

BELGIUM

**PUNCHING BELOW ITS WEIGHT:
LAWS AND PRACTICES PROVIDE
INADEQUATE HUMAN RIGHTS
PROTECTION**

*Amnesty International
Submission to the UN Universal
Periodic Review, January -
February 2016*

**AMNESTY
INTERNATIONAL**



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EXECUTIVE SUMMARY

This submission was prepared for the Universal Periodic Review (UPR) of Belgium in January - February 2016. Amnesty International evaluates the implementation of recommendations made in the previous UPR, assesses the national human rights framework and human rights situation on the ground, and makes a number of recommendations to the government to strengthen the protection of human rights and address human rights violations.

Amnesty International considers Belgium's human rights architecture to be inadequate, in particular the failure to establish a National Human Rights Institution compliant with the Paris Principles, and to ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Council of Europe Convention on preventing and combating violence against women and domestic violence.

Amnesty International acknowledges that Belgium has in place several action plans on specific human rights issues and is in the process of drafting a National Action Plan on Business and Human Rights. However, it regrets the absence of a broader national human rights plan to provide a more comprehensive and coordinated framework for policy making.

Amnesty International is deeply concerned about the high prevalence of rape and sexual violence in Belgium. The coordination among service-providing entities is inefficient and victims face obstacles in accessing support services, including police, judiciary, and health care.

Amnesty International remains concerned about faith-based discrimination in Belgium, specifically the prohibition on wearing of symbols of belief in schools and in some workplaces. Prison conditions also remain an ongoing concern, as does the impact on human rights by counter-terrorism legislation and practices.

FOLLOW UP TO THE PREVIOUS REVIEW

Of the 121 recommendations made by member states during Belgium's first UPR in 2011, Belgium accepted 88 recommendations and rejected 33.¹

Amnesty International is pleased to note that Belgium has consulted with civil society on several occasions throughout the UPR process and that it published an interim report in 2013, with updates on efforts to implement accepted recommendations from the 2011 review.²

¹ Human Rights Council, *Report of the Working Group on the Universal Periodic Review - Belgium*, A/HRC/18/3, 11 July 2011, paras 100-103 and Human Rights Council, *Report of the Human Rights Council on its eighteenth session*, A/HRC/18/2, 22 October 2012.

² 'Examen Périodique Universel de la Belgique au Conseil des Droits de l'Homme (2011) – Suivi à mi-parcours des recommandations acceptées (septembre 2013).'

Belgium has taken a number of positive steps since its previous review, including the ratification of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights,³ the Arms Trade Treaty,⁴ and the International Convention for the Protection of All Persons from Enforced Disappearance,⁵ although in relation with the latter the necessary changes to the legislative framework have yet to be made.⁶

Amnesty International regrets, however, that on two key areas progress has been limited. A number of States recommended to Belgium to establish a National Human Rights Institution fully compliant with the Paris Principles.⁷ However, despite commitments by successive governments, there has been little progress on this.⁸ Likewise, no progress appears to have been made to ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment⁹ or to establish a National Preventative Mechanism, as required by the Protocol.

Belgium also accepted a number of recommendations aimed at improving its prison system, including by reducing overcrowding.¹⁰ However, despite some efforts, prison conditions remain problematic.

Moreover, despite accepting a recommendation to strictly adhere to the principle of *non-refoulement*,¹¹ there are reports that the authorities have disregarded or attempted to disregard Belgium's obligations.

³ A/HRC/18/3, recommendations 100.2 (Palestine), 100.3 (Spain, Brazil, South Africa) and 100.6 (Ecuador). Belgium ratified the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights in May 2014.

⁴ Belgium ratified the Arms Trade Treaty on 3 June 2014.

⁵ A/HRC/18/3, recommendations 100.6 (Ecuador), 101.1 (Spain, Brazil, Argentina, Japan) and 101.2 (France), ratification was already nearing completion at the time of the Working Group session, the instrument was deposited on 2 June 2011.

⁶ See Committee on Enforced Disappearances, *Concluding Observations on the report submitted by Belgium under article 29, para. 1, of the Convention*, CED/C/BEL/CO/1, 15 October 2014, paras 12, 16 and 18.

⁷ A/HRC/18/3, recommendations 100.9 (India, United Kingdom, Poland, Egypt, Afghanistan, Portugal, Australia, Norway, Spain, Democratic Republic of Congo, Palestine, Ecuador, Djibouti, Russian Federation, Indonesia, Chile, Burkina Faso, Malaysia), 102.6 (partly accepted – Djibouti).

