



# BELGIUM

SUBMISSION TO THE UNITED NATIONS HUMAN RIGHTS COMMITTEE  
127<sup>TH</sup> SESSION, 14 OCTOBER- 9 NOVEMBER 2019

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# 1. INTRODUCTION

This submission is prepared in advance of the United Nations (UN) Human Rights Committee's (hereinafter, "the Committee") review of the sixth periodic report of Belgium at its 127<sup>th</sup> Session in October 2019. It provides an overview of Amnesty International's main concerns under the International Covenant on Civil and Political Rights (hereinafter, "the Covenant"). These include concerns related to the human rights implementation and prevention architecture, extraterritorial obligations, persons deprived of liberty, ethnic profiling by police, counter terrorism measures, asylum and migration procedures and practises, and gender-based violence.

## 2. HUMAN RIGHTS IMPLEMENTATION AND PREVENTION ARCHITECTURE (ARTICLE 2)

### 2.1 NATIONAL HUMAN RIGHTS INSTITUTION

On 25 April 2019, Belgium's Federal Parliament adopted a law establishing a federal human rights institute (FHRI)<sup>1</sup> which civil society organisations cautiously applauded<sup>2</sup> as a step in the direction of the National Human Rights Institution (NHRI) Belgium repeatedly pledged to establish.<sup>3</sup>

As a 'federal' Institute, the FHRI's mandate is limited to "all matters pertaining to fundamental rights that fall under federal competency" (emphasis added).<sup>4</sup> The law explicitly anticipates so-called inter-federalisation of the FHRI. This means that by agreeing and assenting to a Cooperation Agreement, the governments and parliaments of the Regions and Communities expand the role of the institute to cover their respective areas of competence.

The law further limits the mandate of the FHRI by excluding matters that "are dealt with by sectoral institutions for the promotion and the protection of human rights."<sup>5</sup> Sectoral institutions are described as "independent bodies for the protection and promotion of human rights that cover a specific mandate and have been established by law, decree, ordonnance or cooperation agreements."<sup>6</sup> The law does not specify

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<sup>1</sup> [Loi de 12 mai 2019](#) portant création d'un Institut fédéral pour la protection et la promotion des droits humains.

<sup>2</sup> See, for instance, the reactions of NGO's like [Amnesty International](#), the [Ligue des droits humains](#) and the [Liga voor Mensenrechten](#). ENNHRI reacted similarly.

<sup>3</sup> For a selective overview up to 2015, see p. 4 of Amnesty International, *Belgium: Submission to the UN Universal Periodic Review*, June 2015 (Index: [EUR 14/2497/2015](#)). Hereinafter: A.I. *Belgium: UPR-submission*, 2015.

<sup>4</sup> Article 3 of the Law of 12 May 2019

<sup>5</sup> Article 4 §1 of the Law of 12 May 2019

<sup>6</sup> Article 2, 3° of the Law of 12 May 2019

the intended bodies, but in the preparatory works, 13 sectoral bodies that are members of an existing 'platform for discussion' are mentioned.<sup>7</sup>

These 13 institutions vary in scope, constitutional framework (some are federal, some regional, others inter-federal) and, importantly, independence. Some appear to be established in line with the Paris Principles' provisions about guarantees of independence and pluralism, while others are not. It is therefore not clear whether the FHRI would be mandated to express opinions over issues that are covered by sectoral institutions that are for instance not compliant to the Paris Principles' provisions on independence.

The law intends to establish a human rights institution with a "general and residual"<sup>8</sup> mandate and scope. The explicit exclusion of specific topics covered by other bodies partly voids the general mandate of the FHRI. Surely, the FHRI must be able to address cross-cutting issues that touch upon specific human rights issues that are covered by other institutes.

The new institute is also charged with facilitating and evaluating the "dialogue and cooperation with the organisations mandated with the protection and promotion of human rights."<sup>9</sup> The law provides for the establishment of an Advisory Council (articles 13-15) which institutionalises the cooperation and coordination between the new institute and the existing (but unspecified) 'sectoral bodies'. However, the articles in the law that cover the Council's establishment and its working methods, only enter into force once inter-federalisation has been completed (article 21).

## RECOMMENDATIONS

Amnesty International is concerned about the limits to the mandate and the unclear position the FHRI will take within the constitutional and human rights monitoring landscape in Belgium. The new human rights institute will have to clarify its mandate, responsibilities and modes of cooperation. The FHRI and the other existing human rights institutions will need to find and agree practical and efficient solutions to ensure the greatest possible advancement for the protection and promotion of all human rights.

Amnesty International recommends that the Belgian authorities:

- Agree to the inter-federalisation of the FHRI so that it has "as broad a mandate as possible"<sup>10</sup> and is no longer confined to federal matters.
- Clarify that – though collaboration and cooperation with sectoral bodies are key objectives of the FHRI – the FHRI has full autonomy to address any human rights issue.
- Request the newly established federal human rights institute to elaborate on and explore ways to effectively work together with existing bodies pending inter-federalisation and the establishment of the Advisory Council.

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<sup>7</sup> They are: (1) the inter-federal equality body Unia (with B-status NHRI-accreditation); (2) the federal migration centre (Myria), (3) the national Combat Poverty, Insecurity and Social Exclusion Service; (4) the federal Institute for the Equality between Women and Men; (5) the (federal) Data Protection Entity (DPA); (6) the (inter-federal) National Commission on the Rights of the Child; (7) the (federal) Standing Intelligence Agencies Review Committee (Committee I); (8) the (federal) Central Monitoring Council for the Penitentiary System; (9) the Flemish Children's Rights Commissioner and (10) General 'Délégué' for the rights of the child for French speaking Belgium, (11) Ombuds-services at Federal, (12) French Speaking Community and Walloon region and (13) German Speaking Community level. Source: preparatory works to the Law of 12 May 2019 (DOC 543670/001).

<sup>8</sup> Preparatory works - DOC 543670/001.

<sup>9</sup> Article 3 of the Law of 12 May 2019

<sup>10</sup> Article 2 of the UN Paris Principles relating to the status of national institutions

## 2.2 A NATIONAL PREVENTATIVE MECHANISM

Belgium signed the Optional Protocol to the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) on 24 October 2005 but has not yet ratified the Protocol and has not established a National Preventative Mechanism. Recently, there have been important advancements.

On 19 July 2018, the federal Parliament adopted a law assenting to the OPCAT.<sup>11</sup> Though this law concludes a series of necessary legal steps to allow for the ratification,<sup>12</sup> the law had not been published in the State Monitor and the ratification had not been finalised at the time of writing.

The reason for the delay could be the absence of a plan on how to establish the National Preventative Mechanism, foreseen by the OPCAT.<sup>13</sup> The Minister of Justice continued to rely on “complexities” stemming from Belgium’s institutional and constitutional lay-out as reason for the delays.<sup>14</sup>

Belgium did however make progress on improving the oversight mechanisms for federal prisons. One of the key changes is the reform of the Central Prison Monitoring Council (CPMC) which now is established by law<sup>15</sup> and mandated by the Federal Parliament (and not by executive decree like the CPMC’s predecessor)<sup>16</sup> and whose members will be chosen by Parliament.<sup>17</sup> The scope of the CPMC is limited to the 35 federal prisons in Belgium. Other places where people are deprived of their liberty, including detention facilities for people with mental-health issues, police holding cells and detention centers for minors are not covered by the CPMC’s mandate.<sup>18</sup>

The relation between the CPMC and a future NPM is not clear. The prevailing notion appears that the CPMC would become a segment of a series of NPMs covering specific places of detention. Coordination of these NPM’s and the monitoring of any residual places of detention would then fall to the (in future, national or inter-federal) Human Rights Institute.<sup>19</sup>

## RECOMMENDATIONS

Amnesty International recommends that the Belgian authorities:

- Ratify OPCAT, without further delays and without making any reservation;
- Establish as a matter of priority a National Preventative Mechanism(s) that can monitor all places where people are deprived of their liberty.

