

BELGIUM

Asylum seekers and irregular migrants, excessive use of force by police, prison conditions and the banning of face veils

*Amnesty International
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**AMNESTY
INTERNATIONAL**



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INTRODUCTION

This submission was prepared for the UN Universal Periodic Review of Belgium, in May 2011. In this document, Amnesty International raises concerns about the treatment of asylum seekers and irregular migrants, in particular regarding administrative detention, inadequate conditions in closed centres, breaches of the principle of *non-refoulement*, forcible returns to Iraq, and ill-treatment by law enforcement officials during expulsions. Amnesty International is also concerned about the use of conducted energy devices by police and overcrowding and poor conditions in prisons.

NORMATIVE AND INSTITUTIONAL FRAMEWORK OF THE STATE

RATIFICATION OF INTERNATIONAL HUMAN RIGHTS INSTRUMENTS

Amnesty International welcomes that Belgium was among the first countries to sign the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights in September 2009. However, to date, the Optional Protocol has not been ratified.

Amnesty International is also concerned that Belgium has still not ratified the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, despite repeatedly expressing its intention to do so 'without delay' on several occasions.¹

NATIONAL HUMAN RIGHTS INSTITUTION

Belgium does not have a National Human Rights Institution compliant with the Paris Principles despite specific recommendations to establish one by the European Union (EU) Fundamental Rights Agency,² several Belgian NGOs and most recently the Human Rights Committee.³ In 1999, the Centre for Equal Opportunities and Opposition to Racism was classified by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights as an institution with B-status, i.e. not fully in compliance with the Paris Principles.⁴

PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

ADMINISTRATIVE DETENTION OF ASYLUM-SEEKERS AND IRREGULAR MIGRANTS

In a report published in July 2009, the Office of the Federal Ombudsperson⁵ expressed concern about the use of administrative detention of asylum-seekers and irregular migrants, the living conditions inside closed centres for asylum-seekers and irregular migrants, serious deficiencies in the complaint system for those

detained,⁶ and called for the provision of legal advice services in the closed centres. In the report on his 2008 visit to Belgium, the Council of Europe Commissioner for Human Rights also set out a number of recommendations in relation to the detention of asylum-seekers and irregular migrants in Belgium and called on the Belgian authorities to stop the automatic detention of asylum-seekers who lodge their claims at the border, and for improved conditions in the closed centres.⁷

BREACH OF THE PRINCIPLE OF *NON-REFOULEMENT*

Amnesty International is deeply concerned that the Belgian authorities constructively *refouled* Saber Mohammed, an Iraqi asylum-seeker, to Iraq. In 2005, Saber Mohamed was convicted of terrorism-related offences and after completing his prison sentence in October 2007, he was immediately re-detained under administrative powers pending expulsion to Iraq. In February 2009, the Commissioner-General for Refugees and Stateless Persons rejected his claim for asylum. Saber Mohammed then appealed this decision to the Council for Alien Disputes, which dismissed his appeal despite noting that he would face a real risk of torture and other grave human rights violations if returned to Iraq. On 5 March 2009 Saber Mohammed was released from administrative detention, but immediately placed under a compulsory residence order. On 3 April 2010, he was re-arrested and placed in administrative detention in a closed centre in Bruges, where he remained until his return to Iraq on 27 October 2010.

On 20 September 2010 the Commissioner for Refugees and Stateless Persons found that Saber Mohammed would face a real risk of torture and other ill-treatment if he were to be returned to Iraq. Amnesty International is deeply concerned that, while appearing to be voluntary, Saber Mohammed's decision to return to Iraq was in fact a result of the state of distress caused by his continued detention in a closed centre and the prospect of continuing to be detained for long periods of time. In the light of this, the organization considers that Saber Mohammed's return to Iraq was anything but "voluntary", and that the Belgian authorities constructively *refouled* Saber Mohammed to Iraq.

