

TREATY BODY MONITOR

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Information Submitted to the Committee

The Committee on Economic, Social, and Cultural Rights (the Committee) considered Belgium's 3rd periodic report on 12-13 November 2007. The 160-page report systematically documents Belgium's implementation of Articles 1-15 of the Covenant on Economic, Social, and Cultural Rights (the Covenant)¹. Because the Flemish and Walloon authorities prepared separate reports, the final report submitted to the Committee integrates information received from both communities. While Committee members expressed appreciation for the comprehensive nature of the report, a few felt that there should have been more coordination among the drafters, so that Flemish and Walloon sections are not differentiated.

The Committee provided the State party with a list of issues on 10 April 2007.² The list posed specific questions regarding the provisions of Articles 1-15 of the Covenant. Belgium's written replies to the

¹ E/C.12/BEL/3. Available at: <http://www2.ohchr.org/english/bodies/cescr/cescrs39.htm>

² E/C.12/BEL/Q/3. Available at: <http://www2.ohchr.org/english/bodies/cescr/cescrs39.htm>

Committee were made available on 25 October 2007. The replies, like the report, were quite extensive and systematically responded to each question asked.

The Coalition of Belgium Civil Society for Cultural, Economic and Social Rights (the Coalition), a large umbrella organisation of national non-governmental organisations (NGOs), presented a joint parallel report on Belgium's implementation of the Covenant.³ The first part of the report analyses the commitment of the Belgian State to progressive realisation of the Covenant at a national level. The second part assesses Belgium's contribution to economic, social and cultural rights internationally. The last part of the alternative report provides recommendations for improvement. The Coalition expressed disappointment that the authorities were unwilling to "substantially discuss" the parallel report with its representatives. In addition, it regretted the "descriptive nature" of the report because it lists policies without reference to implementation and practice.

Themes and Issues

The Kingdom of Belgium's delegation was very large. It was presided over by Mr Francois Vandamme, Counsellor General of the International Affairs Division of the Federal Service for Employment, Work and Social Consultation. It included delegates from the Permanent Mission to the United Nations, as well as representatives from Social Security, the Ministry of Justice, the Ministry of the Interior, and the Institute for Equality. In addition, there were two representatives from the Flemish and Walloonian regional authorities.

In his opening remarks Mr Vandamme stated that it was an honour to work with the Committee and assured the members that Belgium considered implementation of its international obligations a top priority. He affirmed that the comments and recommendations provided by the Committee in previous cycles had been disseminated to governmental authorities, NGOs, and the general public through inter-departmental seminars and public announcements. Finally, he announced that the delegation had "carefully prepared" for its dialogue with the Committee.

Throughout the proceedings there was a spirit of genuine dialogue and cooperation. Because the delegation comprised officials with specific competence in issue areas, it was able to provide in depth clarification on many topics. Nevertheless, Committee members were not hesitant to express dissatisfaction when they felt that information was lacking, or that a certain explanation was insufficient. Some of the major themes addressed during the interactive dialogue were: the relationship between the Covenant, the Federal Government, and the regional authorities; labour rights; discrimination and integration; and equal access to education. Overall, the discussions were quite substantial and much useful information was exchanged.

Status of the Covenant in domestic law

A number of Committee members requested clarification on the modalities of Belgium's federal structure in regard to the implementation of its obligations under international law. Given that it is the central Government that ratifies international instruments, Mr Reidel asked what measures the federal authorities had taken to promote cultural, economic, and social rights at the regional level. Mr Kolovsov followed up by asking how the central government could guarantee implementation given the considerable autonomy of federated units. He also was dismayed at the complex system of overlapping jurisdiction of the regional and federal courts.

³ Available in French and English at: <http://www2.ohchr.org/english/bodies/cescr/cescrs39.htm>

Committee member Mr Pillay noted that the Covenant took precedence over domestic law, but was confused as to why, if this was the case, the provisions did not always have direct legal force under national law. He wanted to know if individual courts had the authority to decide whether a specific provision was directly applicable. Mr Sa'di reminded the State Party that this issue had been raised in the previous review, and asked what reaction the Government had had to the Committee's recommendation that all provisions of the Covenant should be directly applicable in all levels of the court system. On a related point, Mr Tirado Mejia wanted to know the State party's position on the adoption of an optional protocol which would allow the Committee to receive individual communications when rights guaranteed under the Covenant were not being upheld in national courts.