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<sup>11</sup> See [Parliamentary Works](#) of the law assenting to the OPCAT - 54-3192.

<sup>12</sup> The parliamentary assemblies of the Regions and Communities had previously assented to ratifying OPCAT: Brussels Capital Region ([Ordonnance du 27 juillet 2017](#)) ; Walloon Region ([Décret du 13 mars 2014](#) and [Décret du 13 mars 2014 \(2\)](#)); French Speaking Community ([Décret du 27 février 2014](#)); Flanders ([Décret de 13 juillet 2012](#)); German Speaking Community ([Décret de 25 mai 2009](#)).

<sup>13</sup> See p. 14-15 of the debate in [Parliament](#) about adoption of the law assenting to OPCAT, as well as the Minister’s [response](#) to a Parliamentary question on 27 May 2019 (Question N° 6-2348, introduced on 4 February 2019).

<sup>14</sup> [Question](#) N° 6-2348.

<sup>15</sup> [Royal Decree of 19 July 2018](#).

<sup>16</sup> Article 39 and following of [Loi portant des dispositions diverses en matière pénale de 11 juillet 2018](#); Article 119 of [Loi modifiant le statut juridique des détenus et la surveillance des prisons et portant des dispositions diverses en matière de justice de 25 décembre 2016](#).

<sup>17</sup> M. Nève, ‘Belgique: le Conseil central de surveillance pénitentiaire recrute 350 citoyens pour observer les prisons du pays’, 11 July 2019.

<sup>18</sup> Other potential shortcomings include that the government is not required to respond to the annual reports the CPMC will produce. For more see: T. Daems, ‘[Rijp voor puberteit](#)’, *FATIK*, januari – maart 2017, 153, 13-19.

<sup>19</sup> See in this sense also: T. Daems, cited above.

# 3. EXTRATERRITORIAL OBLIGATIONS (ARTICLE 2, 6, 7 & 9)

## 3.1 BUSINESS AND HUMAN RIGHTS

Amnesty International has documented cases in which Belgian companies have been implicated in human rights abuses in other countries. In one such case, Belgium took insufficient action to hold the relevant company to account.<sup>20</sup> Belgium does not at present have a national legislative or policy framework that requires Belgian companies to respect human rights extraterritorially. Companies are not legally required to conduct human rights due diligence in their global operations or supply chains or report publicly on the steps taken.<sup>21</sup>

Belgium has adopted a National Action Plan to implement the UN Guiding Principles on Business and Human Rights, but it focussed primarily on awareness-raising and voluntary commitments. The plan will be revised in 2020. This offers the Belgian authorities the opportunity to institute a range of legal and policy reforms to ensure that Belgian companies respect human rights throughout their operations and supply chains and that, where human rights abuses occur, Belgium will hold companies to account and ensure that victims can access remedial mechanisms inside Belgium if they need and wish to do so.

## RECOMMENDATIONS

Amnesty International recommends that the Belgian authorities:

- Adopt legal and policy reforms to require companies domiciled or headquartered in Belgium to carry out human rights due diligence throughout their global operations and supply chains, and report publicly on the steps taken including details of any specific human rights issues identified and how the company dealt or plans to deal with them.
- Put in place measures to ensure that all Belgian state support to companies domiciled or headquartered in Belgium that are operating or planning to operate abroad, whether that support is through export credits, insurance support or diplomatic support, is made conditional upon the company carrying out human rights due diligence in relation to its operations and supply chains and reporting publicly on the steps taken.

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<sup>20</sup> Amnesty International, *Bulldozed: How a mining company buried the truth about forced evictions in the Democratic Republic of the Congo* (Index: AFR 62/003/2014); Amnesty International, *Chains of Abuse: The global diamond supply chain and the case of the Central African Republic* (Index: AFR 19/2494/2015)

<sup>21</sup> See also: Amnesty International, *Bulldozed* (cited above).



## 3.2 INTERNATIONAL JUSTICE

Though Belgium usually champions tackling impunity for crimes under international law, the State's current criminal procedure law is lacking on several fronts. Universal jurisdiction is only foreseen for certain crimes<sup>22</sup>, but for all crimes under international law - the active or passive principle of personality governs whether prosecution is possible.<sup>23</sup>

Belgium should explicitly clarify that for all crimes under international law, including genocide, crimes against humanity, war crimes, torture, enforced disappearance and extrajudicial executions, it will apply the *aut dedere aut judicare* principle.<sup>24</sup> The State should also ensure that there is no longer a statute of limitations for the prosecution of the crimes of torture<sup>25</sup>, enforced disappearance and extrajudicial executions, nor for civil tort suits based on crimes under international law. The federal government should ensure that the judiciary has sufficient means to investigate and prosecute crimes under international law and human rights violations and abuses.

Belgium ratified the International Convention for the Protection of All Persons from Enforced Disappearance but has yet to make several legal changes, in particular to the criminal code, to implement the Convention.<sup>26</sup>

## RECOMMENDATIONS

Amnesty International recommends the Belgian authorities to:

- Explicitly stipulate in its laws that it considers itself obliged to either exercise jurisdiction over a person suspected of committing a crime under international law, or to extradite the person to a state able and willing to do so, or to surrender the person to an international criminal court;
- Promptly take the necessary legislative measures needed to bring its laws in conformity with the Convention for the Protection of All persons from Enforced Disappearance, as recommended by CED.

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<sup>22</sup> Certain acts of terrorism, sexual crimes, trafficking of human beings and certain corruption crimes

<sup>23</sup> Artikel 6, 1°bis en artikel 10, 1°bis Titre Préliminaire du Code de Procédure Penale.

<sup>24</sup> For further background, see: Amnesty International, *Universal Jurisdiction*, September 2001 (Index: IOR 53/003/2001). An implicit reference to the principle exists in Belgian law in the sense that it is stipulated that Belgian courts are also competent to judge when international treaties, European Union law or international customary law so prescribe (article 12bis Titre préliminaire du Code de procédure pénale). This reference is unsatisfactory since it leaves grey areas, now that such a strong basis in international law is as of yet uncertain for some crimes under international law (The obligation to extradite or prosecute (*aut dedere aut judicare*): Final Report of the International Law Commission, 2014, p. 7, see also 53 and The obligation to extradite or prosecute (*aut dedere aut judicare*): Comments and observations received from Governments, 26 March 2009, p. 180.)

<sup>25</sup> In the sense of article 1 of the Convention Against Torture.

<sup>26</sup> See also: CED, *Concluding observations on the report by Belgium*, CED/C/BEL/CO/1.

## 3.3 ARMS TRANSFERS TO PARTIES IN THE CONFLICT IN YEMEN

In February 2019 an Amnesty International investigation documented Minimi-machine guns being used by “The Giants”, a Yemeni militia that is backed and supplied by the United Arab Emirates but unaccountable to any government. The weapons were probably sold by Belgium to the UAE. Both the UAE and unaccountable militias like the “Giants” are involved in serious human rights violations or abuses in Yemen.<sup>27</sup>

From the Walloon region<sup>28</sup> in particular, weapons continued to be exported to members of the Saudi-led coalition in Yemen. Amnesty International campaigned for an end to these transfers and for more transparency. In 2017, 153 million euros worth of licenses were granted for transfers to Saudi Arabia, in 2018, licenses worth 195 million euros<sup>29</sup> were allowed, making it the single most important export country for weapons export from the Walloon region.

