Centre for Equal Opportunities and Opposition to Racism's parallel report on the sixteenth, seventeenth, eighteenth and nineteenth reports presented by Belgium on the application of the International Convention on the Elimination of All Forms of Racial Discrimination

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INTRODUCTION

The Centre for Equal Opportunities and Opposition to Racism (hereafter: the Centre) is a public federal institution that exercises its statutory tasks completely independently. It was created by the Law of 15 February 1993.

Its statutory tasks are as follows: "The Centre's task is to promote equal opportunities and combat all forms of discrimination, exclusion, restriction or preferential treatment based on: *a so-called race, skin colour, descent, national or ethnic origin; sexual orientation, civil status, birth, wealth, age, religious or philosophical beliefs, current or future state of health, disability or physical characteristic(…)*[1] ". [2]

"*The Centre also has the task of ensuring respect for the basic rights of foreigners and informing the authorities about the nature and scale of migration flows and developing dialogue between all governmental and private players involved in policies for the reception and integration of immigrants. In addition, the Centre has the task of supporting the fight against human trafficking and smuggling.*[3] " The Centre presents its parallel report to the CERD committee on three accounts.

Firstly, the Centre was re-accredited as a National Human Rights Institution (status B) for Belgium by the United Nations Sub-Committee on Accreditation during its March 2010 session.

Secondly, the Centre is also the equality mouthpiece set up in accordance with the European Union's Directive 2000/43 (race directive).

Finally, with these two mandates, and its specific task acknowledged by virtue of Article 14 of the CERD, the Centre is the independent mechanism for promoting, protecting and monitoring in accordance with the Durban Programme of Action (§ 163) and the final statement of the Review Conference (§§ 45, 100 and 103)[4]

The work carried out by the Centre evolves in line with topical events and trends in society. It has developed its action by deploying different methods of intervention and operation: processing individual cases, defence work in structural cases, information, training and raising awareness. It implements its action within the framework of all its areas of competence.

The Centre is approached on a daily basis regarding situations of racial discrimination or the failure to respect the basic rights of foreigners in the country. All requests are dealt with in accordance with the Centre's tasks: conscientiously and based on legal bases resulting from the Belgian and international regulations and jurisprudence in force.

Finally, it is within this context and within the framework of its abovementioned statutory tasks that it submits a parallel report on the application of the International Convention on the Elimination of All Forms of Racial Discrimination.

[1] Art. 2 of the Law of 15 February 1993 creating a Centre for Equal Opportunities and Opposition to Racism.
[2] Since 12 July 2011, the Centre is the independent Belgian mechanism responsible for protecting, promoting and monitoring the United Nations Convention on the Rights of Persons with Disabilities, Article 33 (2).
[3] Art. 2 of the Law of 15 February 1993 creating a Centre for Equal Opportunities and Opposition to Racism.
[4] See § 342 of the country report.

The Centre will undergo significant transformation in the course of 2014[5]. In execution of the government agreement, a cooperation agreement was concluded on 12 June 2013 between all the regional, community and federal governments in view of 'interfederalising' the Centre[6]. It also has full competence to deal with matters that fall under regional and community competences. At the same time, matters concerning foreigners' rights (fundamental rights of foreigners, migration flows and the fight against human trafficking) no longer fall under the remit of the Centre for Equal Opportunities and they have been entrusted to a new separate institutions, Federal Centre for the Analysis of Migration Flows, the Protection of the Fundamental Rights of Foreigners and the Fight against Human Trafficking.

The government agreement also provided for the interfederalisation of the Institute for the Equality of Women and Men on the one hand, and on the other, the creation of body encompassing these three institutions (discrimination/migration/gender) which was to become the National Institute for Human Rights. These two sections of the government agreement haven't been implemented.

While the Centre is very pleased with this evolution, as regards the extension of it competences to regional and community matters, the means/obligations in terms of decentralisation, the guarantees offered concerning its independence, in accordance with the Paris Principles, the budget and the nomination and status of governance or organs (board of directors, management, etc.), it would like to draw the Committee's attention to several points:

- **Regarding the CERD mandate, the separation of the fight against racism and racial discrimination on the one hand, and respect for the fundamental rights of foreigners on the other into two different organs runs the risk of weakening the guarantees of protection in accordance with the CERD. The collaboration between the two new institutions will certainly be a crucial stake of this point of view. The fact that the two institutions will share the same board of directors (in part) and the same building will act in favour of this collaboration.**
- **The Federal Migration Centre's board of directors continues to be appointed by royal decree and therefore by the government. This doesn't comply with the Paris Principles.**
- **The creation of the National Institution of Human Rights, as a complement and according to the mandates of the different existing organs, has yet to take shape despite the various commitments made.**

[5] See §§ 339 to 343 of the country report and http://www.diversite.be/dun-centre-%C3%A0-deux-un-avant-go%C3%BBt-de-ce-qui-va-changer-en-2014

[6] Interfederal Centre for Equal Opportunities and Opposition to Racism and Discrimination.

GENERAL CONSIDERATIONS

Action plan against racism (Durban follow-up)

In autumn 2002, the prime minister at the time had asked the Centre to prepare a project entitled "National action plan against racism, racial discrimination, xenophobia and the intolerance associated with it". Despite numerous attempts and discussions between the different levels of power, such a plan was never adopted in Belgium.

