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AMNESTY
INTERNATIONAL



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CONTENTS

1. INTRODUCTION	4
2. THE OPTIONAL PROTOCOL TO THE CONVENTION AGAINST TORTURE AND A NATIONAL PREVENTIVE MECHANISM (ARTICLE 2 - LOIPR §43)	4
2.1 RECOMMENDATIONS	5
3. HUMAN RIGHTS INSTITUTION (ARTICLE 2 – LOIPR §6)	5
3.1 RECOMMENDATIONS	6
4. THE PRINCIPLE OF NON-REFOULEMENT (ARTICLE 3 – LOIPR QUESTION 18-20)	7
4.1 RETURNS TO SUDAN	7
4.1.1 RECOMMENDATIONS	7
4.2 RETURNS TO AFGHANISTAN	7
4.2.1 RECOMMENDATION	8
4.3 EXTRADITION TO THE RUSSIAN FEDERATION AND	8
4.4 RELIANCE ON DIPLOMATIC ASSURANCES AGAINST TORTURE	8
4.4.1 RECOMMENDATIONS	9
4.5 RETURNS POLICIES AND PRACTICES	9
4.5.1 RECOMMENDATIONS	10
5. PERSONS IN DETENTION (ARTICLE 11 – LOIPR §§ 29-35)	10
5.1 PRISONERS' LEGAL STATUS AND OVERSIGHT MECHANISMS	10
5.1.1 RECOMMENDATIONS	11
5.2 OVERCROWDING AND CONDITIONS OF DETENTION IN PRISONS	11
5.2.1 RECOMMENDATIONS	13
5.3 ACCESS TO COVID-19-VACCINES FOR PRISONERS	13
5.3.1 RECOMMENDATIONS	14
5.4 PRISON REGIMES FOR SUSPECTS OR PERSON CONVICTED OF TERRORISM RELATED OFFENCES	14
5.4.1 RECOMMENDATIONS	14
5.5 DETENTION OF MIGRANTS, INCLUDING CHILDREN	15
5.5.1 RECOMMENDATIONS	16
6. STRIP SEARCHES (ARTICLE 11 – LOIPR QUESTION 30)	16
6.1 IN PRISON	16
6.2 BY POLICE AND IN ADMINISTRATIVE DETENTION	16
6.3 RECOMMENDATIONS	17

7. ETHNIC PROFILING BY POLICE (ARTICLE 2, 3)	18
7.1 RECOMMENDATIONS	18
8. POLICING AND USE OF FORCE (ARTICLE 2 - LOIPR QUESTION 12C; ARTICLE 3 – LOIPR QUESTION 18)	20
8.1 RECOMMENDATIONS	21

1. INTRODUCTION

Amnesty International submits this document in advance of consideration by the United Nations (UN) Committee Against Torture (hereinafter the Committee) of Belgium’s fourth periodic report on the measures taken to give effect to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter the Convention) in July 2021.

The submission highlights Amnesty International’s recent work on ethnic profiling by the police and other concerns related to policing. It also contains concerns about breaches of the principle of non-refoulement and about detention conditions and notes relevant developments in Belgium’s legal framework and human rights architecture.

2. THE OPTIONAL PROTOCOL TO THE CONVENTION AGAINST TORTURE AND A NATIONAL PREVENTIVE MECHANISM (ARTICLE 2 - LOIPR §43)

Belgium signed the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) on 24 October 2005.

Belgium still has not ratified the OPCAT and the state has no national preventive mechanism in place, despite repeated commitments and recommendations from this Committee, from other treaty bodies, from civil society organisations and from states during all three cycles of the UPR.