On the issue of implementation at the regional level, the delegation advised the Committee to bear in mind that the Constitution divides competency between the federal government and largely autonomous regional units. Mr Vandamme explained that both levels have legislative authority and enforce a uniform legal system. The representative from the Ministry of Justice added that regional units have their own responsibility for the Covenant to the extent that they have legislative power of their own. The Constitutional Court, which places an emphasis on international law, can review and revise interpretations if there are fundamental differences between the spirit of the Covenant and the interpretation of a lower court judge.

Mr Vandamme assured the Committee that the Covenant, and all international conventions, are ratified by the Federal Parliament and are thus binding at all levels. He asserted that all provisions do not have direct effect because Belgium is hesitant to create jurisprudence in a case where the meaning of the provision is not entirely clear. Instead, whether a provision can be directly enforced is at the discretion of a competent judicial authority. Thus, the Covenant is invoked to support interpretation rather than given direct effect. The representative from the Ministry of Justice stated that the fundamental rights "set out literally" in the Constitution are parallel to international instruments, and although courts do not base decisions directly on the Covenant, it is not accurate to say that its provisions are not applied. The unspoken implication of this explanation was that since the actual wording of the provisions lack clarity, Belgian courts interpret the law to uphold the spirit of the Covenant.

In addition, the delegation announced that it strongly supported the adoption of an optional protocol to the Covenant and noted that Belgium had taken an active role in preparatory work.

Development Aid

Many Committee members welcomed Belgium's commitment to international development and noted its expressed goal of contributing 0.7% of its gross domestic product (GDP) to international development projects by 2010. While conceding that his was a praise-worthy aspiration, a few Committee members expressed doubt as to whether this could truly be achieved. Mr Dasgupta pointed out that, according to statistics, the percentage of GDP given for development had actually decreased from 2004 onwards. Mr Sa'di reiterated this point by drawing attention to the current financial turmoil and asking what specific measures the government would implement to sustain the goal of 0.7%.

Mr Kerdoun inquired as to the amount of debt owed to Belgium from developing countries and asked what portion of this would be written off. Mr Rzeplinski highlighted the fact that nearly all of Belgium's development aid was going to the former colonial territories of the Congo, Rwanda, and Burundi. He referred to a section of the NGO parallel report which called into question the percentage of "aid" that is, in fact, going to Belgian nationals who are employed as administrative/economic consultants or have invested in private development projects in these countries. In this light, he wanted to know what regulatory procedures were in place to ensure that aid money was spent in legitimate development cooperation and not simply invested to strengthen Belgian economic interests in these countries.

Ms Bonoan-Dandan referred to the Committee's previous concluding recommendation which called upon Belgium to "do all it can" to ensure that policies of the International Monetary Fund (IMF) and the World Bank were compatible with the Covenant. She asked what specific measures the Government had taken to pressure these powerful financial institutions into ensuring that their policy formulations complied with the provisions of the Covenant.

The delegation emphasised that the goal of giving 0.7% of GDP is not just an initiative of Belgium, but that it is a goal established for all developed countries according to the Millennium Development Goals (MDG) of 2000. While acknowledging that major challenges exist, the delegation reiterated the State Party's commitment to meeting this objective. For this purpose, the Finance Ministry has created an annual growth calendar which will contribute to keeping the rate of development assistance on track.

The delegation recognised that there are "emotional links" between Belgium and its former colonial territories, but underscored that development partners are chosen on the basis of specific criteria such as poverty levels and socio-economic development. Belgium's historical relationship with recipient countries means that it has considerable experience with development in the region and thus contributes to the effectiveness of aid. The delegation further explained that all development cooperation is overseen by the managers of the federal budget, and is implemented through governmental cooperation with NGOs and multi-lateral institutions. These institutions are themselves in charge of how the money is spent. According to the delegation, the Belgian authorities then make a decision on continued aid on the basis of progressive indicators. In addition, all budgetary assistance is given on a sectoral basis, meaning that funds will only be used in a specific sector such as education, health, or infrastructure.

