assisting in the “transit” of a third-country national is now a criminal offence.

3. *Provisions for the punishment of persons who take advantage of the vulnerability and precarious social situation of others*

119. The addition of paragraph 1 bis to article 77 bis of the Act of 2 January 2001 imposes a penalty of one to five years’ imprisonment and a fine ranging from FB 500 to FB 25,000 for anyone who takes advantage, either directly or through an intermediary, of the particularly vulnerable situation of a foreigner resulting from his or her illegal or uncertain administrative status, by selling, renting or making available rooms or any other locale for the purpose of earning abnormally high profits.

120. The Programme Act of 2 August 2002³ amends article 77 bis, paragraph 1 bis, of the Act of 15 December 1980, by inserting the phrase “any real property [or]” between “making available” and “rooms” in order more effectively to prevent persons from taking advantage of the precarious social situation of others by offering them housing in dilapidated buildings.

121. The Act adds a paragraph 4 bis to provide for the seizure of the real property, room or any other locale referred to in article 77 bis, paragraph 1 bis.

122. Lastly, the Act adds a paragraph 4 ter to article 77 bis to provide for the reception or rehousing of foreigners found in the situations enumerated in article 77 bis, paragraph 1 bis, pursuant to a decision taken by the minister or designated official responsible for implementing the policy on foreigners in consultation with the relevant services.

4. *Harmonization of existing legal provisions with the Act of 10 July 1996 abolishing the death penalty and amending criminal sentences*

123. The Act of 23 January 2003⁴ amends article 77 bis, paragraph 2, by replacing the term “imprisonment” with the phrase “from five to 10 years’ imprisonment” and amends article 77 bis, paragraph 3, by replacing the term “forced labour” with “imprisonment”.

5. *Temporary protection*

124. Pursuant to the Act of 18 March 2003,⁵ Council of the European Union directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between member States in receiving such persons and bearing the consequences thereof was incorporated into the Act of 15 December 1980.

125. The Act of 18 February 2003⁶ amended article 71 of the Act of 15 December 1980 by adding article 57/32, paragraph 2, subparagraph 2, to its list of articles for the purpose of enabling foreigners excluded from the enjoyment of temporary protection and who are placed at the Government’s disposal to lodge an appeal.

6. *Repeal of article 18 bis of the Act of 15 December 1980 and change in the authority responsible for determining the compulsory location for registration of asylum-seekers*

126. The Programme Act of 22 December 2003⁷ repealed article 18 bis, which had allowed restrictions to be placed on the temporary or permanent residence of foreigners in certain municipalities in order to avoid an increase in the foreign population and protect the public interest. This article was repealed partly in response to the recommendations formulated by the Committee on the Elimination of Racial Discrimination in its earlier concluding observations and partly as a result of the implementation since 1994 of the distribution plan relating to asylum-seekers.

127. The Programme Act of 22 December 2003 also amended article 54, paragraph 1, subparagraphs 1 and 3, and paragraph 3, by replacing the words “the Minister or his or her deputy” with “the Federal Agency for the Reception of Asylum-Seekers”, as the Agency would henceforth be responsible for determining the compulsory location for the registration of asylum-seekers. The Programme Act of 9 July 2004⁸ further amended article 54, paragraph 1, subparagraphs 1 and 3, and paragraph 3, of the Act of 15 December 1980, stipulating that the Federal Agency for the Reception of Asylum-Seekers must take into account the occupancy rate in the reception centres for asylum-seekers and the harmonious distribution of asylum-seekers among municipalities on the basis of criteria established by royal decree following consultations with the Council of Ministers, while simultaneously ensuring that the location was suitable for asylum-seekers and space was available.

7. *Amendment of various provisions of the Act of 15 December 1980*

128. The Act of 22 December 2003⁹ reinstated article 55, which had been repealed by the Act of 15 July 1996. Article 55 henceforth provided that a statement or request made by a foreigner with an unlimited residence permit would automatically be deemed unfounded when the said statement or request was still being examined by the minister or his or her deputy, by the Commissioner General for Refugees and Stateless Persons or by the Standing Committee on Appeals by Refugees, unless the foreigner had submitted a request for its further examination by registered mail addressed to the body examining his or her statement or request within 60 days of the entry into force of this provision or the date of issuance of the unlimited residence permit. In the event of a decision to return or expel a foreigner to whom article 55 had been applied, certification of compliance with article 3 of the European Convention on Human Rights must be obtained from the Commissioner General for Refugees and Stateless Persons.

129. The Act of 22 December 2003 also amended article 65 of the Act of 15 December 1980 by providing that the minister or his or her deputy would deem inadmissible any application for review of a judgement if the application was submitted after the deadline stipulated in paragraph 1 or challenged any decision other than those mentioned in articles 44, 44 bis and 64. The Act of 22 December 2003 amended article 69, subparagraph 3, of the Act of 15 December 1980 by stipulating that consideration of the action for annulment would be suspended until such time as the minister or his or her deputy had decided on the admissibility of the application.

8. *Enlargement of the European Union*

130. On 16 April 2003, the 25 Heads of State and Government of the current and future member States of the European Union signed the Treaty of Accession 2003, which provided for the accession of 10 new States to the European Union on 1 May 2004. The 10 new member States were: Cyprus, Malta, the Czech Republic, Slovakia, Latvia, Slovenia, Poland, Hungary, Lithuania and Estonia.

131. The treaty provides that the old member States may, for a two-year period following the date of accession, apply national measures or measures deriving from bilateral agreements to regulate the access of nationals of the new member States to their labour markets. The treaty stipulates that current member States may continue to apply these measures for a five-year period following the date of accession, or even for a seven-year period, if their labour market might be heavily disrupted. These measures are not applicable to Malta or Cyprus, for which the treaty does not specify any transition period for the free circulation of workers.

132. The introduction of the transition period as it relates to the residence of these nationals in Belgium is provided for by the royal decree of 25 April 2005.¹⁰ A ministerial circular of 30 April 2004 specifies the consequences arising from the entry into the country and residence of the new European citizens.¹¹

133. As from 1 May 2004, the new European citizens may travel in Belgium on a valid national identity card or passport.

134. Special provisions apply to employed persons during the transition period. Nationals from one of the new member States who were residing abroad on 1 May 2004 and who wish to come to Belgium as an employed person must obtain prior authorization (the required work permit and the provisional residence permit for the period covered by the work permit). After working for an uninterrupted period of 12 months or longer, such nationals have access to the labour market and may apply for permanent residence. Nationals of new member States who were officially resident in Belgium on 1 May 2004 and who were working there as salaried employees may apply for permanent residence after an uninterrupted period of work in Belgium of 12 months or longer.

135. The transition period provided for by the Treaty of Accession 2003 applies only to employed persons, not to self-employed persons or service-providers. Nationals of a new member State who wish to be self-employed or to provide a service in Belgium after 1 May 2004 are treated in the same manner as other European citizens.

9. *Unaccompanied foreign minors*

136. Part XIII, chapter 6, entitled “Guardianship of unaccompanied foreign minors under the Programme Act of 24 December 2002”¹² (known as the “Guardianship Act”) was adopted in order to set out specific rules on the representation of such minors. This guardianship scheme entered into force on 1 May 2004.¹³

137. The term “unaccompanied foreign minor” is understood to mean:

“Any person who appears or claims to be under the age of 18, and who:

- Is not accompanied by a person exercising parental authority or guardianship under the relevant law in accordance with article 35 of the Act of 16 July 2004 containing the Code of International Private Law;
- Is a national of a country not belonging to the European Economic Area (EEA);

and who is in one of the following situations:

- Has applied for refugee status; or
- Does not meet the conditions for entering and remaining in the country pursuant to the Act of 15 December 1980 on the entry, temporary and permanent residence and removal of aliens.”

138. The circular of 23 April 2004 concerning the “unaccompanied foreign minor” form was adopted in recognition of the authority of the Guardianship Service, which, under article 3, paragraph 2, subparagraph 2, of the Guardianship Act, is responsible for establishing the identity of unaccompanied foreign minors (a task previously carried out by the Aliens Office). Thus, the “unaccompanied foreign minor” form is completed when the minor is intercepted at the border or inside the country by the police or when a person claiming to be an unaccompanied foreign minor, as stipulated in article 6, paragraph 1, of the above-mentioned Programme Act makes initial contact with the Aliens Office. The circular of 30 April 2004 on cooperation between the

Aliens Office and the municipal authorities in relation to the residence of unaccompanied foreign minors spells out the impact of implementing the Guardianship Act on certain tasks assigned to the municipal authorities.

139. Lastly, a ministerial circular concerning the residence of unaccompanied foreign minors was adopted on 15 September 2005.¹⁴ Pursuant to this circular, the Minors Unit of the Aliens Office is authorized to find a lasting solution¹⁵ regarding the residence of any unaccompanied foreign minor present in the country and must ensure that this solution is in the best interests of the child and respects the child's fundamental rights. This lasting solution is determined after examination by the Aliens Office of all the elements in the case file of the unaccompanied foreign minor.

10. *Mutual recognition of decisions taken on the expulsion of third-country nationals by member States of the European Union*

140. The Act of 1 September 2004¹⁶ incorporates Council of the European Union directive 2001/40/EC of 28 May 2001 on the mutual recognition of decisions on the expulsion of third-country nationals into the Act of 15 December 1980. When an expulsion order has been issued by the competent administrative authority of a member State of the European Union in the name of a foreigner arrested on Belgian territory, such an order may henceforth be recognized and executed. This system is not compulsory; the foreigner may be expelled on the basis of a decision taken by the Aliens Office or in implementation of a return or readmission agreement between member States of the European Union. The Belgian State shall decide whether or not to exercise that option as a function of the financial compensation provided for executing the recognized order.

141. The Act of 1 September 2004¹⁷ amending article 71 of the Act of 15 December 1980 supplements this article 71 by including a reference to article 8 bis, paragraph 4, so as to enable foreigners detained during the recognition procedure described in article 8, paragraph 1, to lodge an appeal.

11. *Amendment to article 74/4 of the Act of 15 December 1980 concerning the obligations of carriers of foreigners who do not meet entry requirements*

142. The Act of 22 December 2004¹⁸ incorporates into the Act of 15 December 1980 Council of the European Union directive 2001/51/EC of 28 June 2001 supplementing the provisions of article 26 of the Convention Implementing the Schengen Agreement of 14 June 1985.

143. Before the promulgation of the Act of 22 December 2004, article 74/4 of the Act of 15 December 1980 stipulated that carriers who transported into Belgium passengers who did not possess the required documents or whose situation corresponded to one of those specified in article 3 (lack of means of subsistence, for example) were required to escort them back to their country of origin or to any other country where they might be allowed entry. The Act of 22 December 2004 extended this principle to include cases in which carriers who are to transport foreigners to a country of destination from Belgium refuse to take them on board, or in which the authorities of a destination country refuse them entry and send them back to Belgium, where they are refused entry (foreigners in transit).

144. The Act of 22 December 2004 stipulates that if carriers clearly fail to meet their escort obligations by not complying with two successive formal notices to do so (sent by registered mail), the minister or his or her deputy may arrange for the expulsion of the passenger. In such cases, the carrier is required to pay for the costs of the deportation, as well as the lodging, subsistence and health-care expenses of the passenger.

12. *Biometric data*

145. A chapter VII bis concerning the gathering of biometric data pursuant to Part 1 of the Act of 15 December 1980 was inserted by the Programme Act of 27 December 2004.¹⁹ It has been possible since 1996 to take fingerprints of asylum-seekers (art. 51/3). Since the entry into force of this Programme Act on 10 January 2005, fingerprints may also be taken from any foreigner who:

- Requests a visa (other than for the purpose of family reunification) or a provisional residence permit from the Belgian authorities;
- Applies in Belgium for a residence permit of a maximum of three months;
- Applies in Belgium for entry (except for the purpose of family reunification) or for a residence permit of more than three months;
- Is scheduled to be returned, receives an expulsion order, or is the subject of a royal expulsion order or ministerial repatriation order.

146. Biometric data are gathered to establish and/or to verify the identity of foreigners, to determine if a foreigner poses a threat to the public order or to national security, or to comply with the obligations set out in European regulations and directives.

147. Biometric data may be gathered at the initiative of the Belgian diplomatic or consular representative, the minister, the Aliens Office, a judicial police officer or the administrative authorities. The Aliens Office may also request such data from the judicial authorities, the police or the officials of the government departments that possess them.

13. *Amendment to article 57/12 of the Act of 15 December 1980, concerning the Standing Committee on Appeals by Refugees*

148. The Act of 16 March 2005²⁰ amending article 57/12 of the Act of 15 December 1980 requires the appeal to be heard by a single judge as a rule; the judge may refer the case to a chamber with three judges if he or she believes that the case raises questions of principle.