⁸ E.g. the decision to create a 'human rights mechanism' in the Federal Government agreement of 11 October 2014. See *Accord de gouvernement - "Un engagement économique, un projet social,"* p. 227 and Committee on Enforced Disappearances, *List of issues in relation to the report submitted by Belgium under article 29, para. 1, of the Convention, Addendum, Replies by Belgium to the list of issues*, CED/C/BEL/Q/1/Add.1, 6 August 2014, paras 2-6.

⁹ A/HRC/18/3, recommendations 100.1. (Czech Republic, United Kingdom, Norway, Spain, Brazil, Ecuador), 100.2 (Palestine), 100.6 (Ecuador).

¹⁰ A/HRC/18/3, recommendations 100.35 (Czech Republic), 100.36 (Australia), 100.37 (Djibouti), 100.38 (Chile), 100.39 (Ecuador), 100.40 (Algeria), 100.41 (United States), 100.42 (United States), 100.44 (Sweden), 100.45 (Netherlands), 100.47 (Slovakia).

¹¹ A/HRC/18/3, recommendation 100.57 (Indonesia).

THE NATIONAL HUMAN RIGHTS FRAMEWORK

NATIONAL HUMAN RIGHTS INSTITUTION

Belgium's human rights infrastructure has a number of gaps, including the absence of a strong, sufficiently funded and independent National Human Rights Institution (NHRI). The complex constitutional structure of the country further heightens the need for such an institution.

UN treaty bodies,¹² the EU's Fundamental Rights Agency,¹³ 18 States during Belgium's first UPR,¹⁴ and several NGOs have called for the establishment of an NHRI in full compliance with the Paris Principles. Belgium has consistently expressed its commitment to doing so; however, to date little progress has been made.

In 2014, Belgium reformed the Centre for Equal Opportunities,¹⁵ an equality body accredited as a B-status NHRI.¹⁶ This reform brought it into compliance with EU requirements and Belgian constitutional law and split the Centre into two distinct bodies, the Federal Centre of Migration, Protection of the Fundamental Rights of

¹² Committee against Torture (CAT/C/BEL/CO/2), 19 January 2009, para. 12; Committee against Torture (CAT/C/BEL/CO/3), 3 January 2014, para. 9; Human Rights Committee (CCPR/C/BEL/CO/5), 16 November 2010 para. 8; Committee on Enforced Disappearances (CED/C/BEL/CO/1), 15 October 2014, para. 10; Committee on the Elimination of Discrimination against Women (CEDAW/C/BEL/CO/6), 7 November 2008, para. 34; Committee on the Elimination of Discrimination against Women (CEDAW/C/BEL/CO/7), 14 November 2014, paras. 12-13; Committee on the Elimination of Racial Discrimination (CERD/C/BEL/CO/15), 7 March 2008, para. 10; Committee on the Elimination of Racial Discrimination (CERD/C/BEL/CO/16-19), 14 March 2014, para. 7; Committee on Economic, Social and Cultural Rights (E/C.12/BEL/CO/3), 4 January 2008, para. 26; Committee on Economic, Social and Cultural Rights (E/C.12/BEL/CO/4), 23 December 2013, para. 8; Committee on the Rights of Persons with Disabilities (CRPD/C/BEL/CO/1), 28 October 2014, paras 48-49.

¹³ European Union Agency for Fundamental Rights, *National Human Rights Institutions in the EU Member States - Strengthening the fundamental rights architecture in the EU I*, May 2010.

¹⁴ A/HRC/18/3, recommendation 100.9 (India, United Kingdom, Poland, Egypt, Afghanistan, Portugal, Australia, Norway, Spain, Democratic Republic of Congo, Palestine, Ecuador, Djibouti, Russian Federation, Indonesia, Chile, Burkina Faso, Malaysia).

