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**Racism, racial discrimination, xenophobia and related forms of intolerance, follow-up to and implementation of the Durban Declaration and Programme of Action**

## **Report of the Working Group of Experts on People of African Descent on its mission to Belgium**

**Comments by the State\***


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\* The present document is being issued without formal editing.

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## **I. Introduction**

1. The Government of the Kingdom of Belgium welcomes this opportunity to respond to the report of the Working Group of Experts of People of African Descent [hereunder referred to as ‘the Working Group’] on its mission to Belgium in February 2019.
2. As illustrated by the standing invitation addressed to the Special Procedures since March 2001, Belgium is and will remain a firm supporter of the Special Procedures of the Human Rights Council, which it considers as the eyes and ears of the Council.
3. The Government welcomes nuanced and thorough reports to complement its analysis of the topic at hand. The Government considers that such reports of the Special Procedures are important to provide an outside perspective on the human rights situation in the country and thus considers those reports and recommendations carefully. Belgium therefore thanks the Working Group for its visit and its report.

## **II. General remarks**

4. The report highlights concrete issues of discrimination that people of African descent face. Belgium acknowledges the existence of these contemporary forms of racial discrimination, including against people of African descent, particularly in the field of housing, employment and education. All governments concerned are undertaking continuous efforts to address these issues, taking into account their complex and multi-faceted nature.

### **Time constraints**

5. The time foreseen in the program to meet with representatives from federal and federated Ministers, administrations or other representatives was very limited. We understand that the Working Group wanted to meet as many institutions and civil society representatives as possible. However, the very limited time reserved to meet with multiple officials concerned on the topic left little time for exchange of views and to address a number of issues deemed important by the authorities.

### **Methodology**

6. From the way the visit has been conducted, it is not clear that it concerned a follow-up visit. Indeed, the report focuses on the colonial past, while the report of the first visit only mentioned Belgium’s colonial past in the margins, which leads to some confusion.
7. From a methodological perspective, the report brings forward a number of very strong general statements, for which the base or the source is not always clearly mentioned.
8. The report states, for instance, that “there is clear evidence that racial discrimination is endemic in institutions in Belgium” and that “inequalities are deeply entrenched because of structural barriers...”. There is no mention of statistics or other references on which these statements are based. Belgium would value more precise and evidence-based references in order to be able to address some issues mentioned in the report. Another example of a generalization is the fact that the colonial past in Central Africa is presented as the sole explanation for the persistence of contemporary forms of discrimination in Belgium. This is an oversimplification and a generalization that is particularly lacking in nuance (see more details below).
9. Furthermore, the report contains inconsistencies. For example, in §24 and §66 (unspecified), the report mentions that there is “clear evidence that racial discrimination is endemic in institutions in Belgium”, while §105 states that “a racial equity audit within its public institutions...” should be conducted, “to look for systemic bias and discrimination within the regular and routine operation of business”.

10. Even though Belgium is convinced, as stated in the report, that challenges remain, it would like to recall some positive initiatives that have been taken. Such positive examples include amongst many others, the Flemish action program against discrimination on the private rental market, Flemish initiatives to improve the representation of people of African descent in the media (for example, the diversity policy of the Flemish public broadcaster VRT)<sup>1</sup>, a specific policy on equal opportunities in education, etc.. Another positive example given to the Working Group is the introduction by the Federal Government of “mystery calls”, a process involving the use of social inspectors who are now able to present themselves as job seekers or clients in the context of an employment relationship in order to investigate and establish offenses against the anti-discrimination law. The Federal Government has also created the possibility for the private sector to take positive measures in order to improve the employment rate of disadvantaged groups.

### **Use of certain language**

11. The report contains vague wording and subjective language, in particular when referring to the colonial past (for example ‘...colonial exploitations and atrocities in Africa continue to haunt people of African descent today’, wording like ‘it is believed that’...).

12. The fluidity of the Working Group’s definition of ‘African descent’ causes confusion in some parts of the report. For example, in §11 the Working Group explains that it was informed that “most Africans who migrated to Belgium in recent decades came from the former Belgian colonies in Africa Congo/Zaire, Rwanda and Burundi”. This is only correct when ‘African’ refers to ‘sub-Sahara African’, since most Africans who migrated to Belgium in recent decades came from Morocco, while in the recent years Belgium received a significant number of refugees from Eritrea and Guinee as well as increasing immigration from West African countries. In large cities like Antwerp these African nationals outnumber those originating from former colonies by far.