## RECOMMENDATIONS

Amnesty International recommends the Belgian authorities, the regions in particular, to:

- Halt any arms transfers when there is a substantial risk that the weapons will be used to commit or facilitate serious violations of human rights law or humanitarian law;
- Halt the transfer of weapons that risk being used by any of the parties in the conflict in Yemen;
- Ensure their legislation is aimed at avoiding such transfers.

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<sup>27</sup> Amnesty International, *When Arms Go Astray – the deadly new threat of arms diversions to militias in Yemen*, February 2019.

<sup>28</sup> Since 2003 arms transfer control is a regional competence in Belgium. Four different legal regimes exist, one for each region (Flanders, Wallonia and Brussels) and one for federal transfers (for a remainder category including transfers like army purchases). Wallonia is by far the largest exporter of the four.

<sup>29</sup> Data: [Belgique: 2018 - Rapport Annuel sur les exportations et les importations d'armes classiques](#).

# 4. PERSONS DEPRIVED OF THEIR LIBERTY (ARTICLES 7 & 9)

## 4.1 PRISONERS' LEGAL STATUS

The rights of detainees are specified primarily in the Act on Principles of Prison Administration and Prisoners' Legal Status (commonly referred to as the 'Dupont Act') of 12 January 2005 which defines prisoners' legal status and lays down rules governing prison administration. Its implementation is an ongoing process. Many human rights bodies and civil society organisations, including this Committee<sup>30</sup>, the European Committee on the Prevention Against Torture (CPT),<sup>31</sup> the Committee Against Torture (CAT)<sup>32</sup> and Amnesty International<sup>33</sup> have expressed concern about the delayed entry into force of key provisions of the Dupont Act. In recent years, the law has been amended on several fronts and significant progress has been made on the implementation of particular elements of the Dupont Act. Recent developments on the implementation of the Act include<sup>34</sup>:

- Changes to and entry into force of the articles pertaining to monitoring bodies within each prison (so-called Oversight Committees) and the reform of the Central Prison Monitoring Council (CPMC – Chapter 2.2) (articles 26-27 and 29-31).<sup>35</sup>
- The entry into force of provisions about the creation of consultative bodies within each prison (article 7).<sup>36</sup>
- The provisions about complaint procedures for detainees (articles 147-166) should enter into force on 1 April 2020.<sup>37</sup>
- The articles stipulating the adoption of individual detention plans for convicted detainees (aimed at compensation, possible transfers, rehabilitation and reintegration into society) entered into force in April 2019 (articles 35-40).<sup>38</sup>
- Provisions with regard to minimum material conditions, fire safety and hygiene (see below Chapter 4.3) were clarified in a royal decree that took effect on 14 February 2019 (article 41).<sup>39</sup>
- Provisions on the prison regime entered into force in 2018 (articles 48-52).<sup>40</sup>
- The right of detainees to participate in work activities (articles 81-86) should enter into force on 1 January 2020.<sup>41</sup>

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<sup>30</sup> Point 18 of CCPR/C/BEL/CO/5

<sup>31</sup> §87 CPT, *Rapport au Gouvernement de la Belgique relatif à la visite effectuée en Belgique par le Comité européen pour la prévention de la torture et des peines ou traitements inhumains ou dégradants (CPT) du 23 au 27 avril 2012*, CPT/Inf (2012) 36, Strasbourg, 13 December 2012.

<sup>32</sup> §14 CAT/C/BEL/CO/3

<sup>33</sup> Amnesty International, *Belgium: Submission to the United Nations Committee Against Torture*, October 2013 (Index: EUR 14/002/2013). Hereinafter: A.I. *Belgium: CAT-submission*. 2013.

<sup>34</sup> See also Belgium's footnotes *document – Annex 0*, number 172.

<sup>35</sup> Royal decree of 19 July 2018.

<sup>36</sup> Entered into force: 15 September 2018, Royal Decree of 22 June 2018.

<sup>37</sup> Entry into force on the 1<sup>st</sup> of April 2020. See; Art. 7 Royal Decree of 19 July 2018.

<sup>38</sup> Enters into force: 29 April 2019, Royal Decree 5 April 2019

<sup>39</sup> Entered into force: 14 February 2019, Royal Decree 3 February 2019.

<sup>40</sup> Entered into force: 1 November 2018, Royal Decree 3 October 2018.

<sup>41</sup> Entry into force: 1 January 2020, Royal Decree 26 June 2019.

Provisions that have yet to enter into force include the amended<sup>42</sup> article 15§2, which provides that specific prisons or prison sections are designated for special categories of prisoners. Articles of the Dupont Act stipulating detainees' rights to health care have not entered into force either (articles 87-98). This includes the provision that detainees should enjoy the same standards of health care that are available in the community (art. 88).

## 4.2 STRIP SEARCHES

In 2013, Amnesty International, the Committee against Torture and others asked to revoke an amendment to the Dupont Act that had recently entered into force and which made strip searches of prisoners a standard procedure on several occasions.<sup>43</sup> On 29 January 2014, the Constitutional Court annulled this provision.<sup>44</sup> Amnesty International welcomes this rectification, though it is worrying that that it subsequently took 3 years before this annulment was accepted by the prison administration, according to the Central Monitoring Council.<sup>45</sup>

The rules and practices of the application of strip searches and body cavity searches outside of the context of prisons are less rigorously regulated.<sup>46</sup> Amnesty International could not find data or other reporting on the application of such searches in other circumstances.

## 4.3 CONDITIONS OF DETENTION AND OVERCROWDING

Conditions of detention in prisons remain worrying due to overcrowding, dilapidated facilities and insufficient access to basic services.<sup>47</sup> In addition, staff shortages, lack of adequate financial resources, poor staff security and violence by prisoners have led in several occasions for prison staff to go on strike. In the absence of proper mechanisms to care for prisoners during strikes, industrial actions often resulted negatively on detention conditions, health and security for detainees.<sup>48</sup>

Following repeated criticism, in particular by the CPT,<sup>49</sup> a new law entered into force in July 2019 aimed at installing a so-called minimum service during industrial action that requires the provision of certain minimum services to be guaranteed to detainees during prison staff strikes.<sup>50</sup>

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<sup>42</sup> The current article only mentions specific prisons or prison sections for remand detainees, female detainees and female detainees accompanied by children under the age of three. The original provision additionally stipulated separate prisons for *inter alia* detainees serving prison sentences of at least 5 years and detainees who need specific care (due to age, physical or mental health).

<sup>43</sup> For further information please see: A.I. *Belgium: CAT-submission*. 2013 (Index: [EUR 14/002/2013](#)).

<sup>44</sup> Art. 108§2 of the Dupont Act was annulled by the [Judgement 20/2014](#) of 29 January 2014 of Belgium's Constitutional Court.

<sup>45</sup> [Advice](#) of the Central Council 2017-07.

<sup>46</sup> Article 28 of the Police-Act ([Loi de 5 août 1992 sur la fonction de police](#)) for instance does not provide provisions about reporting obligations.