¹⁵ Accord de coopération du 12 juin 2013 entre l'autorité fédérale, les Régions et les Communautés visant à créer un Centre interfédéral pour l'égalité des chances et la lutte contre le racisme et les discriminations sous la forme d'une institution commune au sens de l'article 92bis de la loi spéciale de réformes institutionnelles du 8 août 1980, http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2013061209&table_name=loi

¹⁶ International coordinating committee of national institutions for the promotion and protection of human rights (ICC), ICC Sub-Committee on Accreditation (SCA), <http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Pages/default.aspx>

Foreigners, and Action against Human Trafficking, which is mainly charged with monitoring migration flows, and the Inter-federal Centre for Equal Opportunities and Action to Combat Racism.¹⁷ However, the respective mandates of the two bodies continue to be too narrow to be fully compliant with the Paris Principles.

In its 2014 Government Agreement, the federal government committed to establish “a human rights mechanism”.¹⁸ The Secretary of State for Equal Opportunities has clarified that the mechanism must be in accordance with the Paris Principles; however, there are no further details on what the mechanism will entail or when it will be put in place.

OPTIONAL PROTOCOL TO THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

Since Belgium signed the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) in October 2005, successive governments have expressed their intention to ratify it, while noting the “complexities”¹⁹ of establishing a National Preventative Mechanism (NPM) in light of the State’s structure. They have also linked these discussions to the on-going discussions on creating an NHRI (see also above). Although including the NPM in the NHRI could be a valid option, it is regrettable that since the OPCAT was signed in 2005, successive governments have not taken effective steps towards its ratification and implementation. In light of the serious human rights concerns regarding conditions in detention,²⁰ Amnesty International is concerned at Belgium’s failure to create an NPM in a timely manner.

Since the last review, several federated Parliaments have adopted the necessary legal provisions to ratify the OPCAT,²¹ however, those actions remain without effect until an agreement to establish the NPM has been reached between the federated and federal levels.

¹⁷ ‘Inter-federal’ means that the remit of the new Centre in the fight against discrimination also includes the competences of the Regions and Communities, in addition to the Federal competencies.

¹⁸ The Federal Government’s coalition agreement of 11 October 2014. *Accord de gouvernement - "Un engagement économique, un projet social,"* p. 227, <http://www.premier.be/fr/accord-de-gouvernement>.

¹⁹ See for instance: Committee against Torture (CAT/C/BEL/3), 3 January 2014, para. 174 and ‘*Examen Périodique Universel de la Belgique au Conseil des Droits de l’Homme (2011) – Suivi à mi-parcours des recommandations acceptées (septembre 2013).*’ Available here: http://lib.ohchr.org/HRBodies/UPR/Documents/session11/BE/BelgiumImplementation_fr.pdf

²⁰ See below for some concerns on the prison system and on ‘interned’ people, see also: Amnesty International, *Submission to the United Nations Committee against Torture* (Index: EUR 14/002/2013) which includes further information on the prison system, internment and other relevant areas (e.g. transportation of detainees). See also: e.g. on children in detention, Committee on the Rights of the Child (CRC/C/BEL/CO/3-4), 18 June 2010, paras 82-83; and ‘Standpunt Kinderrechtencoalitie Vrijheidsbeperking en Vrijheidsberoving van Minderjarigen (2014), available at: <http://kinderrechtencoalitie.be/standpunten>.

²¹ Have adopted legislative instruments: the Flemish Parliament, the Walloon Parliament, the Parliament of the French Speaking Community, and the Parliament of the German Speaking Community. Similar actions are still needed by the federal legislature and the legislative bodies of the Brussels Capital Region.

CONVENTION ON PREVENTING AND COMBATING VIOLENCE AGAINST WOMEN AND DOMESTIC VIOLENCE

At the time of writing, Belgium has yet to ratify the Council of Europe Convention on preventing and combating violence against women and domestic violence (the Istanbul Convention). The Secretary of State for Equal Opportunities has expressed an intention to finalise the process as soon as possible and has stated that, pending ratification, the Convention will be fully reflected in policies on gender-based violence.²²

HUMAN RIGHTS PLAN

To date, Belgium does not have a national action plan on human rights.²³ While there are several national action plans aimed at specific human rights or human rights related issues, an overarching human rights plan would strengthen both the sectorial and the general approach to human rights protection, through better mainstreaming, greater coherence and increased visibility of human rights as a policy priority.

Such a plan could usefully specify guidelines for meaningful collaboration with human rights treaty bodies, provide directions for policy making, as well as set benchmarks for assessing progress and measures for evaluation. Currently there are significant ambiguities with regard to the distribution of human rights competences between the federal, federated and 'inter-federal' levels in Belgium, and between municipalities and central government. There is a lack of human rights mainstreaming and as a result human rights perspectives are included in policies in an *ad-hoc* manner, if at all. Some of these shortcomings are overcome through action plans on specific subjects or through more informal measures. However, these solutions are not sufficiently institutionalized, and not open to independent scrutiny.