On the topic of compatibility between the Covenant and the policies of the Bretton Woods institutions, the delegation asserted that Belgium has consistently intervened in matters of loans, debt reduction, and strategic assistance. Specifically, the delegation pointed out that the State Party has urged financial institutions to use indicators on corruption, good governance, and social spending as prerequisites for the distribution of loans. In addition, Belgium stresses that poverty reduction programs must address education, health, protection of vulnerable groups, etc., as well as growth related priorities. Finally, the delegation stated the Belgium has helped to erect structures to track the use of resources.

Discrimination/Integration

Committee members asked a number of questions regarding discrimination. Noting the on-going crisis in relations between the Flemish and Walloon communities, Mr Sa'di asked if there was any discrimination on regional or linguistic grounds. Also, in light of the difficulties many European nations are facing in integrating immigrants into society, Mr Sa'di wanted to know how successful Belgium had been in this regard and what specific measures had been taken to address discrimination against immigrant communities.

Mr Rzeplinski drew attention to information he had received which indicated that the judiciary was almost entirely composed of upper class ethnic Belgians. He therefore asked if public offices were accessible for Belgian nationals from lower social strata or with foreign origins.

Committee member Ms Wilson raised the issue of jurisdiction in the context of legal protection against discrimination. She asked whether federated units had legislative authority in this regard and to what extent the central government oversees uniform discrimination codes. Noting that the State report offered detailed information regarding racial and non-racial discrimination categories, she expressed concern at the fact that no statistics were provided regarding discrimination against linguistic minorities, disabled citizens, or homosexuals.

Mr Vandamme first addressed the topic of relations between Flemish and Walloonians. He explained that Belgium's representative parliamentary democracy accurately reflects differences in demographics and incorporates legal mechanisms to protect the interest of all communities. The head of delegation also stated that all legal residents enjoy the full protection of anti-discriminatory legislation. He confirmed that foreign-born residents receive a range of services to promote integration including language classes, seminars on civic rights and cultural tolerance, union membership and municipal services.

Regarding access to public offices, the delegation stressed that since recruitment of judges is based on objective criteria, civil jobs are open to all citizens. While acknowledging that "some sociological factors" may have an influence, the State party asserted that the diversity of recruitment has greatly increased. As evidence, the delegate cited a number of Belgian nationals with African origin who hold posts in the *Palais de Justice* in Brussels.

The representative from the Ministry of Justice explained that the distribution of jurisdiction between federal and regional units takes into account linguistic, administrative and legal externalities. She also affirmed that anti-discriminatory legislation covers 18 different grounds for discrimination, including disability, sexual orientation, and language. Finally, the delegate cited recent laws which give same-sex couples the right to legal benefits.

Gender Equality

A few Committee members requested clarification on issues relating to gender equality. Ms Wilson noted that the State Party report mentioned the adoption of a new gender equality law and asked what results this had achieved. In addition, she wanted to know what percentage of senior administrative and academic posts were held by women. Ms Bonoan-Dandan posed questions on the wage gap between men and women, asking what benchmarks the authorities used to measure progress in this regard.

In response, Ms Fastre, from the Institute for Equality of Men and Women, explained that the new law inserted a "gender dimension" into all federal policies. She elaborated by stating that the law would set strategic objectives and create new regulatory instruments to "mainstream, anchor, and implement" gender equality. Her answer was rather vague, leaving many questions unanswered. This perhaps had to do with her admission that implementation of the law was suspended while Belgium waited for the formation of a new government⁴.

Ms Fastre was, however, able to offer precise statistics on the wage gap. She stated that, according to a report created at the request of the federal government, the wage gap runs out about 15%. She also stated that women represent 30.9% of academic staff and 37% of senior administrative positions at Belgian universities. Noting that that these statistics were in line with European-wide inequality statistics, she assured the Committee that the Government had a number of tools at its disposal to tackle these issues.

Labour Rights

Much discussion revolved around various issues under the topic of labour rights. Ms Wilson noted the unusually high youth unemployment rate in Brussels and asked what measures were in place to address this. She was also curious about the size of the informal economy in Belgium. Mr Martynov asked if the delegation could provide statistics on unemployment of other vulnerable groups including women and foreigners. Another Committee member asked about situations in which unemployment benefits may be suspended.

