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## الجمعية العامة



مجلس حقوق الإنسان

الدورة الثلاثون

البند ٣ من جدول الأعمال

تعزيز وحماية جميع حقوق الإنسان، المدنية والسياسية والاقتصادية والاجتماعية والثقافية، بما فيها الحق في التنمية

## تقرير المقررة الخاصة المعنية بأشكال الرق المعاصرة، بما في ذلك أسبابها وعواقبها، أورميلا بهولا

إضافة

بعثة إلى بلجيكا\*

موجز

يتضمن هذا التقرير الاستنتاجات الرئيسية التي خلصت إليها المقررة الخاصة المعنية بأشكال الرق المعاصرة، بما في ذلك أسبابها وعواقبها، أورميلا بهولا، في أعقاب الزيارة القطرية التي قامت بها إلى بلجيكا في الفترة من ١٩ إلى ٢٦ شباط/فبراير ٢٠١٥. وبعد تحليل الإطار المعياري والمتعدد التخصصات والمتعدد المستويات للآلية المؤسسية لمكافحة أشكال الرق المعاصرة، تنظر المقررة الخاصة في الاستغلال الاقتصادي والعمل القسري والاسترقاق المنزلي والتسول القسري للأطفال والزواج القسري. وتعتزف بالطابع الشامل للإطار التشريعي والمؤسسي البلجيكي لمعالجة هذه المسائل وتوجه الانتباه إلى التحديات المستمرة لمنع هذه الممارسات والكشف عن الضحايا وتحديد هويتهم والحق في الانتصاف الفعال. ويخلص التقرير إلى توصيات تهدف إلى مساعدة الحكومة على معالجة الثغرات المتبقية بشأن أشكال الرق المعاصرة المعنية.

\* يُعَمَّم موجز هذا التقرير بجميع اللغات الرسمية. أما التقرير نفسه، الوارد في مرفق الموجز، فيُعَمَّم باللغة التي قُدم بها وبالفرنسية فقط.



الرجاء إعادة استعمال الورق



## Annex

*[English and French only]*

### **Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Urmila Bhoola, on her mission to Belgium (19–26 February 2015)**

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## I. Introduction

1. In accordance with Human Rights Council resolution 24/3, and at the invitation of the Government of Belgium, the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Urmila Bhoola, conducted an official visit to Belgium from 19 to 26 February 2015.
2. During her visit, the Special Rapporteur met with the Federal Ministers of Foreign Affairs, of Justice and of Employment, Economy and Consumer Affairs. She also met with the State Secretaries for the Fight against Poverty and Equal Opportunities, for the Fight against Social Fraud and for Asylum and Migration, as well as numerous senior representatives of the Federal Government. She held meetings with the Minister-President of Flanders and the Minister of the Government of the Brussels-Capital Region responsible for employment and the economy, as well as representatives of the French community and the Walloon regional governments. The Special Rapporteur also met with representatives of the Federal Parliament, law enforcement authorities, the judiciary, State prosecution, the Federal Migration Centre, the National Commission for the Rights of the Child and representatives of civil society.
3. The Special Rapporteur held meetings in Brussels and conducted visits to the specialized victim support centre Pag-Asa and the reception centre for unaccompanied foreign children Minor-Ndako. She also travelled to Antwerp, Ghent and Namur in order to get information on the issues relating to her mandate from the perspective of the municipal authorities and local civil society organizations, including the Payoke victim support centre in Antwerp.
4. The Special Rapporteur takes this opportunity to thank the Government for its invitation and the cooperation extended prior to and during her visit. She is also grateful to all her interlocutors, including representatives of authorities at the federal, regional, community and municipal levels, civil society organizations and especially the victims who engaged with her during the visit. She also wishes to thank the Office of the United Nations High Commissioner for Human Rights Regional Office for Europe for the assistance provided.

## II. Background

5. Belgium is a high-income country in Western Europe with a population of 11.2 million.<sup>1</sup> Since gaining independence in 1830, the State's structure has evolved from a unitary State to the current federal State composed of communities and regions.<sup>2</sup> The process of devolution began in the 1970s and has gone through several phases.
6. Belgium comprises three communities: the French, the Flemish and the German-speaking community; and three regions: the Flemish, the Walloon and the Brussels-Capital regions.<sup>3</sup> The federal, regional and community levels of governance have their own legislative and executive bodies<sup>4</sup> and respective competencies. Within their competencies and territory, the regions and communities are independent and their legal acts have the same legal value as federal laws.
7. The federal level has competencies in matters relating to all Belgians, i.e. foreign affairs, justice, social security and internal affairs. The competencies of the regions are related to territory and include the economy, employment and housing, while those of the communities relate to the individual (person-related), including culture, education and matters related to health and family policy. In 2014, Belgium finalized the sixth State reform, according to which

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<sup>1</sup> See World Bank, 2015 World View (2013 data), available from <http://wdi.worldbank.org/table/1.1>.

<sup>2</sup> Article 1 of the Constitution.

<sup>3</sup> Articles 2 and 3 of the Constitution.

<sup>4</sup> In the case of the Flemish region and the Flemish community, the powers are exercised by a single parliament and a single government.

several federal competencies, including for family benefits, the labour market and health and social care, were transferred to the regions and communities.

8. Belgium is a country of immigration. The number of immigrants has been on the rise in the past three decades, reaching a record 138,071 in 2011.<sup>5</sup> The majority of immigrants, 63 per cent, come from other European Union member States. The percentage of immigrants from countries that joined the European Union in 2004 and 2007 more than tripled between 2003 and 2012 to 24 per cent, while the number of those from third countries decreased substantially.<sup>6</sup> The foreign-born population amounted to 19 per cent in 2013.<sup>7</sup>

9. The Belgian economy, which was affected by the global financial crisis and plunged into recession, has been growing since early 2013. The Organization for Economic Cooperation and Development estimates that the recovery remains fragile and the country still has low employment rates and a high public debt, and that the foreign-born population suffers from poor employment prospects and poverty.<sup>8</sup>

### III. Normative and institutional framework

#### A. International and regional legal framework

10. Belgium has ratified or acceded to all core human rights instruments and their optional protocols, with the exception of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. It also signed in 2005 but has not yet ratified the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment and Punishment.

11. Belgium has ratified the 1926 Slavery Convention and the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery. It is also a party to all International Labour Organization (ILO) fundamental conventions, including the Forced Labour Convention, 1930 (No. 29), the Abolition of Forced Labour Convention, 1957 (No. 105), the Minimum Age Convention, 1973 (No. 138), and the Worst Forms of Child Labour Convention, 1999 (No. 182). In 2004, it ratified the United Nations Convention against Transnational Organized Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. On 10 June 2015, after the Special Rapporteur's visit, Belgium ratified the ILO Domestic Workers Convention, 2011 (No. 189).

12. As a member of the Council of Europe, Belgium is party to the European Convention for the Protection of Human Rights and Fundamental Freedoms, which, in its article 4, prohibits slavery, servitude and forced or compulsory labour. The compliance of States with the Convention is monitored by the European Court of Human Rights. While the Court has already delivered judgements finding a violation of article 4,<sup>9</sup> it has not yet ruled against Belgium under the aforementioned article, despite having decided on the merits in several cases.<sup>10</sup> Belgium has

<sup>5</sup> There was an approximately 10 per cent decrease in the numbers in 2012 (124,717 immigrants), the reasons for which are to be determined. See Federal Migration Centre, *Rapport annuel migration 2013*, pp. 18–19, available from [www.diversite.be/sites/default/files/documents/publication/rapport\\_cntr\\_2013\\_migration\\_fr\\_web.pdf](http://www.diversite.be/sites/default/files/documents/publication/rapport_cntr_2013_migration_fr_web.pdf).