BUSINESS AND HUMAN RIGHTS

Belgium does not at present have a national legislative or policy framework that requires Belgian companies to respect human rights extraterritorially. However, Belgium is currently in the process of drafting a National Action Plan to implement the UN Guiding Principles on Business and Human Rights. This is an opportunity for the government to institute a range of legal and policy reforms to ensure that Belgian companies act with due diligence in their operations, including operations outside of Belgium, and that, where human rights abuses occur, Belgium will hold companies to account and ensure that victims can access remedial mechanisms in Belgium.²⁴

²² Secretary of State Elke Sleurs (federal government). Chambre de représentants de Belgique, *Note de Politique Générale - Égalité des chances*, 2 December 2014, p. 4, <http://www.dekamer.be/FLWB/PDF/54/0588/54K0588033.pdf>

²³ During the previous review Ecuador recommended Belgium "to elaborate a National Action Plan for the promotion and protection of human rights that allows federal and non-federal institutions that work in this field to better coordinate policies and their implementation". Regrettably, Belgium rejected the recommendation following examination. A/HRC/18/3, recommendation 102.5 (Ecuador) and A/HRC/18/2, para. 234.

²⁴ See also: 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).

THE HUMAN RIGHTS SITUATION ON THE GROUND

DOMESTIC VIOLENCE AND VIOLENCE AGAINST WOMEN

In February 2014, a country-wide study of Belgium commissioned by Amnesty International found that a quarter of the women surveyed reported having suffered sexual violence at the hands of their partners. Thirteen percent reported having been raped by someone other than their partners.²⁵ Official statistics on rape and other forms of sexual violence in Belgium are equally worrying.²⁶ Moreover, under-reporting of rape and other forms of sexual violence is estimated to be common.²⁷ Obstacles to accessing support services, including police, judiciary, and health care are considerable and the level of confidence in the authorities remains low.²⁸

Due in part to pressure from civil society, the authorities are aware of the problem and the federal government, as well as the governments of Flanders and the French Community have announced increased priority to tackling rape and domestic violence.²⁹ A new inter-federal action plan on gender-based violence is also being drafted with particular actions to combat sexual violence.³⁰

However, at the end of April 2015, police spokespersons suggested that “domestic violence” should no longer be a priority in the new National Security Plan for the police and the judiciary.³¹ At the time of writing, the National Security Plan had yet to be finalized.

²⁵ The survey was carried out by Dedicated, an independent market research and opinion polling agency, at the instruction of Amnesty International Belgium and SOS Viol, a Brussels based NGO providing legal, psychological and social aid to rape victims. Dedicated for Amnesty International in Belgium and Sous Viol, *Etude des opinions et des comportements de la population belge en matière de violences sexuelles. – Synthèse Presse*, 19 February 2014, http://issuu.com/amnestybe/docs/enquete_synthese_final

²⁶ In 2013 the police registered eight complaints of rape and ten instances of sexual harassment daily. 44 per cent of all complaints of rape are dropped without charge. The national conviction rate, 13 per cent in 2006, is below average for Europe.

²⁷ The 2008-2009 ‘Security Monitor’ states that an estimated 90% of sexual crimes are not reported to the police. Federal Police. *Veiligheidsmonitor 2008-2009: samenvatting van de grote tendensen*.

²⁸ Dedicated for Amnesty International in Belgium and Sous Viol. *Etude des opinions et des comportements de la population belge en matière de violences sexuelles. – Synthèse Presse*. 19 February 2014, http://issuu.com/amnestybe/docs/enquete_synthese_final

²⁹ The Federal Government’s coalition agreement of 11 October 2014. *Accord de gouvernement - "Un engagement économique, un projet social,"* p. 225. The Flemish Government’s coalition agreement *Regeerakkoord Vlaamse Regering 2014-2019*. p. 126. The Government of the French Community. *Fédérer pour réussir*. p. 49.

³⁰ Secretary of State Elke Sleurs (federal government), Chambre des représentants de Belgique, *Note de Politique Générale - Égalité des chances*, 2 December 2014, p. 5, <http://www.dekamer.be/FLWB/PDF/54/0588/54K0588033.pdf>

³¹ De Standaard. 30 April 2015. *Partnergeweld geen prioriteit meer voor politie*. The previous plan included ‘domestic violence and violence against women’ as a priority issue.