FORCIBLE RETURNS TO IRAQ

Belgium continues to forcibly return people to Iraq despite UNHCR guidelines recommending that, unless volunteering for return, Iraqis from the five Central Governorates (the provinces of Ninewa (Mosul), Kirkuk, Diyala, Salah al-Din and Baghdad) as well as those belonging to specific groups identified to be at risk from the Southern Governorates and Al-Anbar, should not be forcibly returned to Iraq until there is substantial improvement in the security and human rights situation in the country. In particular, UNHCR advises against the return of persons to areas from which they do not originate.

INADEQUATE RECEPTION CONDITIONS FOR ASYLUM-SEEKERS

Since May 2008 the reception conditions for asylum-seekers have been seriously deficient. The responsible federal government agency (Fedasil) has repeatedly been condemned by the administrative courts for failing to provide housing to asylum-seekers.⁸ Since the start of the crisis, over 7.000 asylum seekers, including children, have been left homeless, and while over a thousand are housed in hotels, they are not provided with medical, social or legal assistance.⁹

EXCESSIVE USE OF FORCE DURING FORCED RETURNS

Amnesty International continues to receive reports of ill-treatment by law enforcement officials during expulsions of undocumented migrants and asylum-seekers whose asylum claims have been rejected. In November 2008, the UN Committee against Torture expressed concern at continuing allegations of ill-treatment, including ill-treatment with a racist element, by law enforcement officials.¹⁰ In March 2008, the UN Committee on the Elimination of Racial Discrimination also expressed concern about racist ill-treatment and discrimination by law enforcement officials, including excessive use of force during expulsions of non-citizens.¹¹

On 26 April 2008, Ebenizer Sontsa, an asylum-seeker from Cameroon whose asylum claim had been rejected, was forcibly restrained by several law enforcement officials during an attempted removal from Brussels Airport. Following protests by other passengers at his treatment, the removal was abandoned and he was returned to the immigration detention centre of Merksplas where he lodged a complaint alleging ill-treatment. A new deportation was scheduled for 9 May 2008, but on 1 May Ebenizer Sontsa took his own life. In December 2008, the Public Prosecutor closed the investigation into his death. According to the family's lawyer the complaint lodged by Ebenizer Sontsa in May 2008, right before his death, was never investigated and in March 2009, the family again lodged a complaint.

USE OF CONDUCTED ENERGY DEVICES BY POLICE

Conducted energy devices or stun-guns are incapacitating weapons capable of delivering a temporarily debilitating electric shock by direct contact or by firing projectiles upon the target. Given the unresolved safety concerns and their potentially lethal nature, Amnesty International recommends that the use of conducted energy devices either be suspended pending further safety research or limited to use in situations where officers would otherwise be justified in resorting to firearms.¹² Although conducted energy devices are not part of standard police equipment in Belgium, incidents in recent years suggest that these weapons are not being used solely as an alternative to lethal force. Conducted energy devices were, for instance, used (unsuccessfully) in March 2010 to remove apparently peaceful environmental activists from a forest near Bruges (the '*Lappersfortbos*') scheduled for clearing. In Parliament the Minister for Interior Affairs defended the use in this instance as necessary to force a person chained to a tree, to cooperate. Though allegedly the conducted energy device was used only once on the person concerned and apparently with no lasting damage, it seems clear from the Minister's report that the use of conducted energy devices is not limited to being an alternative to lethal force.¹³

Discussions are currently ongoing on broadening the use of conducted energy devices and Amnesty International is concerned at the lack of transparency and of specific regulations for these potentially lethal weapons. It is for instance currently unclear who can use conducted energy devices, under what circumstances, according to which modalities for their use, what training is required and what control mechanisms exist.¹⁴

PRISON SYSTEM

Amnesty International is concerned about credible and persistent reports about overcrowding in prisons, poor conditions in some prisons, inadequate protection of

prisoners' rights, disproportionate restrictions of those rights during strikes of prison staff and poor treatment of mentally ill persons held in prisons.

Both remand prisons and prisons for sentenced offenders appear to be chronically overcrowded. In March 2010, a total of 10,501 persons were being held in prisons with a maximum capacity of only 8,829 persons.¹⁵ Although the government has made efforts to create extra capacity, it has failed to sufficiently address the shortage of cells and has even had to resort to renting a prison facility in the Dutch city of Tilburg, where about 500 persons are currently held. Overcrowding may in itself amount to cruel, inhuman or degrading treatment or punishment, but may also facilitate other violations of human rights, including the rights to health and privacy, and may impact on standards of hygiene, food quality and safety, and restrict exercise time, and the number and length of visits.