⁴ At the time of writing, Belgium had been without a standing Government for nearly 2 months due to outstanding negotiations between regional authorities

Noting the high level of unionisation in Belgium, Mr Martynov asked about legislation to protect the right of workers to strike. He drew attention to the fact that law does not prohibit the dismissal of striking workers and reported allegations that many employers prefer to pay fines rather than reinstate workers dismissed because of union activity. Ms Bonoan-Dandan was confused by the assertion in the State Party report that there was no explicit legal protection for strikers because “a ban in principle of dismissal of workers on strike would provide greater protection than for other workers”. Committee Chair Mr Texier pointed out that the European Commission on Social Rights agreed that there was an “inadequate legal framework” on the right to strike in Belgium. He also asserted that the timeliness of a strike should be dealt with by unions and employers rather than judges.

Committee member Mr Dasgupta was concerned at the lack of equal treatment of persons with regard to social security benefits. Noting that the European Committee on Social Rights faulted the State Party for not providing for the retention of accrued benefits when a person moves to a nation not bound by bilateral agreements with Belgium, he asked whether, in such circumstances, the State simply appropriated the funds. Drawing attention to Belgium’s rapidly ageing population, Mr Martynov asked whether the current pension fund would be able to cope with this impending problem. Mr Abdel-Moneim observed that the minimum guaranteed income support seemed very small. Finally, Mr Martynov asked why the State Party had declined to ratify the ILO convention on labour statistics.

Mr Vandamme first addressed the issue of unemployment. While he lamented that the delegation could not provide recent figures, the head of delegation explained that high youth unemployment was a major problem that generally stemmed from a lack of professional skills. He stated that measures such as coordinated training bodies and employers’ associations were having a positive effect despite the lack of spectacular statistical results. Mr Vandamme also stated that the situation of women in the labour market has greatly improved. Addressing the informal economy, he explained that 6% of the population participates in informal employment and assured the Committee that there were policies in place to combat the phenomenon.

The delegation stressed that trade union representatives were fully protected by the law. Upon dismissal they receive hefty compensation and have unhindered recourse to the courts. It was explained that before any strike case comes before the courts, a body of social arbiters meets with parties to hold negotiations. This kind of settlement is preferable to all parties involved. The delegation reiterated that although a worker can never be fired for going on strike, the general law of contract allows employers to unilaterally end employment in the case of a serious fault on the part of a worker. Therefore, even during a strike, if a serious infraction takes place, the worker’s employment can legally be terminated. The delegate insisted that giving total protection to a striking worker would give them greater privileges than a non-striking worker.

The representative from Social Security explained that the transfer of pension funds when a citizen relocates is done on the basis of reciprocity. Therefore, if a State does not transfer the accrued pension when an individual moves to Belgium, Belgium will not do so when an individual moves to that country. The delegate added that bilateral social security agreements had been signed with a number of States. He also explained that to deal with the ageing population the government was encouraging people to remain at work by giving them certain tax exemptions. The State has also set up a fund for future health care. Regarding the ILO convention on employment statistics, Mr Vandamme noted that while the State has not ratified the Convention Belgium conducts a vigorous policy to ensure health and workplace safety conform to EU standards.

Migrant Rights

Committee member Mr Kerdoun asked how Belgian legislation protects the rights of foreign workers. Aside from legal structures, he wanted to know how the labour market integrated migrant workers. Mr Reidel asked what social assistance asylum seekers whose status has not been determined were entitled to receive. Ms Barahona Riera asked for clarification on the policy of linking labour contracts for foreign workers with

sectors where there is a need for manpower. She also raised questions regarding health care and access to legal recourse for immigrants.

Mr Vandamme asserted that Belgium had not ratified the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* because it contains two provisions which contradict national unemployment regulations. Nevertheless, all resident workers are entitled to the full protection of anti-discrimination and employment legislation. Another member of the delegation elaborated on the condition of granting work permits based on a market analysis. It allows for immigrants to join the labour market only if there is a specific need for services. She emphasised that to do otherwise would “open the door to many problems”.

