

BELGIUM

SUBMISSION TO THE UN COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

103RD SESSION, 19-30 APRIL 2021

Amnesty International submits this document in advance of consideration by the United Nations (UN) Committee on the Elimination of Racial Discrimination (hereinafter the Committee) of Belgium's combined 20th-22nd periodic reports on the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination (hereinafter the Convention) in April 2021. The submission highlights Amnesty International's recent work on ethnic profiling by the police, other concerns related to policing and to relevant developments in Belgium's legal framework and human rights architecture.¹

HUMAN RIGHTS INSTITUTION

The Committee has repeatedly recommended the establishment of a national human rights institution in full compliance with the Paris Principles.² Belgium has taken important steps to achieve that commitment and Amnesty International cautiously welcomed the creation, in 2019, of the Federal Human Rights Institute (FHRI), which held its inaugural meeting on 2 September 2020.³

Nonetheless, the FHRI may not be considered to be fully compliant with the Paris Principles as it has not been "given as broad a mandate as possible".⁴ The institution currently has a restricted mandate that only covers "fundamental rights that fall under federal competency" and additionally cannot work on matters that "are dealt with by sectoral institutions for the promotion and the protection of human rights."⁵

Amnesty International also regrets that the FHRI has not been mandated to establish an individual complaints procedure. The law's preparatory works and the law itself explicitly anticipate widening the mandate through cooperation agreements between the federal and the regional authorities. The federal government confirmed in October 2020 that it "strives towards" an inter-federal institute with A-status and with a complaints procedure.⁶

¹ Amnesty International, « *On ne sait jamais, avec des gens comme vous.* », *Politiques policières de prévention du profilage ethnique en Belgique*, 2018 (English summary).

² Paragraph 7 of CERD/C/BEL/CO/16-19 and paragraph 10 of CERD/C/BEL/CO/15.

³ *Loi de 12 mai 2019 portant création d'un Institut fédéral pour la protection et la promotion des droits humains*, http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2019051210&table_name=loi. For a more details on Belgium's FHRI, see Amnesty International, *Belgium: Submission to the United Nations Human Rights Committee*, 13 September 2019, <https://www.amnesty.org/en/documents/eur14/1041/2019/en/>.

⁴ Point 2 of the Principles relating to the Status of National Institutions. (The Paris Principles). Adopted by General Assembly resolution 48/134 of 20 December 1993, <https://www.ohchr.org/en/professionalinterest/pages/statusofnationalinstitutions.aspx>

⁵ Article 4 §1 of the Law of 12 May 2019. The law does not specify the intended institutions nor which rights would thus fall outside of the mandate of the FHRI. The preparatory works indicatively list: (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), <http://www.dekamer.be/FLWB/PDF/54/3670/54K3670001.pdf>

⁶ Federal Government Agreement of 30 September 2020, p. 85.

https://www.belgium.be/en/about_belgium/government/federal_authorities/federal_government/policy/government_agreement

RECOMMENDATIONS

Amnesty International recommends that the Belgian authorities:

- Reform the Federal Human Rights Institute so that Belgium has a national human rights institution that is fully compliant with the Paris Principles, including by ensuring that all human rights issues are within its mandate, including regional competencies and transversal issues.
- Ensure the Federal Human Rights Institute is mandated to establish an individual complaints procedure and ensure that adequate funding and resources are provided to take up that role.

NATIONAL ACTION PLAN AGAINST RACISM AND OTHER FORMS OF DISCRIMINATION

Racism and related discriminations remain pervasive and, as the UN's Working Group on People of African Descent stated following a country visit in 2019: "(t)here is clear evidence that racial discrimination is endemic in institutions in Belgium."⁷ UNIA, Belgium's equality body, has reported an ever-increasing number of complaints of racial discrimination.⁸

Since the 2001 World Conference against Racism in Durban, Belgian authorities have expressed the intention to formulate a national ('inter-federal') action plan against racism. This Committee has also stressed the need to adopt such a plan.⁹

There has been limited progress. A 2016 study commissioned by the federal government was presented as preparatory to the action plan¹⁰ and in February 2020, the 'Inter-Ministerial Conference Against Racism' was established. The Conference provides the government members of the federal and federated entities a forum for coordinating measures against racial discrimination, antisemitism, faith-based discrimination and intersectional discrimination and is intended to support a future Action Plan. On 27 September 2020, the Inter-Ministerial Conference adopted a 'Starting Note.'¹¹

In October 2020, the federal government committed to draw up and implement an inter-federal action plan against racism and related intolerance and discrimination. The government stated it will consult with relevant stakeholders and that the plan will have measurable objectives, and a timetable, and will specifically designate resources and responsibilities.¹²

RECOMMENDATIONS

Amnesty International recommends that the Belgian authorities:

- Elaborate, adopt, and implement in close consultation with civil society stakeholders, a National Action Plan against racism and related forms of discrimination.