<sup>47</sup> See for instance: CPT, *Rapport au Gouvernement de la Belgique relatif à la visite effectuée en Belgique par le Comité européen pour la prévention de la torture et des peines ou traitements inhumains ou dégradants (CPT)*, le 8 mars 2018, CPT/Inf (2018)8, §66, 68, 70. OIP Belgique. *L'Etat belge responsable de la surpopulation carcérale*, 18 janvier 2019, OIP Belgique and ECtHR: [Vasilescu v. Belgium](#), (64682/12) 2014.

<sup>48</sup> CPT. [Public Statement](#) concerning Belgium, Strasbourg, 13 July 2017 (CPT/Inf (2017) 18); See also: [Report of CPT visit during May 2016 strike](#); And strike reports by the [Committees of oversight of Antwerp](#) (4 July 2018, ), but also: [Louvain](#) (6 July 2018)

<sup>49</sup> The CPT has been raising the issue since 2005, including through a [public statement](#). See also: Amnesty International, *Public Statement, Belgium: action needed to uphold repeated human rights promises*, June 2016 (Index: EUR 14/4349/2016), and ECtHR, [Clasens c. Belgique](#), (26564/16) (2019).

<sup>50</sup> The implementation of the law requires several executive decrees. [La Loi de 23 mars 2019 concernant l'organisation des services pénitentiaires et le statut du personnel pénitentiaire \(1\)](#).

## 4.4 PRISON REGIMES FOR SUSPECTS OR CONVICTS OF TERRORIST OFFENCES

The UN Special Rapporteur for the promotion and protection of human rights and fundamental freedoms while countering terrorism (the Special Rapporteur)<sup>51</sup> and the CPT have raised concerns about prison regimes imposed on detainees suspected or convicted of terrorism. They are concerned that in some cases, these special security measures or regimes could amount to prolonged solitary confinement. Furthermore, they raised concerns about the individual assessments and criteria used to determine whether detainees are considered “radicalised”, thus requiring special security measures.<sup>52</sup> In August 2019, the Supervisory Commission at Ittre prison published a report, in which it was particularly critical about the so-called “D-Rad:Ex” wing, a special section where detainees considered highly “radicalised” are held, in particular about the assessment and criteria used to determine whether detainees are confined to this special wing, the detention conditions and the long term impact on detainees.<sup>53</sup>

## RECOMMENDATIONS

With regard to people deprived of their liberty, Amnesty International recommends that the Belgian authorities:

- Continue the efforts towards full implementation of the law on detainees’ legal status and its provisions on the rights of people deprived of their liberty.
- Intensify efforts to end prison overcrowding and ensure all prison facilities and detention conditions are in line with international standards.
- Further develop alternative screening methods (e.g. scans or ultrasound) to replace strip searches and body searches as much as possible.
- Provide clarification on the rules and practices of the application of strip searches and body cavity searches outside of the context of prisons. Provide data on the application of such searches by the police, upon arrest and in police custody situations.
- Safeguard detainees’ rights, including to health care and security during industrial actions.
- Ensure decisions on detainees’ placement in special wings, or under special security measures or regimes are taken solely following an individualized assessment, which:
  - Is based on specific and objective criteria, including a person’s actual behaviour and supported by credible, concrete, complete and up-to-date information
  - Shows the measure is necessary and proportionate
  - Periodically reviewed by an independent and impartial entity that permits the detainee to meaningfully participate in the review
- Ensure rules on restrictive confinement, including restrictive confinement amounting to solitary confinement, are in line with international human rights law and standards and ensure that detainees are never subjected to prolonged solitary confinement in excess of 15 consecutive days.

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<sup>51</sup> UN Special Rapporteur for the promotion and protection of human rights and fundamental freedoms while countering terrorism. *Visit to Belgium - Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*. A/HRC/40/52/Add.5 (hereinafter: Special Rapporteur: *Visit to Belgium*).

<sup>52</sup> Special Rapporteur: *Visit to Belgium*, § 33-45; CPT. *Rapport au Gouvernement de la Belgique relatif à la visite effectuée en Belgique par le Comité européen pour la prévention de la torture et des peines ou traitements inhumains ou dégradants (CPT) du 27 mars au 6 avril 2017*, CPT/Inf (2018) 8, p. 6

<sup>53</sup> Commission de surveillance de la prison d’Ittre. *Rapport de fin de mandat*. August 2019. p. 32-44.

# 5. ETHNIC PROFILING BY POLICE (ARTICLE 2 & 26)

Amnesty International has found that ethnic profiling continues to be a problem in Belgium and has urged the Minister of the Interior, the federal and local police to take more action to prevent, detect or combat ethnic profiling and to guarantee the right to be free from discrimination.<sup>54</sup>

Amnesty's research has shown that police officers' interpretation of the 'reasonable grounds', legally required for an identity check, varies broadly. In addition, also due to the lack of data collection and systems to report checks, commanding officers have very little oversight and can give little feedback on why and how identity checks are conducted. Police officers told Amnesty International that they rely on their own interpretation or even on their gut feeling when deciding whether to conduct an identity check.

The broad and inconsistent interpretation of what the notion of 'reasonable grounds' consists of raises the concern that identity checks carried out by some police officers may not consistently withstand the test of legality, necessity and proportionality which they are required to meet under international human rights law.<sup>55</sup> Indeed, in particular young males from minority groups often state that they have been subjected to identity checks that seem arbitrary and discriminatory.<sup>56</sup>

Though such testimonies are common, the full extent of the problem is hard to assess since authorities in Belgium fail to collect thorough and disaggregated equality data. The total absence of data on identity checks, is especially hampering an adequate response to the problem.

## RECOMMENDATIONS

Amnesty International recommends that the Belgian authorities:

- Acknowledge the human rights problems caused by ethnic profiling by the police;
- Amend the Police Act by:
  - Incorporating an explicit prohibition of direct and indirect discrimination on the grounds of race, skin colour, sex, language, religion, political or other opinions or beliefs, national or social origins, property, birth or other status;
  - Explicitly prohibiting ethnic profiling.
- Take steps in policy and practice to combat ethnic profiling, including by ensuring corrective disciplinary and other accountability measures are in place;
- Establish a solid policy framework and guidance for decision-making by police officers. This includes a clear definition of what constitutes a reasonable and objective suspicion and an outline of legitimate criteria that may be considered when deciding to carry out an identity check to stop a person. It should also be ensured that policies which are neutral at first glance do not implicitly lead to or encourage ethnic profiling, or disproportionately affect certain groups.

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<sup>54</sup> Amnesty International, « *On ne sait jamais, avec des gens comme vous.* ». *Politiques policières de prévention du profilage ethnique en Belgique*, 2018.

<sup>55</sup> Amnesty International, *Etnisch profileren – Analyse van het juridisch kader*, July 2017.

<sup>56</sup> Police officers confirmed that ethnic profiling is a reality in the above cited [Amnesty International report](#). According to a study of the European Fundamental Rights Agency, Belgians of Turkish and North-African descent are being stopped by the police more than majority Belgians. European Fundamental Rights Agency (FRA), *Data in Focus Report. Police stops and minorities*, EU-MIDIS, 2010. Also illustrated by Ligue Des Droits de l'Homme (LDH), *Contrôler et punir: étude sur le profilage ethnique*, March 2017 ; and by Hogeschool PXL, *Belevingsonderzoek. Hoe beleven jongeren hun vrijetijdsbesteding in de publieke ruimte?* 2014.