In a vaguely worded explanation, the delegation stated: “there are different procedures for illegal foreigners”. However, the delegate did make it clear that Belgium always respected the “integrity of the family” in this context of deportation. Another member of the delegation underscored that asylum seekers are entitled to residence in a “material aid centre” where they receive medical aid and other social services. An application for legalisation of residence is provided, but this does not guarantee access to the labour market.

Equality of Education

Mr Rzeplinski opened discussion on equal access to education by drawing attention to the wide variation in the quality of schools in Belgium. Ms Wilson expressed surprise at the fact that it is the federated units that are responsible for school curriculum. She asked if there are federal standards for academic quality, language requirements, and school certificates. Mr Kerdoun also commented on the fact that the three linguistic communities have exclusive jurisdiction on educational matters and asked if one community consistently outperformed the others in terms of academic performance.

Mr Abdel-Moniem asked whether progress was being made in the effort to secure equal access to Belgian universities through free, public institutions. He also noted that many universities were suffering from underfunding and asked what steps the government would take to ensure that places of higher learning have the funds to provide a quality education. Ms Bonoan-Dandan asked whether education in human rights was provided in schools. She was specifically interested in curricula that targeted racism and xenophobia. Mr Sa’di suggested that an integrated school system might be conducive to social unity.

The State Party confirmed that the school system is three-fold, but emphasised that all diplomas are equally valid. According to the delegation, families are free to choose what system to send children to and language classes are made available to those who need it. The representative from the Flemish regional government explained that schools receive funding based on the number of students. He also announced that, based on national standards, the Flemish system seems to be stronger than the Walloonian. Another delegate conceded that this was true but posited that social inequality is the distinctive factor. In principle, the system is set up to work objectively so that all pupils have equal opportunity.

On the subject of funding for higher education, the delegation confirmed that there is a degree of structural funding from public authorities, but acknowledged that universities cannot meet financial obligations solely on the basis of public funds. Therefore, most institutions require student fees. The delegate explained that these fees are scaled according to parent’s income and also pointed out the availability of scholarships from private foundations. This situation is uniform in both the French and Flemish university systems.

Next, the delegation affirmed that there are initiatives and awareness campaigns for the promotion of human rights at both the high school and university levels. In addition, the delegation cited human rights training courses for judges, lawyers, and law enforcement officers. In response to the point about regional integration, Mr Vandamme took a somewhat defensive stance. He noted that some parties have expressed interest in consolidation, but highlighted that the current structure was a constitutional choice based on democratic

principles. He insisted that the Committee “respect” this choice, and asserted that, in general, it had produced excellent results.

Public Health

Mr Riedel inquired about how money was allocated for public health. He wanted to know for what purposes money was spent and how problem areas were identified. In addition, he asked for statistics regarding mental health, anti-smoking, obesity, HIV, and breast cancer and wanted to know what results the figures reflected. Mr Sa’di made the observation that the vast majority of Belgian hospitals are both private and non-profit. He therefore was curious as to how they are funded. Ms Bonoan-Dandan raised the issue of reproductive health. She asked for statistics on maternal mortality and for clarification on abortion policy.

The head of delegation informed the Committee that the right to health was assured by the federal government, but that preventative health was a matter for regional authorities. The delegation was not able to provide all the statistics that were requested, but instead cited an annual report that assesses socio-economic indicators and participation in preventative health programs. The Flemish delegate indicated that 96% of the Flemish population receives necessary vaccinations.

The delegation explained that all citizens have access to publicly funded hospitals. Private facilities obviously function through the sponsorship of private foundations, but differ from public only in that private patients are able to choose their own doctor. The delegation conceded that despite public expenditures, it is vital for patients to have insurance to cover costs going beyond basic coverage. The delegate also stated that there are various networks which inform the public of their medical rights and provide information on health risks. In general, Belgian healthcare is recognised for its excellence.

On the issue of reproductive health, the delegation indicated measures to reimburse women for in-vitro fertilisation and contraception procedures. According to statistics, there were 15,000 abortions in 2003, with the average age of patient being 27. The delegation also mentioned mobile information and support campaigns to raise awareness of HIV among vulnerable communities.