DETENTION

The government has announced plans to fully implement the law governing the internal legal position of detainees, including oversight mechanisms, individual detention plans and complaint mechanisms for detainees.

Overcrowding in prisons remains a key concern. In March 2015, the overall rate of overcrowding was reported to be almost 113%,³² compared to 127% in March 2013.³³ Though a marked improvement, these figures hide the fact that some prisons may have far higher overcrowding rates, up to nearly double the intended capacity.³⁴ In some instances, this may constitute inhuman or degrading treatment.³⁵

In March 2015, the Minister of Justice announced plans to reduce the prison population to under 10.000 detainees, or even 8.000 detainees, including by decreasing the number of people held in pre-trial detention who currently constitute 36% of the total prison population.³⁶

The treatment of people in detention with mental health problems is a particular concern, in particular of so-called 'interned' persons. Such offenders suffering from a mental or psychiatric disorder are not convicted as criminals, but involuntarily committed for an indefinite period of time because they are deemed to pose a threat to society or to themselves. The authorities have not made adequate resources available to ensure that there are enough specialised facilities for "mentally ill offenders" and they are often held in the psychiatric wings of prisons where the care is insufficient. Following several judgements by the European Court of Human Rights condemning Belgium for the treatment of such offenders,³⁷ a new

³² Response of the Minister for Justice to a Parliamentary question of MP Caroline Cassart-Mailleux, cited figure is for 31 March 2015. Chamber of Representatives, MV 3531, 11 May 2015, <http://www.dekamer.be/kvvcr/showpage.cfm?section=grva&language=nl&cfm=grvaXml.cfm?legislat=54&dossierID=54-B024-866-0303-2014201502506.xml>

³³ The data shows the situation on 1 March of 2013. Some caution is needed when interpreting these figures, since they refer to the overall situation at one particular moment in time and are merely an indication. Further information: Amnesty International, *Submission to the United Nations Committee against Torture* (Index: EUR 14/002/2013) and for further figures: Statistics Belgium, *Population détenue*, <http://statbel.fgov.be/fr/statistiques/chiffres/population/autres/detenu/>. Source of the data: Federal Public Service for Justice, Directorate General EPI Penitentiary Institutions.

³⁴ The latter is the case for the penitentiary of Vorst, which was reported to house 580 detainees for a capacity of 300 in May 2015. Source: Nieuwsblad, Vorst bouwvallig: 100 gedetineerden moeten nog voor de zomer verhuizen, 06 May 2015, http://www.nieuwsblad.be/cnt/dmf20150506_01666364

³⁵ See for instance: European Court of Human Rights (ECtHR), *Vasilescu v. Belgium*, 25 November 2014, (application no. 64682/12).

³⁶ Minister for Justice Koen Geens. *Plan Justice – une plus grande efficience pour une meilleure justice*. Presented on 18 March 2015, <http://www.koengeens.be/fr/justitieplan>

³⁷ The first such case was ECtHR, *Aerts v. Belgium*. 30 July 1998, 25357/94. Later convictions: ECtHR, *De Donder and De Clippel v. Belgium*, 6 December 2011- 8595/06; ECtHR. *L.B. v. Belgium*, 2 October 2012 - 22831/08; ECtHR, *Swennen v. Belgium*, 10 January 2013, 53448/10; ECtHR, *Dufoort v. Belgium*, 10 January 2013, 43653/09; ECtHR

psychiatric facility was opened in May 2014, with a second facility planned. However, these facilities still do not provide sufficient places nor do they cover all the needs for treatment.

THE PRINCIPLE OF *NON-REFOULEMENT*

The State has again been found to violate the principle of *non-refoulement*,³⁸ in particular in cases relating to national security.³⁹

- In September 2014, the European Court of Human Rights found that Belgium had violated Article 3 of the European Convention on Human Rights by extraditing Tunisian national Nizar Trabelsi to the USA.⁴⁰ Moreover, in this particular case, the Belgian government also ignored a binding interim measure by the Court which called for suspension of his extradition.⁴¹
- In June 2015, in the case of Abdallah Ouabour, the European Court of Human Rights ruled that if Belgium were to extradite him to Morocco as foreseen, it would violate the principle of *non-refoulement*.⁴²

COUNTER-TERRORISM AND HUMAN RIGHTS

Belgian counter-terrorism legislation, policies and practices may undermine the protection of human rights, in particular for those suspected or convicted of terrorism, including their rights to a fair trial, to privacy and to not be subjected to ill-treatment. Following the attack on the Jewish Museum in Brussels in May 2014 and the attacks in Paris in January 2015, the government announced further measures, including restricting travel. To date, there has been no human rights compliant evaluation of these measures.

