

Concluding Observations of the Committee on the Rights of the Child,

Belgium, U.N. Doc. CRC/C/15/Add.178 (2002).

COMMITTEE ON THE RIGHTS OF THE CHILD

30th Session

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES

UNDER ARTICLE 44 OF THE CONVENTION

CONCLUDING OBSERVATIONS OF THE COMMITTEE ON THE

RIGHTS OF THE CHILD: BELGIUM

1. At its 782th and 783th meetings (see CRC/C/SR. 782 and 783), held on 23 May 2002, the

Committee on the Rights of the Child considered the second periodic report of Belgium (CRC/C/83/

Add.2), which was received on 7 May 1999, and adopted At the 804th meeting, held on 7 June 2002.

the following concluding observations.

A. INTRODUCTION

2. The Committee appreciates that the report follows the guidelines for reporting. It notes that the

report was timely, comprehensive and self-critical in nature, as were the written replies to its List of

Issues (CRC/C/Q/BELG/2), and welcomes the additional information provided by way of annexes.

The discussion in the report on the follow-up to the Committee's earlier recommendations was

especially appreciated. The Committee further notes with appreciation the presence of a high-level

delegation, which contributed to an open dialogue, and a better understanding of the implementation

of the Convention in Belgium.

B. FOLLOW-UP MEASURES UNDERTAKEN AND PROGRESS ACHIEVED BY THE STATE

PARTY

3. The Committee welcomes:

- The adoption of article 22-bis of the Constitution on the protection of children;
- The adoption of new laws by the State party, concerning the protection of children, child labour,

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- The numerous initiatives to combat trafficking and child sexual exploitation, including among others: the introduction of Joint Actions under the Europol Convention; the establishment of a national commission of experts to study sexual exploitation of children; the establishment of Child Focus, a European centre for missing and exploited children; the adoption of three Acts in 1995 to combat sexual exploitation; and the reform of the Criminal Code.
- Ratification of the Optional Protocol to the Convention on the involvement of children in armed conflict; and
- Ratification of ILO Convention no. 182 on the worst forms of child labour.

C. PRINCIPAL SUBJECTS OF CONCERN AND RECOMMENDATIONS

The Committee's previous recommendations

1. The Committee regrets that some of the concerns and recommendations (CRC/C/15/Add.38) it made upon consideration of the State party's initial report (CRC/C/11/Add.4) have been insufficiently addressed, particularly those contained in paras. 8, 9, 11, 13, 14, 15, 16. The Committee notes that those concerns and recommendations are reiterated in the present document.
2. The Committee urges the State party to make every effort to address the previous recommendations that have not yet been implemented and to address the list of concerns contained in the present concluding observations.

C.1 GENERAL MEASURES OF IMPLEMENTATION

Reservations and declarations

4. The Committee appreciates that the State party has reviewed its declaration to article 2 and its reservation to article 40(2)(v) of the Convention, pursuant to the previous concluding observations. Nevertheless, it is concerned that the State party does not intend to withdraw them. With respect to article 2, the Committee noting that the general principle of non-discrimination in the Convention prohibits differences in treatment on grounds that are arbitrary and objectively unjustifiable, including nationality, is concerned that the declaration to article 2 may restrict non-Belgian children

in Belgium to the rights contained in the Convention. The Committee emphasizes that the guarantee of non-discrimination in the Convention applies to "each child within [the State party's] jurisdiction".

With respect to the reservation to article 40, the Committee is concerned that the possibility of appeal to the Court of Cassation against judgments and measures imposed by the Court of Assize (sitting here as a court of first and last instance) is strictly limited to points of law and therefore deprives the defendant from a full review of his case by a higher court, which is even more important since the

Court of Assize handles the most severe cases and imposes relatively heavy sentences.

5. The Committee encourages the State party to review its declaration and reservation with a view to

withdrawing them in accordance with the Declaration and Plan of Action of the Vienna World

Conference on Human Rights (1993).

Legislation

6. The Committee welcomes information from the State party of draft laws concerning the rights of

the child, including with respect to adoption, guardianship for unaccompanied minors, access to

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courts, and due process guarantees.

7. The Committee recommends that the State party:

(a) rigorously review and ensure that these and other laws concerning children, as well as

administrative regulations, are rights-based and conform to international human rights standards,

including the Convention;

(b) ensure adequate provision is made for their effective implementation, including budgetary

allocation; and

(c) ensure their speedy promulgation.