14. *Amendment to articles 20 and 21 of the Act of 15 December 1980, concerning the repatriation and expulsion of foreigners*

149. The Act of 26 May 2005²¹ amending articles 20 and 21 of the Act of 15 December 1980 concerns the supervision of repatriation and expulsion operations and revokes article 56, which provided that persons with recognized refugee status could be removed by ministerial

repatriation order, after consultations with the Advisory Committee on Aliens, or by royal expulsion order. The new article 21 stipulates that a foreigner who was born in Belgium or arrived before the age of 12 and is officially resident there or who has refugee status may in no circumstances be repatriated or expelled.

150. In addition, foreigners falling into the following categories may be repatriated or expelled only if they have committed a serious breach of national security:

- Foreigners who have been officially resident in Belgium for at least 20 years;
- Foreigners who have not received a prison sentence of five or more years and who exercise parental authority as a parent or guardian or who have statutory maintenance obligations pursuant to article 203 of the Civil Code towards at least one child officially resident in Belgium.

151. Foreigners falling into the following categories may be repatriated only if they have committed a serious breach of public order or national security:

- Foreigners who have been officially resident in Belgium for at least 10 years without interruption;
- Foreigners who meet the legal requirements for acquiring Belgian nationality by choice or through a declaration of nationality, or for recovering Belgian nationality;
- Foreigners who are married to, and not separated from, a Belgian national;
- Foreign workers with a permanent incapacity for work, where the incapacity is caused by an occupational injury or illness sustained at work and the foreign worker is officially resident in Belgium.

15. *Amendments to various legal provisions with a view to intensifying action to combat trafficking in and smuggling of human beings and the practices of slum landlords (Moniteur belge, 2 September 2005)*

152. The Act of 10 August 2005²² incorporates the following international standards into Belgian law:

(a) At the level of the United Nations:

The Convention against Transnational Organized Crime, its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and the Protocol against the Smuggling of Migrants by Land, Sea and Air, all three signed in Palermo on 15 December 2000;

(b) At the level of the European Union:

- Council Framework Decision of 19 July 2002 on combating trafficking in human beings;
- Council Directive of 28 November 2002 defining the facilitation of unauthorized entry, transit and residence;
- Council Framework Decision of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of unauthorized entry, transit and residence;
- Council Directive of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities;

(c) At the level of the Council of Europe:

- Convention No. 197 on Action against Trafficking in Human Beings, adopted on 16 May 2005.

153. These instruments introduce some new principles:

- They establish a distinction between trafficking in human beings and smuggling of migrants;
- States are required to criminalize internal trafficking in human beings that does not involve crossing a border (nationals may now be victims);
- A clear purpose of exploitation, such as organ-trafficking, is taken into account in the definition of the offence of trafficking;
- New concepts such as having control over another person or endangering the life of the victim are being used.

154. In the light of the above-mentioned international and European instruments, Belgian legislators have seen the need to review the definitions of trafficking in human beings, smuggling of migrants and facilitation of illegal entry, transit or residence, as well as the applicable penalties and aggravating circumstances.

155. The new article 77 of the Act of 15 December 1980 increased the penalties for the offence of facilitating entry or illegal residence from eight days to one year and/or a fine of between €1,700 and €6,000. Under the old article 77 bis of the Act of 15 December 1980 on the entry, temporary and permanent residence and removal of aliens, trafficking in human beings was punishable by one to five years' imprisonment and a fine of between €500 and €25,000. This provision also applied to the smuggling of migrants. No clear distinction was made between the two offences.

156. The criminalization of trafficking in human beings has been changed drastically. Firstly, the definition of the offence covers both cross-border trafficking (involving the victim being moved from his or her country of origin to a destination country) and internal trafficking within the Belgian borders. Now that it is no longer limited to foreign nationals, the offence established in the old article 77 bis of the 1980 Act has been moved to a new article 433 quinquies of the Criminal Code, in Part VIII, on “Crimes and offences against the person”, while article 77 bis now specifically relates to the smuggling of migrants. Articles 433 sexies to novies provide for aggravating circumstances and the deprivation of political rights.

157. Trafficking in human beings is established as a separate offence in articles 77 bis to 77 sexies of the 1980 Aliens Act. Article 77 bis contains a definition of trafficking in human beings, while articles 77 ter to sexies provide for aggravating circumstances and the deprivation of political rights.

158. Article 81 of the Act of 15 December 1980 has also been amended in order to enable the relevant civil servants, including officials from the Aliens Office, to investigate and record acts of trafficking in human persons and bring the perpetrators to justice.

159. Article 433 decies criminalizes the behaviour of slum landlords, and articles 433 undecies to quaterdecies provide for aggravating circumstances and accessory penalties (confiscation).

B. Legislative provisions on acquisition of Belgian nationality

160. The procedure for access to Belgian nationality has been modified five times in the last 20 years, in a constant effort to make the procedure faster, easier, more straightforward and more efficient.

161. The most recent change in the area of access to Belgian nationality was the adoption of the Act of 1 March 2000, which is aimed at facilitating the integration of foreigners through the acquisition of Belgian nationality. The Act introduces three new key concepts:

(a) It facilitates nationality declarations and naturalization procedures;

(b) The Act speeds up and facilitates all procedures for acquiring Belgian nationality by reducing to one month the period within which the prosecutor’s office must process the file (and the period for consideration of naturalization applications by the Aliens Office and the Belgian intelligence service) and by establishing a three-way sequential system for replacing birth certificates; and

(c) The Act does away with the assessment of the person’s willingness to integrate in the case of declarations of choice or applications for naturalization. Under the new procedure, this willingness is taken for granted: the naturalization questionnaire no longer includes questions on the applicant’s language proficiency or profession, and the police no longer investigate the degree of integration of applicants for naturalization.

162. With regard to mixed marriages, since 1985 marriage has not afforded citizenship automatically.

163. Conversely, the foreign spouse of a Belgian national may acquire Belgian nationality by means of a declaration after a three-year period of cohabitation in Belgium (or after a six-month period of cohabitation in the case of foreign nationals who, at least three years before making their declaration, were given permission to reside in Belgium for over three months or to settle in the country).

164. The minimum conditions of residence and cohabitation are intended to prevent marriages of convenience contracted for the sole purpose of acquiring Belgian nationality.

C. Right to marriage and choice of spouse

165. 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.

166. Thus, the publication of marriage banns has been replaced by an official declaration of marriage (Civil Code, art. 63). Article 64 of the Civil Code lists the papers to be submitted to the registrar by each of the spouses. The Act of 3 December 2005 (in effect since 1 February 2006) amended article 64 of the Civil Code, thus simplifying the formalities for the declaration of marriage and legal cohabitation arrangements (for more details, see the circular of 16 January 2006 concerning the Act of 15 December 2005).

167. The new Act gives the registrar legal grounds for refusing to celebrate a marriage (Civil Code, art. 167) if it transpires that the prescribed conditions have not been met or if he or she believes that to go ahead with the ceremony would be contrary to the principles of public order. If the registrar declines to celebrate a marriage, the parties concerned have a month to appeal before a court of first instance.

168. The Act deals with the specific case of marriages contracted with a view to benefiting in terms of residential status. No marriage exists when, even if formal consent has 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). This type of marriage can be challenged by the spouses themselves, by any interested party, or by the public prosecutor (Civil Code, art. 184).

169. Further to the Act of 4 May 1999, the Ministry of Justice issued a circular on 17 December 1999 clarifying the procedural aspects of the new legislation. 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 the registrar cannot refuse to draw up an official declaration or to celebrate a marriage solely on the grounds that an alien is in Belgium illegally.

170. The Minister of the Interior issued a circular on 11 July 2001 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.

171. This must be read in conjunction with the circular dated 17 December 1999. It confirms that an illegal alien's right to marry is guaranteed. Its purpose is to provide some clarifications on the consequences of the new marriage procedure in Belgium for applications for residence by foreign spouses and on the papers to be submitted.

172. In addition, the Ministry of the Interior and the Ministry of Justice have signed a joint circular providing for a system of information exchange between the registrar and the Aliens Office. The circular, dated 13 September 2005, envisages the exchange of information in the event of a declaration of marriage involving an illegal alien, on the one hand, and in cases where the registrar refuses to celebrate a marriage involving a foreign national, on the other. These measures, rather than challenging the marriage rights of illegal aliens, aim to prevent marriages of convenience.

173. The Act of 13 February 2003 makes it possible for persons of the same sex to marry. In addition, article 46, paragraph 2, of the Act of 16 July 2004 establishing the Code of International Private Law grants the same right to homosexual couples where at least one of the partners is a non-Belgian national, if he or she is a citizen or permanent resident of a State whose legislation permits same-sex marriages. Article 44 of the Act provides that the marriage can be contracted in Belgium if one of the future spouses is a Belgian national or a permanent resident of Belgium or has been habitually residing there for at least three months at the time of the marriage.

D. Participation of non-Belgians in elections

174. The Act of 19 March 2004 granting foreigners the right to vote in local elections extends the right to vote in such elections to foreign residents from countries other than European Union member States who are over the age of 18, who have been residing legally in Belgium for at least five years, and who have made a declaration promising to respect the Constitution, Belgian law and the European Convention for the Protection of Human Rights and Fundamental Freedoms.

175. They are, however, not eligible to stand in elections.

176. The next local elections in which foreigners will be able to vote for the first time under the Act are scheduled to be held in October 2006.

177. The extension of voting rights to foreigners from non-European countries as of the 2006 local and provincial elections seeks to boost the integration of immigrants in their local communities.

178. Awareness campaigns have been conducted by regional governments and regional integration centres to inform the people concerned and encourage them to register to vote.

E. Right to freedom of thought, conscience and religion

179. The Belgian Constitution enshrines the principle of freedom of religion, which means that each person is free to practise his or her religion or to express his or her beliefs, and that the State may not intervene in the appointment of ministers of any denomination.

180. Under article 181 of the Constitution, the State pays the salaries and pensions of ministers of recognized religions, as well as the salaries and pensions of members of the Central Lay Council.

181. Belgium has a system for recognizing religions. Each religion can apply for recognition, which will be the subject of specific legislation.

182. The recognized religions at present are Catholicism, Evangelical Protestantism, Judaism, Orthodox Christianity, Anglicanism and Islam. The country's non-denominational community is also recognized.

183. Recognition of a religion carries no value judgement of the content itself of a religion or belief. It does mean, however, that the religious or non-denominational movement can establish an organizational structure to act as a focal point between the religious or non-denominational community and the State in temporal matters.

184. In addition to the payment of salaries and pensions, other financial benefits are derived from recognition, in particular support for the construction and maintenance of places of worship, which falls within the remit of regional authorities.

185. In the absence of a clear hierarchy, it has been somewhat difficult to appoint a representative body for the Muslim community.

186. Elections were held for the first time in December 1998 with a view to establishing a general assembly of Muslims in Belgium.

187. The members elected on that occasion and others nominated by existing members applied for membership of the representative body for Belgium's Muslim community, namely the Muslim Executive of Belgium.

188. The representative body was composed of 17 members: 7 Moroccan representatives, 4 Turkish representatives, 3 representatives of other nationalities and 3 converts.

189. In the light of the tensions that emerged in 2001, and at the request of the then president of the general assembly and other representatives of the Muslim community, the Belgian Government decided to appoint two mediators to report on the origin of these tensions and the future of the institutions.

190. It emerged that only general elections would restore the legitimacy of the bodies representing the Muslim community and bring an end to these internal conflicts.

191. A new executive was established in July 2003, with a mandate to prepare and organize future elections. After a year of negotiations, it emerged that the provisional executive was unable to build a consensus within the Muslim community concerning the holding of such elections.

192. To break the deadlock, which was causing further delays in dealing with Muslim issues, the Belgian Parliament passed the Act of 20 July 2004, entrusting the organization of general elections to an independent commission composed of an expert in electoral law, two eminent judges and two members of the Muslim community.

193. The arrangements for these elections were based directly on the first elections held in 1998, on which there had been widespread consensus within the Muslim community.

194. The general elections were held on 20 March 2005, with the participation of 45,000 of the 70,000 registered voters. On the basis of these results, a general assembly of Belgian Muslims was set up. The new executive was recognized by the royal decree of 7 October 2005.

195. At no time in the process did the federal Government interfere in the internal management of Muslim affairs; rather, it supported the process of democratic elections in order to ensure that Islam is treated on an equal footing with the other religions recognized in Belgium.

Walloon region

196. On 26 May 2005, the Walloon government adopted on second reading a draft decree on the organization of committees entrusted with the secular administration of the affairs of recognized Muslim communities.

197. This draft decree sets forth the rules pertaining to the following issues:

- Recognition of local communities;
- Appointment of committee members;
- Committees' rules of procedure;
- Oversight of internal regulations; and
- Budgetary and accounting oversight.

198. The draft is due for submission to the Council of State before being adopted on its final reading by the Walloon government.

F. Employment and labour

F.1 Federal level

Integration of persons belonging to ethnic minorities

199. A multicultural business unit was set up within the Federal Department of Employment, Labour and Industrial Relations in July 2001. The unit was set up to conduct awareness-raising, information and education campaigns on ethnic discrimination in the labour market and to promote the equal treatment of workers of foreign origin.