<sup>6</sup> *Ibid.*, pp. 20–21.

<sup>7</sup> This figure includes those of foreign nationality who migrated to Belgium (11 per cent) and those who obtained Belgian nationality after birth (8 per cent) (*Ibid.*, pp. 28–29).

<sup>8</sup> See Organization for Economic Cooperation and Development *Economic Surveys: Belgium 2015*, p. 14, available from [http://dx.doi.org/10.1787/eco\\_surveys-bel-2015-en](http://dx.doi.org/10.1787/eco_surveys-bel-2015-en).

<sup>9</sup> See, for example, *Siliadin v. France*, 2005, *Rantsev v. Cyprus and Russia*, 2010, and *C.N. v. the United Kingdom*, 2012.

<sup>10</sup> *Van der Mussele v. Belgium*, 1983; *Van Droogenbroeck v. Belgium*, 1982, and *De Wilde, Ooms and Versyp v. Belgium*, 1971.

ratified the Council of Europe Convention on Action against Trafficking in Human Beings, and its independent monitoring body conducted a mission to Belgium in October 2012, the report of which was published in September 2013.

13. As a member State of the European Union, Belgium is bound to adhere to the Charter of Fundamental Rights, which, in its article 5, prohibits slavery, servitude, forced or compulsory labour and trafficking in human beings. The European Union adopted several directives relevant for the mandate that Belgium incorporated into its national legislation.

## **B. National legal and institutional framework**

### **Legislation**

14. Belgian legislation does not contain specific provisions criminalizing slavery and the institutions and practices similar to slavery as defined in the 1956 Supplementary Convention, with the exception of forced marriage, nor does it contain explicit provisions on the prohibition of forced labour, in accordance with the international instruments ratified by Belgium. The approach taken by the authorities in the development of the legislative framework, which was from the outset very much linked to migrants and their residency status,<sup>11</sup> was not to enshrine separate criminal offences but to link them to the criminal offence of human trafficking.

15. Trafficking is defined in the Criminal Code, article 433 quinquies (1), as “recruiting, transporting, transferring, harbouring, receiving a person, or taking control or transferring control exercised over that person”, for the purposes of the exploitation of prostitution or other forms of sexual exploitation, the exploitation of begging, providing labour or services in conditions contrary to human dignity, the removal of organs or in order to have the person commit a crime or an offence against his or her will. With the exception of the latter, the consent of the victim is irrelevant to establish the offence.

16. The basic offence is punishable by one to five years of imprisonment and a fine between 500 and 50,000 euros.<sup>12</sup> The aggravating circumstances that provide for increased penalties are laid down in articles 433 sexies to 433 octies and include abuse of authority and of a person’s situation of vulnerability, the use of fraudulent tactics, violence, threats or any other form of constraint or where the offence was committed against a child.<sup>13</sup> The latest amendment to the Criminal Code establishes the multiplication of the fine by the number of victims.<sup>14</sup>

17. In terms of economic exploitation, the Special Rapporteur notes that the provision referring to “labour or services in conditions contrary to human dignity” could include cases amounting to slavery and slavery-like practices. She regrets, however, the lack of specific criminalization of these practices that can occur in situations not necessarily linked to human trafficking. Furthermore, the Special Rapporteur was informed that, although the intention of the drafters of the legislation appears to have been to allow for “conditions contrary to human dignity” to develop through judicial interpretation, in some instances this has had a negative impact on legal certainty. Some prosecutors have been reluctant to bring cases to court owing to a lack of clarity as to when a certain situation reaches such conditions, and have preferred to prosecute employers through labour law and Social Criminal Code infractions, where the conviction was more likely to be secured. This consequently has had an impact on the protection and assistance warranted to the victims since they do not benefit from the multidisciplinary

<sup>11</sup> The relevant legislative provisions were first contained in the Law of 15 December 1980 on entry to the territory, stay, settlement and removal of foreigners.

<sup>12</sup> Article 433 quinquies (2). According to paragraph 3, the attempt is punishable by imprisonment of one to three years and fine of 100 to 10,000 euros.

<sup>13</sup> The maximum penalty is 20 years imprisonment and a fine of 150,000 euros.

<sup>14</sup> Law of 24 June 2013 penalizing the exploitation of begging, prostitution and trafficking in human beings in consideration of the number of victims. The same applies for exploitation of begging in Articles 433 ter and quater.

support system (see paras. 24–26 below). At the same time, the Special Rapporteur notes that the definition might potentially encompass a larger number of victims who are not necessarily in contemporary forms of slavery but in conditions of work that are exploitative, poorly paid and do not comply with the minimum labour standards.

18. The exploitation of begging is criminalized by article 433 ter (1), which defines this crime as “recruiting, training, diverting or retaining a person in order to engage him/her in begging, encouraging the person to beg or to continue begging, or putting the person at the disposal of a beggar so that he or she can use the person to arouse public sympathy”, and “exploiting, in any way, the begging of a third person”. The punishment provided is that of imprisonment of between 6 months and 3 years and a fine of 500–25,000 euros.<sup>15</sup> Article 433 quater specifies a higher penalty in cases of aggravating circumstances, including when a child is involved.

19. According to article 391 sexies of the Criminal Code, forcing someone to marry is punishable by 3 months to 5 years of imprisonment and a fine of 250–5,000 euros. An attempt to do so can result in a term of imprisonment of between 2 months and 3 years and a penalty of 125–2,500 euros.

20. The legal framework relating to article 433 quinquies is supplemented by the ministerial circular of 26 September 2008 on the implementation of multidisciplinary cooperation in respect of victims of human trafficking and the circular of 17 January 2007 of the Board of Prosecutors General relating to investigations and prosecutions (Col 01/2007), which sets out a list of indicators to help to assess the situations that are contrary to human dignity.<sup>16</sup> During her visit, the Special Rapporteur learned that the updated version of the 2007 circular would be finalized soon, while the ministerial circular was being revised. The revised circulars are intended to reflect new trends in terms of putting more focus on Belgian and other European Union victims and to better define what is meant by economic exploitation.

### **Institutional framework**

21. In order to address those contemporary forms of slavery, which are caused by human trafficking, Belgium has established a comprehensive multidisciplinary cooperation mechanism involving various stakeholders at the federal, regional and community levels, which is commendable. The Special Rapporteur heard mainly positive reviews of the structures in place and the overall functioning of the referral system.

22. The political and strategic coordination of the mechanism is ensured by the Interdepartmental Coordination Platform, chaired by the Minister for Justice.<sup>17</sup> The Platform is composed of around 30 stakeholders, including representatives of the Prime Minister’s Office and a number of federal public services,<sup>18</sup> the Board of Prosecutors General, the Federal Prosecutor’s Office, the Federal Police, the State Security Service, the Federal Migration Centre and the non-governmental organization Child Focus. Pursuant to the Royal decree of 21 July 2014, among the Platform members are representatives of regional governments and of the three specialized centres for victims (Payoke, Pag-Asa and Sürya). The Platform meets twice a year and its day-to-day work in terms of managing the preparation and execution of decisions, drafting the national anti-trafficking action plan<sup>19</sup> and biennial governmental reports, among others, is managed by a bureau that meets monthly.