- Collect data, monitor and research the use of identity checks. Data on identity checks should be collected through stop forms. Such forms should state among other things the reason for the stop and the perceived ethnicity and gender of the person stopped, and may in themselves help to reduce ethnic profiling, as they require officers to justify their stop on legitimate grounds, both on paper and to the individual in front of them. A copy or receipt of the form should be handed to the person stopped, which should also specify how a complaint about the stop can be made. Such stop forms can further aid the collection of data and can give insights into any bias or disproportionality in regard to police stops of people in particular groups.<sup>57</sup> The copy of the form retained by the state agent implementing the stop should not contain any individual identifying data apart from ethnicity/gender.
- Deal with complaints of ethnic profiling or other forms of discrimination by police thoroughly, impartially, transparently and effectively;
- Provide compulsory, continuous training to all relevant police officers. Training should not be limited to theoretical human rights messages on discrimination. It should enable law enforcement officials to critically reflect on their own subconscious biases and how to overcome them in relevant situations of their work. It should be practical in the sense that it conveys to police officers what is expected of them and provide them with the necessary skills to establish reasonable and objective suspicion in concrete situations.<sup>58</sup> Further, it should stress the consequences of ethnic profiling, both with regard to its ineffectiveness and counter-productivity, highlighting that it is not compatible with good policing. The potential consequences of engaging in discriminatory conduct, which include disciplinary action, must also be emphasised.<sup>59</sup>

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<sup>57</sup> UN High Commissioner for Human Rights, *Preventing and countering racial profiling of people of African descent: Good Practices and Challenges*, 2019, paras. 35 and 41. Considering that the collection of ethnic data can also be used to facilitate ethnic profiling, safeguards against possible misuse of the data must be established. See also *Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance*, A/HRC/29/46, 2015, para 68.

<sup>58</sup> ECRI, *General Policy Recommendation No. 11 on combating racism and racial discrimination in policing*, adopted on 29 June 2007, para. 46.

<sup>59</sup> Also: para. 47 of *Preventing and countering racial profiling of people of African descent* (above).

# 6. COUNTER TERRORISM (ARTICLES 2, 6, 7, 9, 14, 17 & 19)

## 6.1 CRIMINAL LAW – PRINCIPLE OF LEGALITY

Belgium has adopted numerous laws including new offences and amending the constitutive elements of existing offences in Book II, Title *I*ter of the Criminal Code (articles 137–141ter). Certain new offences and amendments are insufficiently precisely worded, and reflective of a tendency towards the preventative use of criminal law by way of inchoate offences and the criminalization of preparatory acts, with a tenuous link with the principal offence. The SR expressed concerns about the extensive interpretation of the offence of participation in the activities and leadership of a terrorist organisation (art. 140) and the criminalization of travel with terrorist intent, which in Belgian law also includes inbound travel.<sup>60</sup>

## 6.2 INCITEMENT TO COMMIT A TERRORIST OFFENCE

Article 140*bis* criminalizes public dissemination of messages with the intention to incite, directly or indirectly, the commission of a terrorist offence, when this entails a risk that such an offence could potentially be committed.<sup>61</sup> An amendment adopted in 2016 made the qualification of the offence vaguer by discarding the risk requirement. This amendment was struck down by the Constitutional Court in 2018. Amnesty International still deems the current definition, and more specifically the inclusion of indirect incitement, at odds with freedom of expression.

## 6.3 DYNAMIC DATABASE

In September 2016 a new, “dynamic” database was established. This database should allow for better exchange, updating and cross-checking of information relating to persons linked to terrorism and what is deemed as constituting “violent extremism” between different public services.<sup>62</sup> Its initial focus was on 5 categories of (potential) “Foreign Terrorist Fighters”<sup>63</sup>. This also extends to behaviour not necessarily covered by criminal law. Its scope has subsequently been broadened to include “Homegrown Terrorist Fighters”<sup>64</sup> and “hate preachers”<sup>65</sup> – this last category also including behaviour that does not constitute

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<sup>60</sup>Special Rapporteur: *Visit to Belgium*, §16 – 25; See also: Amnesty International, *Dangerously disproportionate. The ever-expanding national security state in Europe*, January 2017 (Index: 01/5342/2017), p. 54-55 (Hereinafter: A.I. Dangerously Disproportionate) and: Comité de Vigilance en Matière de Lutte Contre le Terrorisme (Comité T), *Rapport 2019*.

<sup>61</sup> Included by [Law of 18 February 2013](#).

<sup>62</sup> Established by [law of 27 April 2016 on additional measures in the fight against terrorism](#) and [Royal Decree of 21 July 2016 establishing a shared database on foreign fighters](#) (amended).

<sup>63</sup> Individuals residing or having resided in Belgium who, with the aim of joining or providing active or passive support to terrorist groups, (1) are in a “jihadist conflict zone”, (2) have left Belgium with the aim to travel to such zones, (3) have returned or are in the process of returning to Belgium for such zones, (4) were prevented from traveling to these zones, or (5) there are serious indications that they intend to travel to such zones.

<sup>64</sup> Persons for which there are serious indications of their intention to use violence for terrorist purposes, and those intentionally providing support to them or to registered FTFs.

<sup>65</sup> Persons having a link with Belgium who (1) pursue the purpose of undermining the principles of democracy or human rights, the proper functioning of democratic institutions or other foundations of the rule of law; (2) justify the use of violence, and (3) propagate these views with the aim of exerting a radicalizing influence.



criminal incitement.<sup>66</sup> These last two categories were already being included in practice but have only been provided with a legal basis in 2018, following a recommendation by the Standing Intelligence Agencies Review Committee.<sup>67</sup>

Inclusion in the database, although not a criminal law measure, has consequences for the human rights of the persons concerned.<sup>68</sup> Furthermore, for certain categories retention in the database does not seem to require that the person continues to pose a security risk. It is not possible for individuals to verify directly whether they are listed in the database, nor can they request access to their information or ask for it to be corrected or removed. They can only indirectly request verification and correction of their personal data via the Data Protection Authority (DPA – formerly the Privacy Commission). The DPA can only communicate to the person that the necessary verifications have been carried out.<sup>69</sup>

## 6.4 VICTIMS OF TERRORISM<sup>70</sup>

On 22 March 2016, 32 people were killed and over 300 were injured when explosive devices were detonated at the Brussels Airport and in a metro carriage in metro stop Maelbeek in Brussels. By the end of the year, victims of the attacks started to come forward, reporting feeling overlooked by the government, struggling to find their way through a complex administrative maze, leading to additional psychological and financial problems for some.<sup>71</sup>

In 2017 a Parliamentary Investigative Committee – set up following the March 2016 attacks – issued recommendations to improve the system for assistance and redress for victims of terrorism.<sup>72</sup> The Parliamentary Enquiry Committee and victims' associations recommended simplifying the system and guaranteeing swift compensation by setting up one separate fund to replace the myriad of interlinked existing compensation mechanisms.

The government passed several pieces of legislation expanding and amending existing systems.<sup>73</sup> This approach appears in contradiction to the recommendations by the Parliamentary Investigative Committee and the demands of the 2 victims' associations. A last piece of legislation further regulating insurance coverage for victims of terrorism was dropped after the fall of the government, thus leaving the reform unfinished. This piece of legislation was meant to address one of the main issues, the role of insurance companies. To remedy the complexity for victims, who often have to turn to multiple insurance companies, in addition to government institutions, this law would have assigned responsibility for each victim to one single insurance company. Although this would have simplified interactions with insurance companies, it would not have sufficiently remedied the complexity of the system as a whole: victims would still need to turn to several public and private institutions to obtain compensation.