200. Its principal tasks are to:

- Raise awareness in the various occupational sectors and help them to conclude collective bargaining agreements that combat unequal treatment based on origin;
- Raise awareness among inspectors from the Employment Law Inspectorate and labour inspectors, and give them training;
- Raise awareness among businesses about ethnic discrimination in the job market and about the advantages of a diversity policy;
- Formulate recommendations on the matter for the Federal Department of Employment, Labour and Industrial Relations.

201. In order to carry out these tasks, the unit has taken a number of initiatives of different kinds in conjunction with those concerned.

1. *Information and awareness-raising*

Information and awareness-raising for “district teams” and employment law inspectors

202. An information campaign to draw attention to ethnic discrimination on the labour market was conducted for the so-called “district teams” (*cellules d’arrondissement*). Between July 2001 and February 2002, some 19 sessions were held, and were attended by 1,000 participants.

Information and awareness-raising for the joint commissions

203. The aim of this initiative was to promote the introduction of non-discrimination clauses into sectoral collective-bargaining agreements. The initiative was planned jointly with the Department of Collective Labour Relations and was carried out in stages: (a) a session to raise awareness among commission chairpersons; and (b) sessions to raise awareness among commission members.

204. Chairpersons of the joint commissions: This session offered an opportunity to raise awareness of the fact that the practice of ethnic discrimination at work is a real and recurrent problem, and to encourage employers and unions to take this fact into account. Of the 178 commissions and subcommissions, 38 were represented at the session.

205. Members of the joint commissions: In June 2002, a number of awareness-raising days were held in different sectors of activity. Half a day was dedicated to analysing instances of ethnic discrimination. Afternoons were dedicated to group discussions on the need to draft non-discrimination clauses and codes of conduct for the different sectors.

2. Training

Training for employment law inspectors

206. Training sessions were held in April 2004 for the district heads and one expert-inspector was designated for each district. The training lasted nine days in all and some 77 inspectors took part.

207. The aim of the training was to assist inspectors in carrying out their new tasks. Article 21, paragraph 1, of the Act of 25 February 2003 to combat discrimination, amending the Act of 15 February 1993, which established the Centre for Equal Opportunity and Action to Combat Racism, provides that workers who are victims of discrimination may lodge a complaint, including with the Employment Law Inspectorate. The inspectors may intervene in cases where acts of discrimination are discovered. Article 17 stipulates that compliance with the Act is to be monitored in accordance with the provisions of the Labour Inspection Act. As a result, the inspectorate (pursuant to the royal decree of 15 July 2005, published in the *Moniteur belge* of 2 August 2005) may assess each case, attempt to mediate, impose fines, etc.

208. The Act of 30 July 1981 to suppress certain acts based on racism or xenophobia, as amended by the Act of 20 January 2003, gives the inspectorate supervisory powers in criminal matters. Article 5 ter of the Act stipulates that this supervision is to be carried out in accordance with the provisions of the Labour Inspection Act of 16 November 1972. These new powers must therefore be exercised in the same way as for any other violation of the employment laws.

209. On the basis of the guide to identifying ethnic discrimination (cf. section 3 below, “Publications”), the following points were addressed during the training sessions:

- The practice of ethnic discrimination in employment;
- The examination of new legislation on combating ethnic discrimination in employment;
- The scope of the inspectors’ new powers, as contained in the new legislative provisions;
- Identifying and addressing discriminatory practices.

Training for trade unions

210. In collaboration with the Institute for Equality between Women and Men, the district team was requested to hold information and awareness-raising sessions on ethnic discrimination at work as part of the ongoing training of trade union delegates from the General Confederation of Liberal Trade Unions of Belgium (CGSLB). The trade union delegation is asked to mediate between the worker and the employer and amongst workers themselves. In cases of ethnic discrimination, the delegation can play a decisive role.

211. In this regard, the new anti-discrimination legislation associates workers' organizations with the system for protecting victims of discrimination from dismissal. Article 21, paragraph 3, provides that, if an employer terminates the labour relationship or unilaterally alters working conditions when a complaint of discrimination has been made, the worker or the workers' organization of which he or she is a member can request his or her reinstatement. Furthermore, article 31 of the same Act provides that, with the victim's agreement, the workers' organization is able to assist the worker and bring legal action for acts of discrimination.

3. *Publications*

Guide to identifying ethnic discrimination

212. This guide was produced to support the inspectors from the Employment Law Inspectorate in their new task. The inspectors have the authority to deal with these problems in the same way as any other matter already falling within their remit. The planning and production of this guide were done in close collaboration with the Office of the Director-General for Employment Law.

213. The guide is made up of three parts: (a) the first part explains how discriminatory practices work; (b) the second goes on to examine the legislative provisions on the issue; and (c) the third part helps the inspectorate identify and deal with complaints by offering them a checklist. The guide is given to all employment law inspectors and aims to support them in their daily work by helping them to better identify acts of ethnic discrimination and to deal with them in the most judicious manner.

Document: "Preventing and combating ethnic discrimination at work - sectoral review"

214. This document is intended for members of the joint commissions and aims to encourage the development of sectoral collective agreements on non-discrimination. It proposes a review of the existing initiatives relating to codes of conduct, collective labour agreements and provisions on the fight against ethnic discrimination. It reviews the situation and compares such instruments in Belgium and the Netherlands, highlighting the advantages and disadvantages of each instrument. It is intended to encourage the joint commissions to adopt initiatives to deal with this phenomenon.

Model sectoral collective agreement on non-discrimination

215. The team was asked for its views and support in drawing up non-discrimination codes (particularly in the subsector of public transport by road and the subsector of transportation of goods). The team therefore produced a model collective agreement for those sectors that wish to sign agreements, non-discrimination clauses and/or codes of conduct. This general model takes into account the particularities of each sector and proposes a corpus containing the minimum anti-discrimination provisions.

Leaflet: "Protection against discrimination at work ... in brief"

216. This leaflet aims to inform the general public about current anti-discrimination legislation. It provides useful information for workers who have been the victims of acts of discrimination at work, on the specific action to take and the protective measures provided for

workers in the new legislative provisions. It gives a detailed list of bodies, groups and institutions which have the authority to handle complaints, help workers and take legal action. The leaflet was produced in close collaboration with the Office of the Director-General for Employment Law.

F.2 Walloon region/French community

217. On 27 May 2004, the Walloon region adopted a decree on equality of treatment in employment and vocational training.

218. This decree prohibits all direct and indirect discrimination based on religious or philosophical beliefs, disability or physical characteristics, current or future health, age, civil status, sex, gender, sexual orientation, national or ethnic origin, or family or socio-economic origin.

219. It applies to everyone, in both the public and the private sectors, as regards vocational guidance, job placement and assistance in the promotion of employment, social and professional integration and vocational training, including the recognition of a person's skills.

220. Policy in the Walloon region is focused on "mainstreaming diversity", meaning better integrated awareness of the diversity of needs rather than the systematic implementation of provisions specifically designed for certain groups. However, to ensure complete equality for both employed and unemployed workers and to guarantee the principle of equal treatment, the Walloon government can maintain or adopt specific measures and take affirmative action to prevent or compensate for the disadvantages experienced by groups having difficulty in the labour market.

221. The Walloon Department of Vocational Training and Employment (FOREM) implements this policy to prevent racial discrimination mainly through the following measures and actions.

Access to services for social integration through employment and to vocational training

222. Since March 2003, any non-European citizen with a valid residence permit or whose application for regularization or asylum has been deemed admissible can register with FOREM as a job-seeker and, free of charge and without discrimination, benefit from services for social integration through employment and/or receive vocational training.

223. Previously, while these individuals could obtain a work permit or a temporary authorization when an employer submitted an application on their behalf, they could not register as job-seekers or attend vocational training courses.

Equal opportunities

224. The policy of the Walloon region is expressed in the FOREM Management Contract 2001-2005, which, in its article 38, states that "in terms of gender equality and equal opportunities, the Department of Employment (SPE) will follow European policy and will take targeted action based on the priorities set out by the regulator".

Differentiated, yet universal, offer

225. The services offered by FOREM are universal, and accessible on a voluntary basis to any officially registered user without discrimination. However, depending on the specific needs of clients, the services available can be differentiated and personalized. To this end, awareness-raising sessions and training courses on how to provide support and assistance in the integration process are held for FOREM advisers (and advisers from most of its partners), to enable them to better understand and respond to clients' needs. Hence advisers receive training in intercultural relations to improve their ability to communicate and improve their relationships with foreigners or people of foreign origin. Support materials and documents for advisers were also produced.

226. Furthermore, FOREM takes part in the MIDIME (Migration, Discrimination and the Job Market in Wallonia) Equal project (2005-2007), in partnership with the Walloon Intercultural Association set up by the Walloon government to support its intercultural policy. This project aims to provide ideas and tools to improve the effectiveness of the policies to combat discrimination against people of foreign origin in the Walloon region, in particular by improving the effectiveness of the measures designed to help such people find work (development of an appraisal grid and the corresponding tools and indicators, assessment of measures taken, development of tools, management of the experiment in the field).

Efforts to combat discrimination in recruitment

227. In practical terms, the promotion of equal access to employment is reflected in the systematic avoidance of any form of discrimination in the job advertisements circulated by FOREM. Recruitment advisers are careful to bring to the attention of employers who wish to advertise a job through FOREM (using any medium whatsoever) the principle of equal treatment, which prohibits the use of discriminatory criteria based on, among other things, nationality or ethnic origin.

Integration through training

228. FOREM, alone or in partnership, organizes or supervises courses in French as a foreign language.

229. In this context, a huge literacy programme is being conducted in the French community and in the Walloon region for job-seekers who are poorly educated and/or of immigrant origin. Among foreigners or persons of foreign origin, it targets women especially, and aims to help beneficiaries become integrated in society through employment or vocational training, with the objective of preventing the replication across generations of social inequality, social exclusion and the unemployment trap.

230. In conjunction with the "Reading and Writing" association and the Centre for Equal Opportunity and Action to Combat Racism, FOREM is taking part in a programme to promote literacy and knowledge of the French language among foreigners, mainly new arrivals reuniting with their families, refugees, asylum-seekers and/or foreigners who have applied to regularize their immigration status in order to become more easily employable.

231. The main objective of this action is to help the people concerned to find employment as quickly as possible. The training concentrates primarily on the oral and written skills needed to look for a job and meet an employer (reading job advertisements, making telephone calls, introducing oneself), but it also covers themes related to social and cultural life in Wallonia.

232. In partnership with the federal police, who wish to open up to all segments of society, FOREM organized training courses to prepare potential candidates to sit the police recruitment examination. Special emphasis was put on informing and increasing awareness among women and immigrants of non-European origin.

Taking advantage of interculturalism

233. The Department of Employment tends to focus on job-seekers' existing know-how in its efforts to facilitate their social integration through employment and to help them plan their career on the basis of their particular skills.

234. Thus, by means of a specific system based on a strong and active partnership (INTER-NATION), the Equal project, implemented by FOREM in cooperation with Espace International Wallonie-Bruxelles, makes it easier for the long-term unemployed, especially those of foreign origin, to have access to jobs with an international dimension where they can draw on their expertise, cultural and linguistic skills as members of other cultures.

235. The aim of the Equal project is to promote interculturalism and to take advantage of it in occupations with an international dimension. The project consists of establishing a job-training/placement scheme in the fields of international trade, international finance, development cooperation and the international promotion of performing arts. The project offers short, active training courses that correspond to the reality in the field, linguistic immersion, a work placement abroad, a work placement in a Walloon company and help in finding a job.

236. Finally, it should be noted that in the Contract for the Future for Walloon Men and Women, adopted in January 2005, the Walloon government undertook to simplify the procedure for granting work permits to new arrivals.

F.3 Flemish community

Employment: a significant qualitative achievement in Flanders

237. In 1998, the conclusion of the agreement on the employment of migrants (30 June 1998) by the Flemish Economic and Social Coordination Committee (VESOC) marked the beginning of a coherent policy aimed at significantly improving the position of immigrants in the labour market. In the period 2001-2002, this category-specific approach was integrated into a broader policy of diversity and proportional participation in the labour market (EAD), with a focus on a number of target groups. Since then, the EAD policy has undergone a number of qualitative and quantitative changes, in terms of both content and field of application.

238. The legal basis for the Flemish EAD policy is contained in the Flemish decree of 8 May 2002 concerning proportional participation in the labour market. This decree aims to guarantee equal treatment by avoiding all forms of discrimination on the grounds of sex, or a person's supposed race, ethnicity or nationality in the areas of vocational guidance and training,

career and work placement support, or in respect of the working conditions of employees in the public or education sectors. The decree confirms the objective of proportional participation in the Flemish labour market, encourages companies to adopt a policy of diversity and proportional participation in employment, and provides for follow-up and independent monitoring of implementation of the decree, complaints procedures and possible sanctions.