<sup>15</sup> Attempted exploitation of begging is punishable by 1 month to 2 years of imprisonment and a fine of 100 to 2,000 euros.

<sup>16</sup> These include conditions relating to wages or payment (e.g., the withholding of wages, the provision of wages that are too low or no provision of days off); working conditions and working environment; housing circumstances; and dependency on the employer.

<sup>17</sup> See Royal decree of 16 May 2004.

<sup>18</sup> As part of the most recent major reforms to the federal administrative structure of Belgium, former ministries were renamed federal public services.

<sup>19</sup> The third action plan, for the period 2015–2019, is being drafted.

23. The role of the Federal Migration Centre<sup>20</sup> is to monitor and follow up on policy regarding human trafficking. It acts as an independent national rapporteur and as the secretariat of the Platform and facilitates coordination between the three specialized centres.<sup>17</sup> For its yearly reports, the Centre draws statistical data from six sources: the police, the social inspectorate, the Board of Prosecutors General, the Immigration Office, the specialized centres for victim support and the Criminal Policy Department. The Special Rapporteur learned that, despite attempts to launch a computerized centralized data collection system, no such system currently existed.

24. At the operational level, the specialized personnel of the local and federal police, social inspection services (Social Inspection Directorate General of the Federal Public Service for Social Security)<sup>21</sup> and labour inspection services (Directorate General for the Supervision of Social Legislation of the Federal Public Service for Employment, Labour and Social Dialogue) cooperate in order to identify situations of contemporary forms of slavery by performing monthly controls in predefined high-risk industry sectors in each judicial district.<sup>22</sup> If a presumed victim is detected either during the inspections or on the basis of a complaint, the reference magistrate to the Public Prosecutor's Office or the Labour Prosecutor's (Auditor's) Office, in case of economic exploitation, is informed, with the two often working in a collaborative manner. At the same time, one of the three specialized non-governmental organization-led centres Pag-Asa (Brussels), Sürya (Liège) and Payoke (Antwerp) must be contacted. These centres, run by multidisciplinary teams, provide victims with shelter, psychosocial, medical, administrative and legal assistance. The Immigration Office also needs to be informed regarding the residency status of the (presumed) victim and only the three centres are competent for requesting residence permits on behalf of victims, including children, with this Office.

25. Presumed victims are granted a 45-day reflection period, during which they can decide if they wish to file a complaint or make a statement or if they prefer to return to their country of origin.<sup>23</sup> In order to obtain the status of official victim, presumed victims must meet the following three conditions: break all contacts with the presumed perpetrator; accept assistance offered by a specialized centre; and cooperate with the judicial authorities by making statements or by filing a complaint against the perpetrator or perpetrators. The Special Rapporteur heard of instances when the police would take victims' statements right away, without respecting the reflection period, and neglect to inform them of their rights and to put them in direct contact with a specialized centre.

26. As soon as a victim has lodged a complaint or made relevant statements, he or she is granted the status of "victim of human trafficking"<sup>24</sup> and is entitled to a three-month provisional residence permit, renewable once.<sup>25</sup> The victim's stay may be extended further by being granted a six-month residence permit, renewable every six months until the end of the judicial procedure, when the victim can be granted a permanent residence permit<sup>26</sup> or returns to his or her

<sup>20</sup> As part of the restructuring in March 2014 of the former Centre for Equal Opportunity and Opposition to Racism, a B-status national human rights institution, the Federal Migration Centre and the Inter-federal Centre for Equal Opportunities were created.

<sup>21</sup> Specialized units in each of the nine regional offices across the country.

<sup>22</sup> The competency for labour and social inspections is shared between the federal and regional levels. Regular meetings are held between the relevant stakeholders, such as the federal police, the inspections and the magistrates, at the local level — in each judicial district — organized by the specialized magistrates.

<sup>23</sup> During this period, he or she is entitled to social assistance, including from a public social welfare centre; if he or she does not hold a residency permit, the specialized reception centre may issue him or her with an "order to leave the territory within 45 days".

<sup>24</sup> There is also a possibility of being granted provisional victim status by the magistrate to the Public Prosecutor's Office upon advice from other partners involved and on the basis of a list of criteria.

<sup>25</sup> The victim is entitled to social benefits, including accommodation, psychosocial help and legal aid, and is authorized to work.

<sup>26</sup> In the event that his or her complaint results in a legal conviction, or if the magistrate to the Public Prosecutor's Office or the Labour Prosecutor's Office has cited the element of trafficking in its indictment. The Public Prosecutor's Office can decide autonomously and at any stage of the procedure that the person concerned is no longer to be considered to be a victim, in which case the Immigration Office withdraws the residence permit. There is a list of reasons to justify doing so.

country of origin. In the case of unaccompanied children, who are provided with a legal guardian,<sup>27</sup> the three conditions are looked at with greater flexibility and the children are immediately issued with a three-month residence permit.

27. In 2013, 116 persons obtained official victim status and 72 received permanent residence.<sup>28</sup> In the same year, the three centres started 133 new programmes of support, of which 90 were for victims of labour exploitation and 1 was for a victim of forced begging. In total, 33 per cent of the victims were European Union nationals, including three Belgians.<sup>29</sup> The average duration of the assistance programme is 2–3 years.

28. Special reception centres for unaccompanied children provide similar support as the centres for adult victims. The Special Rapporteur visited Minor-Ndako in the Flemish community, which has the capacity to accommodate 86 unaccompanied children in residential and non-residential care. In the French community, Esperanto Mena is a smaller centre in a secret location with around 15 places available for unaccompanied children who are victims of human trafficking.

29. The Belgian approach focuses primarily on the link between victim status and the residency permit, which indicates that it was primarily construed for foreign non-European Union (third country) victims in an irregular situation. According to some of the Special Rapporteur's interlocutors, this approach is not relevant in the current circumstances, which is characterized by a considerable number of European Union victims whose primary interest is to return home. Others expressed the opinion that the system does not need changing since the victims, notwithstanding their nationality, can still benefit from the assistance offered by the specialized centres.

## IV. Main findings relevant to the mandate

### A. Economic exploitation and forced labour

30. Given that forced labour is not criminalized as a separate offence, situations that might amount to forced labour fall within the broader framework of economic exploitation, i.e. "labour or services in conditions contrary to human dignity", in accordance with article 433 quinquies of the Criminal Code. The Special Rapporteur was informed that there are evidentiary challenges that often prevent convictions from being handed down for this offence, as a result of which labour prosecutors prefer to focus on infractions of the Social Criminal Code, which still provide victims with compensation.

31. The Social Criminal Code encompasses social fraud and illegal work and its implementation is overseen through inspections executed at the district level.<sup>30</sup> It includes provisions on labour rights and regulates offences related to working conditions (health and safety at work), child labour, undeclared and illegal work, social documentation and social security payments. Depending on the gravity of infraction, a range of penalties are foreseen (four levels), from an administrative fine of 10–100 euros (level 1) to 6 months to 3 years of

<sup>27</sup> Guardians, either professional or voluntary, deal with all the administrative and legal procedures related to the child. The system of guardians, overseen by the guardianship service within the Federal Public Service for Justice, was introduced for unaccompanied foreign children in 2004 (Title XIII, chapter VI, of the framework legislation of 24 December 2002 entitled "Guardianship of foreign unaccompanied minors", entered into force on 1 May 2004).