Victims' associations and Amnesty International expressed concern that the government's approach would not ensure justice and adequate redress for victims, but would further entrench the current system's complexities and that it could fall short of ensuring access to swift compensation and simple, easily accessible procedures.<sup>74</sup> The Special Rapporteur also expressed her deep concern about the situation of the victims and recommended further legislative reforms.<sup>75</sup>

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<sup>66</sup> Also see Special Rapporteur: *Visit to Belgium*, §57-58.

<sup>67</sup> Comité R, *Annual Report 2017*, p. 68 and 105,

<sup>68</sup> Confidential circulaires set out the administrative and security approach to listed individuals.

<sup>69</sup> [Data protection law](#)

<sup>70</sup> For more detailed analysis, see: Amnesty International, *Slachtoffers van terroristische aanslagen: Herstel en schadevergoeding*, March 2019; and Comité T, *Rapport 2019*, p. 49.

<sup>71</sup> See testimonies in the report of the Parliamentary Enquiry Committee; press reports: 'Slachtoffers en nabestaanden aanslagen 22/03 voelen zich in de steek gelaten door overheid: "Onmenselijk"', *HLN*, 18 januari 2017; 'Wij terreurslachtoffers hebben nood aan specifiek statuut', *DS*, 18 januari 2017; 'Slachtoffers aanslag Brussel wachten nog op vergoeding: 'Voor tweede keer slachtoffer'', *RTL Nieuws*, 8 maart 2017.

<sup>72</sup> Chambre des représentants. *Enquête Parlementaire. Deuxième Rapport Intermédiaire et Provisoire sur le Volet « Assistance et Secours*, DOC 54 1752/007, May 2017.

<sup>73</sup> I.a. amendments to the Commission for financial assistance for victims of violent crime, which can pay out advances and subsidiary capped financial assistance (Amendments to the [Law of 1 August 1985](#)); creation of a "status of national solidarity" and a residuary pension for victims with 10% invalidity or more ([Law of 18 July 2017](#)).

<sup>74</sup> Also see: *Als er morgen opnieuw een aanslag gebeurt, belanden slachtoffers nog altijd in administratieve hel*, *Het Nieuwsblad*, 23 March 2019,

<sup>75</sup> Special Rapporteur: *Visit to Belgium*, § 46-51.

## 6.5 FOREIGN FIGHTERS AND THEIR CHILDREN

Approximately 500 Belgian nationals travelled to Syria and Iraq with the purpose of joining the armed group calling themselves “Islamic State”, Jabhat Al Nusra or other groups.<sup>76</sup> Many of them were killed. Some of them have been convicted for terrorist offences by Belgian courts, sometimes in absentia. Some Belgian nationals have eventually been arrested by Kurdish or Iraqi authorities.<sup>77</sup>

Belgian nationals who travelled to conflict areas are excluded from the right to claim consular assistance<sup>78</sup>. Amnesty International considers that this exclusionary rule should be amended to ensure it is not applied when a Belgian national is at risk of being subjected to serious human rights violations such as for instance when a Belgian national runs the risk of being tortured or executed. In such instances Belgian authorities should take steps including, among others, providing consular assistance, trial monitoring, visits, and diplomatic engagement to seek to prevent serious human rights violations or abuses from occurring – such as violations of the right to life and the prohibition of the right to freedom from torture and other cruel and degrading treatment.

Of the estimated 162 children of at least one Belgian parent in Syria or Iraq, circa 50 identified children are currently being held in refugee camps Al Hol, Al Roj and Ain Issa in Northern Syria.<sup>79</sup> Belgium’s official government policy is that children younger than 10 are allowed back into the country; for children older the right to return is assessed on a case by case basis. However, this does not imply a right to be actively repatriated: the children have to reach a Belgian embassy or consular post first. The government refuses to let the parents come back.<sup>80</sup> Several families initiated judicial proceedings asking the Belgian State to take measures to facilitate repatriation of children. In June 2019, a humanitarian mission led by prof. Loots (VUB) and joined by *inter alia* the head of Child Focus and the Délégué aux droits des enfants left to Northern Syria to offer humanitarian assistance to Belgian children in the three camps. Simultaneously, the Belgian authorities repatriated 6 Belgian children, some orphans, some victims of international child abduction. The humanitarian mission had identified a seventh child, seriously malnourished, which it wished to repatriate, but the Belgian authorities did not repatriate this child. Reportedly, all remaining children in the three camps are now accompanied by a parent, thus precluding repatriation by the Belgian authorities.

When children are in detention or in IDP camps with their right to freedom of movement severely limited and no or limited access to essential services, it may be presumed that it is likely to be in their best interests to return or be transferred to the country of origin or habitual residence of one of their parents. In such cases, and especially when a request for repatriation/transfer has been made, Belgium should facilitate the return of the children of Belgian parents, taking into consideration the obligation to respect the right to family life and the right of the child not to be separated from his or her parents against their will, unless competent authorities subject to judicial oversight determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. If in the child’s best interest this may also require the repatriation of their parent.

## 6.6 OVERSIGHT & EVALUATION

Belgian policies countering terrorism and “radicalisation” are developed and put into practice in a complex constitutional context. The complexity and fragmentation of these policies can exacerbate the human rights risks inherent to these policies, underscoring the need for comprehensive oversight and evaluation.<sup>81</sup> Oversight and evaluation are needed to assess and monitor effects of new counter-terrorism powers in ordinary law, and the application of terrorism-related criminal law provisions; deprivation of nationality or revocation of residence rights related to national security; possible discriminatory effects of policies; possible discriminatory policies or behaviour including ethnic profiling.<sup>82</sup>

Just before the end of the legislative term, a law was passed setting up a Federal Human Rights Institute. This institution could play a vital role if it can be reformed to be fully compliant to the Paris Principles and

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<sup>76</sup> Van Ostaeyen, P. and Van Vlieden, G., *Citizenship and Ancestry of Belgian Foreign Fighters*, ICCT Policy Brief, May 2018,

<sup>77</sup> 2 Belgian nationals are known to be detained and sentenced to death in Iraq. Belgium is reportedly offering consular assistance and opposing their execution through diplomatic channels.

<sup>78</sup> Art. 83, Consular Code.

<sup>79</sup> The total number of children with ties to Belgium in Syria or Iraq, is ca. 137-162, depending on the source. Most of these children have not been located, many of them are possibly deceased.

<sup>80</sup> For an overview, see Coolsaet, R. and Renard, Th., *Children in the Levant: Insights from Belgium on the dilemmas of repatriation and the challenges of reintegration*, Security Policy Briefs – July 2018, p. 6.

<sup>81</sup> See also: Special Rapporteur: *Visit to Belgium*, §77.