Although there has been a great deal of progress, for instance as regards a better application of the criminal law provisions against racism, Belgium is still faced with several challenges especially in terms of growing tensions in an increasingly diverse society and a high increase in racist, anti-Semitic, islamophobic and xenophobic views on the internet. The Centre has also observed continuing forms of direct and indirect discrimination on the basis of nationality or origin in the sectors of employment, education, housing and in public services.

The main objective put forward during the concluding statement of Durban II (2009), was the (re)mobilisation of the political will to rise together against racism, on a national, regional and international level. The fight against racism is indeed a responsibility that the whole of society must assume; it is not only the responsibility of the authorities or the victims.

The adoption of such a national/interfederal action plan should also be an opportunity to take into consideration the recommendations resulting from the Commission du Dialogue Interculturel (2004) and the Assises de l'Interculturalité (2010) and to rethink this legacy in light of today's realities and stakes.

The Centre regrets that more than 12 years after the Durban World Conference, Belgium still has not adopted an action plan against racism.

Implementation and evaluation of the law against racism

The Law of 30 July 1981 aimed at suppressing certain acts inspired by racism and xenophobia was fundamentally reformed in 2007[7]. Parliament was supposed to make an assessment of this law[8] in 2012 (five years after its adoption).

The Centre regrets that it was not possible to carry out this assessment. Indeed, two points deserve attention concerning the law against racism[9] :

- The royal decree allowing positive actions to be conducted still has not been adopted. The results of the socioeconomic monitoring[10] nevertheless clearly show an ethnic stratification of the employment market and a systematically less favourable position for foreigners or those of foreign origin, especially as regards certain nationalities (of origin). Consequently, no positive action measure can be legally or validly adopted.
- Compensation (EUR 650/1300) is very low and does not motivate the other party to negotiate or the victim to go to court and initiate the related costs.

[7] See §§ 11 to 25 of the country report
[8] And of the general law against discrimination and the gender law (all from 10 May 2007).
[9] For more information see: http://www.diversite.be/lois-antidiscrimination-et-antiracisme-%C3%A9valuation
[10] See § 234 and following in the country report and also: http://www.diversite.be/monitoring-socio-%C3%A9conomique

REMARKS PER ARTICLE AND PER PARAGRAPH OF THE COUNTRY REPORT

ARTICLE 2: POLICY AIMED AT FIGHTING RACISM

Actions to raise awareness in the target groups § 43-48

Awareness-raising and training actions for the police and prison officers

§ 46: A ministerial decree determines the objectives and contents of the various modules that must be give to police cadets.

The ministerial decree provides for a specific module on discrimination and racism. However, according to the police academy, the lecturer for this module has 4 to 16 hours to teach these subjects and therefore does not always have the chance to deal with all the content provided for in the ministerial decree. Furthermore, the lecturers have not systematically had specific training in these subjects and do not always master the anti-racism and anti-discrimination laws or the various related concepts.

It should also be noted that a reform in the basic training of police officers is currently underway and that there still are not any clear directives regarding the way in which these subjects (anti-racism, anti-discrimination and diversity laws) will be integrated into the new system.

Finally, within the framework of the agreement that links the police to the Centre, the last report submitted makes the following observations[11] (extracts from the report):

- Islamophobia

The Centre notes that police staff is conscious that the concept of diversity is very broad and encompasses numerous criteria. However, there is often a tendency to reduce it to 'foreigners' alone. And when asked who these foreigners are, it becomes clear that they are only referring to 'Muslims'. Everyone has their own idea about 'Islam' and 'Muslims'. In general, these ideas are not based on real contact with people, but are usually founded on the general image that is conveyed in our society, rumours that circulate in a unit, etc.

- Attitudes in the face of discriminatory behaviour

Some participants do not call discrimination into question, either internally or externally.

Police officers do not always know how to react when they are witness to discriminatory harassment towards a colleague and their superior does not intervene. As for team leaders, they say that they have few skills to adopt a coherent and constructive attitude in this domain.

Externally, we see that come consider discriminatory behaviour as 'normal'. "It is the owner's choice to whom he/she wants to rent"; "It is normal for an employer not to employ foreigners", etc.

- Lack of knowledge of the law against racism

We have also noticed a lack of knowledge of the legislation against racism or discrimination. Not only is it not well known but furthermore, it is not always sufficiently taken seriously and people tend to consider it as less restrictive than the highway code, for instance.

[11] http://www.diversite.be/collaboration-avec-la-police-f%C3%A9d%C3%A9rale-rapport-annuel-2012

Integration programmes and policies § 49-113

Roma and Travellers § 49-67

§ 50: Belgium adopted a National Roma Integration Strategy in March 2012. The Centre points out that the European Commission, in its communication "COM(2012) 226 final – National Roma Integration Strategies: a first step in the implementation of the EU Framework", has identified several shortfalls in various domains (education, employment, health, housing) dealt with by the National Roma Integration Strategy. The main points of attention concern the lack of quantifiable objectives and indicators to measure the effects of the policies announced.

§ 53: At federal level, a Committee for Roma and Travellers was created. Its mission is to ensure their participation in the Belgian policy and to offer them equal opportunities.

The Centre points out that it is not clear that the participation of Roma is encouraged by the creation of the National Roma Council: neither its composition nor the way it operates are revealed in the National Roma Integration strategy. What about how it operates, its funding and coordination with other authorities such as the Minderheden Forum, the Foyer or the Centre de Médiation des Gens du Voyage et des Roms en Wallonie?