<sup>28</sup> See Federal Migration Centre, Belgium, 2013 annual report on human trafficking, p. 1. Available from [www.diversitybelgium.be/annual-report-human-trafficking-2013](http://www.diversitybelgium.be/annual-report-human-trafficking-2013).

<sup>29</sup> Ibid., pp. 105–106.

<sup>30</sup> There is one cell composed of labour and social inspectorates, as well as the National Employment Office and the National Office of Social Security, per judicial district. Each is presided by the labour auditor and includes representatives of the Federal Public Service for Finance, the magistrate in the prosecutor's office and a member of the federal police.



imprisonment and/or a penal fine of 600–6,000 euros or an administrative fine of 300–3,000 euros (level 4).<sup>31</sup>

32. Given the above, the present analysis will focus on economic exploitation, which can amount to forced labour, although the number of cases is impossible to distinguish owing to them being encompassed within the broader framework of economic exploitation. Certain situations of economic exploitation also include an element of debt bondage, prohibited under the 1956 Supplementary Convention,<sup>32</sup> an example of which was provided in the case of an undocumented Chinese worker who was subjected to debt bondage by a construction company.<sup>33</sup>

33. According to the information received by the Special Rapporteur, economic exploitation has been on the rise in recent years, to the point where it is now behind most cases of human trafficking. The traditionally high-risk sectors include construction and renovation, transport, agriculture and horticulture, domestic work, meat processing, retail, car washing and hospitality. In the absence of centralized statistics, the data provided by the Board of Prosecutors General, not inclusive of the cases taken up by the labour prosecutors, shows that, in 2014, 115 cases of economic exploitation were heard in courts (44.1 per cent out of all cases).<sup>34</sup>

34. While economic exploitation and infractions of the Social Criminal Code affect workers regardless of their nationality, the Special Rapporteur learned that the number of workers from other European Union countries who are victims of economic exploitation is on the increase, to the point that they now constitute the majority of victims. In many cases, workers experience situations of long working hours with insufficient pay, unsafe working conditions and unpaid social security contributions.<sup>35</sup> Their passports are sometimes withheld by their employers and they might also be subjected to intimidation and violence or threats of violence.

35. According to the information obtained, there is an increasing number of bogus self-employed<sup>36</sup> and posted workers from the European Union. Posted workers<sup>37</sup> are in many instances subject to the above-mentioned abuses and exploitation. The most recurrent problems include the non-payment of social contributions in their country of origin, which calls for better coordination between the relevant authorities in the countries of posting and of origin.<sup>38</sup> Workers in the construction sector often find themselves in a situation of bogus self-employment that entails the necessity of paying their own social contributions, of which they become aware only once they have already become heavily indebted.

36. For the reasons mentioned above, including for investigations to be less burdensome, the vast majority of these cases are prosecuted under the Social Criminal Code for social fraud and illegal employment of foreign workers. For example, the Special Rapporteur was informed that in the Ghent Court of Appeal, 2,114 cases of illegal employment of foreigners were opened in

<sup>31</sup> See article 101 of the Social Criminal Code.

<sup>32</sup> Article 1 (a) of the Convention states that debt bondage is understood as the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

<sup>33</sup> See Federal Migration Centre, Belgium, 2013 annual report on human trafficking, p. 27.

<sup>34</sup> Other cases included 112 cases of sexual exploitation (43.24 per cent) and 14 cases of forced begging (5.41 per cent).

<sup>35</sup> In Antwerp, she was presented with an example of a good practice for combating social dumping in the construction sector, in which workers wore a badge and a helmet that automatically showed whether the employee was registered with the social security authorities.

<sup>36</sup> Someone who voluntarily or under force takes on a self-employed status while, in reality, the person works under the subordination of an employer as a salaried worker.

<sup>37</sup> In Directive 96/71/EC concerning the posting of workers in the framework of the provision of services, a “posted worker” is defined as a worker who is employed in one European Union member State and sent by his or her employer to undertake work in another on a temporary basis.

<sup>38</sup> The Posting of Workers Enforcement Directive, adopted in May 2014, although not yet transposed into Belgian national legislation, is meant to ensure that Directive 96/71/EC is better applied in practice.

the period from 2009 to 2013, but only 22 were linked to economic exploitation. The nationalities most affected were Bulgarians (1,281) and Romanians (569).

37. The especially vulnerable situation of undocumented third-country workers to labour rights violations was also brought to the Special Rapporteur's attention. Owing to the fear of expulsion from the country should they not be granted official victim status, as their exploitation would not constitute "labour or services in conditions contrary to human dignity",<sup>39</sup> they choose to continue in an exploitative situation rather than report their employer to the authorities. In a positive development, in 2013<sup>40</sup> Belgium transposed Directive 2009/52/EC providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals, which, *inter alia*, imposes financial penalties on employers for employing irregular migrants and provides for the repayment of outstanding wages, taxes and social security contributions. It was pointed out by interlocutors, however, that this remedy is contingent on securing access to free legal aid, which is not always possible, and that the repayment of wages is very difficult once the undocumented worker is no longer in the country.

38. The Special Rapporteur heard concerns regarding prison work, managed by the Prison Labour Agency, an autonomous structure under the Federal Public Service for Justice, especially in terms of absence of a work contract for prisoners engaged in working for private businesses. The main concern expressed was that they are paid wages well below the minimum hourly rate. The Special Rapporteur notes the considerable difference between the pay received for an hour of prison work, ranging from 0.62 euro cents to 3.6 euros, amounting to a salary of 120–450 euros per month, and the minimum salary in Belgium of 1,501.82 euros per month. At the same time, she was assured of compliance with the legislation regarding occupational safety and health standards and the use of profits obtained from collaboration with companies (products marked "cell-made") for vocational training and other projects. The Special Rapporteur notes that the ILO Forced Labour conventions No. 29 and No. 105 do not prohibit prison labour as such but do provide for specific conditions to be met, including for prisoners to offer themselves voluntarily to work, for example, by providing written consent, and for the minimum conditions with regard to wages, social security benefits and occupational safety and health to be met.

## B. Domestic servitude

39. The estimates of the number of those involved in domestic work in Belgium vary from 42,100,<sup>41</sup> with more than 90 per cent of them women, to 100,000.<sup>42</sup> The majority of those taking up employment in domestic work are migrants and large numbers of domestic workers appear to be in an irregular situation. Domestic workers in Belgium are permitted to join trade unions, although their union membership is very limited.

40. The legal framework on domestic work in Belgium is complex, with workers covered by at least six different contractual arrangements, a situation that creates inequalities among domestic workers in terms of employment, working conditions, labour protection and social security coverage. This complexity also makes it difficult for workers to be aware of their rights

<sup>39</sup> A special aggravating circumstance could be applied due to "abusing the particularly vulnerable situation where the person is because of his/her illegal or precarious administrative situation ... so that the person has in fact no real and acceptable choice but to submit to this abuse". The punishment foreseen is imprisonment from 10 to 15 years and a fine of 1,000 to 100,000 euros (article 433 septies of the Criminal Code).

<sup>40</sup> Law of 11 February 2013 providing for sanctions and measures against employers of illegally-staying third-country citizens.

<sup>41</sup> See data for 2008 available from <http://laborsta.ilo.org>.