Claes v. Belgium, 10 January 2013, 43418/09; ECtHR, *Van Meroye v. Belgium*, 9 January 2014, 330/09; ECtHR, *Oukili v. Belgium*, 9 January 2014, 43663/09; ECtHR, *Caryn v. Belgium*, 9 January 2014, 43687/09; ECtHR, *Moreels v. Belgium*, 9 January 2014, 43717/09; ECtHR, *Gelaude v. Belgium*, 9 January 2014, 43733/09; ECtHR, *Saadouni v. Belgium*, 9 January 2014, 50658/09; ECtHR, *Plaisier v. Belgium*, 9 January 2014, 28785/11; ECtHR, *Lankester v. Belgium*, 9 January 2014, 22283/10. For an overview of the case law: Stephanie Gryson (Liga voor Mensenrechten), *Internering in België: de veroordelingen door het Europees Hof voor de Rechten van de Mens*, 21 April 2015, http://www.mensenrechten.be/index.php/site/nieuwsberichten/internering_in_belgie_de_veroordelingen_door_het_europees_hof_voor_de_recht

³⁸ Following the previous review where Amnesty International raised the case of M.S. in its submission, the ECtHR found that Belgium had indeed violated art. 3 of the European Convention on Human Rights (ECHR) (prohibition of torture and other ill-treatment) through constructive *refoulement* to Iraq. ECtHR, *M.S. c. BELGIQUE*, 31 January 2012, 50012/08.

³⁹ The State has also been found to violate the principle in different circumstances, see e.g. ECtHR, *S.J. c. Belgique*, 27 February 2014, 70055/10; ECtHR. *M.S.S. v. Belgium and Greece*, 21 January 2011, 30696/09, and ECtHR, *Singh et autres c. Belgique*, 2 October 2012, Nr. 33210/11.

⁴⁰ ECtHR, *Trabelsi c. Belgique*, 4 September 2014, 140/10.

⁴¹ See: Amnesty International, *Amnesty International's concerns on Belgium's disregard for the European Court of Human Rights' Interim Measure in the case of Nizar Trabelsi*, Ref. B1543, 28 March 2014.

⁴² ECtHR. *Ouabour c. Belgique*, 2 June 2015. 26417/10,

TRANSGENDER PERSONS

In order to obtain legal recognition of their gender, transgender persons are required to comply with criteria that violate their human rights. Such measures include having to undergo psychiatric diagnosis and sterilization, as well as other mandatory medical treatments. The government has acknowledged the problem and has announced legal reform, but the precise plans and timing for the changes remain unclear.

RELIGIOUS DISCRIMINATION

In Flanders, the autonomous board of the Flemish Community Education (GO!) decided to prohibit the wearing of symbols of belief in all schools under its authority.⁴³ The ban has given rise to concerns by international human rights bodies and others.^{44 45} The blanket ban is contrary to the right of the students to freedom of religion or belief, as established in several cases by the Council of State (Belgium's highest administrative court).⁴⁶ However, despite this, the autonomous board of the Flemish Community Education has not taken measures to comply; it appears to consider that the decisions of the Council of State apply only to the schools directly involved in the law-suits. The ban remains in place for all other GO! schools.

The authorities of the French Community in Belgium (*Fédération Wallonie-Bruxelles*) have so far left the decision on whether or not to authorize religious symbols to the individual schools. This may also constitute a basis for discrimination against members of some ethnic or religious groups, as individual or groups of schools may impose disproportionate restrictions.

Several municipalities across the country have imposed bans on religious symbols in the schools within their authority.⁴⁷

Banning religious symbols has also become commonplace for many public employers, including teachers and certain groups of civil servants.⁴⁸ Such measures

⁴³ In effect since 1 September 2013. The decision by way of circular letter: Raad van het Gemeenschapsonderwijs, *omzendbrief 2013/1/omz inzake het verbod op het dragen van levensbeschouwelijke kentekens*.