ARTICLE 4: CONDEMNATION OF ALL PROPAGANDA AND RACIST ORGANISATIONS

ARTICLE 5: BAN ON ALL FORMS OF DISCRIMINATION § 138-282

Updating of provisions relating to certain foreigners living in Belgium § 138-189

§ 140: The Aliens Litigation Council (CCE) has to constantly manage a large backlog of files. During its individual consultations, the Centre often meets foreigners who have been waiting more than six months, or even more than a year, for a decision concerning their appeal for annulment.

§ 142: The Law of 15 September 2006 implements Council directive 2004/83/EC of 29/04/2004. Within this framework, a specific authorisation procedure allowing seriously ill foreigners to stay (Article 9ter of the Law of 15 December 1980) was established. Submitting a request on the basis of Article 9ter is subject to tougher conditions than making an application for asylum. The difference in the way matters concerning admissibility requirements are dealt with was judged unconstitutional by an order of the Constitutional Court pronounced on 26 November 2009 (no. 193/2009)

Furthermore, while it rules on full remedy actions within the framework of appeals against refusals for subsidiary protection, the CCE does not have unlimited jurisdiction as regards appeals lodged against refusals based on Article 9ter.

The Centre recommends an assessment system that examines to what degree the procedure in Article 9ter meets the obligation to offer sufficient protection to sick persons, as stipulated in European Directive 2004/83/EC.

§§ 146-147: A list of safe countries of origin was drawn up in 2011. The CGRA can decide not take into consideration a request for international protection from a national from one of these safe countries. The law only provides for an action for annulment against this decision to not take a request into account.

Besides the criticisms expressed by UNHCR[12] , with which the Centre agrees, it should be noted that through an order of 16 January 2014[13], the Constitutional Court partly nullified the Law of 15 March 2012 by forcing the authorities to guarantee an effective remedy, even for nationals from so-called safe countries.

a. *The Law of 8 May 2013 modifying the Law of 15 December 1980 on access to the territory, stay, establishment and return of the foreigners, and modifying the Law of 27 December 2006 containing various provisions*

Among other things, this law provides for the introduction of the concept of "first country of asylum", which gives the CGRA the chance to declare an application unfounded if the person asking for asylum already benefits from real international protection in the first country of asylum. The Centre points out that, as is the case for safe countries, it is essential to fully and individually examine, in each case, whether the interested party benefits from real international protection in the first country of asylum and whether they are still authorised to return to this country.

b. *Statelessness*

Besides the ratification of the Convention of 1961 on the reduction of cases of statelessness, the government agreement of 1st December 2011 provides for a procedure for the recognition of the status of statelessness by the CGRA. None of these measures were adopted in either 2012 or 2013.

It should be possible to produce reliable, transparent and comparable figures in support of a better understanding of the phenomenon. As regards the registration of persons who are stateless or of undetermined nationality in the National Register, the Centre recommends that instructions concerning a standardised use of encoding (recording) be elaborated and communicated to the communes; and that training and support for civil servants responsible for this encoding be reinforced, with a particular emphasis on entering children in the registers. Court decisions recognising the status of statelessness should be automatically sent to the communes, so they can be entered in the registers. Finally, the Centre recommends the production of annual statistics by the Minister of Justice on the number of requests for recognition of statelessness, the number of decisions granting this status and the number of decisions refusing it.

The second priority relating to statelessness is the consolidation of the best procedural guarantees within the framework of the procedure to determine the status of statelessness and how to associate it with access to the right of residency.

§§ 148-149: Between the end of 2009 and the beginning of 2012, the Belgian state faced a crisis in terms of receiving asylum seekers. During this period, 12,350 asylum seekers received a decision of "non-designation", i.e. that they were not allocated a place in a reception centre during their asylum procedure because of the "structural saturation of the support network". Through a judgement of 23 October 2012, the European Committee of Social Rights (ECSR) gave its verdict on a complaint linked with the fact that, since 2009, unaccompanied foreign minors or illegally staying unaccompanied foreign minors were not guaranteed accommodation, if there were no available places in a reception centre, or were excluded from welfare. The ECSR decided that the government had violated Article 17 §1 of the European Social Charter relating to the fact that "children and young persons have the right to appropriate social, legal and economic protection". In addition, it decided that Article 7, §10

[12] UNHCR, *Preliminary comments of the United Nations High Commissioner for refugees concerning amendments to the bill Doc 53 1825/001 modifying the law of 15 December 1980 on access to the territory, stay, establishment and return of foreigners and concerning the introduction of the notion of safe country of origin in the asylum procedure*, 16 November 2011, p.1.

[13] http://www.const-court.be/public/f/2014/2014-001f.pdf

of the Charter had not been respected because the necessary measures to ensure these minors received special protection against physical and moral hazards had not been adopted. It was also decided that the state had failed in its obligations associated with the right to health protection, guaranteed by Article 11 of the Charter, by not ensuring accommodation for minors, which constitutes an essential minimum standard in an attempt to eliminate the causes of poor health.

The Belgian state must remain vigilant so that a new reception crisis does not occur again and that it continues to respect the basic rights of asylum seekers.

152-159: Access to the territory and establishment: INAD centres

INAD centres are closed centres located in the so-called 'airside' zone of airports with flights coming in from outside the European Union. Their infrastructure is influenced by the lack of space available within the perimeter of the airports.

Detention in an INAD centre is supposed to be brief; the detainees wait here to put on the next available flight home. In 2012, 231 people were turned back at the border. In principle, these people are quickly transferred to another closed centre. Nevertheless, in 2012, 63 of them were still detained in an INAD centre, ten of whom were children.