<sup>42</sup> Data by the trade union CSC Food and Services covering the sector of domestic work. See International Migration Papers No. 116, Promoting integration for migrant domestic workers in Belgium, ILO, 2013, available from [www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---migrant/documents/publication/wcms\\_222293.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_222293.pdf), p. 2.

and can result in employers abusing this situation to subject domestic workers to exploitation.<sup>43</sup> This is even more the case since the specificities of the sector itself make domestic workers, especially those who reside in the household, socially isolated and particularly vulnerable to human rights violations, economic exploitation, physical and verbal abuse and, in extreme cases, subjugation to domestic servitude and domestic slavery.<sup>44</sup> The irregular situation of domestic workers can only exacerbate this.

41. While there is no specific criminalization of domestic servitude or slavery in Belgian legislation, the Special Rapporteur was informed of at least one example where a conviction was obtained for economic exploitation of a domestic worker under article 433 quinquies of the Criminal Code, with the victim benefiting from the referral system. Another case from 2008, involving 17 individuals allegedly subjected to domestic servitude by a hotel guest in a luxurious Brussels hotel, in which the court procedure is still ongoing, was also brought to the Special Rapporteur's attention.

42. The overall number of prosecutions is low, however. This is due to the difficulty in detecting cases, with domestic work happening mainly in private households and sometimes linked to servile marriage, with victims being forced to perform household chores in line with gendered stereotypes.<sup>45</sup> The police and inspectorates need to obtain an authorization from an investigating judge granting them access to private homes, on the basis of a justified request and only for serious offences. Furthermore, in terms of investigation, obtaining sufficient proof seems to be problematic. According to the information obtained, cases of domestic servitude could also be prosecuted under the Social Criminal Code.

43. In an attempt to regulate the sector of domestic work, in 2004 the federal Government introduced a system of service vouchers,<sup>46</sup> which is used extensively. According to National Employment Office data, there were 0.975 million users by the end of 2014 and 149,782 workers were participating in the system at the end of 2013. The Special Rapporteur acknowledges the positive effects of this system as it discourages informal employment, gives domestic workers an employment contract, a monthly salary based on current wage scales, social security coverage and insurance for work accidents and breaks the social isolation of workers by introducing the service voucher agency as the third party, namely, the employer. At the same time, several stakeholders pointed out the system's deficiencies, such as the fact that it does not encompass all types of domestic work, that it sustains a vulnerable sector of workers and should be therefore an intermediate rather than a long-term measure, and the high cost it represents for the regional governments.<sup>47</sup>

44. The Special Rapporteur was encouraged by the work that Belgium, hosting 203 foreign diplomatic missions and 109 international organizations, has undertaken over more than a decade with regard to cases of domestic servitude in diplomatic households and safeguarding the rights of victims. The central role in terms of prevention, monitoring, mediation and administrative punishment is played by the Protocol and Security Department of the Federal Public Service for Foreign Affairs, in cooperation with the Federal Public Services for Employment, Labour and Social Dialogue. A set of rules regarding the employment of private

<sup>43</sup> Three types of contracts exist for establishing a direct labour relationship between private employers or households and the three types of domestic worker: domestic servants, non-manual domestic workers and manual domestic workers. There is also a service voucher system, the au pair system and the system for domestic workers working as diplomatic personnel (see International Migration Papers No. 116, pp. 16–22, 61).

<sup>44</sup> See A/HRC/15/20, paras. 16–18.

<sup>45</sup> Ibid., para. 43.

<sup>46</sup> At the time of the visit, vouchers were tax deductible (30 per cent tax reduction), bought by private individuals and given to domestic workers (signed and dated) for each hour worked. The domestic worker submits the voucher to the service voucher agency (employer) in exchange for a pay (the value of the service voucher is 7.5 euros, plus the federal Government subsidy of 13.3 euros).

<sup>47</sup> In accordance with the sixth State reform, the service voucher system has been a regional competence since 1 July 2014.

domestic workers by diplomats, of which there are around 7,000, has been established in order to prevent cases of exploitation and servitude, including: (a) work contract checks performed by the Protocol Department before allowing the issuance of visas to workers; (b) a compulsory interview of domestic workers to inform them about their rights and duties, held at the Belgian Embassy before coming to Belgium; and (c) a yearly personal interview held at the Protocol Department to renew the special working permit.

45. Given the diplomatic immunities and privileges of diplomats set out in the 1961 Vienna Convention on Diplomatic Relations, which prevents cases concerning diplomats from being taken to court, the Commission for Good Offices was established in May 2013 to find an out-of-court solution through mediation for serious cases of labour standards abuses and domestic servitude. It is chaired by the Director General of Supervision of Social Legislation (Federal Public Services for Employment, Labour and Social Dialogue) and includes several other federal public services and trade union representatives. The Commission deals with three to four cases of domestic servitude per year. While diplomats have immunity from criminal prosecution, the domestic worker can still benefit from the system in place for those with the status of official victim.<sup>48</sup> Furthermore, in cases of unresolved credible complaints regarding abuses of domestic workers, the diplomat in question, or even the whole diplomatic mission, can be refused visas for any new domestic worker.

46. The Special Rapporteur was also interested in obtaining information on the vulnerability of au pairs to domestic servitude, but to no avail. It would appear that the issue has not received much attention in Belgium, although the Special Rapporteur was informed subsequently that the 2014 Federal Government Coalition Agreement foresees an initiative to be undertaken in consultation with the regions aimed at combating abuses in the framework of the status of au pairs.<sup>49</sup>

### C. Forced child begging

47. The Special Rapporteur was presented with information about numerous instances of begging, especially begging with children and child begging, primarily in Belgian cities. It is important to note that begging as such is not criminalized in Belgium and a case-by-case approach is necessary to establish whether the situation is one of forced begging, as criminalized in the Criminal Code and prohibited under international law.

48. In terms of international standards relevant for the mandate, forced begging is prohibited under the ILO Forced Labour Convention, 1930 (No. 29), and could in certain cases meet the international definition of slavery. Moreover, forced child begging violates a number of rights under the Convention on the Rights of the Child, including article 32 (1), which explicitly prohibits the economic exploitation of children. It falls under the worst forms of child labour, in accordance with the ILO Worst Forms of Child Labour Convention, 1999 (No. 182), and can constitute a violation of the prohibition on delivering a child for exploitation, as per the 1956 Supplementary Convention.<sup>50</sup>

49. In Belgium, putting children at the disposal of a beggar so that he or she can use them to arouse public sympathy and inciting children to beg are criminal offences.<sup>51</sup> There are, however, less clear-cut cases of child begging, where a parent begs with his or her child or children. This

<sup>48</sup> See Ministerial Circular of 26 September 2008.

<sup>49</sup> See [www.premier.be/sites/default/files/articles/Accord\\_de\\_Gouvernement\\_-\\_Regeerakkoord.pdf](http://www.premier.be/sites/default/files/articles/Accord_de_Gouvernement_-_Regeerakkoord.pdf), p. 156.

<sup>50</sup> Under article 1 (d) of the Convention, States parties agree to take all practicable and necessary legislative and other measures to bring about progressively and as soon as possible the complete abolition or abandonment of any institution or practice whereby a child or young person under the age of 18 years, is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour.

<sup>51</sup> See article 433 ter of the Criminal Code.

so-called “passive begging”, where a begging parent is only accompanied by his or her child or children, who are not themselves begging, is not criminalized.