ETHNIC PROFILING BY POLICE

⁷ Statement to the media by the United Nations Working Group of Experts on People of African Descent, on the conclusion of its official visit to Belgium, 4-11 February 2019 - Brussels, 11 February 2019. <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24153&LangID=E>

⁸ Figures for 2019 and for 2020.

⁹ Paragraph 6 of CERD/C/BEL/CO/16-19.

¹⁰ Dr. Saïla Ouald Chaib, *Racisme in België 15 jaar na de Durbanverklaring: Tijd voor een interfederaal actieplan tegen racisme*, 2 September 2016 <https://biblio.ugent.be/publication/8069432/file/8069433.pdf>.

¹¹ Bart Somers, *Startnota interfederaal actieplan tegen racisme goedgekeurd*, 27 September 2020, <https://www.bartsomers.be/nieuws/interfederaal-actieplan/?lid=6249>

¹² Federal Government Agreement of 30 September 2020, p. 84.

https://www.belgium.be/en/about_belgium/government/federal_authorities/federal_government/policy/government_agreement

Amnesty International has found that ethnic profiling¹³ 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.¹⁴

Amnesty International's research in Belgium shows that police officers acknowledge the practice exists and that the legal and policy framework for decision-making by police officers provides insufficient guidance. 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.¹⁵ Indeed, in particular young males from minority groups often state that they have been subjected to identity checks that seem arbitrary and discriminatory.¹⁶ 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.

On 10 June 2020 seven civil society organisations (Amnesty International, JES, Liga voor Mensenrechten, Minderhedenforum, Uit De Marge, Ligue des Droits Humains, MRAX) and human rights defender Yassine Boubout joined forces in a platform called "Not normal?!" aimed at stopping ethnic profiling by police in Belgium.

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.
- 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.¹⁷ The

¹³ For further detail on the issue of ethnic profiling, Amnesty refers to the work of this Committee and in particular its General Recommendation N°36 (CERD/C/GC/36) and Amnesty's [contribution](#) and [response](#) to that recommendation.

¹⁴ Amnesty International, « *On ne sait jamais, avec des gens comme vous.* ». *Politiques policières de prévention du profilage ethnique en Belgique*, 2018 ([English summary](#)).

¹⁵ Amnesty International, *Etnisch profileren – Analyse van het juridisch kader*, July 2017.

¹⁶ 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.

¹⁷ 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

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.¹⁸ 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.¹⁹

POLICING AND USE OF FORCE

In February 2018, Jozef Chovanec, a 39-year-old Slovakian national died following a violent police intervention in a holding cell at Charleroi airport. Leaked video footage of the intervention showed police officers joking and one officer making a Nazi-salute next to the man as he is being restrained by several colleagues.²⁰ A criminal investigation is ongoing but it was only after the footage was leaked – in August 2020 – that provisional measures were taken against the officers.²¹ The Committee Against Torture had already expressed its concern over how the death of Jonathan Jacob, in similar circumstances in 2010, had been handled by Belgian authorities.²²

In 2017 and 2018 Doctors of the World and Amnesty International received numerous credible allegations of ill-treatment by police against migrants and asylum seekers transiting through Belgium.²³

- On 17 May 2018, Mawda Shwari, a two-year-old child of Kurdish-Iraqi parents, was killed by a bullet fired by police, after officers chased and attempted to intercept a van that had fled to avoid police control. There were 30 people believed to be migrants in transit in the vehicle, including several minors. The police officer that fired the bullet in an attempt to stop the van was convicted to a suspended sentence for involuntary manslaughter in February 2021. An appeal is pending.

As far as Amnesty can determine, there is no comprehensive data on deaths in custody or following a police intervention. In recent years, media has reported on a worrying number of cases of young men belonging to ethnic minority groups dying as a result of or following contact with the police:

- On 7 May 2018, in Roeselare, Lamine Moïse Bangoura (27) resisted being forcibly evicted from his home. An attempt to arrest him, led to his death due to “restrained asphyxia” according to the autopsy. In June 2020, the council chamber of the court of first instance decided that none of the eight police officers involved would be prosecuted, the decision was confirmed upon appeal in March 2021.
- On 20 August 2019, in Brussels, Mehdi Bouda (17) died following a collision with a police car. He reportedly fled an identity check. The prosecutor’s office did not press charges, the council chamber is yet to decide whether a criminal trial will be held.
- On 10 April 2020, a police chase in April 2020 in Molenbeek, an area of Brussels with a high number of people belonging to ethnic minority groups, resulted in the death of 19-year-old Adil Charrot who fled for fear of being fined for breach of COVID-19

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.

¹⁸ ECRI, *General Policy Recommendation No. 11 on combating racism and racial discrimination in policing*, adopted on 29 June 2007, para. 46.

¹⁹ Also: para. 47 of *Preventing and countering racial profiling of people of African descent* (above).

²⁰ Press reconstruction of the timeline of events in February 2018, including video footage, <https://www.vrt.be/vrtnws/nl/2020/08/25/tijdlijn-wat-gebeurde-er-na-het-hardhandig-politieoptreden-op/>.