It is not easy to determine which authority is competent to manage an INAD centre at a regional airport. Is it a federal competence, since it is linked to the competence of border control? Or is it a regional competence linked to that of airport management?

The Royal Decree of 8 June 2009, which governs the running of the INAD centres does not answer this question. The result is that neither the police, nor the IO, nor the regional public services feel required to assume ultimate responsibility for everything regarding INAD centre staff. And yet, the text grants the staff a crucial role to guarantee the implementation of the rights of the persons detained.

The Centre notes that despite the genuine willingness of all the players it encountered, the lack of precision in the basic regulations has a negative effect on the respect of the rights of the persons detained. It therefore recommends that the different levels of power should conclude a cooperation agreement in order to ensure the full application of the Royal Decree of 8 June 2009.

§§ 160-161: The Belgian Country report refers to the Law of 6 May 2009 which includes various provisions relating to asylum and immigration according to which a foreigner had five days, and no less than three working days, to lodge an emergency appeal against an expulsion order. The law which provided for this five-day period was recently modified and the period was reduced to three working days.

The previous five-day period also resulted from a legislative change that occurred following an order of the Constitutional Court which gave a verdict on the compatibility of the period initially provided for - 24 hours - with the internal and international standards associated with the effective remedy. The Court considered that the period to be set by the legislator must be reasonable and that three working days to lodge an emergency application for suspension was a minimum period. Subsequently, while the new period of three working days is not in itself contrary to what is stipulated in this order, the objective that must be preserved according to the Court, i.e. to be able to lodge an appeal within this period, is nevertheless not always easily met. In view of the considerable consequences that an expulsion order could have on the interested party, the reduction in the period

during which the order to leave the territory cannot be implemented, is a step back for the rights of the detained foreigner, in particular for those who benefit from legal aid.

Furthermore, Belgium's report points out that in practice, "if the foreigner lodges their emergency appeal within 15 days (in case of detention) of the notification of the decision, the Aliens Litigation Council can make a ruling forbidding the expulsion of the interested party until the judgement". However, it is not specified that this jurisprudence, established by seven decisions pronounced by the CCE's General Assembly, follows a condemnation of Belgium by the European Court of Human Rights on 21 January 2011, for violation of the right to effective remedy in the sense of Article 13 of the European Convention on Human Rights (ECHR). The Belgian report points out that "an appeal was nevertheless lodged with the State Council by the minister against this type of jurisprudence" and a recent decision of the CCE rejected an appeal lodged the fifteenth day after the notification, i.e. within the given period, because it was considered that the applicant had lacked diligence. This restrictive interpretation of emergency, and consequently of the possibility of benefiting from the suspension of the expulsion order, in this recent decision of the CCE as well as the desire to nullify the decisions confirming the more extensive interpretation of emergency, raises questions in view of the jurisprudence of the European Court of Human Rights.

The Centre therefore recommends reviewing the emergency procedure, so that all foreigners can benefit from an effective examination of the form and content of the expulsion order before the latter can be implemented.

§§ 162-164: As mentioned in Belgium's report, this law introduces the notion of an entry ban in Belgian law. An analysis of the public services in the issuing of entry bans since 2 July 2012 shows, first of all, a systematic use of the maximum duration of entry bans (3 and 5 years respectively). An entry ban of a typical duration of 8 years is also issued to people who pose a threat to public order or national security. However, the law, just like the return directive, clearly specifies that the duration of the ban must take into account all the circumstances particular to the individual situation of the interested party. Secondly, the Immigration Office (IO) did not explain the individual motivations justifying the choice of these durations. In accordance with the directive's principles, the child's greater interest should also be an essential consideration and therefore be taken into account in the decisions. In this respect, in several recent cases the Aliens Litigation Council has, as a matter of urgency, suspended the execution of an order to leave the country with an entry ban owing, in particular, to the decision's lack of individual motivation.

According to the Centre, it is important that the decision to issue an entry ban is always individualised and the motivation for the duration of the measure is on a case-by-case basis.

§ 165: The implementation of this law which provides a legal framework for the transfer of detained foreigners was clarified through the adoption of circular 1815-detained foreigners, which came into force on 7 March 2013. Among other things, this circular provides for the possibility of detaining a foreigner in prison who is here illegally for an extra period of seven to ten days after their sentence to allow their expulsion or transfer to a closed centre. The foreigner will be subsequently detained administratively in prison during this period and, in practice, will not be separated from common law prisoners, which should be the case according to international standards. In practice, they will also not benefit from the same rights as foreigners detained administratively in closed centres, especially, for instance, as regards visiting rights.

§ 167: The Centre noted that there were still major differences between the communes regarding the application of this circular, known as SEFOR. The Centre therefore recommends that the training and support for civil servants in the communes should continue and be increased so that a uniform application of the SEFOR circular is achieved in all communes, by granting priority to voluntary return as recommended in the return directive.

§ 172: An action for annulment of this law was submitted to the Constitutional Court of Belgium which pronounced its decision on 26 September 2013 (Decision no. 121/2013). Overall, the law successfully passed the constitutionality test in the eyes of Belgian law.

The Centre regrets this reform which, in its opinion, has introduced unjustifiable differences in treatment. The fact that the Constitutional Court has noted the constitutionality of the law does not mean that the compliance of these provisions might still be referred to the international courts in view of the Belgium's international commitments, especially in relation to the following points:

- The requirement of having income corresponding to 120 % of the social integration income
- Within the framework of its mandate as independent mechanism responsible for the monitoring of the implementation of the United Nations Convention on the Rights of People with Disabilities, the Centre particularly laments the fact that the right of disabled people to family life is called into question for essentially budgetary and economic reasons, without the individual situation of persons with disabilities being taken into account.
- The difference in treatment between Belgians and EU nationals to the detriment of Belgians.