50. This is exemplified by the 26 May 2010 decision of the fourteenth Chamber of the Brussels Court of Appeals (Arrêt No. 747), which ruled that, while a situation of a parent begging with his or her children in order to provoke the pity of passers-by is not desirable, it does not constitute a penal offence.<sup>52</sup> The Special Rapporteur’s interlocutors mainly agreed on the need to tackle the situation of parents begging with their children by adopting a social rather than a criminal law approach. However, there have been some opposing views and, in 2013, there was a discussion in the Belgian senate on a draft law aimed at amending the relevant provisions of the Criminal Code by penalizing all parents begging with their children.<sup>53</sup> The Special Rapporteur was informed that the debate on this amendment had been adjourned.

51. The Special Rapporteur agrees about the necessity to address the root causes of the problem and remains interested in the outcome of discussions of the working group on forced begging established in the Federal Public Service for Justice. The importance of focusing on prevention is even more evident since those involved in begging, including children, appear to belong mainly to the Roma community,<sup>54</sup> the members of which are marginalized and discriminated against, including in terms of access to basic social services, and often victims of prejudice and racism.<sup>55</sup>

52. The representatives of Roma non-governmental organizations with whom the Special Rapporteur met explained that begging with children was mainly due to the poverty of these communities, which are not homogenous and lack proper childcare arrangements. They adamantly dismissed the notion that it was part of Roma culture to beg, as portrayed by some. They emphasized the need for assistance to be provided to improve the socioeconomic situation of the members of these communities and for additional measures to ensure their integration, including customized immediate support and equal access to employment, skills training, housing and education.

53. While the social approach is important, the Special Rapporteur wishes to emphasize the need to remain vigilant in order to properly detect and identify children who are indeed exploited, either by being forced to beg by their parents or guardians or by other adults, and to bring perpetrators to justice, always with the best interest of the child as the primary consideration. She notes that a limited number of convictions under article 433 quinquies of the

<sup>52</sup> The Committee on the Rights of the Child, referring to this decision, called upon Belgium to expressly ban the use of children for begging on the streets whether or not the adults concerned involved are parents (CRC/C/BEL/CO/3-4, paras. 72 and 73). The Belgian child rights non-governmental organization coalition (CODE) commented by emphasizing the need to address the root causes of the problem and not to criminalize family members who themselves were extremely vulnerable. See [www.lacode.be/IMG/pdf/Analyse\\_Obs\\_fin\\_Mendicite.pdf](http://www.lacode.be/IMG/pdf/Analyse_Obs_fin_Mendicite.pdf). Upon the coalition’s request for clarification, the Chair of the Committee, in a letter dated 17 June 2013 explained that the Committee’s recommendation did not imply the need to penalize begging and imprison parents begging with a child.

<sup>53</sup> *Proposition de loi modifiant et complétant les dispositions de l’article 433 ter et suivants du Code pénal relatif à l’exploitation de la mendicité en vue d’interdire toute forme d’utilisation d’une personne a fortiori d’un enfant dans une démarche de mendicité*, 5-1477/1, Senate, 10 February 2012.

<sup>54</sup> According to estimates, there are some 30,000 Roma living in Belgium, including those having Belgian nationality and Eastern European Roma whose immigration status is in many cases precarious (National Roma Integration Strategy, Belgium, 2012).

<sup>55</sup> This is not Belgium-specific. See the 2012 report prepared for the European Commission entitled “Report for the study on typology and policy responses to child begging in the EU”, and RACE in Europe, *Trafficking for Forced Criminal Activities and Begging in Europe: Exploratory Study and Good Practice Examples*, London, September 2014.

Criminal Code for forced begging (not limited to children)<sup>56</sup> and a low number of cases investigated by the police might indicate a lack of proper victim detection and identification.

54. The Special Rapporteur is especially concerned about the information received that situations of adults begging with children, in which the adult is not necessarily the parent, or of children begging alone were not taken up by the front-line officials and that they have avoided taking action, effectively meaning that children who are victims of forced begging (or the adults or parents with them) are not identified and provided with the appropriate protection and assistance. The official stakeholders with whom the Special Rapporteur met referred to the complexity of situations and the difficulties in establishing evidence of forced begging, including when children are involved.

## D. Forced marriage

55. Forced marriage was criminalized in Belgium in 2007 through the inclusion of article 391 sexies in the Criminal Code.<sup>57</sup> Other relevant provisions include article 146 of the Civil Code, requiring the need for consent to marriage, and article 146 ter, stipulating that marriage is not valid either when contracted without the free consent of the two spouses or when the consent of at least one of the spouses was obtained through violence or threat. The recent amendment to the article 433 quinquies,<sup>58</sup> which added to the definition the words “taking control of the person”, was introduced, *inter alia*, to cover the situations of forced marriage.

56. Results of a study on the prevalence of forced marriage in the Brussels-Capital region<sup>59</sup> show the difficulty of obtaining reliable data on the phenomenon of forced marriage. According to the official statistics, there are between 10 and 15 cases of forced marriage per year in Belgium.<sup>60</sup> One of the challenges in relation to forced marriages, as explained to the Special Rapporteur by the researcher, is that it is underreported, either because of the victims’ lack of awareness about it being a criminal offence, fear of family retaliation or the absence of proper victim detection and identification.

57. This points to the fact that, while criminalization of forced marriage is important and in line with international standards, namely, the relevant provisions of the 1956 Supplementary Convention, which prohibits servile marriage, the preventive and protection aspects are crucial. The Special Rapporteur was encouraged by the attention that the Government is giving to this issue and the work undertaken by non-governmental organizations on forced marriages, also with the financial support of the authorities.<sup>61</sup> She wishes to emphasize the need for this engagement to continue, including in terms of awareness-raising and providing victims with specialized assistance.

<sup>56</sup> For example, the decision of the Sixth Chamber of the Criminal Court in Nivelles of 25 January 2013 involved a Slovakian defendant who was exploiting the begging of persons with disabilities.

<sup>57</sup> See Act of 25 April 2007 inserting article 391 sexies in the Criminal Code and amending certain provisions of the Civil Code to make forced marriage a criminal offence and broadening the grounds for annulment of such marriages.

<sup>58</sup> See Law of 29 April 2013 amending article 433 quinquies of the Criminal Code for the purpose of clarifying and extending the definition of trafficking in human beings.

<sup>59</sup> See Nawal Bensaid and Andrea Rea, *Etude relative aux mariages forcés en région de Bruxelles-Capitale*, 2012, available from <http://germe.ulb.ac.be/uploads/pdf/articles%20online/rapportMF2013NawalB.pdf>.

<sup>60</sup> The police statistics showed 11 formal complaints of forced marriage in 2013, compared with 14 in 2012; 12 in 2011; and 15 in 2010 (Police Criminal Statistics).

<sup>61</sup> For example, the network *Réseau mariage* et migration, composed of 21 associations, has organized training sessions and awareness-raising campaigns.

## V. Continuing challenges to eradicating contemporary forms of slavery

### A. Prevention

58. In terms of prevention, it is essential that the root causes that make people vulnerable to contemporary forms of slavery, such as poverty, inequality, social exclusion and discrimination, be addressed. This can be achieved by empowering individuals, focusing particularly on the most vulnerable, including migrants, especially those in an irregular situation, children, persons of foreign origin and Roma, and by guaranteeing their human rights.

59. At the federal level, the Government is tackling poverty and social exclusion through policy-level action: the third multi-year federal poverty reduction plan was being drafted at the time of the Special Rapporteur's visit; Belgium publishes a biannual report on poverty analysing recent trends, political measures and studies on the subject; and it has adopted a national action plan to fight child poverty. In order to ensure mainstreaming of the issue across the federal Government, a network of anti-poverty officers and the system of "experts by experience" were introduced. To address the social exclusion of immigrants, the Flemish and the Walloon governments established civic integration programmes.<sup>62</sup> The Inter-federal Centre for Equal Opportunities is mandated to promote equality and fight discrimination, and legislation to that effect has been adopted at different levels.