Poverty

Mr Pillay asked what percentage of the population was living below the poverty line. He was interested in whether poverty reduction policies integrated economic, social, and cultural rights. Mr Pillay also asked whether there was an intention to increase social assistance benefits to the poor. However, his main concern was that Article 23 of the Covenant, the right to housing, was not applicable in court. He noted that since 2000 there has been an acute shortage of social housing and asked why this issue was not being more thoroughly addressed. On the contrary, Mr Pillay noted that the cost of housing in proportion to income was getting greater and greater. In light of the lack of affordable housing, another Committee member asked about cases of forced evictions and homelessness. Ms Bonoan-Dandan wanted to know what legislation and policies were in place to ensure adequately nutritious food to the poor.

In response, the State party informed the Committee that eight percent of the population lived in poverty, but asserted that social assistance in Belgium is broad-based and provides for decent housing, food and healthcare. The delegation cited “mediation funds” which provide subsidies for energy bills and rent. Financial aid given by the Government is based on the consumer price index for sustainable development. This means that as the cost of housing, food, or energy rises, the amount of aid will rise to meet the need. The delegation made it clear that the Government does not just hand out money, but also provides programs and services to help people rise out of poverty.

On the issue of the right to housing, Mr Vandamme was somewhat vague. He stated that while the right could not be directly invoked in court, there was “an obligation to find a provisional answer in accordance with social assistance legislation”. He conceded that there was not enough low-cost housing and that rent prices were rising due to real estate speculation. The representative from the Ministry of Justice told the Committee that rent control policy was being discussed and also mentioned a draft law which would void the obligation to pay a security deposit.

The delegation was not in a position to provide detailed statistics on forced evictions. The delegate only stated that anyone who has been evicted could ask for assistance and would be provided with temporary housing for the period of “transition”. The delegation provided no new information regarding the right to food, but only reiterated that public health and social assistance programs took nutrition into account when formulating policy.

Other Issues

A number of Committee members brought up issues related to the rights of the child. They asked about the protection of unaccompanied minors, laws against trafficking and domestic abuse, and requested statistics on prosecution of paedophilia. Mr Sa’di demanded to know why there was a difference between the age of (sexual) consent and the legal age for marriage. He also asserted that the name of Belgium is “associated with trafficking and child prostitution”.

Committee member Mr Marchan Romero asked how Article 15, the right to participate in cultural life, was guaranteed by the State party. He stated that, given the challenges associated with integration of immigrants, as well as the linguistic, socio-economic, and cultural disparities between regions, the authorities must take specific steps to ensure that everyone has access to channels of cultural participation.

The delegation argued that statistics showing an increase in the incidence of domestic abuse were a product of more accurate reporting measures and do not reflect an actual increase in abusive behaviour. The delegate clarified that domestic abuse was not a specific crime, but constituted “aggravated circumstances” which led to harsher penalties. The State party informed the Committee that corporal punishment was not prohibited, and that it is up to judicial authorities to distinguish between legitimate punishment and child abuse. The delegate also outlined mechanisms for the protection for unaccompanied minors. On the issue of age of sexual consent, it was asserted that this was a legislative choice that left room for judicial digression on the basis of individual cases. Finally, the delegation assured the Committee that Belgium spared no effort in combating paedophilia.

On the issue of the right to culture, the delegation stated that each region was responsible for “giving vigour” to cultural life. The State party drew attention to the “flourishing” cultural activity in various regions and emphasised that cultural expression was carried out with respect to diversity and tolerance, rather than with a spirit of competitiveness.

Conclusions and next steps

The meeting ended with both Committee and delegation expressing satisfaction at the open and honest spirit of their dialogue. The State party reiterated its willingness to continue to work with the Committee and promised to carefully consider its opinions and recommendations. The Chairman of the Committee thanked the State party for its cooperation and wished the delegation a safe journey home.

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TREATY BODY MONITOR STAFF

Gareth Sweeney, Deputy Manager, Information Program, Geneva

Eléonore Dziurzynski, Communications Officer, Geneva

Benjamin Lee, Human Rights Officer, Geneva

Michelle Evans, Representative to the United Nations, New York

AUTHOR OF THE BELGIUM REPORT

Christopher Brown, Intern

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