13. It should be noted that immigrants of African descent are not the only ones. They share challenges with immigrants from other continents. Notably Turkey, which is an important country of origin for many immigrants for several decades now and following the recent refugee crisis there is significant influx from refugees from the Middle East.

## **III. Specific remarks on certain topics**

### **Statistics**

14. Although statistics on so-called racial tracing are necessary to understand the issue and to take future initiatives, the requested statistics can only be produced in conformity with Belgian constitutional law, which is based on the principle of equality, and European Union legal requirements. It is in principle illegal in Belgium and in the EU to collect and analyse data on the ethnic or so-called racial background of citizens, even though some exceptions are foreseen.

15. As member of the European Union, Belgium has a long tradition of protection of private life and personal data. Data protection forms part of the rights protected under Article 8 of the European Convention on Human Rights, which guarantees the right to respect for private and family life, home and correspondence, and lays down the conditions under which restrictions of this right are permitted. The EU’s data protection standards are based on Council of Europe Convention 108, EU instruments – including the General Data Protection Regulation 2016/679 and the Data Protection Directive for Police and Criminal

<sup>1</sup> The diversity policy of the Flemish public broadcaster VRT targets ‘New Flemish people’, including people of African descent. VRT successfully uses target figures in order to improve and enforce a nuanced, non-stereotypical representation in the media as well as to make their hiring practices more inclusive for people with a migration background. Finally, VRT regularly consults with civil society to address and tackle the remaining challenges mentioned in the report.

Justice Authorities – as well as on the respective case law of the European Court of Human Rights and of the Court of Justice of the European Union. Article 9 of the Regulation, directly applicable in Belgium, states that processing of personal data revealing racial or ethnic origin (amongst others) is prohibited unless specific conditions are fulfilled. Article 24 *quinquies* of the Act of 4 July 1962 on Public Statistics stipulates that “the investigations and statistical studies of the National Statistical Institute may in no case concern private life, including sexual life, political, philosophical or religious opinions or activities, race or ethnic origin.” However, this only applies to the National Statistical Institute. Other entities are free to gather data, on the condition that this is done on a voluntarily basis and on the basis of self-identification and in compliance with the General Data Protection Regulation. In Belgium several data and data banks exist (for example: the general census which includes data on gender, age, country/place of birth, nationality, same sex marriage or legal cohabitations - National Register in which nationality can be used as a proxy for ethnic origin, through the country (or group of countries) of birth of a person or of one of his/her parents). Technically, these data can be crossed with data about housing, socioeconomic data (situation on the labour market ...), financial information, and many others through the inclusion of other administrative and survey-based databases.

16. In the biannual Socioeconomic Monitoring, administrative data from the National Register and the Crossroads Bank for Social Security are crossed to map the labour market participation ((un)employment rate, (in) activity, mobility between employment status, employment in labour market sectors, ...) of all people at working age registered in the National Register according to ethnic origin and migration background.

17. The variable of ‘ethnic origin’ captures the country (or group of countries) of birth of a person or of one of his/her parents. The variable of ‘migration background’ captures whether a person has a foreign (EU/non-EU) nationality, or whether a person was born with a foreign (EU/non-EU) nationality and got naturalized to Belgian nationality, or whether one or both of his/her parents has a foreign (EU/non-EU) nationality or was born with a foreign (EU/non-EU) nationality. With this method, data are practically exhaustive and objective, as they are not based on a sample or on self-reported data.<sup>2</sup> The report is published by the Ministry of Employment, Labour and Social Dialogue and Unia. Each version of the monitoring expands on the basis of the other versions. It is now possible to develop precise, multivariate and relevant statistical analyses to measure the existence and magnitude of inequalities in the labor market with respect to age, gender, origin, level of education, household type, place of residence, etc. The third report brought new insights and in particular, the introduction of the variable "education" (low, medium or high level) and a detailed analysis of the public sector.

18. While it is true that data based on ethnicity or so-called race are not collected, the regional governments collect data on foreign origin. On the basis of these data, those governments regularly monitor the work, life and educational situation of people of foreign origin and publish reports about the findings and adjust their policies accordingly.