239. The EAD policy enjoys broad-based support: the Flemish government, Flemish employers and unions, and the representatives of target groups are actively involved in formulating the policy. As a result, the Diversity Commission was established within the Flemish Social and Economic Council (SERV) on 16 December 2003. Along with representatives of employers and unions, representatives of target groups also sit on this commission. The Diversity Commission is the central advisory body for all legislation concerning the policy of diversity and proportional participation in employment. In this way, representatives of organized immigrant communities in Flanders play a proactive role in developing employment policy.

240. In addition, Flemish employment policy forms the basis for investing in the continued professionalization of immigrant federations through the provision of financial support for two members of staff, so that they can carry out their advisory role in full. The federations are also associated with the EAD policy as active partners: they promote a long-term career guidance project (referral of very vulnerable young immigrant job-seekers to integration programmes run by the Flemish Service for Employment and Vocational Training (VDAB)).

241. The objective of the Flemish EAD policy is to achieve, by 2010, proportional participation of all target groups which are underrepresented in employment. In order to achieve this objective, a clear and specific growth scenario was prepared for immigrant employment: at least 2,000 additional jobs - ideally 5,000 - must be assigned every year to non-European Union²³ nationals. This growth scenario is monitored annually.

242. Almost €8 million is allocated each year to the incentive policy, which does not include the salaries of the 125 “diversity outreach workers”. The measures and actions are aimed at employers as well as at workers and job seekers, with an emphasis on three complementary areas: encouraging employment opportunities, combating discrimination and making up lost ground.

243. The updated strategic plan for minorities, for 2004-2010, includes a proposal on the employment of Gypsies and Travellers: in the framework of the policy of diversity and proportional participation in the labour market, the emphasis will continue to be placed on specific categories of ethnocultural minorities, notably on new arrivals and long-standing immigrants in the labour market, better qualified immigrants and caravan-dwellers. One element of the plan is the offer of individual career support and programmes of integration through work aimed at those living in caravans on residential sites.

G. Non-discrimination in the exercise of the right to housing

G.1 Walloon region

244. With regard to this provision, it should first be noted that the Federal Anti-Discrimination Act of 25 February 2003 applies to the provision of goods and services and therefore includes housing, and sanctions all discrimination (whether on the grounds of gender, skin colour, national origin, age, health, sexual orientation, civil status, or religious or philosophical beliefs). Under the Act discrimination is considered to exist if there is differentiated treatment which cannot be justified objectively. The Act allows the competent civil courts to apply the principle of the reversal of the burden of proof.

Access to social housing

245. In the Walloon region, the policy of access to social housing is not particularly oriented towards persons of foreign origin; it is targeted more generally at households with low or modest incomes. In other words, nationality is not considered when allocating public housing, and persons of foreign origin have the same access to social housing as Belgian citizens.

246. Thus, public housing services in the Walloon region do not practise any ethnic discrimination in the area of access to housing. Besides, such discrimination would be contrary to the Walloon Housing Code and the legal and regulatory provisions governing the activities of public housing associations in their role of implementing the right to housing.

247. In accordance with this objective, the public housing sector's rules governing access favour the most disadvantaged households: the acceptance of applications from prospective tenants is conditional upon income limits; the allocation of available housing is regulated by a points system which determines priorities according to the real social situations of prospective tenants.

248. On the basis of articles 166 and 168 of the Walloon Housing Code and a ministerial order of 15 February 1996, the Walloon Housing Association (SWL) and the public housing associations (SLSP) have appeal procedures which can be used by prospective tenants who consider themselves to have been wronged by a decision of a public housing association.

249. To date, two appeals submitted in 2003 have been referred to the Walloon Housing Association, arguing that decisions on the allocation of social housing contained elements of discrimination on the grounds of the ethnic or religious origin of the prospective tenants. This low number of appeals (in proportion to the 8,000 to 9,000 housing allocations per year from a stock of 103,000 rental units) implies that this type of problem is, fortunately, very rare in the social housing sector.

250. In preparing for the two appeals, the Walloon Housing Association sought the opinion of the Centre for Equal Opportunity and Action to Combat Racism. The two appeals were declared admissible and well founded, and led to the revocation of the two decisions against which they had been submitted. This outcome attests to the effectiveness of the procedure in this field.

Access to removal and rent allowances

251. One of the measures under Walloon housing regulations targets immigrants, in this case asylum-seekers, and concerns removal and rent allowances. The Walloon region pays the allowance to asylum-seekers who have stayed in a reception centre or with a family and who rent safe and decent accommodation. In 2002, some 650 asylum-seekers submitted applications for the allowance.

G.2 Flemish community*Housing policy*

252. No recent data on access by ethnocultural minorities to housing are available.

Flemish Housing Association

253. The Flemish Housing Association deals only with social housing, not housing in general. There are no figures available on the number of tenants or prospective tenants from ethnocultural minorities, but there are figures on the number of social housing units allocated each year to Belgian nationals, European Union citizens and non-European Union citizens.

1. Segregation and formation of ghettos

254. Two fundamental objective criteria determine the allocation of social housing, namely, income (which must be less than a given amount, which varies depending on the family situation), and ownership (a social-housing tenant cannot own a home). The order of allocations is based on the date of registration, but certain legal rules on priority must be respected.

255. Priority is given in the following order:

- (1) To persons with a specific disability, if the housing is specifically adapted for this purpose;
- (2) To persons whose appeal against an unfair allocation is declared admissible and well founded;
- (3) To persons who, under the law, must be rehoused as part of a special housing programme;
- (4) To persons who are eligible for housing created or funded in the framework of a particular programme and under specific terms and conditions (e.g. Sidmar housing);
- (5) To families whose family situation has changed and who, in line with the principle of rational occupation, have a right to a larger or smaller house and submit an application to this effect to the social housing association of which they are already tenants;
- (6) To residents of campsites and properties which have been expropriated or declared uninhabitable or inadequate.

256. There are greater numbers of ethnocultural minorities in conurbations than in rural areas. Since they tend to have low average incomes, they are largely eligible for social housing. Consequently, ethnocultural minorities are over-represented in social housing (as compared with the total population), although this does not imply that they live in ghettos.

257. Unlike the secondary private rental market, in which this group is also over-represented, social housing associations endeavour, insofar as possible (they are not subsidized for this activity), to ensure the quality of life in the social housing districts. In the big cities, the social housing associations, and certainly those in Antwerp, nevertheless ask to be allowed to allocate less housing to ethnocultural minorities. Some of these associations claim that they have to allocate more than 90 per cent of social housing to ethnocultural minorities. The result is that locals leave the neighbourhood and there are more social problems due to the cohabitation of many different nationalities and cultures.

2. *Access to social housing*

258. Since allocation criteria do not take into account the ethnic and cultural background of social housing tenants, a person's background is no obstacle to access. There is nevertheless a restriction on persons without legal residence status, who cannot rent social housing; in fact someone who loses their legal residence status can be evicted from social housing (we do not currently have any information to show that any case of this nature has actually arisen).

Caravan-dwellers

259. The key issue facing caravan-dwellers lies in the great uncertainty surrounding where they can settle, which strongly influences other aspects of their lives (education, work, etc.). The encampment policy, that is to say, the provision of sufficient and adequate legal sites, is a priority objective of the Flemish diversity policy. In May 2001, the Flemish government decided to fully recognize caravans as a form of housing. This recognition in principle was reflected in the draft decree containing the Flemish Housing Code. A definition of "caravan" was included in the Code and the improvement of the housing situation of caravan-dwellers was added to the objectives of housing policy in Flanders.

260. This is an important amendment: it offers the ministry responsible for housing a framework for the development of initiatives in the area of encampment policy. It is also an important principle: the encampment policy is considered to be an issue related to housing rather than only to well-being.

ARTICLE 6: REMEDIES AND JUDICIAL ACTION ON COMPLAINTS

261. An overview of the case law of Belgian courts and tribunals in relation to the acts of 30 July 1981 and 23 March 1995 may be consulted on the website of the Centre for Equal Opportunity and Action to Combat Racism (www.antiracisme.fgov.be).

262. The Criminal Policy Unit, which reports to the Federal Department of Justice, regularly collects statistics on criminal convictions for racism. Offences are classified as follows:

- 3. Protection of the person
- 31. Fundamental rights/individual freedoms
- 3101. Protection of the equality of persons
- 310101 A0. Racism and xenophobia (Act of 30 July 1981)

263. Efforts are currently under way to further develop the existing system of classification used by the criminal records office. Thus, additional details on the types of offences committed (under the 1981 Act or the 2003 Act, incitement to hatred, etc.) should, in principle, be available in two or three years' time in the statistics prepared by the Criminal Policy Unit.

264. Recent statistics show that, over the last 10 years, there has been an increase in the number of sentences for racist offences, as illustrated in the following table:

Year	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
No. of racist offences	2	6	17	16	17	13	24	21	15	30	28

265. It should be noted that a unit in this table represents the conviction of a different individual at least once during a particular year (thus, if a person has been convicted several times in the same year, he/she will only appear once in the statistics). The current system of classification provides access to information such as the sex of the offender, the jurisdiction within which the offence was committed and the sentence passed. Thus, in 2003, the 28 convictions recorded involved 25 men, 2 women and 1 person whose sex was unknown. According to the information on the jurisdiction of the court of appeal, 6 cases were heard in Antwerp, including 4 on appeal; 13 in Ghent, including 4 on appeal; 4 in Brussels, including 1 on appeal; 3 in Liège; and 2 in Mons. With regard to the sentences passed, there were 21 prison sentences, including 17 suspended sentences; 21 fines, including 3 suspended fines; 3 seizure orders; 1 deprivation of rights; and 2 community service orders. It should be noted in particular that 3 of the 28 persons convicted were repeat offenders, while 1 was a civil servant or public official responsible for preventing, identifying, prosecuting or penalizing the offence.

266. Information on complaints of acts of racism and/or xenophobia is supplied by the Prosecutors' Association. This information reveals that:

[Table 1]

- In 2000, 806 new cases of acts of racism and xenophobia were recorded throughout Belgium;
- In 2001, 852 were recorded;

- In 2002, 745 were recorded; and
- In 2003, 796 were recorded.

267. The number of cases is disaggregated by jurisdiction of the court of appeal and by judicial district. The judicial district of Brussels appears to receive by far the highest number of complaints in the country each year.

[Table 2]

- Of all the cases brought in 2000, 2001, 2002 and 2003, 2,224 were dismissed.

268. The number of cases dismissed is also disaggregated by jurisdiction of the court of appeal and by judicial district. Dismissal is a temporary waiver of prosecution, and puts an end to the investigation. As long as the criminal proceedings have not been closed, the case can be reopened.

[Table 2a]

Out of the 2,224 cases dismissed:

- 695 were dismissed for reasons of expediency (such as the absence of a criminal record, the offender's youth or other priorities);
- 1,491 were dismissed for technical reasons (such as no case to answer, insufficient evidence or expiry of the time limit for prosecution); and
- 38 were dismissed for other reasons (that did not come under technical reasons or reasons of expediency per se).

[Table 3]

- Of all the cases brought in 2000, 2001, 2002 and 2003, 94 have already been the subject of one or more declaratory judgements.

[Table 4]

- Of all the cases brought in 2000, 2001, 2002 and 2003, 82 cases resulted in trials.

269. As to the point raised in paragraph 17 of the Committee's concluding observations (CERD/C/60/CO/2), concerning the involvement of the media, especially the press, in acts of racism, there appears to have been some confusion over the meaning of the concept of a racially motivated "press offence". The latter is not an offence committed by the press or with its connivance, but the criminal expression of a thought or opinion in a written publication.

**ARTICLE 7: NON-DISCRIMINATION IN THE EXERCISE
OF THE RIGHT TO EDUCATION**

A. Flemish community

A.1 Decree concerning equal opportunities in education

270. When interpreting the decree of 28 June 2002 concerning equal opportunities in education (amended on 15 July 2005) the following objectives should be borne in mind: the achievement of optimal learning and developmental opportunities for all schoolchildren, the prevention of exclusion, segregation and discrimination, and the promotion of social cohesion. The decree has three main thrusts: establishing the fundamental right to enrol in the school of one's choice; making local authorities responsible for observance of that right, in addition to preventing and remedying developmental and learning delay through the creation of local platforms for dialogue; and the provision of supplementary aid for schools with a large number of pupils suffering from developmental and learning delay.

A.1.1 Right to enrol in the school of one's choice

271. In principle all pupils have the right to enrol in the school of their choice (that is, the school chosen by their parents). The aim of the relevant provisions of the decree is to bring into effect, in the education sector, Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, and is another step towards the implementation of articles 5 and 6 of the International Convention on the Elimination of All Forms of Racial Discrimination.

272. Schools may refuse to enrol pupils in very rare cases only, for example, if the admission conditions are not met, the school's physical capacity has been exceeded or the pupil has been permanently expelled during the previous two academic years.

273. A school may set priorities, in particular for newcomers speaking another language and pupils qualifying for equal opportunity measures (among other things, because they speak another language).