Coordination

8. Since the initial report was considered, the Committee notes the establishment of the Inter-

Ministerial Conference for the Protection of Child Rights, and the agreement for the creation of a

national commission for the rights of the child. However, the Committee remains concerned: at the absence of a global vision of children's rights, which has not been translated into a national plan of action; that different laws governing different administrative jurisdictions may lead to discrimination in the enjoyment of children's rights across the State party; that the absence of a central mechanism to coordinate the implementation of the Convention in Belgium makes it difficult to achieve a comprehensive and coherent child rights policy.

9. The Committee recommends that the State party:

- (a) expedite the formal approval and full implementation of the above mentioned agreement in order to establish the National Commission for the rights of the Child with adequate human and financial services;
- (b) assign the coordination of the implementation of the Convention to a permanent body, highly visible and easily identifiable, with an adequate mandate and resources;
- (c) prepare and implement a comprehensive national plan of action for the implementation of the Convention, with special attention to children belonging to the most vulnerable groups (e.g. poor households, asylum-seekers), undertaken through an open, consultative and participatory process; and
- (d) continue and expand the use of child impact assessments in the formulation of budgets and policies.

Monitoring structures

10. Since the initial report was considered, the Committee notes the establishment of the Children's

Rights Commissioner for the Flemish Community. The Committee acknowledges the activities of the

Délégué Général aux Droits des Enfants in the French Community, and the Centre for Equal

Opportunities and Opposition to Racism. However, the Committee is concerned that there is no

independent mechanism to monitor the implementation of the Convention, and which is empowered

to receive and address complaints of children in the German-speaking Community nor at the federal level.

11. The Committee recommends that the State party:

- (a) establish independent human rights institutions in the German-speaking Community and federal level in accordance with the Paris Principles (General Assembly resolution 48/134), to monitor and evaluate progress in the implementation of the Convention. They should be accessible to children, empowered to receive and investigate complaints of violations of child rights in a child-sensitive manner, and address them effectively; and
- (b) ensure that all the human rights institutions have formal advisory functions with the respective legislative bodies, and that they establish formal links with each other.

Data collection

12. The Committee welcomes: the statistical annexes provided with the list of issues; notes measures underway to improve data collection in offices processing asylum claims; and welcomes information on a working group on statistics to be set up within a national study forum on juvenile delinquency.

Nevertheless, with reference to its previous concluding observations, the Committee is still concerned at the absence of a nation-wide mechanism to collect and analyse data on the areas covered by the Convention.

13. The Committee recommends that the State party establish a nation-wide system such that disaggregated data is collected on all persons under 18 years for all areas covered by the Convention, including the most vulnerable groups (e.g. non-nationals, children with disabilities, children of economically disadvantaged households, children in conflict with the law, etc.), and this data is used to assess progress and design policies to implement the Convention.

Training/Dissemination of the Convention

14. The Committee welcomes information that the State party has made available compilations of the

initial report, summary records, and concluding observations. It further welcomes information of special publications for disabled children. However, Committee is concerned that the State party is not undertaking adequate dissemination, awareness-raising and training activities of the Convention in a systematic and targeted manner.

15. The Committee recommends that the State party:

(a) strengthen, and make on-going its programme for the dissemination of information on the

Convention and its implementation among children and parents, civil society and all sectors and levels of government, including initiatives to reach those vulnerable groups, such as new immigrants;

(b) develop systematic and ongoing training programmes on human rights, including children's rights,

for all professional groups working for and with children (e.g. judges, lawyers, law enforcement

officials, civil servants, local government officials, personnel working in institutions and places of

detention for children, teachers and health personnel).

C.2 GENERAL PRINCIPLES

The right to non-discrimination

16. The Committee welcomes the Decree of March 2000 expanding the mandate of the Centre for

Equal Opportunities and Opposition to Racism to include all forms of discrimination, including

gender, sexual orientation, birth, civil status, ill health, age, and disability. The

Committee is

concerned at racist incidents against minorities; the disparities in the enjoyment of economic and

social rights, particularly health and education experienced by poor children, and non-Belgian

children, including unaccompanied minors, and disabled children.