§§ 174-176: This law was subject of an action for annulment at the Constitutional Court of Belgium which, in particular, raises the question of the non-application of this law to unaccompanied foreign minors from a Member State in the European Economic Space whose situation is governed by a circular of 2 August 2007. It is the legislator's responsibility to intervene to guarantee the protection of unaccompanied foreign minors who are members of the European Economic Space.

§§ 177-178: Minors arriving at the border whose minority is raises doubts, can be retained, in accordance with the law, in a closed centre during the procedure to determine their age.

This provision goes against the standards recommended by the CPT by virtue of which "If there is any uncertainty regarding the minority of an illegal foreigner, i.e., if they are under 18 years old, the interested party must be treated as though they are a minor until proven otherwise".

The Centre therefore recommends that the legislation be modified to comply with standards of the CPT, which states that if there is any uncertainty regarding the minority of a foreigner, the interested party must be treated as though they are a minor until proven otherwise".

§§ 179-189: Among other things, legislation and regulations have evolved concerning the modification in the definition of trafficking of human beings and the adoption of a procedure that recognises specialised victim reception centres.

While the Centre hoped and prayed for an extension to the definition of sexual exploitation and considered that it was important to be able to have an evolving concept owing, in particular, to the creativity of criminal networks, the concept of human trafficking must not, however, with regard to the general expansion of the legislative act, become a dumping ground for anything and everything.

The recognition of a reception centre does not give the right to subsidies and the question of stable and guaranteed funding remains a weak point in the system to combat trafficking.

Provisions relating to the acquisition of Belgian nationality § 190-195

§ 192: The duration of the recognised asylum procedure for refugees cannot be taken into account to obtain Belgian nationality. The Centre questions the compliance of this effect with the 1951 Refugee Convention.

§ 195: The law shows a change in terms of the way in which obtaining Belgian nationality is perceived. The Centre regrets that the effects of obtaining nationality on integration, and especially the employment market, has not been sufficiently taken into account[14].

Right to marry and choose one's spouse § 196-203

§ 197: The law of 2 June 2013 published in the Moniteur Belge on 23 September 2013 has reinforced the fight against marriages of convenience and civil partnerships of convenience. This law provides for the possibility of extending the existing two-month period to three months, during which time the wedding ceremony is postponed in case of suspicion of a marriage of convenience.

The Centre wonders whether every exclusion criterion respects the proportionality criterion.

The Centre regrets that the choice to extend the scrutiny period was imposed without any quantitative or qualitative data allowing the system to combat marriages or civil partnerships of convenience to be assessed before the reform.

The area of work and employment

Federal level § 211-242

§ 227: Non-Belgians and nationals who are not from a Member State do not have access to federal public jobs owing to their nationality. The Centre speaks in favour of the federal government making civil service jobs open to citizens from outside the European Union or the European Economic Space.

§§ 234-237: The Socioeconomic Monitoring report (published on 5 September 2013[15]) presents the results of analyses crossing the traditional employment market indicators with two new variables: origin and migration history. The results show an ethnic stratification of the employment market: persons of foreign origin systematically find themselves in a less favourable position in the employment market, benefiting from less advantageous and more precarious work conditions and contracts. The Centre calls on the authorities and social partners to use the results of the monitoring report to conduct policies targeting the most disadvantaged minority groups and, on the other hand, ensure the continuity of this monitoring.

§ 239: The code of conduct annexed to the Convention Collective 38*sexies* concerns the recruitment and selection phase of workers. However, the Centre recommends a code of conduct that also covers the two other phases of the work relationship and that an annex be provided for CCT 95 as well. The Centre would therefore like the code of conduct annexed to CCT 38 to be included in full (and completed with its suggestions) in the code of conduct annexed to CCT 95, which is to be established.

[14] See Centre for Equal Opportunities and Opposition to Racism, Migration Report 2011, pp. 182-185
[15] http://www.diversite.be/monitoring-socio-%C3%A9conomique

Walloon region § 243-250

The Discrimination-Diversity consortium includes trade unions (FGTB-CSC), the Regional Integration Centres, the University of Liège's EGID research centre, the Walloon public service for employment and the department for employment.

The Centre speaks in favour of the Walloon government providing a fixed and perennial framework to the Wallonia Diversity Consortium in order to reinforce its visibility and its legitimacy among the players in the employment market.

Flemish Community § 253-266

§§ 265-266: The Centre welcomes the assessment of the action plan against discrimination in employment and the fact it has been updated, which has led to the adoption of several measures aimed at ensuring a better connection between Flemish policy on proportional representation on the one hand, and diversity in the labour market and the fight against job discrimination on the other.

The Centre nevertheless would like a support and steering committee to be appointed, in which the different partners are represented, in order to stimulate discussion and the practical implementation of the different actions.

Non-discrimination in exercising the right to housing § 270-282

Walloon region § 270-274

§ 271: The Centre emphasises the lack of social housing, and within the framework of this offer, the lack of big enough housing for large families. Furthermore, the regularly mentioned social mix concept is not clearly defined and its operation is consequently called into question. While this objective can possibly play a positive role in "living together", it provides no solution to improve financial accessibility to housing.