A.1.2 Protection of the right to enrolment and local dialogue

274. The aim of local dialogue platforms is threefold: to oversee the right to admission, to mediate in cases of conflict, and to help implement a local equal opportunities policy in education.

275. The local dialogue platforms bring together at the local level all those who aim for greater equality of opportunities in education. Their membership includes schools' management teams and governing authorities together with representatives of relevant trade union organizations, parents' associations, pupils' councils, sociocultural and/or socio-economic partners, organizations of ethnocultural minorities, associations that give the poor a voice, the integration sector, reception bureaux and those responsible for school-community relations.

A.1.3 Aid for schools where numerous children come from difficult backgrounds

276. Under the policy on equal opportunities in education, schools may receive supplementary aid for three successive academic years if the school is attended by a relatively high number of pupils meeting certain criteria. Primary and lower secondary schools qualify if: pupils' families are in receipt of a replacement income, pupils do not live with their families, pupils' parents have no fixed abode, pupils' mothers have no qualifications or the language spoken at home is not Dutch. For middle and upper secondary schools, pupils qualify if: they have a learning delay of at least two years, are new arrivals or have attended reception classes during the previous academic year. Supplementary aid may take the form of extra classes or teaching periods.

A.2 Reception classes for new arrivals speaking another language

277. Reception classes are intended for pupils enrolled in a school in the Flemish community who:

- Are under 18 years old;
- Do not have Belgian or Dutch nationality;
- Were not born in Belgium or the Netherlands;
- Do not have Dutch as their mother tongue;
- Have insufficient knowledge of the language of the classroom to attend classes without being at a disadvantage;
- Have not yet completed a full academic year at a school where Dutch is the language of the classroom.

278. In practice, the pupils concerned are an extremely heterogeneous group, in terms of age group, educational experience, literacy and reasons for living in Flanders. What they have in common is an insufficient mastery of the language of the classroom to attend classes without being at a disadvantage. They find it difficult to join in classes with pupils of their own age or at the level they had reached in their country of origin.

279. These pupils attend special reception classes for one academic year to acquire the language skills and knowledge of the education system they need to attend ordinary classes.

280. Extra periods are allocated to schools offering reception classes for this purpose.

A.3 Equal opportunities in higher education

281. Pursuant to article II.6 of the decree of 19 March 2004 on student status, participation in higher education, the introduction in higher education institutions of certain further education courses for social advancement and support for the reorganization of higher education in Flanders, the management teams of higher education institutions are required to guarantee access to higher education - in material and other terms - to "students from objectively determined population groups whose participation in higher education is far lower than that of other groups".

A.4 Every child's right to education

282. All children residing in Belgian territory have a right to education. The Constitution enshrines this right in article 24, paragraph 3: "Everyone has the right to education that respects fundamental rights and freedoms. Access to education is free until the end of compulsory schooling. All pupils of school age have the right to moral or religious education at the community's expense."

283. Pursuant to the decree of 28 June 2002 concerning equal opportunities in education, all children have the fundamental right to enrol in the school that they and their parents choose. Enrolment may not be refused merely because the residence status of the applicant or the applicant's parents is not in order. This was confirmed by the circular of 24 February 2003 on the right to education for children without legal residence status. Once enrolled, these pupils must attend classes regularly, like all other pupils of compulsory school age.

B. French community

284. With regard to this provision, it should be mentioned that the Wallonia-Brussels French community has adopted two new decrees.

285. The decree of 14 June 2001, on the integration of new arrivals into the education system organized or subsidized by the French community, entitles new arrivals to attend bridging classes, at the request or with the agreement of those exercising de jure or de facto parental authority over the pupil, or at the pupil's request or with his or her agreement if unaccompanied. Newcomers normally attend bridging classes for no less than one week and no more than six months, but this period may be extended to a maximum of one year.

286. Pupils attending bridging classes may attend all or some of their lessons together with pupils in ordinary classes at the same school or establishment or at other schools or establishments. Bridging classes are intended to allow newcomers to catch up and, in the case of those whose mastery of French is insufficient, to give them intensive French classes.

287. To be considered as new arrivals, pupils must meet the following conditions:

- (a) They must be aged between two and a half years and 18 years;
- (b) They must:
 - Have applied for refugee status or have had their refugee status recognized in accordance with the Act of 15 December 1980 on the entry, temporary and permanent residence and removal of aliens; or
 - Be a minor accompanying someone who has applied for refugee status or who has had his or her refugee status recognized in accordance with the Act of 15 December 1980 on the entry, temporary and permanent residence and removal of aliens; or

- Have applied for recognition as a stateless person or have been recognized as a stateless person; or
- Be the national of a State regarded as a developing country within the meaning of article 2 of the Act of 25 May 1999 on international cooperation, or a country in transition being officially aided by the Development Assistance Committee of the Organization for Economic Cooperation and Development;

(c) They must have been in Belgium for less than a year.

288. The Government may add other countries to the list of developing countries concerned for a given period if it believes that those countries are suffering from a serious crisis.

289. The decree of 28 April 2004 on differential funding of primary and secondary schools takes account of pupils' socio-economic rating in the allocation of school subsidies or funding. As was the case with the 1998 decree, which was intended to ensure that all pupils had equal opportunities for social emancipation, in particular thanks to positive discrimination, the decree of 28 April 2004 does not concern migrants alone.

Notes

¹ Royal decree of 9 July 2000 regulating the special procedure for challenging decisions relating to the entry, temporary and permanent residence and removal of aliens (*Moniteur belge*, 15 July 2000).

² Act of 28 November 2000 on the protection of minors under the criminal law (*Moniteur belge*, 17 March 2001).

³ Programme Act of 2 August 2002 (*Moniteur belge*, 29 August 2002).

⁴ Act of 23 January 2003 on the harmonization of existing legal provisions with the Act of 10 July 1996 abolishing the death penalty and amending criminal sentences (*Moniteur belge*, 13 March 2003).

⁵ Act of 18 March 2003 amending the Act of 15 December 1980 (*Moniteur belge*, 22 May 2003).

⁶ Act of 18 February 2003 amending article 71 of the Act of 15 December 1980 on the entry, temporary and permanent residence and removal of aliens (*Moniteur belge*, 10 April 2003).

⁷ Programme Act of 22 December 2003 (*Moniteur belge*, 31 December 2003).

⁸ Programme Act of 9 July 2004 (*Moniteur belge*, 15 July 2004).

⁹ Act of 22 December 2003 containing various provisions (*Moniteur belge*, 31 December 2003).

¹⁰ Royal decree of 25 April 2005 amending the royal decree of 8 October 1981 on the entry, temporary and permanent residence, and removal of aliens (*Moniteur belge*, 17 May 2004).

¹¹ Circular of 30 April 2004 on the temporary and permanent residence of nationals of the new member States of the European Union (Cyprus, Malta, the Czech Republic, Slovakia, Latvia, Slovenia, Poland, Hungary, Lithuania and Estonia) and members of their families, effective as of 1 May 2004, particularly during the transition period prescribed by the Treaty of Accession 2003.

¹² Part XIII, chap. 6, entitled “Guardianship of unaccompanied foreign minors under the Programme Act of 24 December 2002”, as amended by the Programme Act of 22 December 2003 and by the Programme Act of 27 December 2004. This law brings Belgian law into conformity with the Council of the European Union resolution of 26 June 1997 (OJEC, 19 July 1997, C221/23-26).

¹³ Royal decree of 22 December 2003 implementing Part XIII, chap. 6, entitled “Guardianship of unaccompanied foreign minors under the Programme Act of 24 December 2002”, which was amended by the royal decree of 9 January 2005.

¹⁴ Ministerial circular of 15 September 2005 concerning the residence of unaccompanied foreign minors (*Moniteur belge*, 7 October 2005).

¹⁵ The term “lasting solution” is understood to mean:

- Family reunification,
- Return to the country of origin or to the country in which the unaccompanied foreign minor has been given leave to enter or to remain in exchange for assurances concerning the proper reception and care to be provided to the minor, depending on the latter’s needs as determined by his or her age and level of autonomy, either by the child’s parents or by other adults taking care of the child, or by governmental or non-governmental bodies;
- Leave to remain for an unlimited length of time in Belgium, in accordance with the provisions contained in the Act of 15 December 1980 on the entry, temporary and permanent residence and removal of aliens.

This lasting solution shall be determined after examination by the Aliens Office of all the elements in the case file of the unaccompanied foreign minor.

¹⁶ Act of 1 September 2004 amending the Act of 15 December 1980 on the entry, temporary and permanent residence and removal of aliens (*Moniteur belge*, 12 October 2004).

¹⁷ Act of 1 September 2004 amending article 71 of the Act of 15 December 1980 on the entry, temporary and permanent residence and removal of aliens (*Moniteur belge*, 12 October 2004).

¹⁸ Act of 22 December 2004 amending the Act of 15 December 1980 on the entry, temporary and permanent residence and removal of aliens (*Moniteur belge*, 18 January 2005).

¹⁹ Programme Act of 27 December 2004 (*Moniteur belge*, 31 December 2004).

²⁰ Act of 16 March 2005 amending article 57/12 of the Act of 15 December 1980 on the entry, temporary and permanent residence and removal of aliens (*Moniteur belge*, 10 May 2005).

²¹ Act of 26 May 2005 amending the Act of 23 May 1990 on the inter-State transfer of convicted persons and the Act of 15 December 1980 on the entry, temporary and permanent residence and removal of aliens (*Moniteur belge*, 10 June 2005).

²² Act of 10 August 2005 amending various legal provisions with a view to intensifying action to combat trafficking in and smuggling of human beings and the activities of slum landlords (*Moniteur belge*, 2 September 2005).

²³ Refers to the 15-member European Union.

**REPLIES TO THE COMMITTEE'S OBSERVATIONS AND
RECOMMENDATIONS IN RELATION TO THE PREVIOUS
REPORT (CERD/C/60/CO/2, 21 MAY 2002)**

Paragraph 11 of the concluding observations

290. Duly introduced into the Belgian domestic legal order by the Act of 9 July 1975 ratifying the International Convention on the Elimination of all Forms of Racial Discrimination of 7 March 1966 (the Act entered into force on 6 September 1975 and was published on 11 December 1975), the provisions of the Convention thus form an integral part of Belgian law and have mandatory force.

291. Furthermore, since the *Le Ski* decision, delivered on 27 May 1971, the Belgian Court of Cassation has clearly affirmed the primacy over domestic legal provisions of provisions in international treaty law having direct effect in the national legal system.

292. Thus, Belgian courts must apply these international provisions to the extent that they are self-executing. By "self-executing provision" or "provision having direct effect" is meant a clear treaty provision, legally self-contained, which imposes on the Belgian State an obligation either to refrain from acting or to act in a specific manner, and which, consequently, may be cited as a source of law in itself by individuals under Belgian jurisdiction without there being any need for complementary domestic legislation.

293. The parliamentary discussions on the Act of 9 July 1975 shed no light on the specific issue of the self-execution of the provisions of the Convention.

294. Moreover, the quasi-absence of legal opinion and case law on this subject makes it impossible to make a categorical statement on this issue. In practice, in Belgian courts, defendants seldom rely mainly on the protection of the provisions of the Convention. Rather, they tend to invoke the protection provided by articles 10 and 11 of the Constitution, domestic legislation on racism and combating discrimination and article 14 of the European Convention on Human Rights.

Paragraph 12 of the concluding observations: see answer on page 6

Paragraph 13 of the concluding observations: see answer on pages 23 and 44

Paragraph 14 of the concluding observations: see answer on page 7

Paragraph 15 of the concluding observations: see answer on page 4

Paragraph 16 of the concluding observations

1. Preliminary observations

295. Paragraph 16 of the concluding observations of the Committee on the Elimination of Racial Discrimination expresses the Committee's concern about several cases of racist incidents in police stations involving law enforcement officials, where the victims were immigrants and asylum-seekers. The Standing Police Committee on Police Oversight (Standing Committee P)

deeply regrets that the report portrays the police exclusively in this light. The observations are limited to allegations of complaints and incidents, and do not mention the work undertaken by the police in general in the area of diversity. There is therefore a risk, the consequences of which may be disproportionate, that this negative aspect will be the focus of attention.

296. The Standing Committee P believes that mention should also be made of developments since 2000 concerning the police in Belgium, in particular the policy implemented by the “new” integrated police force for raising police awareness of racism and anti-Semitism and for combating both internal and external discrimination. The Standing Committee P therefore suggests that more information be provided in relation to paragraph 19 of the concluding observations, which deals with raising awareness of racial discrimination, and that the category of police officials be expressly included.