Since the previous review by this Committee, there has been progress. Notably, in July 2018 a law assenting to the OPCAT was adopted by the federal Parliament thus concluding a series of necessary legislative steps.¹ However, the law has not yet been published in the State Monitor and the instrument of ratification has not

¹ Parliamentary Works of the law assenting to the OPCAT - 54-3192, <http://www.dekamer.be/kvvcr/showpage.cfm?section=flwb&language=fr&cfm=/site/wwwcfm/flwb/flwbn.cfm?dossierID=3192&legislat=54&inst=K>. The parliamentary assemblies of the Regions and Communities had previously assented to ratifying OPCAT: Brussels Capital Region (Ordonnance du 27 juillet 2017, http://www.ejustice.just.fgov.be/mopdf/2017/09/12_1.pdf#Page125); Walloon Region (Décret du 13 mars 2014, http://www.ejustice.just.fgov.be/mopdf/2014/03/27_2.pdf#Page88 and Décret du 13 mars 2014 (2), http://www.ejustice.just.fgov.be/mopdf/2014/03/27_2.pdf#Page90); French Speaking Community (Décret du 27 février 2014, http://www.ejustice.just.fgov.be/mopdf/2014/04/02_1.pdf#Page90); Flanders (Décret de 13 juillet 2012, http://www.ejustice.just.fgov.be/mopdf/2012/09/11_2.pdf#Page40); German Speaking Community (Décret de 25 mai 2009, http://www.ejustice.just.fgov.be/mopdf/2009/08/03_1.pdf#Page67).

been deposited. The government has stated that it first wants to establish a National Preventive Mechanism (NPM).²

Consultations with relevant stakeholders on how to set up an NPM have started, focusing in particular on how to integrate the tasks of such a preventive mechanism within existing mechanisms and bodies.³ A coalition of NGOs warned that this approach (among other concerns) might disregard the specificity of the preventive role and that adding tasks to existing bodies may lead to muddling of roles and functions.⁴ Indeed, the state should be mindful that the establishment or designation of a National Preventive Mechanism complements rather than replaces existing systems of oversight and the NPM's establishment should not preclude the creation or operation of other such systems.⁵

2.1 RECOMMENDATIONS

Amnesty International recommends that the Belgian authorities:

- Ratify the Optional Protocol to the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, without further delays and without any reservations.
- Establish as a matter of priority a National Preventive Mechanism that can monitor all places where people are deprived of their liberty. The NPM should be in full conformity with the provisions of the Optional Protocol and with the Guidelines set out by the Subcommittee on the Prevention of Torture (SPT), including with regard to independence, capabilities, resources, access and powers.

3. HUMAN RIGHTS INSTITUTION (ARTICLE 2 – LOIPR §6)

This Committee, other treaty bodies and civil society organisations have repeatedly recommended the establishment of a national human rights institution in full compliance with the Paris Principles.⁶ In recent years, Belgium has taken important steps toward that goal and Amnesty International cautiously welcomed the creation of the Federal Human Rights Institute (FHRI) in 2019, which held its inaugural meeting on 2 September 2020 and became operational in 2021.⁷

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”.⁸ The institution currently has a restricted mandate that only covers “fundamental rights that fall under federal competency” [emphasis added] and additionally cannot

² See for instance paragraph 22 of A/HRC/WG.6/38/L.5,

<https://uprmeetings.ohchr.org/Sessions/38session/Belgium/Pages/default.aspx>.

³ Amnesty International and other civil society organisations were invited to take part in these consultations. See also: Federal Parliament, Exposé d'orientation Politique du ministre de la Justice, 4 November 2020, Doc 55 1610/ (2020/2021), p31, <https://www.dekamer.be/FLWB/PDF/55/1610/55K1610015.pdf>.

⁴ Coalition OPCAT (Informal platform composed of ACAT, la Ligue des Droits Humains, Défense des Enfants International (DEI) –Belgique, I.Care, la section belge de l'Observatoire International des Prisons et le Centre d'Action Laïque), Ratification de l'OPCAT et création d'un Mécanisme national de prévention en Belgique, February 2021, <https://www.dei-belgique.be/index.php/ressources-externes/publications/send/41-publications/493-avis-de-la-coalition-opcat-01-21-ratification-de-l-opcat-et-creation-d-un-mecanisme-national-de-prevention-en-belgique.html>

⁵ SPT Guidelines on National Preventive Mechanisms, UN Doc. CAT/OP/12/5 (2010) §5.