60. In March 2012, Belgium launched a national Roma integration strategy, and the Special Rapporteur was informed first-hand about the work undertaken by Roma mediators and community stewards deployed in cities with a high percentage of Roma. In Ghent, the Special Rapporteur was provided with information on an outreach programme aimed at bringing those most vulnerable into contact with the appropriate services. Similarly, in Namur, a multidisciplinary team of the social cohesion department carries out a number of activities for those in need.

61. In terms of poverty alleviation, the municipal public social welfare centres offer assistance, in the form of either a right to social integration by means of employment or an integration income or the right to social assistance (material or non-material aid). Given that the right to reside in Belgium is a prerequisite for being eligible for this assistance, the Eastern European Roma communities do not in general have access to it.

62. The Special Rapporteur was encouraged by the programmes and policies in place at the federal, regional and community levels aimed at addressing poverty and marginalization of the most underprivileged parts of the population. However, according to the information obtained, the level of poverty in Belgium has not changed considerably: in 2013, 20.8 per cent of Belgians were at risk of poverty or social exclusion.<sup>63</sup> Moreover, vulnerable groups continue to face discrimination and obstacles to the full enjoyment of their economic, social and cultural rights, especially in terms of access to education, vocational training, employment, health care and housing.

63. Another important part of the prevention work is raising awareness regarding contemporary forms of slavery. The Special Rapporteur received information about several initiatives undertaken by the authorities and other actors, such as specialized centres, including the development of a brochure for medical personnel and a multilingual leaflet about the referral

<sup>62</sup> The Council of Europe European Commission against Racism and Intolerance referred to a conceptual problem with the integration policies of Belgium, focusing only on what immigrants should do rather than looking at it as a two way process, including intercultural dialogue. See [www.coe.int/t/dghl/monitoring/ecri/country-by-country/belgium/BEL-CbC-V-2014-001-ENG.pdf](http://www.coe.int/t/dghl/monitoring/ecri/country-by-country/belgium/BEL-CbC-V-2014-001-ENG.pdf), para. 117.

<sup>63</sup> Less than the European Union average of 24.5 per cent. See [www.luttepauvre.be/chiffres\\_nombre\\_pauvres.htm#4](http://www.luttepauvre.be/chiffres_nombre_pauvres.htm#4).

system in place. Nevertheless, she notes the absence of any awareness-raising campaigns aimed at the general public that could have a preventive effect.

## **B. Victim detection and identification**

64. In order for victims to be able to gain access to the system of protection and assistance in place, should they not reach out to it independently, they need to be identified. Both official and unofficial stakeholders with whom the Special Rapporteur met highlighted the issue of proper victim detection and identification as crucial and at times problematic.

65. While noting the existence of specialized units that investigate claims of exploitation in slavery-like conditions within the inspectorates, the police and the Immigration Office, the Special Rapporteur emphasizes the need for other non-specialized front-line officials to acquire skills in victim detection and identification through appropriate training. Furthermore, she wishes to draw attention to the fact that focusing the controls by the police and social and labour inspectorates on high-risk sectors may impede the identification of victims in other, atypical sectors.

66. The Special Rapporteur also heard concerns that the emphasis of the existing framework of multidisciplinary cooperation on third-country nationals, especially those in an irregular situation, might have an impact on victim detection and identification by not taking into account the fact that victims of modern slavery can also include Belgians, other European Union nationals and those legally residing in Belgium.

67. The Special Rapporteur regrets that, according to the information received, children, including unaccompanied children, are not always perceived as potential victims of contemporary forms of slavery by front-line officials and that hardly any child victims have been officially identified. She is also concerned about children who are exploited in forced begging not being identified as potential or actual victims.

68. While the Special Rapporteur welcomes the recent legislative changes<sup>64</sup> introducing legal guardians also for unaccompanied children from the countries of the European Economic Area<sup>65</sup> and Switzerland, she is concerned that not all guardians have the expertise to identify victims of contemporary forms of slavery. In this regard, she welcomes the first training session for guardians organized after her visit and the adoption of a circular aimed at, inter alia, improving the existing cooperation between those involved in identifying unaccompanied children and providing care.<sup>66</sup> The Special Rapporteur emphasizes the need for continued scrutiny to ensure that guardians strengthen their cooperation with the specialized staff of reception centres for unaccompanied children.

## **C. Right to an effective remedy**

69. In the meetings held by the Special Rapporteur, issues related to the right to an effective remedy for victims of contemporary forms of slavery, including in terms of effective access to justice and adequate and prompt reparation, were often raised as problematic.

<sup>64</sup> Law of 12 May 2014 modifying Title XIII, Chapter VI “Unaccompanied minor aliens” of the Programme Law of 24 December 2002 (Loi du 12 mai 2014 modifiant le titre XIII, chapitre VI, de la loi-programme (I) du 24 décembre 2002 en ce qui concerne la tutelle des mineurs étrangers non accompagnés).

<sup>65</sup> *European Union* member States and the three European Free Trade Association States (Iceland, Liechtenstein and Norway).

<sup>66</sup> Circular of 8 May 2015 concerning the form used to identify unaccompanied children and concerning the provision of care, published on 20 May 2015. [www.ejustice.just.fgov.be/cgi/article\\_body.pl?language=fr&caller=summary&pub\\_date=15-05-20&numac=2015000265](http://www.ejustice.just.fgov.be/cgi/article_body.pl?language=fr&caller=summary&pub_date=15-05-20&numac=2015000265).



70. This was said to be partly due to the reduction in resources allocated to the specialized victim centres, resulting in victims not being able to secure the legal services of lawyers with experience in working with the centres and who were thus well acquainted with the legal procedure. Furthermore, a means test is applied, in which a certain threshold determines whether victims can gain access to free legal aid, and another threshold determines whether the aid can be provided partially free of charge. There are situations in which victims who are eager to rebuild their lives and manage to earn an income find that they are no longer entitled to free legal aid.

71. An additional impediment in terms of effective access to justice can be the lack of assistance of a qualified interpreter from the moment of detection through the judicial procedure. The Special Rapporteur is concerned that the specialized centres struggle with sufficient funds for interpreting, which could potentially put certain victims in a disadvantaged position in terms of access to justice.

72. The Belgian system provides the possibility for victims to obtain reparations in the form of compensation for the damage suffered. This can be achieved by the victim filing civil charges requesting compensation during the criminal trial. Victims can also make a separate civil application before the civil court<sup>67</sup> and the Federal Migration Centre and the specialized centres also may file a civil lawsuit either on their behalf or on behalf of the victim with his or her consent.<sup>68</sup>

73. However, the Special Rapporteur was informed that, in general, obtaining compensation proves to be difficult even when the court has ordered it, since offenders often arrange their finances to ensure that nothing is available to compensate victims. The individual has to enforce the judgement against the offender through a procedure that is lengthy and involves additional costs, when in fact, it was pointed out to the Special Rapporteur, it would be preferable for the State to ensure that compensation orders are enforced.