⁴⁴ CEDAW/C/BEL/CO/7, paras 18-19; CERD/C/BEL/CO/16-19, para.11.

⁴⁵ Inter alia the Flemish Commissioner for Children's Rights (Kinderrechtencommissariaat), http://www.kinderrechtencommissariaat.be/sites/default/files/bestanden/2014_2015_analyse_arrest14okt2014_dragen_levensbeschouwelijke_symbolen_leerlingen.pdf. Amnesty International, *Choice and Prejudice* (Index: EUR 01/001/2012).

⁴⁶ Council of State, *Singh v. Gemeenschapsonderwijs*, verdict nr. 228.748, A. 209.320/IX-8123, 14 October 2014. On the same day, the Council of State ruled in two other cases of prohibitions in GO! schools, and repeated its motivation in the case of *Singh v. Gemeenschapsonderwijs*. See See Council of State <http://www.raadvst-consetat.be>

⁴⁷ For example in Tervuren (Flanders), Charleroi (Wallonia), Dendermonde (Flanders), Verviers (Wallonia) and Brussels this was recently or still is the case. Amnesty International was not able to analyze the reasoning behind each of these municipal decisions.

⁴⁸ By way of illustration, bans on religious symbols were reported to be part of the internal rules of employment of the municipalities of Etterbeek, Sint-Agatha-Berchem, Ukkel, Vorst, Antwerp, Boom, as well as for the employees of certain autonomous public institutions, like

are argued to be aimed at ensuring neutrality, interpreted as an exclusive concept. This interpretation is not in keeping with that recommended by the UN Special Rapporteur on freedom of religion or belief, according to which the state should treat members of different religions or beliefs on the basis of equality and ensure non-discriminatory implementation of the right to freedom of religion or belief.⁴⁹

There are persistent and credible reports of faith-based discrimination and discrimination on the basis of perceived origins, in particular in employment.⁵⁰

A law prohibiting full-face veils in public places entered into force on 1 June 2011. Amnesty International considers that the law violates the rights to freedom of expression and religion of those women who choose to express their identity or beliefs in this way.⁵¹

RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW

Amnesty International calls on the government of Belgium to:

Human rights infrastructure

- Establish a National Human Rights Institution which is fully compliant with the Paris Principles, as Belgium committed to in the previous review;⁵²
- Ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment without further delay, as Belgium had accepted to do in the previous review,⁵³ and establish a National Preventative Mechanism in accordance with the Optional Protocol;

Actiris, the Port of Brussels and SLRB. In some instances the restrictions apply only to staff that is in contact with the public.

⁴⁹ Amnesty International, *Choice and Prejudice* (Index: EUR 01/001/2012) and United Nations General Assembly, *Interim report of the Special Rapporteur on Freedom of religion or belief*, 18 July 2011, A/66/156.

⁵⁰ Amnesty International, *Choice and Prejudice* (Index: EUR 01/001/2012). "Open Society Foundations, *Muslims in Antwerp*, September 2011; Perrin Nathalie & Martiniello Marco, *Discrimination et désaffiliation des jeunes issus de l'immigration*, 2014. »

⁵¹ *Loi visant à interdire le port de tout vêtement cachant totalement ou de manière principale le visage*. See e.g.: Amnesty International, Belgium, *Amnesty International submission to the UN Universal Periodic Review 11th session of the UPR Working Group, May 2011* (Index: EUR 14/001/2010); Amnesty International, *Belgium full face veil ban would breach international law*, 22 April 2010 and Amnesty International, *Choice and Prejudice* (Index: EUR 01/001/2012).

⁵² A/HRC/18/3, recommendation 100.9 (India, United Kingdom, Poland, Egypt, Afghanistan, Portugal, Australia, Norway, Spain, Democratic Republic of Congo, Palestine, Ecuador, Djibouti, Russian Federation, Chile, Burkina Faso, Malaysia).

⁵³ A/HRC/18/3, recommendations 100.1 (Czech Republic, United Kingdom, Norway, Spain, Brazil, Ecuador), 100.2 (Palestine), 100.6 (Ecuador).

- Ratify and implement the Council of Europe Convention on preventing and combating violence against women and domestic violence (the Istanbul Convention);
- Develop and adopt a human rights action plan and ensure its effective implementation as a tool to respect, promote, protect and fulfil human rights.