⁶ See, for this committee, paragraph 9 of CAT/C/BEL/CO/3 and paragraph 12 of CAT/C/BEL/CO/2.

⁷ *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 further 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/>

⁸ 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>

work on matters that “are dealt with by sectoral institutions for the promotion and the protection of human rights.”⁹

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 complaint procedure.¹⁰

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.”¹¹ 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, would only enter into force once inter-federalisation has been completed (article 21).

In April of 2021, the Committee on the Elimination of Racial Discrimination recommended that Belgium should ensure the FHRI’s mandate covers all human rights on the entire territory, that it should be mandated to set up an individual complaint mechanism and that the state should ensure the FHRI has the necessary resources to take up these tasks.¹² During Belgium’s third cycle of the UPR, over thirty states made recommendations related to a National Human Rights Institute compliant to the Paris Principles, Belgium swiftly accepted the vast majority of these recommendations.¹³

3.1 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 complaint procedure and ensure that adequate funding and resources are provided to take up that role.

⁹ 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>

¹⁰ Federal Government Agreement of 30 September 2020, p. 85.

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

¹¹ Article 3 of the Law of 12 May 2019.

¹² Paragraph 7-8 of CERD/C/BEL/CO/20-22.

¹³ See: 35.22 - 35.46 but also 36.6 - 36.7 of A/HRC/WG.6/38/L.5.

4. THE PRINCIPLE OF NON-REFOULEMENT (ARTICLE 3 – LOIPR QUESTION 18-20)

4.1 RETURNS TO SUDAN

Between September and December 2017, Belgium violated the principle of non-refoulement by returning Sudanese nationals to Sudan without carefully assessing the risk of torture and other ill-treatment or other serious human rights violations upon return, and by allowing Sudanese government officials to interview and help identify supposed Sudanese citizens before making any assessment.¹⁴

The Commissioner General for Refugees and Stateless Persons (CGRS) was tasked with an investigation of these returns. The CGRS concluded it could not confirm or deny allegations of ill-treatment but found shortcomings in the risk assessment prior to the return of the Sudanese nationals, and criticized aspects of the collaboration with the Sudanese identification mission.¹⁵ The European Court of Human Rights, in *M.A. v. Belgium*, a case submitted by one of the returned Sudanese citizens, confirmed that the Belgian authorities had not sufficiently assessed the real risks that the returnee faced in Sudan and that the authorities had acted in violation of international human rights law.¹⁶

4.1.1 RECOMMENDATIONS

Amnesty International calls upon the Belgian authorities to scrupulously observe the principle of non-refoulement by not returning any person, in any manner whatsoever, to a country where they would be at real risk of serious human rights violations.

4.2 RETURNS TO AFGHANISTAN

Belgium continues to return people to Afghanistan. In light of the unabated conflict, the generalised insecurity and high levels of poverty Amnesty International considers such returns to be in violation of the

¹⁴ Amnesty International, *Belgium: Returns to Sudan violated principle of non-refoulement*, 30 January 2018, <https://www.amnesty.be/IMG/pdf/eur1478112018english.pdf>.