## **Belgium’s colonial past**

### **Public debate about the colonial past:**

19. Belgium is coming to terms with its colonial past, which is a gradual and ongoing process. The King Baudouin study cited in the report (indicating that more than 7 out of 10 Belgo-Rwandans, Belgo-Congolese or Belgo-Burundian people think the colonial question is taboo in the Belgian public debate) was published in 2017. In the meanwhile certain

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<sup>2</sup> FPS Employment, Labour and Social Dialogue & Centre for Equal Opportunities and Opposition to Racism (2013), *Socio-economische Monitoring. (Socioeconomic Monitoring)*; FPS Employment, Labour and Social Dialogue & Interfederal Centre for Equal Opportunities (2015), *Socio-economische Monitoring. Arbeidsmarkt en origine (Socioeconomic Monitoring. Labour market and origin)*; FPS Employment, Labour and Social Dialogue & Unia (2017), *Socio-economische Monitoring. Arbeidsmarkt en origine (Socioeconomic Monitoring. Labour market and origin)*.

initiatives have been taken showing that debate around this topic is indeed ongoing. Belgium even encourages a thorough and open public debate without any restrictions on this topic. This has been for instance the approach followed by the Government and the Parliament(s) with regard to investigating and questioning Belgian policy regarding the murder on Lumumba, or the way in which the “métis” (persons of mixed descent) of the colonization were treated before and after independence. Reference can also be made to several parliamentary resolutions at different levels and the debate these engendered. Active exchanges of views are taking place amongst both civil society fora and Belgian authorities. Historians are encouraged to work on fact-finding and analysis of the colonial past in the Belgian and international context. Archive resources are made available by competent authorities, and research enabled accordingly. This is also why Belgium, at the request of the diaspora and at the initiative of the director of the Museum, decided to rethink completely the way in which the AfricaMuseum presented history. Belgian officials have stated unequivocally on numerous occasions that colonialism, which was based on inequality, cannot be condoned. The recent reopening of the AfricaMuseum led to a vivid public debate.

20. Another important result of recent debates about the colonial past is the declaration of the Prime Minister, on 4 April 2019, on behalf of the Belgian Government, acknowledging the targeted segregation of métis persons under the colonial administration of the Belgian Congo and Rwanda-Urundi until 1962 and following decolonization, as well as the related policy of forced abduction. On behalf of the Federal Government, he apologized to people born to white fathers and African mothers during the Belgian colonization and their families for the injustices and suffering. He expressed his compassion for the African mothers, whose children were taken from them. He expressed the wish that this solemn moment would be a further step towards raising awareness and knowledge of this part of Belgium's history and strengthen the Belgian authorities' determination to fight relentlessly against all forms of discrimination, racism and xenophobia. Several actions and/or commitments were taken with regard to their civil status, to helping the concerned persons identifying their African biological parents, to their access to the colonial archives, to facilitate the access to their personal files, to historical research etc.

#### **Link between the colonial past and current racism**

21. The Belgian Government recognizes that there are multiple forms of racism in our society and it recognizes its colonial past and the fact that this was based on inequality. However, drawing very direct links between the colonial past and current forms of racism against people of African descent and presenting the Belgian colonial past in Central Africa as the sole explanation for the persistence of contemporary forms of discrimination in Belgium is an oversimplification and a generalization that lacks in nuance. There is a more complex reality, where current forms of racism have multiple and much more complex causes than just the colonial past: Belgium, similarly to many other countries, has developed into a multicultural society the last decades, and it faces the challenge of ensuring an inclusive society where people with very diverse backgrounds live harmoniously together in full respect of diversity. It is taking concrete steps in working towards this goal.

#### **Education**

22. The right to education is firmly anchored in the Belgian Constitution (art. 24)<sup>3</sup> stipulating that “education is free; any preventive measure is forbidden”. This implies that

<sup>3</sup> 1. Education is free; any preventive measure is forbidden; the punishment of offences is regulated only by the law or federate law. The community organises non-denominational education. This implies in particular the respect of the philosophical, ideological or religious beliefs of parents and pupils. Schools run by the public authorities offer, until the end of compulsory education, the choice between the teaching of one of the recognised religions and non-denominational ethics teaching.

each pupil or student can enrol in the school or other educational institution of his/her choice. These legal obligations imply among others that schools and other educational institutions are not allowed to select their students or to refuse access to certain students. The free choice has to be guaranteed under all circumstances. Most of the Belgian schools are publicly funded. Each child or youngster between 2 ½ until 18 years old can enrol free of charge, starting with pre-primary until higher secondary education. Also higher education and adult education are freely accessible with choice of institution and programme for a modest enrolment fee. There are no systemic barriers for pupils or students on the basis of ethnic origin or social economical background.