17. In accordance with article 2 of the Convention, the Committee recommends that the State party:

(a) take all appropriate measures, such as comprehensive public education campaigns, to prevent and

combat negative societal attitudes, and implement the recommendations of the Committee on the

Elimination of Racial Discrimination (March 2002);

(b) take all necessary measures to ensure that all children within its jurisdiction enjoy all the rights set

out in the Convention without discrimination;

(c) continue to prioritise and target resources and social services for children belonging to the most

vulnerable groups; and

(d) review existing policies and practice in relation to children with disabilities, including draft

legislation, taking due regard of the Standard Rules on the Equalization of Opportunities for Persons

with Disabilities (General Assembly resolution 48/96) and of the Committee's recommendations

adopted at its Day of General Discussion on "Children with Disabilities" (See CRC/C/69).

18. The Committee requests that specific information be included, in the next periodic report, on the

measures and programmes relevant to the Convention on the Rights of the Child undertaken by the

State party to follow up on the Declaration and Programme of Action adopted at the 2001 World

Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, and taking

account of General Comment no. 1 on article 29(1) of the Convention (aims of education).

Respect for the views of the child

19. The Committee welcomes information that several structures have been set up with the support of

the State party through which children can make their views known. These include conferences,

courses on children's rights, councils in schools and communities, and the "What do You Think?"

project. However, the Committee is concerned that children are not adequately informed on how to

input into policies that affect them, nor how their views will be taken into consideration once they

have been solicited; and that sufficient attention has not been accorded to the participation of primary

and secondary students in school governance, including in areas such as school regulations and

management of discipline. With respect to court or administrative proceedings affecting the child, the

Committee is concerned that the right to be heard under article 931 of the Judicial Code is largely discretionary, and does not adequately guarantee the child this right. The Committee welcomes information of a draft law in this regard.

20. The Committee recommends that the State party, in accordance with article 12, take further steps to promote and facilitate meaningful participation of children in society, including schools.

Moreover, it recommends that legislation governing procedure in courts and administrative proceedings ensure that a child capable of forming his/her own views has the right to express those views and that they are given due weight.

C.3 CIVIL RIGHTS AND FREEDOMS

Violence/abuse/neglect/maltreatment

21. In the area of child abuse, including sexual abuse, the Committee notes with satisfaction the numerous initiatives taken, such as the law on the criminal protection of minors (28 November 2000), amendments to the Criminal Code and adoption of article 22-bis of the Constitution, concerning the protection of the child's moral, physical and sexual integrity. But it remains concerned that corporal punishment is not expressly prohibited by law.

22. The Committee recommends that the State party:

- (a) take legislative measures to prohibit corporal punishment of children in the family, schools and in institutions;
- (b) continue to carry out public education campaigns about the negative consequences of corporal punishment, and promote positive, non-violent forms of discipline;
- (c) establish effective procedures and mechanisms to receive, monitor, and investigate complaints, including intervening where necessary;
- (d) prosecute instances of ill-treatment, ensuring that the abused child is not victimised in legal proceedings and his/her privacy is protected;
- (e) provide care, recovery and reintegration for victims; and
- (f) strengthen the system of reporting through the full support of the confidential centres for abused

children, and train teachers, law enforcement officials, care workers, judges and health professionals

in the identification, reporting and management of ill-treatment cases.

Human rights education

23. The Committee is concerned that the aims of education outlined under Article 29 of the

Convention, including the development and respect for human rights, tolerance and equality of the

sexes and religious and ethnic minorities is not explicitly part of the curricula throughout the State

party.

24. The Committee recommends that the State party, taking into account the

Committee's General

Comment no. 1 on the aims of education, include human rights education, including children's rights,

in the curricula of all primary and secondary schools, particularly with respect to the development

and respect for human rights, tolerance and equality of the sexes and religious and ethnic minorities.

C.4. SPECIAL MEASURES OF PROTECTION

Unaccompanied minors

25. With respect to unaccompanied minors (UAMs) the Committee welcomes the creation of a

special bureau for UAMs in the Aliens Office for handling the requests to stay of these persons. It

also notes a number of other activities, among others, concerning the establishment of special

reception centres for UAMs; a draft law for the creation of a guardianship service, access to

education, and missing persons, which contains provisions on UAMs. But there is not yet, as the

Government acknowledges, specific regulations for UAMs, asylum-seeking or not.