74. In cases where a victim cannot obtain compensation from the perpetrator, it is possible to apply for financial aid to the Commission for Financial Aid for Victims of Deliberate Acts of Violence, at the Federal Public Service for Justice, which manages a fund with the same name.<sup>69</sup> This avenue, subsidiary in nature and open for those in an irregular situation, is rarely used by the victims of contemporary forms of slavery and is subject to a number of conditions.<sup>70</sup> So far, only victims of sexual exploitation have been successful in obtaining compensation from the fund.

## VI. Recommendations

**75. The Special Rapporteur would like to commend the Government of Belgium for the comprehensive legal and institutional framework that it has put in place to combat contemporary forms of slavery. In order to address the remaining normative and implementation gaps, the Special Rapporteur recommends that the State party:**

**(a) Provide for contemporary forms of slavery not yet criminalized, such as forced labour and debt bondage, to be treated as distinct criminal offences, in accordance with the international treaties ratified by Belgium;**

<sup>67</sup> The civil action is suspended until the definite ruling of the criminal judge.

<sup>68</sup> In 2013, its predecessor filed civil charges in 13 human trafficking cases (Federal Migration Centre, Belgium, 2013 Annual report on human trafficking, p. 1).

<sup>69</sup> See articles 28–41 of the Law dated 1 August 1985 on, inter alia, fiscal measures and its amendments. See [www.ejustice.just.fgov.be/cgi\\_loi/change\\_lg.pl?language=fr&la=F&cn=1985080130&table\\_name=loi](http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=1985080130&table_name=loi).

<sup>70</sup> See “L’aide financière aux victimes d’actes intentionnels de violence et aux sauveteurs occasionnels”, available from [http://justice.belgium.be/fr/binaries/L%E2%80%99aide%20financi%C3%A8re%20aux%20victimes%20d%E2%80%99actes%20intentionnels%20de%20violence\\_tcm421-142524.pdf](http://justice.belgium.be/fr/binaries/L%E2%80%99aide%20financi%C3%A8re%20aux%20victimes%20d%E2%80%99actes%20intentionnels%20de%20violence_tcm421-142524.pdf).

(b) Ensure that there are no differences in the judicial interpretation of “labour or services in conditions contrary to human dignity” enshrined in article 433 quinquies of the Criminal Code, including by providing additional guidance in the updated circular of 17 January 2007;

(c) Align domestic legislation with the provisions of the ILO Domestic Workers Convention, 2011 (No. 189), with the aim of minimizing the possibility of abuse and exploitation of domestic workers;

(d) Ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the 2014 Protocol to the ILO Forced Labour Convention, 1930 (No. 29), and the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

(e) Establish an independent national human rights institution in line with the Principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles), and include as a part of its mandate the fight against contemporary forms of slavery;

(f) Provide the newly created Federal Migration Centre and Inter-federal Centre for Equal Opportunities with sufficient resources to carry out their mandates effectively and ensure that this restructuring will not weaken human rights protection;

(g) Introduce a centralized system for the collection, recording and analysis of disaggregated statistical data on contemporary forms of slavery to assist with policymaking, while duly respecting data protection and privacy;

(h) Continue to focus on prevention by addressing the root causes of contemporary forms of slavery, notably by adopting effective measures to combat poverty and discrimination against those most vulnerable, including by ensuring their full enjoyment of economic, social and cultural rights and guaranteeing their de facto integration into the society;

(i) Organize sustainable nationwide awareness-raising campaigns to inform the wider public about the risks of contemporary forms of slavery and the referral system in place;

(j) Provide for a toll-free 24-hour helpline available in multiple languages to enable victims and vigilant citizens to report crimes of slavery and slavery-like practices and to obtain support and assistance;

(k) Ensure that the primary focus of the referral system, which should benefit all victims of contemporary forms of slavery, is on the human rights of the victim. In this regard, services provided should be tailored to the specific needs of the victims, regardless of their nationality or residency status in Belgium. Specific consideration should be given to those who are unable to cooperate with the judicial authorities, including in terms of being issued with a residency permit;

(l) Provide all actors forming part of the multidisciplinary approach to address contemporary forms of slavery with sufficient and sustainable human and financial resources in order to be able to carry out their functions;

(m) Strengthen victim detection and identification, including by providing continued specialized training to all front-line actors who regularly come into contact with potential victims and to the reference magistrates responsible for granting official victim status;

(n) Provide training on victim detection and identification to non-specialized front-line actors, such as health-care personnel, social workers, school staff, legal

guardians of unaccompanied children and staff of the public social welfare centres and child protection services;

(o) Perform unannounced, well-coordinated and regular controls by properly trained and resourced inspection services and the police, and pay specific attention to sectors other than those traditionally considered to be high-risk;

(p) Strengthen cooperation with trade unions and employers' organizations in terms of combating forced labour;

(q) Organize training for all relevant front-line officers on prompt and effective investigation, including on proactive investigation techniques and the use of new investigation methods, on referral of victims, including child victims, and on victim assistance and protection;

(r) Adequately inform victims, once identified, of their rights, including the right to a 45-day reflection period, which should always be respected, and put victims in direct contact with one of the three specialized centres and provide them with quality interpretation, if needed;

(s) Ensure that victims are immediately appointed a specialized, free-of-charge and quality lawyer to represent them throughout the procedure, regardless of whether they are employed or not;

(t) Provide law enforcement officials, prosecutorial and judicial authorities with regular training on the relevant legislation in order to properly apply it in practice and to ensure prompt and effective prosecution and punishment of perpetrators;

(u) Provide all victims of contemporary forms of slavery with access to an effective and appropriate remedy, including compensation. Ensure that compensation is enforced and that those who cannot obtain compensation through the court procedure benefit from it either by the Fund for Financial Aid for Victims of Deliberate Acts of Violence or by a newly established special compensation fund that is effectively accessible to all victims;

(v) Give priority attention to the vulnerability of children, especially unaccompanied children, to contemporary forms of slavery, including forced child begging, taking their best interest as a primary consideration. The Government, in cooperation with relevant stakeholders, should undertake a comprehensive study on the vulnerability of children to slavery and slavery-like practices. It should ensure the proper detection and identification of child victims, provide them with age-appropriate professional assistance and accommodation in specialized centres and access to quality education, should reduce the number of stakeholders in contact with the child and, if relevant, should grant them residency permits regardless of their cooperation with the authorities. Relevant actors working in the field of child rights at all levels, such as civil society organizations, child protection authorities and the independent institutions for children's rights, should be regularly consulted on matters relating to child victims;

(w) Conduct a comprehensive assessment of the au pair system in order to be able to appropriately tackle vulnerabilities of au pairs to contemporary forms of slavery;

(x) Continue to address the issue of forced marriages in cooperation with civil society organizations and other relevant stakeholders and provide the victims with appropriate specialized assistance, including in accommodation structures especially tailored for them;

(y) Ensure full implementation of European Union Directive 2009/52/EC providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals and continue to address the vulnerabilities of

undocumented workers to economic exploitation, including by raising awareness of their rights to seek redress;

(z) Reflect the present recommendations, as relevant, in the national action plan on business and human rights that was being drafted at the time of the Special Rapporteur's visit.

76. In addition, the Special Rapporteur recommends that businesses pay attention to the risks of contemporary forms of slavery in operations in Belgium. Businesses should respect internationally recognized human rights, at a minimum those enshrined in the International Bill of Human Rights and the ILO Declaration on Fundamental Principles and Rights at Work, undertake ongoing human rights due diligence and ensure remediation of any negative human rights impact they cause or contribute to, in accordance with the Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework.

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