Domestic violence and violence against women

- Ensure sufficient budget is allocated for the effective implementation of the National Action Plan against gender-based violence;
- Ensure effective coordination among all service-providing entities, health care services, police and judiciary, with a focus on the victim at each stage;
- Continue to give priority attention to domestic and gender-based violence, in particular to rape and other sexual violence, at all relevant levels, including by police and the judiciary.

Detention

- Establish without further delay an independent complaints mechanism, accessible for all detainees, to investigate in an effective and impartial manner all allegations of ill-treatment;
- Ensure that all persons deprived of liberty are held in humane conditions, including in line with the UN Basic Principles for the Treatment of Prisoners;
- Adopt a comprehensive plan aimed at eradicating conditions and practices that violate the human rights of prisoners. Such plan should focus on ending overcrowding and include an examination of the wider social and economic problems that may be associated with resort to criminal behaviour;
- Ensure sufficient capacity and treatment in specialised psychiatric facilities for involuntarily committed offenders with mental health problems (“interned” people) and ensure that they are no longer held in prisons.

The principle of non-refoulement

- Ensure that no one is transferred to a country or jurisdiction where they would face a real risk of serious human rights violations or abuses, in strict adherence with the principle of *non-refoulement*;
- Strictly comply with the interim measures imposed on Belgium by the European Court of Human Rights.

Counter-terrorism and human rights

- Conduct a prompt and thorough evaluation of all current or draft counter-terrorism laws, policies and practices to ensure their full compliance with international human rights law.

Business and human rights

- Institute legal and policy reforms to require companies domiciled or headquartered in Belgium to carry out adequate human rights due diligence throughout their global operations;

- Put in place measures to ensure that all Belgian state support to companies operating or planning to operate abroad, is made conditional upon the company carrying out adequate human rights due diligence in relation to its operations.

Transgender persons

- Abolish sterilization and surgery requirements, as well as mandatory psychiatric assessment/diagnosis, as preconditions for legal gender recognition for transgender persons.

Religious discrimination

- Adopt legislation to outlaw blanket bans on religious symbols by school authorities and clarify that restrictions imposed by individual schools are only permissible when it has been clearly demonstrated that such measures are necessary, proportional and have a legitimate aim established in international law;
- Ensure that public and private employers do not discriminate against religious minorities, including by introducing internal rules on religious and cultural symbols and dress unless on the basis of a determining occupational requirement;
- Repeal the law banning full-face veils in public places.

ANNEX

AMNESTY INTERNATIONAL DOCUMENTS FOR FURTHER REFERENCE⁵⁴

Belgium full face veil ban would breach international law, 22 April 2010.

Belgium: Asylum seekers and irregular migrants, excessive use of force by police, prison conditions and the banning of face veils - Amnesty International submission to the UN Universal Periodic Review 11th session of the UPR Working Group, May 2011 (Index: EUR 14/001/2010).

Belgium: Amnesty International welcomes commitment to establish a National Human Rights Institution (Index: EUR 14/002/2011).

Choice and Prejudice (Index: EUR 01/001/2012).

Submission to the European Commission against Racism and Intolerance on Belgium (Index: EUR 14/001/2013).

Submission to the European Commission on the Implementation of the Equality Directives (Index: IOR 61/002/2013).

Submission to the United Nations Committee against Torture (Index: EUR 14/002/2013).

Belgium Falls Short of its Obligations on Torture and other Ill-treatment (Index: EUR 14/003/2013).

The state decides who I am: Lack of legal gender recognition for transgender people in Europe (Index: EUR 01/001/2014).

Amnesty International's concerns on Belgium's disregard for the European Court of Human Rights' Interim Measure in the case of Nizar Trabelsi, 28 March 2014 (Ref. B1543 -

http://www.amnesty.eu/content/assets/Letters2014/B1543_PACE_rapporteur_Trabelsi_case-Mar2014.pdf)

Belgium: Submission to the United Nations Committee on the Elimination of Discrimination Against Women: 59th session, 20 October – 7 November 2014, (Index: EUR 14/001/2014).

Bulldozed: How a mining company buried the truth about forced evictions in the Democratic Republic of the Congo, 24 November 2014 (Index: AFR 62/003/2014).

⁵⁴ All of these documents are available on Amnesty International's websites:

<https://www.amnesty.org/en/countries/europe-and-central-asia/belgium/> and www.amnesty.eu