<sup>82</sup> See also: Special Rapporteur: *Visit to Belgium*, §76.

mandated to cover all human rights issues (see above Chapter 2.1). To ensure rigorous and systematic oversight, permanent parliamentary oversight should also be considered, as well as an expert oversight body to specifically review counter-terrorism and national security policies.<sup>83</sup>

## RECOMMENDATIONS

Amnesty International recommends that the Belgian authorities:

- Ensure terrorism-related offences are sufficiently precisely worded in line with the principle of legality.
- Only subject forms of expression to criminal prosecution where it genuinely amounts to incitement, that is encouraging others to commit recognizable criminal acts with the intent to incite them to commit such acts and with a reasonable likelihood that they would commit such acts, with a clear and direct causative link between the statement/expression and the criminal act.<sup>84</sup>
- Ensure data gathering, processing and sharing meet the requirements of legality, necessity and proportionality. These practices should always have a foreseeable and accessible legal basis and be subject to adequate procedural safeguards and independent, sufficiently funded oversight.
- Issue further legislative reforms to ensure adequate redress for victims of terrorism, through simple, easily accessible procedures.
- Ensure, when a Belgian national is at risk of being subjected to serious human rights violations, like the risk of torture or execution, that all appropriate steps to prevent such violations or abuses from occurring are taken, including by providing consular assistance, trial monitoring, visits, and diplomatic engagement.
- Ensure that Belgium holds the best interests of the child as a primary consideration when making decisions about the children of Belgian nationals in Iraq and Syria, including by:
  - Facilitating the repatriation of children of Belgian parents when this is determined to be in the best interest of the child.
  - Taking into consideration the obligation to respect the right to family life and the right of the child not to be separated from his or her parents against their will, unless such separation is determined to be necessary for the best interest of the child.
  - Making decisions following individual assessments that allow for the child to participate and be heard.
  - Taking all reasonable steps to ensure that children who have the right to the Belgian nationality, obtain that nationality and do not remain at risk of statelessness.
- Ensure rigorous and systematic oversight of policies to counter terrorism and “radicalisation”, including by a fully competent national human rights institution and by Parliament.

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<sup>83</sup> See also: Special Rapporteur: *Visit to Belgium*, §71 – 77.

<sup>84</sup> A.I. *Dangerously Disproportionate* p 37-39.

# 7. ASYLUM AND MIGRATION (ARTICLE 2, 7, 9, 13)

## 7.1 RETURNS TO SUDAN: VIOLATION OF THE PRINCIPLE OF NON-REFOULEMENT

In December 2017, Sudanese returnees reported to the Tahrir Institute for Middle East Policy that upon their return between October 2017 and December 2017, they had been detained by Sudanese government agents, interrogated and subjected to ill-treatment.<sup>85</sup> The testimonies followed a highly contested move by Belgium to invite a delegation of Sudanese officials to identify migrants in September 2017. In January 2018, Amnesty International stated that Belgium had violated the principle of non-refoulement, both on procedural and substantive grounds, by not carefully assessing the risk of ill-treatment, torture or other serious human rights violations before returning the Sudanese nationals and by allowing Sudanese officials to interview them before such assessment was made.<sup>86</sup> The Commissioner General for Refugees and Stateless Persons (CGRS) was charged with an investigation of the allegations of ill-treatment and the decision to expel Sudanese migrants. In February 2018, the CGRS concluded it could not confirm nor deny the allegations of ill-treatment but found shortcomings in the risk assessment prior to the return of the Sudanese nationals and criticised aspects of the collaboration with the Sudanese identification mission.<sup>87</sup> Belgium claims it has since amended procedures and practice to comply with the recommendations of the CGRS.

## 7.2 COMMISSION ON RETURNS AND REMOVALS

Shortly after the publication, in February 2018, of the Sudan-report by the CGRS, the government announced the establishment of a Commission charged with an evaluation of Belgium's policies and practices in relation to voluntary return and forcible removal of foreigners. The Commission has a mandate of two years and consists of administration officials, representatives of police and pilots' associations.

In June 2018, Amnesty International submitted recommendations<sup>88</sup>, to which the Commission responded in its interim report.<sup>89</sup> Amnesty International expressed its concern that the report is not a critical analysis of Belgium's return policies and practice – but an overview and defence of government policy. The report justifies, for instance, the lack of alternatives for immigration detention and the resumed detention of families with children. Amnesty International also reiterated concerns about the mandate and composition of this commission and called for the establishment of a commission with a broad, permanent mandate and a representative membership including civil society representatives and independent experts, in addition to administration officials and those tasked with devising and executing government policies.<sup>90</sup>

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<sup>85</sup> For further information see: Amnesty International, *Belgium: Returns to Sudan violated principle of non-refoulement*, January 2018 (Index: EUR 14/7811/2018) – Hereinafter: A.I. Returns to Sudan.

<sup>86</sup> Hereinafter: A.I. Returns to Sudan.

<sup>87</sup> Commissariaat-Generaal voor de vluchtelingen en de staatlozen, *Het respecteren van het non-refoulementprincipe bij de organisatie van de terugkeer van personen naar Soedan*, February 2018.

<sup>88</sup> Amnesty International België, *Mensenrechten en het Belgische terugkeerbeleid. Commissie 'Terugkeer'*, June 2018.

<sup>89</sup> *Rapport intérimaire de la Commission chargée de l'évaluation de la politique du retour volontaire et de l'éloignement forcé d'étrangers*, February 2019.

<sup>90</sup> Amnesty International, *Amnesty pleit voor representatieve commissie die zich buigt over Belgisch terugkeerbeleid*, February 2019.

## 7.3 DETENTION OF FAMILY UNITS

With the entry into force of a Royal Decree on 11 August 2018, Belgium resumed the practice of detention of family units for migration purposes.<sup>91</sup> The absence of an executive decree had effectively ended detention of children for migration purposes in Belgium since 2011. Families with children are now detained as a measure of last resort, following exhaustion of other measures including alternatives for detention.

In the summer of 2018 construction of special “family units” was finalized on the premises of the immigration detention center ‘127bis’ in Steenokkerzeel. Since August 2018, 9 families with a total of 22 children awaiting their removal from the territory have been detained. Civil society organisations launched a campaign against child migration detention, and initiated proceedings for suspension and annulment of the Royal Decree.

On 4 April 2019, the Council of State suspended the Royal Decree, citing the possible hazardous health consequences due to the noise caused by the airport landing strip right next to the “family units”. As a consequence of this decision, the practice of family detention is suspended awaiting the decision on the annulment. However, the government announced it would improve sound insulation so as to be able to resume detention of families with children.<sup>92</sup>

The detention of children is strictly prohibited in international law as it can never be in their best interests.<sup>93</sup> According to the Working Group on Arbitrary Detention, “Children must not be separated from their parents and/or legal guardians. The detention of children whose parents are detained should not be justified on the basis of maintaining the family unit, and alternatives to detention must be applied to the entire family instead.”

## 7.4 ALTERNATIVES TO DETENTION

Belgian immigration law provides for the possibility to detain, under certain conditions, asylum seekers, and irregular migrants, including rejected asylum seekers, awaiting removal. Legally, detention of asylum seekers and migrants awaiting removal is only possible when no other, less coercive measures can be effective. However, very few “less coercive measures”, or alternatives to detention, are effectively available in Belgian law. In certain cases, the authorities can impose the obligation to reside at a determined address. The law provides for additional less coercive measures to be devised by Royal Decree, but this Royal Decree has not been adopted yet. Therefore, Belgian law and practice are lacking real alternatives for detention of migrants and asylum seekers.<sup>94</sup> Amnesty International is concerned that as a consequence, migration detention is not only used as a measure of last resort and calls for the development of alternatives for detention of migrants and asylum seekers.

## 7.5 TRANSIT MIGRATION – REPORTS OF ILL-TREATMENT AND POLICY-SHORTCOMINGS

Several thousand migrants, asylum seekers and refugees in transit are in Belgium while hoping to try to reach the United Kingdom by boarding lorries, trains and ships. Many of these people cannot be forcibly removed to their home countries due to the risks of serious human rights violations that they would face upon return or the absence of return agreements with the home state. Though a large proportion may require international protection, they do not file for asylum in Belgium.