The conditions in a number of prisons, including the prisons of Merksplas, Forest¹⁶ and Jamioulx¹⁷ are also a source of concern. The facilities are old and dilapidated and the cells are unsanitary.

The rights of prisoners are stipulated in the 'Dupont Act' of 12 January 2005 which defines prisoners' legal status and lays down rules governing prison administration.¹⁸ Under the Act, custodial sentences must be served in conditions consistent with human dignity, which enable prisoners to preserve or enhance their self-respect, while both appealing to their sense of personal and social responsibility and preserving law and order. While Amnesty International welcomes the detailed provisions regarding prisoners' rights, it regrets that many of these have not yet entered into force, including the establishment of the independent complaints mechanism envisaged in the Act.¹⁹

The overcrowding of prisons and unsatisfactory working conditions have frequently led to strikes by prison staff. The European Committee for the Prevention of Torture (CPT) in 2005 noted that police officers were deployed during strikes in prisons to maintain order. Lacking the necessary training and skills to deal with prisoners, the police are ill-equipped to protect the human rights of prisoners, leading to prolonged confinement in cells without exercise and restrictions on prisoners' contact with lawyers and visitors. The CPT also noted numerous complaints of ill-treatment by the police.²⁰

BAN ON FACE VEILS

Amnesty International is concerned about draft legislation banning the wearing of full-face veils in public. The Senate has yet to consider the draft law. Amnesty International believes that general prohibitions on the wearing of full face veils would violate the rights to freedom of expression and religion of those women who choose to wear a full face veil as an expression of their religious, cultural, political or personal identity or beliefs. Amnesty International therefore urges states not to adopt such legislation or to impose requirements that women dress in a certain way, and to protect women from the imposition of such requirements by third parties.

RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW

Amnesty International calls on the government of Belgium:

Ratification of international human rights instruments:

- To ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights and the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment without further delay.

National human rights institution

- To establish a National Human Rights Institution, fully compliant with the Paris Principles.

Administrative detention of asylum-seekers and irregular migrants

- To not deprive asylum-seekers and irregular migrants of their liberty under immigration and/or administrative powers, except in the most exceptional circumstances as prescribed by international and regional law and standards. There should be a presumption against detention enshrined by law;
- To further improve the living conditions in the closed centres and to revise the existing system for dealing with individual complaints, including to ensure that legal advice services are available inside the closed centres.

Breach of the principle of non-refoulement

- To strictly observe the principle of *non-refoulement*, including constructive *non-refoulement*.

Forcible returns to Iraq

- To stop forcible returns of individuals to Iraq, particularly to the provinces of Ninewa (Mosul), Kirkuk, Diyala, Salah al-Din and Baghdad, as well as to other particularly dangerous areas, such as parts of Al Anbar province.

Inadequate reception conditions for asylum-seekers

- To comply with the minimum standards for the reception of asylum-seekers and to take immediate measures to respect asylum-seekers' basic rights upon their arrival in Belgium.

Excessive use of force during forced returns

- To ensure that all allegations of ill-treatment and excessive use of force are investigated and to introduce an independent and effective system for monitoring forced returns.

Use of conducted energy devices by police

- To ensure that conducted energy devices be used only when strictly necessary and proportionate and only in situations where the only lawful alternative would be use of lethal force;
- To ensure that the procedures for the use of conducted energy devices by police

officers are transparently and strictly regulated, and that effective control mechanisms are put in place to investigate use of conducted energy devices in specific situations.

Prison system

- To ensure that sufficient and adequate resources are allocated to prisons and to promptly and effectively address the issue of prison overcrowding;
- To ensure that all persons deprived of their liberty are held in humane conditions, commensurate with human dignity;
- To fully respect prisoners' rights, including by implementing existing legislation on such rights, and to ensure the establishment of an independent, effective and accessible complaints mechanism for prisoners;
- To put in place measures to guarantee the rights of prisoners at all time, including during strikes by prison staff.