297. With regard to an adequate complaints procedure - as provided for in the federal plan of action on racism, anti-Semitism and xenophobia - all complaints and allegations against police officials are, thanks to various mechanisms,¹ not only registered with the Standing Committee P, whatever body they were originally reported to, but also dealt with by that committee, either directly or indirectly, or duly referred to the judicial authorities. In addition, the amendment made, by the Act of 20 January 2003, on strengthening anti-racism legislation, to the Act of 13 May 1999, on the disciplinary regulations applicable to police personnel, allows the Centre for Equal Opportunity and Action to Combat Racism, in combating police discrimination, to work through the Standing Committee P and, to some extent, the Police Inspector-General’s Office.

298. The new provision of the Act of 13 May 1999, on discipline,² regulates, among other things, communications between the Centre for Equal Opportunity and Action to Combat Racism, the Standing Committee and the Police Inspector-General’s Office. Thus, if the Centre for Equal Opportunity and Action to Combat Racism notifies one of these bodies of facts that appear to indicate discriminatory treatment, the latter must by law launch an inquiry into those facts, inform the competent authorities and bring the matter before the disciplinary or judicial authorities if the facts so warrant. They must keep the Centre informed of the progress of proceedings. Where the Standing Committee or the Police Inspector-General’s Office is informed of facts that appear to indicate discriminatory treatment, they must inform the Centre, without revealing the identity of those involved; they must also apprise it of any action taken following consideration of the case.

299. The practical arrangements for communications between the Centre and the Standing Committee are the subject of a protocol on information exchange and cooperation between the Centre and the Standing Committee, signed on 2 March 2005.

300. Lastly, the annual reports on the work of the Standing Committee on Police Oversight may be consulted on that committee’s website at www.comitep.be.

2. Statistical data on complaints and allegations of racist acts by police officers

301. In parallel with its inquiry into internal discrimination within the police forces (see below), the Standing Committee P has made a special study of individual complaints of racism and discrimination, i.e. external discrimination by the police.

302. The Standing Committee has analysed the complaints of racism or discrimination by police officers brought to its attention in the period 2000-2004.³ The aim of the study was to obtain more details of the circumstances surrounding alleged acts of racism or discrimination, and it has indeed yielded a much clearer picture of the problem.

303. Based in part on an analysis of the substance of the complaints, the allegations of racism registered in the Standing Committee's database can be divided into three categories:

(a) The largest category comprises racist statements, insults or remarks made in the course of apparently legal police action;

(b) Complaints of arbitrary and discriminatory action allegedly taken solely on the basis of the complainant's foreign origin;

(c) Complaints that do not really seem to have anything to do with racism; for example, someone of foreign origin who alleges assault but does not mention racism.

304. The first category of complaints basically relates to offences defined and punished under the provisions of the Criminal Code dealing with offences against a person's honour. The second category could in theory be covered by the provisions defining and punishing as offences discriminatory acts by public servants and inserted in the anti-racism acts of 30 July 1981⁴ and 25 February 2003.⁵ It is difficult to prove discrimination by a police officer, however, where police intervention is legal and justifiable, and thus has a basic legitimacy; and even more so when, as shown by the study, two thirds of complaints fail to mention witnesses.

305. The study shows that the majority of complaints arise out of encounters between police and citizens. Only very few of the complaints involve racism against police officers by their own colleagues and none concern internal discrimination within the force in the areas of recruitment or promotion. The initial study, relating to 2000-2003, showed that, although the number of complaints of racism increased, it was still relatively low in proportion to the more than 40,000 police officers in Belgium. However, the latest year considered (2004) saw a stabilization, or even a decline, in the number of complaints registered under "racism" in the Standing Committee's database. It will be important to establish whether this is a trend over time.

306. Most of the complaints are related to areas, such as the cities or districts of Brussels, Schaerbeek or Antwerp, with high concentrations of foreigners or people of foreign origin. Most of the alleged events appear to have taken place during a specific police intervention. It is mostly the complainant, through his or her behaviour, who is at the origin of the interaction with the police. In slightly less than half of the cases, the police interventions that triggered the events complained of had to do with traffic policing or identity/vehicle checks. After investigation, almost half of the complaints were considered unfounded.

307. A new circular from the public prosecution service which encourages police officers to specify in their reports that an act was racially motivated is in the process of being implemented. This circular should in theory have an impact on the number of complaints for racism/discrimination brought to the attention of the Standing Committee on Police Oversight, in fulfilment of article 14 bis of the Act of 18 July 1991 on monitoring the police and intelligence services.⁶

3. Study on Travellers⁷

308. In response to a number of cases and questions raised - in particular, questions raised by the representative of the National Committee of Travellers about the police's frequently dysfunctional day-to-day encounters with Travellers - the Standing Committee on Police Oversight has decided to open an inquiry to "conduct a preliminary exploratory study to determine the reasons for the police interventions and the legal framework within which they take place".

309. The many origins of nomadic groups and the great social differences between them sometimes make it difficult for the police or local authorities to know how best to deal with them. It is obvious, however, that the behaviour of Travellers should not be confused with that of other groups or gangs of offenders identified by the police.

4. Study on police interaction with people in vulnerable situations⁸

310. A number of unconnected investigations involving unemployed people, homeless people or tramps triggered this thematic study, which aimed to find out how police officers interact or communicate with people who are unemployed or in a precarious situation but not drug addicts. The police officers' reactions seemed disproportionate, involving undue use of force at the expense of dialogue, which hurt the police force's credibility and did nothing to improve its image.

311. Police officers' approach to begging does not follow a predefined intervention strategy; the extent of the phenomenon and how it is perceived vary substantially from one area to another.

312. The police generally do not pay special attention to begging at the moment, mainly because it is no longer a criminal offence. The study shows that local regulations on begging are not uniform: municipal laws are heterogeneous - if not "typological" - poorly known and rarely lead to prosecution. Moreover, their legality is sometimes questionable. Some cities or districts prohibit begging in certain circumstances; police officers have used this restriction to try to justify administrative arrests. In most cases, once they have checked the person's identity, the police simply ask them to leave, or let them stay where they are, only very rarely resorting to the use of force or constraints. It is reasonable to ask if such behaviour, even if only unconsciously, contributes to the further segregation of the unemployed people concerned and, to some extent, reinforces the cycle of poverty.

313. Looking forward, the Standing Committee on Police Oversight believes it would be advisable to consider introducing a basic training course in police academies (for basic, in-service or specialized training courses) to clarify, within a broader context, the concepts of diversity, multiculturalism, nomadic groups of offenders, child beggars, homeless people or persons of no fixed abode. Such training courses could involve external social actors such as the Department to Combat Poverty, Insecurity and Social Exclusion.⁹

Federal police initiatives in the field of diversity

314. Several initiatives have been undertaken by the federal police in the field of diversity, including: (1) the reference to an enterprise culture in the federal police's mission and values statement;¹⁰ (2) the preparation of a code of professional ethics for the police, containing the principles of respect for individual human dignity and objective, just and fair treatment for every person, and encouraging police officers to base the relationships among themselves on mutual respect;¹¹ (3) the creation of an equal opportunities unit within the office of internal affairs of the federal police in order to promote equal opportunities for men and women in the police force; and (4) the organization of pre-entry training for immigrants and, eventually, other minority groups.

315. The integrated police force diversity action plan, which was launched at the end of 2003, aims to ensure that the police force incorporates the concept of diversity into its work and to combat discrimination both inside and outside the force. The action plan has two components: (1) an internal component comprising a set of actions aiming not only to attract candidates from minority or underrepresented groups to join the police force, but also to integrate and retain them in it; and (2) an outward-looking component covering action by the police, as a public service, in society at large.

316. This plan is implemented in partnership with the federal police and the Centre for Equal Opportunity and Action to Combat Racism, with support from the Standing Committee on Local Police. It has five dimensions:

(a) *Communication*: both internal (including the production of newsletters to sensitize staff to diversity) and external (distribution of a background paper explaining the diversity policy of the police);

(b) *Recruitment*: advertising campaigns and sensitization of contact points representing more than one local area to encourage individuals from minorities to join the police, and to encourage those already in the police to sit examinations for promotion.

(c) *Training*: basic training (with the emphasis on multiculturalism) and function-specific training (particularly for community-policing training officers, neighbourhood police officers, police assistants, monitors and mentors);

(d) Integration: through the creation within the human resources department of a network of resource persons to provide support and act as intermediaries and mediators in matters of diversity; and through a study of violence in the workplace (psychological and sexual harassment), with the objective of identifying structural and cultural risk factors and outlining the most appropriate strategies to prevent the organizational risk factors of violence in the workplace;

(e) Career management: through job offers and appointments and through the opening of a crèche.

317. In 2004, the Standing Committee on Police Oversight started a thematic study on discrimination within the police, with the objective of examining the activities undertaken by the integrated police force in relation to racism and discrimination within the police, and more specifically, the diversity action plan.

318. The Standing Committee continued this study in 2005. Meetings were held during the year with representatives of the committee set up to support the plan of action of the federal police; several requests were addressed to the managers with ultimate responsibility for the plan. The outcome was that the federal police has continued its efforts to implement the plan of action. The committee set up to support the development of a diversity policy within the police met several times to organize the implementation of the policy. However, it appears that, for a number of reasons (including financial ones), some actions are still awaiting implementation even though the initial deadline for their completion has passed. It must be stressed that the plan of action did not necessarily follow the budget cycle and that resources are normally requested as they become needed, meaning that project managers have to review their priorities on the basis of the funding available.

319. The emphasis for the moment is on the network of diversity resource persons. This network is functioning well; its members have been identified and communication tools are being set up. The human resources department could present the service provided by the network to the whole of the police force - which will be an important step - as an integral part of its policy. Alternatively, other existing communication channels could be used, the risk being in this case that information on diversity could be perceived as merely another addition to the mass of guidelines and recommendations sent to frontline police officers.

320. The federal police has also been benefiting from the experience of several external actors. In particular, it has invited academics to conduct thematic studies. Studies that should raise awareness about discrimination, such as the ones on well-being in the workplace and the ageing workforce, are currently under way. One of the projects under the plan of action, and one with a high public profile for its target public, is pre-entry training. Such training was assessed at the end of 2004, after a relative waning of interest in it, especially in the north of the country. It was decided that the original four-month format should be maintained and supplemented with communication-skills and language-training modules.

321. The target population will be able to choose courses in the initial format with or without one or two extra modules, which should reduce both the intensity and cost of the courses. The Fund for the Promotion of Policies on Immigrants could be cancelled for budgetary reasons. If this external source of financing were to be lost, the federal police would have to use its own funds if it wished to continue the project. This would give it the opportunity to make a clear assessment of the results obtained to date and say whether it recommends pursuing the project in the future.

322. Given the flexibility of the plan of action and its funding, the Standing Committee believes the challenge will be to continue pursuing the initial objectives while taking an approach that is consistent with the measures already taken. Indicators will certainly have to be refined to enable an effective assessment of the impact of the initiatives on promoting diversity, although in areas such as organizational culture it is admittedly difficult to determine cause and effect.

323. The Standing Committee believes that the diversity action plan of the integrated police force and the federal plan of action against racism, anti-Semitism and xenophobia are in line with the recommendation recently made to the Netherlands by the Committee on the Elimination of Racial Discrimination,¹² in that they show that Belgium is continuing to promote the effective implementation of measures aimed at ensuring that the ethnic composition of the police appropriately reflects that of Belgian society.

Annex A

STATISTICS ON COMPLAINTS AND ALLEGATIONS OF ACTS OF RACISM COMMITTED BY POLICE OFFICERS¹³

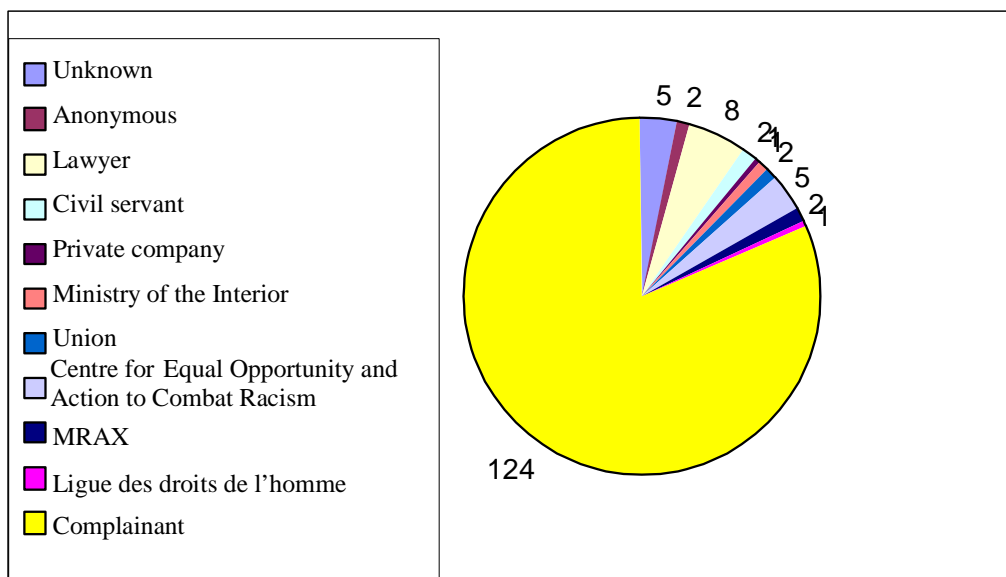
The statistics analysed below are derived from a list of 153 complaints and allegations of acts of racism committed by police officers that were received by and entered into the database of the Standing Committee on Police Oversight (Standing Committee P) between 2000 and 2003. The objective was to put the various complaints into context, to the extent possible, and to analyse all available information.