§ 272: The impact of the moving and housing benefits is limited.

Brussels-Capital Region § 275-276

§ 276 : Financial accessibility to housing is the main problem with which low-income families are faced. A large proportion of immigrants are included in this category.
In this respect, we emphasise the insufficiency in the social housing offer, and within the framework of this offer, the lack of big enough housing for large families. Social mix is not clearly defined.

Flemish Community § 277-281

§ 277: The social housing offer is not sufficient to meet the demand of socioeconomically disadvantaged families, a large proportion of whom are immigrants. At the same time, there is not enough sufficiently big housing for large families.

§§ 278-279: Within the context of a shortage of social housing, the condition of having to already live in the area can play against families who are 'foreign' to the commune, or even of foreign origin, and a fortiori when this condition is adopted by many social housing companies, as is the case.

Sentencing discrimination in the domain of housing § 282

§ 282: The transfer of competence concerning private housing from federal to regional level risks leading to a reduction in the protection granted victims of racial discrimination in housing unless ad hoc regulations are adopted by the regions. Indeed, the federal law, currently in application, has both civil (civil court injunction) and criminal system (fines, competence of the criminal court, etc.).

This double protection does not exist in the anti-discrimination decrees that will be applicable once the matter is regionalised, since only the civil system is provided for.

ARTICLE 6: POSSIBILITIES OF APPEAL AND JUDICIAL ACTION RESERVED FOR COMPLAINTS § 283-310

Measures adopted in order to improve the implementation of the criminal provisions aimed at fighting racism § 283-287

§§ 284-286: The College, the FPS Justice and FPS Interior have adopted a new circular relating to the investigation and prosecution policy regarding discrimination and hate crimes (which includes discrimination based on gender)[16]. The Centre congratulated this adoption and draws the attention of the authorities and the committee to the important stakes in its implementation:

- The Centre would like the ministers competent in the investigation and prosecution policy regarding discrimination and hate crimes to ensure the effective appointment of a reference police officer.
- The Centre invites the competent ministers to appoint a reference person in the "Well-being at work" Inspectorate as well as at federal and regional level in terms of discriminatory harassment.
- The Centre invites the ministers concerned to set up a monitoring system to analyse the statistical data in terms of discrimination and hate crimes, as well as the reliability of recording instruments in the police's "statistical" departments concerned (including the disciplinary aspect) and the public prosecutor's office.
- The Centre invites the ministers concerned to organise, within their department and in collaboration with the Centre, adapted training for judges, auditors, reference labour inspectors as well as reference police officers.

ARTICLE 7: NON-DISCRIMINATION IN THE AREAS OF TEACHING, EDUCATION, CULTURE AND INFORMATION § 311-338

Flemish Community § 311-327

Recent developments in the policy conducted by the Flemish Community in view of fighting discrimination in the area of teaching § 311-319

§ 313: The information is incomplete. We refer to a provisional note on languages from July 2001 from the Flemish Community's Minister of Education, in which multilingualism is considered important.

In practice, it would however appear that heads and teachers perceive multilingualism as being problematical. Eight children out of ten who speak Turkish, Arabic or Berber at home, cannot speak this language at school[17].

The Centre regrets that teaching projects in the pupils language and culture ('onderwijs in eigen taal en cultuur' – OETC) that were underway in schools in Ghent, Brussels and Limburg, were entirely abandoned despite very positive results.

[16] http://www.om-mp.be/omzendbrief/5057048/omzendbrieven_2013.html

[17] Universiteit Antwerpen, Universiteit Gent and KU Leuven's 'Oprit 14' project (Clycq, Timmerman, Lodewyckx, Vandenbroucke et al., 2012)

Inclusive policy concerning target groups § 320-323

§ 320: Despite the efforts of the Flemish authorities to guarantee the equality of rights in education through a transparent enrolment and support policy, there is still a wide gap between certain categories of pupils according to the OECD's recent PISA study, and Flanders cannot manage to make up for this.

Wearing belief symbols § 324

§ 324: In 2009, the education sector in the Flemish Community (GO!) decreed a general ban on the wearing of belief symbols in all schools in its network. The Council of State suspended this ban. After closing all the legal proceedings, the GO! governing body decided to reinstate the general ban in all schools through the circular of February 2013. The ban applies to pupils, teachers and staff. Several applications for a stay and annulment against this circular are pending at the Council of State.

The main criticism voiced by the pupils' federation 'Vlaamse Scholierenkoepel' (VSK) and other interest groups such as BOEH! (Baas over eigen hoofd! – I decide what I think!) is that a general ban is contrary to the freedom of education and cult of personality. These associations lament the fact that pupils can no longer be themselves and consider the ban as a missed opportunity to grant diversity a place in schools.

French-speaking Community § 328-338

New decrees in education § 328-331

§ 329: The assessment planned three years after the adoption of the decree of 3 April 2009 relating to the regulation of pupil enrolments in the first level of secondary education has not yet taken place.

§ 330: As regards the setting up of the reception and schooling system for newly-arrived pupils (DASPA), the decree restricts access to pupils from what are considered to be developing countries or countries in transition officially aided by the Organisation for Economic Co-operation and Development's Development Assistance Committee. This list excludes many countries.

As is the case in education in Flanders, the most recent PISA study shows that in the French-speaking Community, there are major discrepancies in pupil performance depending on the schools they attend and that foreign pupils or those of foreign origin are over-represented in establishments whose results are the lowest.