Ban on face veils

- To withdraw draft legislation to introduce a complete ban of full-face veils in public and to take measures to ensure that all women are able to exercise their rights free from coercion, harassment and discrimination.

ENDNOTES

¹ See for, example, Letter dated 25 March 2009 from the Permanent Representative of Belgium on the occasion of its candidacy for membership of the UN Human Rights Council (A/63/801).

² Fundamental Rights Agency. *National Human Rights Institutions in the EU Member States - Strengthening the fundamental rights architecture in the EU I*. May 2010.

³ Concluding observations of the Human Rights Committee, 22 October 2010, CCPR/C/BEL/CO/5, paragraph 8.

⁴ The application of the Centre was re-examined in 2010. See ICC, *Re-accréditation of the Centre for Equal Opportunities and Opposition to Racism of Belgium to the International Coordinating Committee of National Human Rights Institutions*, March 2010,.

⁵ Le Médiateur Fédéral *Investigation sur le Fonctionnement des Centres Fermés Gérés par l'Office des Etrangers*. June 2009.

www.federaalombudsman.be/sites/default/files/auditCF2008-FR.pdf

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⁶ These deficiencies included the short timeframe within which to file a complaint, the strict admissibility criteria, and the requirement that the complaint must be submitted to the director of the centre.

⁷ *Report by the Council of Europe Commissioner for Human Rights, Thomas Hammarberg, on his visit to Belgium 15-19 December 2008*, 17 June 2009, <https://wcd.coe.int/ViewDoc.jsp?id=1458603&Site=CommDH&BackColorInternet=FEC65B&BackColorIntranet=FEC65B&BackColorLogged=FFC679>

⁸ Since November 2009, the Courts have been imposing fines on Fedasil of between 250 and 500 Euros per day per asylum-seeker, for every day that the asylum-seeker who submitted the claim did not get access to the official reception network.

⁹ www.zonderopvang.be (Belgian umbrella NGO 'Vluchtelingenwerk Vlaanderen' – Amnesty International is a member)

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¹⁰ CAT/C/BEL/CO/2

¹¹ CERD/C/BEL/CO/15

¹² Amnesty International has found that over 400 individuals in the USA have died after being shocked by police *Tasers* since June 2001, see Amnesty International public statement of 2 June 2010, AI Index: AMR 51/049/2010,

<http://www.amnesty.org/en/library/info/AMR51/049/2010/en>

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¹³ Parliamentary Question – Commission for Internal Affairs 17.03.2010. “Question of M. Stefaan Van Hecke to the Minister of Internal Affairs on the « the use of *tasers* » (n° 20479)”..

¹⁴ The European Committee for the Prevention of Torture raised similar concerns and recommended that Belgium should introduce legislation based on stricter regulation for the use of firearms by the police, CPT/Inf (2010) 24, www.cpt.coe.int/documents/bel/2010/inf-fra.htm.

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¹⁵ Data gathered by the 'Federale Overheidsdienst Justitie, Directoraat-Generaal EPI

Penitentaire Inrichtingen'. See

<http://statbel.fgov.be/nl/statistieken/cijfers/bevolking/andere/gevangenen/index.jsp>.

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¹⁶ Hammarberg, p. 11-12.

¹⁷ CPT/Inf (2010) 24, p. 50.

¹⁸ Act of 12 January 2005 on Principles of Prison Administration and Prisoners' Legal Status.

¹⁹ Art. 26-30 of the Law Dupont. This concern was also voiced by Hammarberg, p. 12-13.

²⁰ CPT/Inf (2006) 15, no. 107-117, CPT/Inf (2010) 24, p. 36-40, Hammarberg, p. 13.

ANNEX

AMNESTY INTERNATIONAL DOCUMENTS FOR FURTHER REFERENCE¹

Belgium votes to ban full-face veils, 28 April 2010, AI Index: PRE 01/144/2010

¹ This document is available on Amnesty International's website:

<http://www.amnesty.org/en/region/belgium>

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