26. In accordance with the principles and provisions of the Convention, especially articles 2, 3 and

22, and with respect to unaccompanied persons under 18, the Committee recommends that the State

party:

(a) expedite efforts to establish special reception centres for UAMs, with special attention to those

who are victims of trafficking and/or sexual exploitation;

- (b) to ensure that the stay in those centres is for the shortest time possible and that access to education and health is guaranteed during and after the stay in the reception centres;
- (c) approve as soon as possible the draft law on the creation of a guardianship service in order to ensure appointment of a guardian for the UAM from the beginning of the asylum process and thereafter, as long as necessary, and make sure that this service is fully independent allowing it to take any action it considers to be in the best interests of this minor;
- (d) ensure they are informed of their rights and have access to legal representation in the asylum process;
- (e) improve cooperation and exchange of information among all the involved actors, including the Aliens Office and other relevant authorities, police services, tribunals, reception centres and NGOs;
- (f) ensure if family reunification is carried out, it is done in the best interests of the child; and
- (g) expand and improve follow-up of returned unaccompanied minors.

Sexual exploitation and trafficking

27. The Committee reiterates its satisfaction for the numerous measures taken by the State party to

combat the sexual exploitation and trafficking of children. It is nevertheless concerned that

trafficking for the purposes of sexual or other exploitation is still a problem.

28. The Committee recommends that the State party:

- (a) fully implement the recommendations of the national commission of experts;
- (b) continue to implement policies and programmes in accordance with the Declaration and Agenda for Action, and the Global Commitment adopted at the 1996 and 2001 World Congresses against Commercial Sexual Exploitation of Children;
- (c) continue to recruit female police officers to improve communication and contacts with foreign girls and women working in prostitution;
- (d) ensure that adequate resources (e.g. human and financial) are allocated to policies and programmes in this area;
- (e) continue to undertake awareness-raising campaigns in origin-countries;
- (f) expand cooperation with origin and transit-countries; and

(g) continue to cooperate with the International Organization for Migration.

Administration of juvenile justice

29. The Committee welcomes information since the initial report was considered, that the death

penalty was abolished in 1996; article 53 of the 1965 Young Person's Protection Act, which provided

for pre-trial detention for up to 15 days, was repealed; and recalling above, a national study forum on

juvenile justice, including a workshop on statistics, has been set up. However, it is concerned that the

interim law of 1 March 2002 (which expires on 31 October 2002) on the temporary detention of

juvenile delinquents and the creation of the Everberg Centre effectively replaced article 53 of the

1965 Act with a similar if not more restrictive regime. Moreover, the Committee remains concerned

that under article 38 of the 1965 Act, persons under-18 may be tried as adults. Overall, the

Committee is concerned that the holistic approach to addressing the problem of juvenile crime

advocated in the Convention, including with respect to prevention, procedures, and sanctions has not

been sufficiently taken into consideration by the State party.

30. The Committee recommends that the State party:

(a) establish a system of juvenile justice that fully integrates into its legislation and practice the

provisions of the Convention, in particular articles 37, 39 and 40, as well as with other relevant

international standards in this area, such as the Beijing Rules, the Riyadh Guidelines, the United

Nations Rules for the Protection of Juveniles Deprived of their Liberty, and the Guidelines for Action

on Children in the Criminal Justice System;

(b) ensure that persons under 18 are not tried as adults; and

(c) with respect to the law of March 2002, and its subsequent review in October 2002, ensure, in

accordance with article 37 of the Convention, that the deprivation of liberty is only used as a measure

of last resort, for the shortest possible time, that due process guarantees are fully respected, and that

persons under 18 are not detained with adults.

C.5. OPTIONAL PROTOCOLS

31. The Committee encourages the State party to ratify the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

C.6. DISSEMINATION OF THE REPORTS

32. Finally, the Committee recommends that in accordance with article 44, paragraph 6, of the

Convention, the second report presented by the State party be made widely available to the public at

large and that consideration be given to the publication of the report along with the written answers to

the list of issues raised by the Committee, the relevant summary records of the discussion, and the

concluding observations adopted thereon by the Committee following its consideration of the report.

Such a document should be widely distributed in order to generate debate and awareness of the

Convention and its implementation and monitoring within the Government, the Parliament and the

general public, including concerned non-governmental organisations.