Advice and recommendations in the area of teaching § 336-337

§ 337: As regards the wearing of religious symbols by students in high schools and adult education, despite the recommendation[18] made by the Centre aimed at banning any restrictions on the wearing of religious symbols, no political decision has been taken on this subject and the Centre is receiving an increasing number of files concerning unjustified refusals regarding the wearing of religious or philosophical symbols.

At the same time, despite a Council of State decision[19] quashing a school regulation banning religious education teachers from wearing any belief symbols outside their classroom, such regulations and practices exist in other teaching establishments regardless of the leading case.

[18] http://www.diversite.be/port-des-signes-religieux-enseignement-sup%C3%A9rieur-en-communaut%C3%A9-fran%C3%A7aise

[19] Decision 223.201 of 17 April 2013 http://www.conseil-etat.be/

Action plan in favour of Equality and Diversity in Audiovisual Media § 338

§ 338: The results of the 2013 Barometer of Diversity and Equality in the Media show a positive evolution in the representation of women and minorities in film and television compared with a constant under-representation of all types of groups observed.

RESPONSES TO OBSERVATIONS AND RECOMMENDATIONS MADE BY THE COMMITTEE REGARDING THE PREVIOUS REPORT (CERD/C/BEL/15 of 13 September 2006) § 339-382

POINT 13

Origin is the protected criterion that appears most often in complaints the Centre receives against the police. However, the Centre has noted a constant reduction in the number of complaints against police officers.

Indeed, few victims report this type of offence committed by the police. According to the Centre, there could be several reasons for this:

1. Criminal proceedings: difficulties[20] : It is rare for police officers to be sentenced for acts of violence.

2. Disciplinary proceedings against the police: lack of transparency[21]

POINT 17: detention of illegal immigrants

§§ 344-346: The Centre considers that an in-depth assessment of the system of return centres is required, especially the impact of transfers. The first reports reveal that the asylum seekers in question disappear completely from the system when under pressure of being assigned to a return centre, and thus find themselves without any support.

§§ 352- 355: It is regrettable that clearer and more precise criteria are not available in order to know under which circumstances an asylum seeker making multiple claims is likely to be detained. At the same time, an asylum seeker whose claim has been taken into account, and to which new elements are considered to have been added, should be freed.

Furthermore, as stated by the Belgian Refugee Council in its analysis on asylum at the border, it was noted that "contrary to the HCR's recommendations, the European Commission and the guidelines of the Committee of Ministers of the Council of Europe 48, (...) the detention of asylum seekers at the border is the rule and not the exception". When a person submits a request for asylum at the border, the IO refuses them access to the territory and takes the decision to detain them (...), while it examines the request for asylum at the border. During a contact meeting with the IO representative, it was confirmed that there are no exceptions to these decisions.

The Council of Europe's Commissioner for Human Rights contests the practice of detaining asylum seekers at the border: [The detention of certain asylum seekers appears to be all the more questionable since it seems to be systematic for many asylum seekers. The Commissioner invites the

[20] See the Centre's contribution in the Convention against Torture report (CAT) http://tbinternet.ohchr.org/_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=809&Lang=en
[21] See the Centre's contribution in the Convention against Torture report (CAT) http://tbinternet.ohchr.org/_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=809&Lang=en

authorities to allow persons having requested asylum at the border to benefit from the same rights, deadlines and procedures as other seekers. More generally, he reiterates that asylum seekers have not committed an offence and that their systematic detention in a certain number of cases appears to be contrary to the necessity to individualise every detention decision]".

Finally, the Centre would like to draw attention to the recommendation made by UNHCR and its partners aimed at withdrawing the possibility for authorities to detain an asylum seeker within the framework of the application of the Dublin Regulation, in the phase of determining the responsible state and of supporting the European Commission's proposal to introduce a new Article 27 in the Dublin II Regulation, which limits placing people in detention within the framework of a Dublin procedure and which makes reference to alternatives to detention.

In fact, the Committee against Torture issued recommendations in this respect in its Concluding Observations in the third periodic report of Belgium: "the Committee is still concerned about the information according to which asylum seekers within the framework of the application of the Dublin Regulation, are systematically detained during the entire duration of the asylum procedure and that according to the information provided by the state party during talks, the loss of liberty in these cases could be up to nine months (Arts. 11 and 16). The Committee urges the state party to only detain asylum seekers as a last resort and, when it is necessary, for as short a period as possible and without excessive restrictions, and to set up and apply alternative measures to the detention of asylum seekers."

Subsequently, regarding the almost systematic detention of asylum seekers in the abovementioned situations, it appears that the Concluding Observations of the Committee for the Elimination of Racial Discrimination issued after previous report on Belgium aimed at recommending that "the state party adopt all the requested provisions so that measures preventing the loss of liberty be applied to asylum seekers and to ensure, when detention is necessary, that the conditions of this detention comply with international standards", are still applicable.

§§ 356-357: Alternatives to detention for families with minors

In October 2008, the government decided to create open accommodation, known as "residential units", also sometimes known as "return houses", aimed at putting an end to the detention of illegally staying families with children. In May 2009, this project was ratified by a royal decree.

The running of these units was the subject of an assessment, in 2012, by the Children in Exile platform and its partners. Various recommendations were formulated, especially as regards information, support for coaches, and respect for the family unit. The Immigration Office does indeed sometimes separate the family unit in order to more easily allow a forced return. The children and one of the two parents is therefore housed in a return house and the second parent in a closed centre. The same is true when some of the children are adults. The latter are then placed in closed centres and the rest of the family in a return house. Note that on several occasions, the Director General for Children's Rights was asked to intervene as a result of these situations.