23. The Flemish government actively implements a policy on Equal Opportunities in Education, with a lot of specific measures (on the restriction of educational costs, measures to reach young children to attend pre-primary education, on early school leaving, on teaching the language of instruction to newcomers, etc). All these measures are targeted at disadvantaged groups in society.

24. The freedom of education does not imply that individual schools and teachers have the discretion to teach what is in their own interest. Of course they have to apply to the core curriculum (attainment targets) as set by the Flemish government. In primary education, there are plenty of opportunities to work on topics such as racism and discrimination (but also on inequalities in society, on colonization...) in the subject area 'world orientation-man and society'. In secondary education new attainment targets for Grade 1 (12- 13 year olds) are developed and will be implemented on 1 September 2019. These new attainment targets are in the process of being implemented for the following years for Grade 2 and 3 as well. More emphasis will be laid on 'Historical awareness' and 'civic competences' since these are 2 of the 16 (European) key competences the new curriculum is based on.

25. In the French Community, "self-knowledge and opening up to others", "building citizenship in equality, rights and dignity" as well as the development of competences to facilitate the deconstruction of prejudice and discrimination are among the objectives of philosophy and citizenship courses included in the curricula of primary (2016) and secondary (2018) schools.

26. The principles of equality and non-discrimination have been included in the accreditation criteria for school textbooks (decree of 30 June 2016, amending the decree concerning the education system of the French Community). By strengthening the governance of the education system as part of the Pact of Excellence, schools are provided with the tools needed to implement strategies on citizenship promotion and to prevent discrimination through curricula and guidance. Strengthened school support will be introduced at the start of the school year 2019-2020. The adoption of a core curriculum (for students between 3 and 15 years of age) aims to reduce artificial dividing lines, vertical as well as horizontal, amongst students. It furthermore allows for adapting educational strategies in order to better take into account diversity in the school population. The reform of initial teacher training adopted in February 2019 includes an important segment that aims to strengthen democracy in schools, in particular by developing competences in social psychology as well as the field of cultural diversity and inequalities, based on the criteria of the decree of 12 December 2008 concerning the fight against certain forms of discrimination. The range of educational options for schools has been further developed, particularly with regard to the welcoming and inclusion of new-comers, the attention

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2. If a community, in its capacity as an organising authority, wishes to delegate powers to one or several autonomous bodies, it can only do so by federate law adopted by a two-thirds majority of the votes cast.

3. Everyone has the right to education with the respect of fundamental rights and freedoms. Access to education is free until the end of compulsory education.

All pupils of school age have the right to moral or religious education at the community's expense.

4. All pupils or students, parents, teaching staff or institutions are equal before the law or federate law. The law and federate law take into account objective differences, in particular the characteristics of each organising authority that warrant appropriate treatment.

5. The organisation, the recognition and the subsidising of education by the community are regulated by the law or federate law.

accorded to cultural diversity, the role of law at school, citizenship education, gender equality and the need to understand radicalization processes leading to violence.

27. The topic of European and, more particularly, Belgian colonial history is included in the history curriculum for secondary school in all educational networks. It is also treated in textbooks available to teachers.

#### **IV. Belgium's commitment to prevent and to fight discrimination**

28. Belgium reiterates its commitment to continue its efforts to prevent and to fight all forms of discrimination, including racial discrimination. A firm legislative framework and policy is already in place regarding discrimination and racism, including discrimination against people of African descent. A variety of programs and initiatives are being implemented, of which examples have been given to the Working Group of Experts. However, continuous efforts and attention are required to address the scourge of racism and racial discrimination, faced by every society. The Government will study the findings and recommendations of the Working Group in this light, which could provide inspiration for future initiatives.

29. Following upon the recommendation of the Working group, the decade for People of African Descent was officially launched in Belgium on the 25<sup>th</sup> of June 2019 by the Federal Equal Opportunities Administration (Ministry of Justice), in close cooperation with People of African Descent living in Belgium.

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