1. The complaint

1.1 Cause of the complaint

Figure 1

Origin of the complaint



In most cases, the complainant addresses the Standing Committee P or the judicial authorities directly, either in writing or in person. However, as indicated in the figure above, the complainant can also choose to go through a lawyer, the Centre for Equal Opportunity and Action to Combat Racism, MRAX¹⁴ or the Ligue des droits de l'homme.

In some cases, the complaint is filed by an association such as the Union des Juifs de Belgique. Five complaints were submitted by the Centre for Equal Opportunity and Action to Combat Racism, whose remit has recently been broadened.

1.2 Categories of complaint

Fifty-six of the complaints filed, that is one third of all cases examined, were not entered into the database under a specific category.¹⁵ They are essentially judicial complaints. The following tables give an indication of the different categories used by the Standing Committee P to classify complaints and allegations of acts of racism.

Table 1

No investigation

Category	No. of cases
102	1
109	6
111	1
117	1
122	1
125	4
127	5

The 19 cases that were dismissed correspond to a total of 17 complaints. However, this does not mean that the complaints were necessarily unfounded. In six cases (category 109), the complaint falls under the jurisdiction of the courts, and the Standing Committee P referred the case to the Public Prosecutor's Office, which does not prevent the committee from monitoring progress in the case and, where appropriate, requesting access to the case files.

Table 2

Examination of the file

Category	No. of cases	Finding
201	2	Handled by the investigation services
202	31	
203	1	
204	42	Handled by internal oversight services
205	1	

Complaints of racism are often forwarded to the internal oversight services or to the person responsible for conducting internal checks in the police department concerned (42 cases).

Table 3**Investigation and decision after investigation: closure of the case**

Category	No. of cases	Finding
301	3	Insufficiently substantiated
303	19	
304	3	
307	3	
308	4	
311	2	No fault
312	13	
313	12	
314	3	No dysfunction
319	1	
320	7	Limited checks
325	4	

These 74 cases categorized as “closed” represent 59 complaints that were closed after investigations, which correspond to approximately one third of the 153 complaints of racism recorded between 2000 and 2003. Cases may nevertheless be reopened at a later stage, pursuant to a decision of the Public Prosecutor’s Office or information provided by the internal oversight office of the local and federal police or the Police Inspector-General’s Office.

Table 4**Provisional closure - well-founded complaints**

Category	No. of cases
401	4
402	2
404	6
406	7
408	3
409	7
410	1

These 30 cases categorized as “well-founded” represent 21 complaints that were found to be sufficiently substantiated at this stage of the investigation. This represents 13.7 per cent of the 153 complaints of racism recorded, or 21.6 per cent of the total number of cases entered into the database as “closed” (97).

Table 5
Definitive closure

Category	No. of cases
501	14
505	3
506	1
510	2
520	2
525	1

These 23 cases categorized as “definitively closed” correspond to 21 complaints; 14 were closed after action was taken following a finding of personal fault or dysfunction (classification 501).

In conclusion, when examining the 97 cases entered into the database as “closed”, it emerges that the Standing Committee P dismissed 17 cases (which could nevertheless mean that the complaint was well-founded, but was dealt with at another level), 59 were closed after investigations and 21 were definitively closed with action taken. The last figure is the most important, because it may concern the same cases.

The Standing Committee P dismissed certain complaints, within the limits of its mandate and competencies as set forth in the Organization Act of 18 July 1991; there is a possibility that the investigation conducted by the internal oversight body or reconsideration of the complaint by the Standing Committee P may lead to a finding of personal fault.

2. The complainant

The number of complainants in each case ranges from 1 to 5. The 153 complaints correspond to 175 complainants. In 79 per cent of the cases the complainant is male; in 18 per cent of the cases the complainant is female. In 3 per cent of the cases the complainant is not specified or remains anonymous. Some 57 per cent of complainants are French-speaking and 34 per cent Dutch-speaking. In 9 per cent of the complaints the language of the complainant could not be identified.

From the family names and first names and the content of the complaints (“I am of mixed race”, “I am Belgian”), it can be deduced that 87 of complainants are “of foreign origin” (non-Belgian Europeans or non-Europeans), 11 per cent are Belgian and 2 per cent are of unidentified origin (anonymous complaints or complaints concerning an unknown person).

In 12 cases the complainant is not the victim of the alleged acts; rather, the complaint is submitted to the Standing Committee P by an informant (a witness of the incident, for example). In 52 cases, representing approximately one third of the complaints, the police or private individuals witnessed the incident. The number of witnesses ranges from 1 to 52,¹⁶ which means that in two thirds of the cases there are no witnesses; this makes it more difficult to gather evidence and eventually establish the veracity of the complaint. Four complaints were filed by members of the police force in respect of racist behaviour on the part of one or several colleagues, directed either at them or at third persons.

3. The suspect

In 69 cases, the number of suspects is not specified in the analysis or summary of the complaint or the database.

Table 6

Breakdown of the number of suspects per complaint

No. of suspects	No. of files
1	45
2	30
3	7
4	2

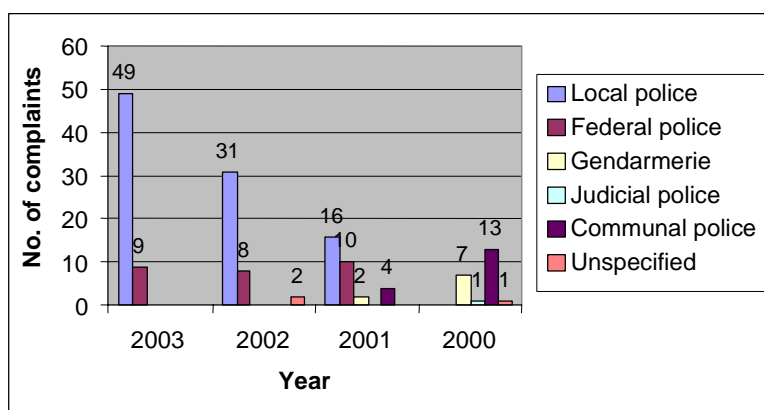
Of the 134 recorded suspects, 88 are men and 6 are women. The gender of the remaining suspects could not be identified, because no relevant information is provided in the complaint (“police officers insulted me”). In 82 per cent of the cases, the complaint of racism is aimed against one or more individual police officers (identified or not), since the problem arises most frequently in the context of specific police interventions (see above). In 6 per cent of the cases, the complaint of racism is aimed against a police department or police force in general. In one case only, a complaint of racism was lodged against the police as a whole.

In 11 per cent of cases, the target of the complaint cannot be identified.

The figure below provides disaggregated data on suspects according to their respective units:

Figure 2

Police force concerned



As a result of the reorganization of the police during the period under review, the gendarmerie, communal police and judicial police forces are represented in 2000 and part of 2001.¹⁷ As of 2002, the only distinction reflected is the one between the local and the federal components of the integrated police force.

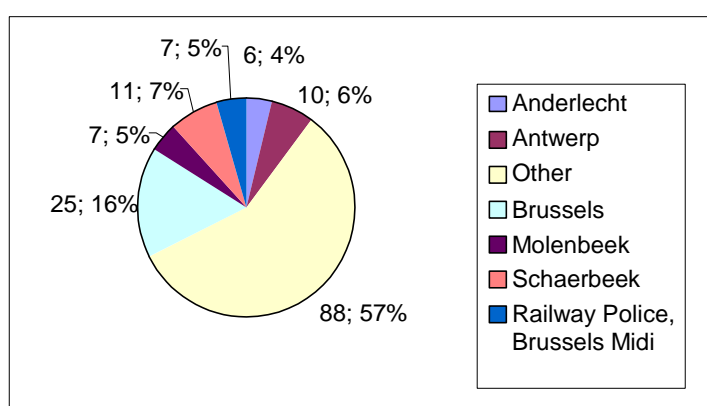
The complaints concern mainly members of the local police, who are the very people working in the field in direct contact with the public. The federal police departments reflected in the figure are operational units such as the general reserve, the traffic police or the railway police.

It is also worth disaggregating the police forces that have been subject to complaints by geographic location. The figure below provides information on the police forces to which suspects belonged, covering a period of four years. Each section indicates the number of complaints against staff members of a given force and the percentage of the total that the number represents.

The largest number of complaints - 25 out of 154,¹⁸ or 16 per cent of the total - was lodged against the police force in the Brussels-Capital district. The category "other" refers to police agencies against which one or two complaints were lodged at most.

Figure 3

Police forces concerned



It should be clarified that, although complaints of racism against staff of the Brussels-Capital police district are most frequent, they have been on the decline since 2001.

Table 7

Brussels-Capital-Ixelles district

2000	2001	2002	2003
4	9	7	5

Conversely, since 2000 the number of complaints has increased slightly in the police districts covering Schaerbeek, Antwerp and Molenbeek. The increase might be due to the fact that, since 2001, these districts have brought together the combined forces of various former municipal police forces and gendarmerie brigades. Still on the issue of suspects, it transpires from the examination of the files that in 89 per cent of the cases the complaints are lodged against one or more police officers on duty. In 5 per cent of the cases the police officer was off duty. In 6 per cent of cases, no relevant information is available.

4. Context

The context can shed light on the circumstances in which the incident giving rise to the complaint occurred and on the police action targeted in the complaint.

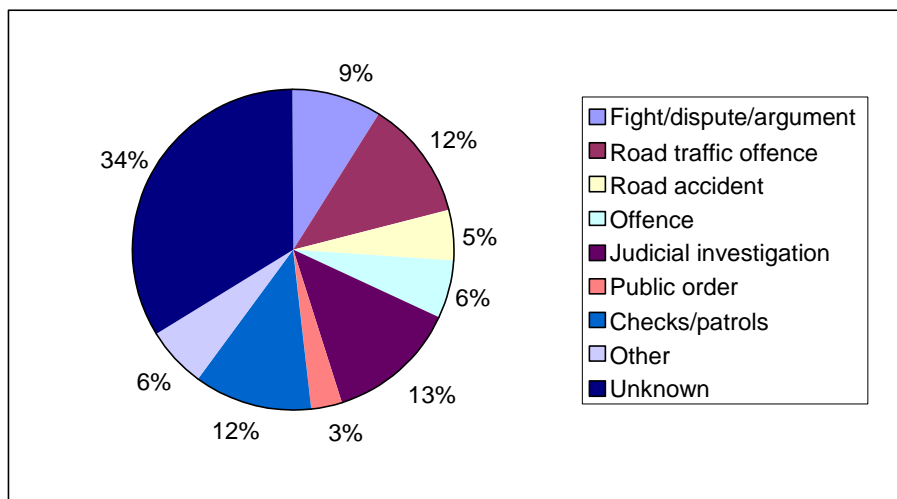
4.1 Reasons for the intervention

Some complaints refer to the circumstances in which the police intervened. In most cases the complaint of racism relates to a particular police intervention. Less than a dozen complaints concern racist behaviour by a police officer that is unrelated to a particular intervention.

The figure below enumerates the reasons for the police intervention that gave rise to the complaint of racism.

Figure 4

Reason for the intervention



Thirty-four per cent of the allegations give no information, or give imprecise information, on the context of the police intervention. Police interventions can be split into the following categories:

- (1) Fight/dispute/argument: the complainant is allegedly implicated in a dispute with neighbours, a brawl in a bar, a family dispute, etc. requiring police intervention;

- (2) Road traffic offence: the complainant is suspected of committing a road traffic offence; the police intervene and may draw up a report or have the car towed away;
- (3) Road accident: the complainant is thought to have been the victim of or responsible for a road accident requiring police intervention;
- (4) Offence: the complainant is suspected of committing or being the victim of an offence such as theft, assault and battery, public drunkenness, etc., and the police intervene;
- (5) Judicial investigation: the police intervene in the context of a judicial investigation;
- (6) Public order/administrative police: for example, the complainant is present during an incident requiring the intervention of a law enforcement agency or is being repatriated;
- (7) Checks/patrols: the police are on patrol and check a person or vehicle that arouses suspicion because of the time of day, the place, etc.;
- (8) Other: this category concerns the reception of the complainant at the police station, emergency (101) calls, the lodging of a complaint, or cases in which the police did not intervene. The cause of the complaint may be, for example, general racist behaviour on the part of a police officer.

The analysis reveals that complaints of racism generally fall into one of the following broad categories: (1) traffic (offence or accident), which gives rise to approximately one fifth of the complaints or allegations; (2) judicial investigations in the wider sense (search warrant, questioning, etc.); and (3) identity or document checks.