¹⁵ Commissariaat-Generaal voor de vluchtelingen en de staatlozen, *Het respecteren van het non-refoulementprincipe bij de organisatie van de terugkeer van personen naar Soedan*, 8 February 2018, http://www.cgvs.be/sites/default/files/onderzoekrapport_terugkeer_naar_soedan_2018_verslag.pdf

¹⁶ Amnesty International, *Belgium: European court rules deportation to Sudan was unlawful*, 27 October 2020, <https://www.amnesty.org/en/latest/news/2020/10/belgium-european-court-rules-deportation-to-sudan-was-unlawful/> and European Court of Human Rights. *M.A. v. Belgium* (application no. 19656/18), 27 October 2020, <http://hudoc.echr.coe.int/eng?i=001-205377>

principle of non-refoulement.¹⁷ In 2017, there were 30 forcible returns to Afghanistan, in 2018, there were 26 repatriations, in 2019 there were 16, in 2020 there were 5.¹⁸

4.2.1 RECOMMENDATION

Amnesty International recommends that the Belgian authorities implement a moratorium on returns to Afghanistan until the situation in the country permits returns to take place in safety and dignity.

4.3 EXTRADITION TO THE RUSSIAN FEDERATION AND 4.4 RELIANCE ON DIPLOMATIC ASSURANCES AGAINST TORTURE

On 21 January 2021, the Federal minister for Justice agreed to an extradition request from the Russian Federation of I.A., a 36-year old male and Russian national born in the Checheno-Ingush Republic (split after the collapse of the Soviet Union into the Republic of Ingushetia and the Chechen Republic), on the basis of an arrest warrant issued by the Sunzhensky District Court, Republic of Ingushetia. The extradition request cites I.A.'s alleged participation in activities of armed groups in Syria as grounds for the requested transfer. Court proceedings in Belgium suggest that the Minister's decision to allow the extradition relied in part on diplomatic assurances from the Russian Federation about the man's treatment and trial on return.¹⁹

Amnesty International is concerned that if I.A. were to be transferred to the Republic of Ingushetia, he would be at serious risk of torture and other ill-treatment, of being prosecuted in a grossly unfair trial or of being forcibly disappeared. Extraditing the man would be in violation of the principle of non-refoulement.

Amnesty International receives regular reports of enforced disappearances, torture and other ill-treatment from the North Caucasus and has documented a number of such cases over the past years. Such human rights violations are frequently, but not exclusively, reported in the context of so-called counter-terrorism activities conducted by members of law enforcement agencies across the North Caucasus. Amnesty International has repeatedly received information about allegations from across the North Caucasus that certain individuals have been targeted as suspected members of armed groups. There have been credible allegations that evidence against them was based on 'confessions' or incriminating 'testimonies' extracted under torture or other ill-treatment. The use of torture is frequent, persistent and widespread in the North Caucasus republics, including Republic of Ingushetia, and across the Russian Federation, and at the moment there are no effective remedies for victims. In its recent periodic report on the Russian Federation, this Committee also noted serious human rights violations in the North Caucasus region, including torture, abductions, enforced disappearances, arbitrary detention, and extrajudicial killings perpetrated by public officials.²⁰ Amnesty International regularly comes across cases of forcible returns or planned forcible returns to the Russian Federation. Recent examples where transfers led to serious human rights violations include

¹⁷ Amnesty first took this position in light of the findings of a 2017 report: Amnesty International, *Forced back to danger: asylum-seekers returned from Europe to Afghanistan*, October 2017, ASA 11/6866/2017, <https://www.amnesty.org/en/documents/asa11/6866/2017/en/>. More recent information on the human rights situation, can be consulted here: <https://www.amnesty.org/en/countries/asia-and-the-pacific/afghanistan/>. See also: ECRE, *No Reason for Returns to Afghanistan – Policy Note #17*, February 2019, <https://www.ecre.org/wp-content/uploads/2019/02/Policy-Note-17.pdf>, Diakonie, *Erfahrungen und Perspektiven abgeschobener Afghanen*, June 2021, <https://www.diakonie.de/journal/erfahrungen-und-perspektiven-abgeschobener-afghanen> and UNAMA, *Need for Violence to End in Order to Stop Thousands of Afghan Civilians Being Killed and Injured in 2021 – UN Report*, 14 April 2021, https://unama.unmissions.org/sites/default/files/14_april_2021_-_need_for_violence_to_end_in_order_to_stop_thousands_of_afghan_civilians_being_killed_and_injured_in_2021_-_un_report_english_1.pdf

¹⁸ Figures provided by the statistics department of the Foreigners' Office to Amnesty International. E-mail dd. 10/06/2021.