²¹ Parliamentary debate in the Joint meeting of the Commissions of Interior and of Justice about the death of Jozef Chovanec on 26 August 2020, <https://www.dekamer.be/doc/CCRI/pdf/55/ic252.pdf>

²² Committee Against Torture, *Concluding observations on the third periodic report of Belgium*, 3 January 2014, UN Doc. CAT/C/BEL/CO/3, para 13, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT/C/BEL/CO/3&Lang=En. Amnesty International, *Belgium: Submission to the United Nations Committee Against Torture: 51st Session of the United Nations Committee Against Torture (28 October – 22 November 2013)*, 11 October 2013, p21, <https://www.amnesty.org/en/documents/EUR14/002/2013/en/>.

²³ In October 2018, Doctors of the World, an NGO providing health care to so-called transit migrants reported that one in four of a group of 440 migrants they interviewed claimed to have been ill-treated by police. For further information, see: Amnesty International, *Belgium: Submission to the United Nations Human Rights Committee*, 13 September 2019, p22, <https://www.amnesty.org/en/documents/eur14/1041/2019/en/>

restrictions. His scooter collided with a police car. The prosecutor's office did not press charges, the council chamber has yet to decide on whether a criminal trial will be held.²⁴

- On 19 July 2020, in Antwerp, Abderrahman 'Akram' Kadri (29) died while he was being arrested for reported disorderly and aggressive behaviour. An investigation is ongoing.
- On 9 January 2021, in Brussels, Ibrahima Barrie, a 23-year-old man, died of a heart attack in custody after being arrested. Police officers reportedly approached him for filming a police intervention and he subsequently tried to flee an identity check. An investigation is ongoing.
- On 18 January 2021, in Brussels, Ilyes Abbedou, a 29-year old Algerian man, was taken into police custody following an alleged theft and administratively detained for illegally residing on the territory. On 19 January he was found dead in his cell. An investigation is ongoing.

Amnesty International is not in a position to comment on the circumstances of the individual incidents but calls on the government to ensure there is no impunity for any wrongdoing by police and to ensure family members are supported and fully informed.

Amnesty International has expressed concern that law enforcement officials resorted to unlawful use of force in enforcing the lockdown measures aimed at protecting public health in the context of the COVID-19 pandemic, in particular in areas with a high number of people belonging to ethnic minority groups.²⁵ The organisation is also concerned about testimonies and videos showing aggressive and intimidating behaviour by police officers against citizens filming police operations. Citizens must be able to document abuse and discrimination in police actions. Filming or photography is an important way for citizens to hold police accountable and document their experience.

This Committee²⁶, civil society organisations, the Committee Against Torture²⁷ and the Human Rights Committee²⁸ have repeatedly raised concerns about the effectiveness and independence of the supervision and monitoring mechanisms in place for the police force. There have also been recommendations on the issue during the state's Universal Periodic Review.²⁹ Belgium has not accepted these recommendations to strengthen the supervision and take action on this issue.³⁰

RECOMMENDATIONS

Amnesty International considers the recommendations made by this Committee in the Concluding Observations on Belgium's 16th to 19th public reports still to be highly pertinent.³¹ It recommends the Belgian authorities in particular to:

- Strengthen supervision and monitoring mechanisms for the police.
- Ensure people's right to record or photograph police and other officials is respected.
- Ensure the coercive enforcement of measures to protect public health is only considered as last resort.
- Ensure that prompt, thorough, and transparent investigations are conducted into all incidents where people die or are seriously injured due to or following contact with the police, and ensure that the family of the victim be kept up to date as the investigation ensues.
- Commission an independent and comprehensive review into all cases of serious incidents and deaths in custody or after contact with the police, and report publicly on the findings. The structural and attitudinal reasons for the decisions and policing choices that may have been a factor in the deaths or injuries must be investigated.

²⁴ Amnesty International, Policing the pandemic: Human rights violations in the enforcement of COVID-19 measures in Europe, 24 June 2020, <https://www.amnesty.org/en/documents/eur01/2511/2020/en/>

²⁵ Amnesty International, Policing the pandemic: Human rights violations in the enforcement of COVID-19 measures in Europe, 24 June 2020, <https://www.amnesty.org/en/documents/eur01/2511/2020/en/>. Ligue des droits humains & Police Watch, Abus Policiers et confinement, June 2020, <https://www.liguedh.be/abus-policiers-et-confinement/>

²⁶ Including paragraph 12 of CERD/C/BEL/CO/16-19.

²⁷ Paragraph 13 of CAT/C/BEL/CO/3.

²⁸ Paragraphs 27-28 of CCPR/C/BEL/CO/6 and paragraph 15 of CCPR/C/BEL/CO/5.

²⁹ A/HRC/32/8 Recommendations 140.23 (Australia) 140.24 (Costa Rica).

³⁰ See for instance point 9 A/HRC/32/8/Add.1

³¹ Paragraphs 12 & 13 of CERD/C/BEL/CO/16-19