In many cases, the complainant him/herself is at fault when the police intervene. The police intervention occurs in response to the alleged commission of an offence involving the complainant in one way or another.

4.2 Action taken and problems arising

Given that complaints of racism are mainly filed in the context of particular police interventions, it is legitimate to ask what actions are at the root of any incident. The table below indicates the number of complaints that refer to a particular police action. One complaint may refer to several actions, which is often the case for the classic “search, arrest and questioning” pattern.

Table 8**Police action mentioned in the complaint**

Police action	No. of cases
Arrest/deprivation of liberty	63
Questioning	39
Identity/document/vehicle checks	25
Drawing up of report	16
Other	16
Search	11
House search	7
Unknown/unspecified	7
Vehicle towing	6
Recording of a complaint	2

The category “other” refers to actions such as the attachment of personal property, breathalyser tests, telephone reception at the police station, etc.

The majority of complaints refer to judicial or administrative arrests, followed by questioning, since this often takes place in the wake of an arrest. The last category, “recording of a complaint”, refers to situations where the police display a racist attitude when a complainant tries to file a complaint.

The complaints criticize the role of the police as follows:

- (1) 78 per cent concern the performance of police duties: use of racist language during an intervention, discrimination during identity checks, etc.;
- (2) 8 per cent concern the police officer him/herself: the police officer is accused of invasion of privacy (possibly due to racism), falsification of records, etc.;
- (3) 3 per cent concern the role of the police: the complaints mention alcohol abuse, the attitude of the police officer on duty, etc.

Undertaking a quantitative analysis of the individual acts that are being denounced in the complaints is difficult, since the same complaint sometimes contains several different grievances. It can be noted that 37 of the complaints do not mention any specific racist or discriminatory acts, but instead refer to blows and injuries, threats, the refusal to take action, etc., without establishing a meaningful link between these acts and racism or discrimination.

5. Trends

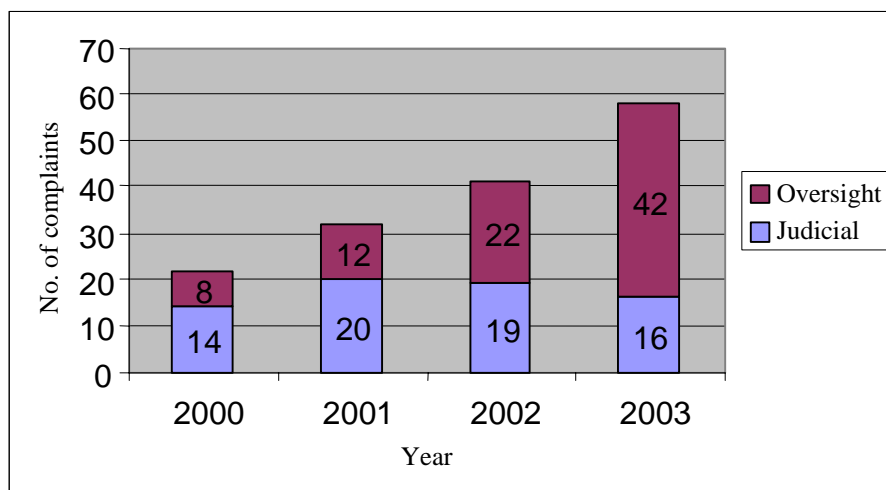
Table 9

Year-on-year increase in the number of complaints

Year	No. of complaints
2000	22
2001	32
2002	41
2003	58

Figure 5

Trends in the number of complaints



Since 2001, the number of complaints referred to the judicial authorities has been falling, while the number of complaints examined by internal oversight mechanisms is on the rise. Criminal legislation against racism and its implementation have been strengthened in recent years, which could mean that the behaviours that are being criticized have not evolved in line with the legislation, or that they are not covered by the new classification of offences.

As to the content, there has been no particular change in the type of complaints. The complaints mostly concern the use of racist language or insults, which are covered by the provisions of the Criminal Code, as well as by anti-racist legislation.

Notes

¹ The Organization Act of 18 July 1991 establishes a clear requirement to transmit to the Standing Committee on Police Oversight:

(a) Automatically: all regulations, guidelines or other texts governing police behaviour; copies of judgements and decisions relating to crimes and offences committed by members of the police; copies of complaints and allegations received by the Federal Police Commissioner, the Police Inspector-General's Office or local police chiefs, and a brief summary of the outcome of inquiries, once completed; disciplinary measures taken against or warnings issued, to police officers; and a copy of the annual report of the police forces and of any other report on their general operation;

(b) On request: copies of all decisions, documents or information relating to criminal proceedings taken against police officers for crimes or offences committed in the course of their duties and any documents the Standing Committee considers necessary to the pursuit of its work;

(c) Additionally: notification of any preliminary inquiry or investigation into a police officer. The police forces are also required to submit a report to the Director of the Investigation Service whenever a police officer is found to have committed a crime or offence. In order to ensure an exchange of information, cooperation and consultation, information-transfer mechanisms have been set up via protocols agreed with the federal and local police, the Police Inspector-General's Office and the Centre for Equal Opportunity and Action to Combat Racism.

² The following provisions have been inserted in article 26 of the Act of 13 May 1999, on the disciplinary regulations applicable to members of the police:

“Where the Centre for Equal Opportunity and Action to Combat Racism notifies the Standing Committee on Police Oversight or the Police Inspector-General's Office of facts that appear to indicate discriminatory treatment within the meaning of the Act of 30 July 1981, prohibiting racist or xenophobic acts, or the Act of 25 February 2003, prohibiting discrimination and amending the Act of 15 February 1993, establishing the Centre for Equal Opportunity and Action to Combat Racism, the president of the Standing Committee or the Inspector-General, respectively, shall conduct an inquiry into those facts, shall inform the competent authorities and, if the facts so warrant, bring the matter before the disciplinary or judicial authorities. The president of the Standing Committee or the Inspector-General shall inform the Centre of the progress of proceedings and in particular of any action taken by the disciplinary or judicial authorities following their consideration of the case.

Where the Standing Committee or the Police Inspector-General's Office is informed of facts that appear to indicate discriminatory treatment within the meaning of the aforementioned acts, the president of the Standing Committee or the Inspector-General, respectively, shall notify the Centre for Equal Opportunity and Action to Combat Racism, without revealing the identities of the parties involved. They shall also notify the Centre of any action taken by the disciplinary or judicial authorities following their consideration of the case.”

³ An initial study was made in 2004, relating to the period 2000-2003 (see annex A for summary). A second study was made in 2005, relating to 2004. The latter study will be presented at an appropriate time, such as during consideration of this report by the Committee on the Elimination of Racial Discrimination.

⁴ Act of 30 July 1981, prohibiting racist or xenophobic acts.

⁵ Act of 25 February 2003, prohibiting discrimination and amending the Act of 15 February 1993, establishing the Centre for Equal Opportunity and Action to Combat Racism.

⁶ Under which the police automatically forward to the Standing Committee on Police Oversight a copy of the complaints or reports they receive, as well as a summary of the outcome of the investigation once this has been completed.

⁷ File No. 27311/2003.

⁸ File No. 22110/2000.

⁹ Established within the Centre for Equal Opportunity and Action to Combat Racism to analyse information on insecurity and to make practical recommendations and proposals to improve policies. Also runs training sessions.

¹⁰ An enterprise culture is defined as: "... the set of beliefs and hopes shared by the majority of staff. In any organization, this produces rules to be followed (norms); the latter are reflected in behaviours that in turn constitute the basis of beliefs and values. All of this forms the development cycle of the enterprise culture.”

¹¹ Royal decree of 10 May 2006, containing the Code of Ethics of the Police (*Moniteur belge*, 30 May 2006).

¹² Report of the Committee on the Elimination of Racial Discrimination on its sixty-fourth and sixty-fifth sessions (A/59/18), para. 155.

¹³ NB: these statistics may be updated when the report is presented to the Committee.

¹⁴ *Mouvement contre le racism, l'antisémitisme et la xénophobie.*

¹⁵ See the codes used by the Standing Committee P to categorize complaints and allegations and the relevant findings in annex B (below).

¹⁶ In one case in 2000 the complaint was filed by staff of a local police station against a colleague.

¹⁷ The current police districts were established in 2001.

¹⁸ Reference is made to 154, rather than 153 cases, because one complaint involved two police districts.

Annex B

**CODES USED BY THE STANDING COMMITTEE ON POLICE OVERSIGHT
TO CATEGORIZE COMPLAINTS AND ALLEGATIONS AND THE
RELEVANT FINDINGS**

No investigation

Case dismissed (100 ...)

101 manifestly unfounded or not applicable

102 anonymous complainant or informant (cannot be located)

103 not sufficiently proven

104 no concrete evidence

105 complaint withdrawn

106 not competent *rationae personae*

107 not competent *rationae materiae*

108 penal under the chapter on members of the police (art. 29 of the Code of Criminal Investigation and/or art. 22 of the Organization Act of 18 July 1991 - no action taken at the level of the Standing Committee P)

109 penal under the chapter on members of the police (art. 29 of the Code of Criminal Investigation and/or art. 22 of the Organization Act of 18 July 1991 - action taken at the level of the Standing Committee P)

110 decision confirmed

111 author unknown

112 no fault

113 no dysfunction

116 congratulations

117 handled by another department or institution

118 handled by the general inspectorate

121 not applicable

122 findings contested

123 transmittal of information

124 referral to the administrative authority

125 referral to the crown prosecutor

126 referral to superiors

127 transfer of competence for dealing with the complaint to superiors

Investigation

201 by a member on duty

202 by the investigation department

203 by the Police Inspector-General's Office

204 by the internal oversight body

205 simple request for information addressed to the police

Investigation and decision after investigation (300 ..., 400 ..., 500 ...)

Closure of the case (300 ...)

301 manifestly unfounded or not applicable

303 not sufficiently proven

304 no concrete evidence

305 complaint withdrawn

306 not competent *rationae personae*

307 not competent *rationae materiae*

308 penal under the chapter on members of the police (art. 29 of the Code of Criminal Investigation and/or art. 22 of the Organization Act of 18 July 1991 - no action taken by the Standing Committee P)

310 decision confirmed

311 author unknown or unidentified

312 no fault

313 no dysfunction

314 refusal to cooperate

315 complainant or informant untraceable

316 congratulations

317 reprimand already issued by chief of unit

318 taken over

319 situation regularized or complaint or allegation better substantiated

320 undertaking of small-scale or limited checks

321 not applicable

323 transmittal of information

324 referral to the administrative authorities

325 referral to the crown prosecutor

326 referral to superiors

Provisional closure - well-founded complaint (400 ...)

401 personal fault, consider comment or warning to prevent recurrence

402 personal fault, consider subsequent statutory or disciplinary examination

403 personal fault, consider compensation

404 personal dysfunction, consider comment or warning to prevent recurrence

405 personal dysfunction, consider subsequent statutory or disciplinary examination

406 personal dysfunction, consider compensation

407 no personal dysfunction

408 organizational dysfunction and request for action to prevent recurrence

409 penal under the chapter on members of the police or officials under police jurisdiction
(Code of Criminal Investigation, art. 29)

410 invitation to offer apology

Definitive closure (500 ...)

501 after action was taken in respect of 401 to 406 and 408 to 410

502 closure after action taken in respect of 407

503 if no action was taken, notification of superiors, higher administrative or judicial authorities or parliament

504 new investigation or new case file

505 subsumed into another investigation or case file

506 monitoring investigation

507 subsumed into a monitoring investigation

508 reopening of a case

509 regularized or better substantiated

510 decision confirmed

520 undertaking of small-scale or limited checks

522 notification of police force

523 transmittal of information

524 referral to the administrative authority

525 referral to the Public Prosecutor's Office

526 referral to police superiors

Paragraph 17 of the concluding observations: see answer on p. 48

Paragraph 18 of the concluding observations: see answer on p. 36

Paragraph 19 of the concluding observations: see answer on pp. 9 and 56

Paragraph 20 of the concluding observations: see answer on p. 13

Paragraph 21 of the concluding observations: a copy of the Annual Report 2005 of the Centre for Equal Opportunity and Action to Combat Racism is provided in annex I

Paragraph 22 of the concluding observations: see annexes IV and V

Paragraph 23 of the concluding observations: see answer on p. 10

Annexes

ANNEX I: ANNUAL REPORT 2005 OF THE CENTRE FOR EQUAL OPPORTUNITY AND ACTION TO COMBAT RACISM

ANNEX II: FINAL REPORT OF THE COMMISSION ON INTERCULTURAL DIALOGUE

ANNEX III: REPORT OF THE WORKING GROUP OF EXPERTS ON PEOPLE OF AFRICAN DESCENT - VISIT TO BELGIUM

ANNEX IV: EUROPEAN EMPLOYMENT STRATEGY: EVALUATION OF THE 2003-2005 EMPLOYMENT STRATEGY IN BELGIUM

ANNEX V: BELGIAN POPULATION STATISTICS