Nevertheless, despite these regulations relating to residential units, the detention of families with children is not forbidden as such by Belgian law. This is simply a statutory adjustment in the types of places of detention as provided for by the law, which legally allows families to continue to be detained in closed centres. The Law of 15 December 1980 was modified in 2011 to include a provision relating to a ban on detaining children in closed centres. But this provision confirms the

possibility of continuing to detain families with children in a “place adapted to their needs” for a “limited period”, notions that are not defined.

The royal decree on the INAD centres is similar. Even though it does not provide for the detention of families with children as such, it still continues to be authorised. The king’s report is more explicit and even specifies certain terms. Hence, within the framework of its study on INAD centres located in regional airports, the Centre noted that no less than 76 children were detained in the INAD centres located in these airports between 2008 and 2012.

Belgium was condemned by the European Court of Human Rights which judged that centre 127 bis was unsuitable for the detention of families with children.

§§ 358-360: Ending the practice of placing persons in airport transit zones

The Belgian Country report refers to the practice by virtue of which foreigners, who are refused access to the territory but are freed following an order of the Chambre du Conseil, are then issued a removal order, for entering the country illegally, on the basis of which they can be detained again. While this is carried out in application of the legal provisions, it should however be noted that, in fact, this practice calls into question the usefulness of the release procedure against these refoulement decisions.

POINT 18 - Expulsion of illegal immigrants

362-366 Complaints, inquiries and sanctions regarding allegations of ill treatment and excessive use of force

The Belgian Country report explains the external control mechanism of removal operations by the General Inspectorate of Federal and Local police (AIG) as a control body of forced returns. The question of its actual independence deserves an explanation. This question is structural in nature, taking into account the integration of the AIG in the police departments’ organisation chart, and more specific within the framework of its task to monitor forced returns. To carry out this task, the AIG is dependent, for more than half of its staff, on short-term and uncertain financing from the European Commission. The two members of staff working full time on these actions are police officers from the Federal Police on secondment for the duration of this financing, after which they will return to their post or remain with the institution which they are currently required to control.

Furthermore, its real capacity to control also raises questions on two levels. On the one hand, its restricted staff numbers means that it can only control a limited number of removals. On the other hand, for refoulement operations, its control task is limited up to the closure of the airplane’s doors. In practice, the controls are only carried out when the foreigner arrives at the airport. Isolation before leaving the closed centre, searches and the transfer from the closed centre to the airport are nevertheless moments involving risk, and where no external controls are exercised over IO staff or the police. On this point, and in several individual cases followed by the Centre, violent (blows, injuries) or degrading treatment (transfer in underwear or in pyjamas, body searches, etc.) was described, although there was no way of proving it.

Finally, note that that the AIG’s last report that was made public dates from 2010. The Centre has however received confirmation from the AIG itself that a 2012 annual report has been published and submitted to the Minister of the Interior for validation. This document is currently not available to the public. The Centre invites the CERD to ask the AIG to send them a copy of the 2012 annual report, considering the importance of transparency concerning the way the AIG operates.

The Belgian Country report refers to the control exercised by the AIG to justify the lack of controls by other players or the lack of use of cameras. The presence of other players (NGOs, international associations or other organisations) could be envisaged during the execution of removal measures and in airports. At the same time, the implementation of an objective monitoring system could be envisaged by video recordings of every removal attempt.

In fact, the Committee against Torture issued recommendations in this respect in the Concluding Observations in its third periodic report on Belgium: "The Committee asks the state party to take the necessary measures to reinforce the independence, impartiality and efficiency of the AIG, in particular by giving this body the appropriate means to allow it to exercise the efficient control of returns and by providing it with the necessary means to receive and examine complaints. The Committee reiterates its previous recommendation (CAT/C/BEL/CO/2 par. 6) and asks the state party to take measures aimed at reinforcing controls, such as the use of video recording and controls carried out by NGOs. The Committee recommends that the state party take concrete measures to limit the use of restraints during removal operations".

The number of complaints received by the AIG since 2006 from people claiming to have been the victim of an abusive use of violence during repatriation does indeed seem to be relatively low. Within the framework of the individual cases it has followed, the Centre has however been regularly informed of situations in which persons, having been the subject of violence or questionable behaviour during a deportation attempt, were not aware of the presence of AIG staff, had not understood their exact role and were not aware of the possibilities of making a complaint.

Finally, there are only very elements that allow us to understand to what degree Committee P exercises its control over AIG staff. No information is available on the way in which this control is carried out (administratively and/or in the field), on the result of this control or what happens afterwards. No mention is made of this control in Committee P's annual report.

§§ 367-370 Competent legal mechanisms used to re-examine the repatriation and expulsion orders

It would appear useful to point out that since 2008, Belgium has been condemned on several occasions by the European Court of Human Rights in cases relating to the detention and/or removal of foreigners.

The M.S. decision (CEDH, Affaire M.S. c. Belgium, 31 January 2012, 50012/08) calls to mind an essential principle regarding the control of the detention of foreigners in the process of an expulsion or extradition procedure: "only an expulsion procedure in progress" can justify their loss of liberty and this will no longer be the case if the "authorities have no realistic chance of deporting the interested parties during the period of their detention". Some provisions of the Law of 15 December 1980 by virtue of which a foreigner can be detained do not specifically contain a similar clause.

POINT 20

There is still a great deal to be done regarding the standardisation and improvement of the data.