Over the last few years, the Maximilian-Park, a park in Brussels close to the Brussels-North railway station, and the train station itself, became an informal hub for migrants and asylum seekers hoping to eventually reach the UK. Most humanitarian and medical assistance to these people is dependent on civil society

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<sup>91</sup> With the entry into force, on Aug. 11, 2018, of the *Royal Decree of 22 July 2018*.

<sup>92</sup> Conseil d'état - *Arrêt N° 244.190*, 4 April 2019.

<sup>93</sup> Amongst others: *Concluding observations on the initial report of Nicaragua* (11 October 2016) CMW/C/NIC/CO/1 at paras 39-40 [CMW Nicaragua 2016]; See also WGAD 2018, *Revised Deliberation No. 5 on deprivation of liberty of migrants* (7 February 2018) para 11; IACtHR, *Advisory Opinion OC-21-14: Rights and Guarantees of Children in the Context of Migration and/or in Need of International protection* (19 August 2014) at para 154; Report of the Special Rapporteur on the human rights of migrants on a 2035 agenda for facilitating human mobility, UN Doc A/HRC/35/25 (28 April 2017) at para 61; and UNHCR, “UNHCR’s position regarding the detention of refugee and migrant children in the migration context” (January 2017).

<sup>94</sup> Arts. 7, 27 §3, 51/5 and 74/6 of the law of 15 December 1980.

mobilisation. In October 2018, Doctors of the World, an NGO providing health care to migrants in the Maximilian-Park reported that one in four of the 440 migrants they interviewed claimed to have been ill-treated by police.<sup>95</sup> Amnesty International has also received numerous credible allegations of ill-treatment by police against migrants and asylum seekers in transit. The organisation raised concerns with the government in July 2017 but did not receive a response. In February 2019 the Standing Police Monitoring Committee issued a report following an enquiry into some reports of ill-treatment of migrants in transit by police during large scale operations, concluding migrants were treated “correctly and humanely”, and suggesting some improvements and best practices.<sup>96</sup>

Government policies targeting this group of migrants and asylum seekers focus almost exclusively on public order, detention and attempted returns. Organisations active on the ground have repeatedly called on the government to set up a “reception and information centre”, offering information and humanitarian assistance in an environment of trust.<sup>97</sup>

## RECOMMENDATIONS

Amnesty International recommends that the Belgian authorities:

- Scrupulously observe the principle of non-refoulement, by not forcibly returning any person, in any manner whatsoever, to any country where they would be at real risk of serious human rights violations;
- Review and amend expulsion procedures, to ensure that no individual can be issued with an expulsion order without an adequate, individualized assessment that the person will not be at real risk of serious human rights violations upon return<sup>98</sup>;
- Establish a permanent commission to review return policies, with a broad mandate and a representative membership including civil society representatives and independent experts, in addition to administration officials and those tasked with devising and executing government policies. End the practice of migration detention of children, and evaluate and further develop non-custodial measures;
- End the practice of immigration detention of families with children and develop and improve less coercive measures;
- Ensure migration detention is only used as a measure of last resort, and develop alternatives for detention of migrants and asylum seekers;
- Protect the right to live in dignity and safety for all people on the move, no matter their legal status, by providing unconditional humanitarian support such as shelter and food, and provide all people in transit with information on their rights, including how to report instances of police ill-treatment, in a way that is accessible and in a language they understand;
- Ensure that law enforcement officers behave according to the highest standards of policing conduct, including by refraining from unlawful acts of violence, and initiate thorough and independent investigations into allegations of violence.

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<sup>95</sup> Médecins du Monde, *Violences policières envers les migrants et les réfugiés en Belgique : notre rapport*.

<sup>96</sup> Comité P, *Le contrôle et la détention de transmigrants par la police à l'occasion d'arrestations administratives massives*, February 2019.

<sup>97</sup> VVW et al. *Migranten op doortocht in België*. January 2019.

<sup>98</sup> For more detailed analysis and recommendations, see A.I. Returns to Sudan.

# 8. GENDER-BASED VIOLENCE (ARTICLES 2 AND 7)

Amnesty International remains deeply concerned about the high prevalence of rape and other sexual and gender-based violence in Belgium.<sup>99</sup> Official statistics on these forms of violence are worrying. Moreover, under-reporting is estimated to be very common: up to 90% of incidents of rape or other sexual violence could go unreported.<sup>100</sup>

In recent years the authorities have taken measures to tackle the problem, including by ratifying the Istanbul Convention in 2016, and drafting a National Action Plan 2016-2019, aimed at the Convention's implementation.<sup>101</sup> Praiseworthy in particular was the establishment in November 2017 of three so-called "Centres for Care after Sexual Violence" in Brussels, Ghent and Liège<sup>102</sup>, and the announcement in March 2019 that three more such centres will be set up in Antwerp, Louvain and Liège.<sup>103</sup> These centres are intended to provide survivors of sexual violence with different forms of assistance in one place. Survivors can get medical care and treatment, psychological care, forensic investigation and evidence gathering, and can also file a complaint with a specially trained police officer present.

A new National Action Plan on gender-based violence is due to be adopted in late 2019 or 2020, which gives Belgium the opportunity to intensify efforts to implement the Istanbul Convention. A group of feminist and human rights organisations submitted a report to the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) which included many recommendations for the new National Action Plan, which should be taken into account by the authorities.<sup>104</sup>

## RECOMMENDATIONS

Amnesty International recommends the Belgian authorities to:

- Ensure long-term and sufficient budget for the fight against gender-based violence and include detailed budgetary provisions in the new National Action Plan on Gender based violence;
- Ensure care centres are established in places that are easily accessible/reachable from all over the country (at least one per province) and to ensure that all such centres get structural and sufficient financing;
- Ensure adequate training for key actors involved in the fight against gender-based violence, especially for medical, police and judicial staff that come into contact with survivors of sexual violence;
- Ensure gender-based violence continues to be treated as a key priority for police and judiciary and should figure prominently in the National Security Plan.<sup>105</sup>

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<sup>99</sup> A.I. *Belgium: UPR-submission*, 2015, p7

<sup>100</sup> Data on registered complaints of sexual violence see [official statistics](#) (in particular p96 and further): and [Minister for Equal Opportunities Peeters](#) cited in the press on the estimated dark number

<sup>101</sup> [Plan d'action national de lutte contre toutes les formes de violence basée sur le genre 2015-2019](#).

<sup>102</sup> 'Centres de Prise en charge des Violences Sexuelles'. See also: Amnesty International, *België – Grote stap vooruit voor slachtoffers van seksueel geweld*

<sup>103</sup> 'Aantal zorgcentra voor slachtoffers van seksueel geweld verdubbeld', *VRT*, March 2019.

<sup>104</sup> [Rapport alternatif](#) de la coalition « Ensemble contre les violences faites aux femmes »

<sup>105</sup> A.I. *Belgium: UPR-submission*, 2015, p7.





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# BELGIUM

## SUBMISSION TO THE UNITED NATIONS HUMAN RIGHTS COMMITTEE

127<sup>TH</sup> SESSION, 14 OCTOBER – 9 NOVEMBER 2019

This submission has been prepared in advance of the United Nations (UN) Human Rights Committee's (hereinafter, "the Committee") review of the sixth periodic report of Belgium at its 127th Session in October 2019.

It provides an overview of Amnesty International's main concerns under the International Covenant on Civil and Political Rights (hereinafter, "the Covenant"). These include concerns related to the human rights implementation and prevention architecture, extraterritorial obligations, persons deprived of liberty, ethnic profiling by police, counter terrorism measures, asylum and migration procedures and practises, and gender-based violence.