

AMNESTY INTERNATIONAL

PUBLIC STATEMENT

AI Index: EUR 14/003/2013
27 November 2013

Belgium falls short of its obligations on torture and other ill-treatment

Belgium is falling short of its obligations under the United Nations (UN) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. This is the conclusion of the independent review of the UN Committee Against Torture, that released its concluding observations on 22 November. Amnesty International calls upon the Belgian authorities to take prompt steps to implement the recommendations.

Conditions in detention

Systemic overcrowding of the prison system has been a huge problem in Belgium for decades. The Committee welcomed the adoption of a so-called 'Master Plan' which aims to increase the capacity and improve the material conditions through the creation of new prisons and the renovation of certain dilapidated buildings. Nonetheless, the Committee expressed concern, in particular since in certain prisons the overcrowding rate still exceeds 50%. It also called upon the government to use alternatives to detention.

Amnesty International is concerned that though the current 'Master Plan' should improve the most dire conditions in certain prisons, it will prove insufficient to solve the problem long term. As an analysis by the Belgian Court of Accounts has shown, the plan falls short of resolving overcrowding, even if the prison population would remain stagnant. The organization believes that a comprehensive plan aiming to reduce and eventually end overcrowding is needed. Such a plan should focus on eradicating conditions and practices that violate the human rights of prisoners and should include an examination of the wider context, including Belgium's criminal policy and alternatives to detention.

Another longstanding human rights problem in Belgian places of detention is the insufficient and inadequate care for detainees with intellectual or psychological disabilities or mental disorders.

Belgium has previously been condemned by the European Court of Human Rights for failing to provide 'mentally ill offenders' with proper care and for subjecting such detainees to degrading treatment. The Committee Against Torture itself had raised concerns in a previous review of Belgium and reiterates its call that the care provided to detainees with problems related to their mental health should receive adequate care. Amnesty International adds that sufficient places in specialized psychiatric facilities for offenders with intellectual or psychological disabilities and mental disorders need to be made available. In these facilities, they should be provided with adequate medical treatment.

The Committee also gave ample attention to the legal situation of detainees. Separation of certain groups of detainees (including the separation of remand detainees and convicted prisoners), complaint and appeals procedures and oversight mechanisms are all provided for in a law that was adopted in 2005. But to this date, these and other provisions have not entered into force.

The Committee also criticized a recent law which would make strip searches standard procedure after almost any contact by a detainee with the outside world. Though currently suspended by the State Party's Constitutional Court, Amnesty International remains concerned about the law and calls upon the State to repeal the provisions of the law and to re-instate the requirement of prior written authorization before a strip search can be carried out.

Non-refoulement

Unenforceable diplomatic assurances against torture and other ill-treatment are used by the Belgian authorities to circumvent the absolute prohibition of torture, relying on “guarantees” of humane treatment when sending a person to a place where he or she may risk torture or other ill-treatment. Belgium recently sought, obtained and intended to rely on such diplomatic assurances in order to extradite Arbi Zarmaev to Chechnya in the Russian Federation where he would be at risk of torture and other ill-treatment. Zarmaev’s case is pending before the European Court of Human Rights.

During the review of Belgium, the Committee reiterated its position on diplomatic assurances stating that States should not resort to the use of diplomatic assurances as a replacement for the principle of non-refoulement when there is a risk of torture or other ill-treatment. This is a clear call to Belgium to cease seeking, using and relying on diplomatic assurances against torture and other ill treatment to forcibly return persons to places where they are at risk of such violations.

Applied to the case of Arbi Zarmaev, the Committee’s recommendation clearly adds to the call to stop his extradition. The European Court of Human Rights imposed an interim measure under rule 39 of its Rules of Court, which requires Belgium to suspend the execution of the extradition until it has ruled on the merits of the case.

Recently, in an unrelated case, Belgium ignored such an interim measure. On 3 October 2013, Nizar Trabelsi was extradited to the USA, despite an interim measure from the Court requesting the Belgian authorities not to proceed with the extradition before it decides on the case. During the dialogue with the Committee, the representative for Belgium defended the extradition of Nizar Trabelsi primarily with unspecified reasons of national security. Amnesty International calls upon Belgium to not repeat this disregard of human rights law and to respect the interim measures imposed by the European Court of Human Rights

Legal framework

Belgium appears to have made no progress in ratifying the Optional Protocol to the Convention against Torture, despite numerous pledges, promises and plans to do so. During the dialogue with the Committee, the State acknowledged that this particular dossier has not seen any recent developments. The State’s representative explained that this is due to the possibility of including the National Preventative Mechanism, which the protocol proscribes, in the also yet to-be-established National Human Rights Institution (NHRI).

The Committee’s recommendation to allow for close consultation with civil society in the discussions on the establishment of a NHRI is most welcome. Amnesty International and other NGOs have been calling for such a dialogue ever since the current government had set itself the goal of creating a NHRI – to date with little or no response from the government’s side. Though welcoming Belgium’s claims that recently some progress has been achieved in the discussions on the establishment of a NHRI, Amnesty International remains skeptical. In May 2014 there will be elections in Belgium and unless the current government prioritizes this dossier immediately, Amnesty International fears that the pledges and engagements made by Belgium will once more prove empty promises.

The Committee also made strong recommendations on Belgium’s legal framework with regard to torture. In general, the lack of explicit attention to torture was scrutinized during the dialogue with the state and in the Concluding Observations. For instance, Belgian law does not explicitly ensure that any statement that has been made as a result of torture cannot be invoked as evidence in any proceedings. Amnesty International had unsuccessfully called upon Belgium to rectify this during a recent legislative change to the relevant articles. A second example is that Belgium’s Criminal Code includes a definition of torture which is not in full compliance to the definition provided in the Convention. The Committee recommended that the State would change these flawed legal provisions.

Deaths in custody and police violence

The Committee deplored the death of Jonathan Jacob. Jacob, aged 26, died in a police holding cell as a result of a violent intervention by the special intervention unit of the Antwerp local police. The

Committee was particularly concerned that more than three years after the facts, those responsible had not been tried. More generally, the Committee expressed concern over reports that sanctions against police officers who were found responsible for ill-treatment were often symbolic and not appropriate for the severity of the acts.

The Committee stated that the current legal provisions for the use of conductive energy devices (commonly referred to as “tasers”) by police officers are insufficient and that the State should make sure that these devices can only be used by well trained officers in instances where otherwise the use of firearms would be legitimate. The Committee expressly stated that such conductive energy devices should not be used in prisons or other places of detention.

Amnesty International notes that currently there are relatively few officers who are allowed to use such devices in Belgium. The organization welcomes that a specialized training is required and that the access to the device is restricted within the Belgian police force. Yet, despite this relatively low number of devices in circulation and the few officers allowed to use them, there have been numerous incidents reported where the devices were used in a manner which is not in line with the principles of proportionality and necessity. These reports include the use of conductive energy devices in prisons and – in one instance – against peaceful protesters.

Background

The Committee Against Torture (CAT) is the body of 10 [independent experts](#) that monitors the implementation of the [Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#) in states that have ratified or acceded to it. Amnesty International submitted a briefing to the Committee in advance of the consideration of Belgium’s third periodic report. It is available at: <http://www.amnesty.org/en/library/info/EUR14/002/2013/en>

End/