¹⁹ Council of State, President of the XIVrd Chamber - Arrest N° 250.090 of 11 March 2021 in the case A. 232.903/XIV-38.595 <http://www.raadvst-consetat.be/Arresten/250000/000/250090.pdf>. The arrest is a decision rejecting a request for suspension of the execution of the extradition in extreme urgency. The Council of State is yet to rule on the request to annul the Minister's decision.

²⁰ UN Committee against Torture, Concluding observations on the sixth periodic report of the Russian Federation, 28 August, 2018, CAT/C/RUS/CO/6, See: https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fRUS%2fCO%2f6&Lang=en

the enforced disappearance, torture and unfair trial of Azamat Bayduev, following deportation from Poland²¹ and the abduction and arbitrary detention by the Chechen police of Magomed Gadaev, following his deportation from France to Russia.²² Magomed Gadaev twice refused assistance from a lawyer provided by human rights activists, decisions which Amnesty believes were made under pressure. On 8 June, he was sentenced to 1,5 years on fabricated charges of arms trafficking.²³

Amnesty International reiterates its opposition to the use of diplomatic assurances against torture or other ill-treatment which the organisation considers inherently unreliable, all the more so when given by the authorities in countries with a consistently poor record on torture and other ill-treatment.²⁴ This Committee's most recent Concluding Observations also called upon Belgium to "in no circumstances rely on diplomatic assurances rather than observing the principle of non-refoulement."²⁵

The Belgian minister's decision about I.A. is currently being appealed before the Council of State and the European Court of Human Rights imposed an interim measure under its Rule 39-procedure requesting to halt any transfer until the Court can assess the case. Amnesty notes that Belgium has in the recent past deliberately ignored an interim measure by the European Court of Human Rights when extraditing Nizar Trabelsi to the United States in October 2013, showing blatant disregard for the Court and its jurisprudence.²⁶ The European Court of Human Rights later found that the transfer had indeed been in contravention to the State's obligations under the principle of non-refoulement.

4.4.1 RECOMMENDATIONS

Amnesty International recommends that the Belgian authorities:

- Do not extradite I.A. to the Russian Federation
- Do not seek or rely on diplomatic assurances against torture or other ill-treatment before transferring a person to another state where that person is at risk of such abuse.
- Respect the interim measures imposed by the European Court of Human Rights

4.5 RETURNS POLICIES AND PRACTICES

In March 2018, partly in response to the allegations of ill-treatment from returned Sudanese nationals (see above), a temporary commission was set up to evaluate Belgium's policies and practices in relation to voluntary return and forcible removal of foreigners. Except for its president, the Commission consisted exclusively of representatives from government services. The interim report it released in February 2019 was an overview and defence of existing practice and policy.²⁷ The Commission's final report, presented to Parliament in September 2020, contained worrying recommendations calling for a repressive approach

²¹ See Amnesty International, Russia: Chechen refugee forcibly disappeared after being unlawfully deported from Poland, at: <https://www.amnesty.org/en/latest/news/2018/09/russi-chechen-refugee-forcibly-disappeared-after-being-unlawfully-deported-from-poland/>

²² Amnesty International, *Joint public statement - France's deportation of Chechen Asylum Seeker Magamed Gadaev to Russia despite Risk of Torture*, EUR 46/3999/2021, <https://www.amnesty.org/download/Documents/EUR4639992021ENGLISH.pdf>

²³ Meduza, *Chechen court hands down prison sentence to Russian asylum seeker deported from France*, 10 June 2021 <https://meduza.io/en/news/2021/06/10/chechen-court-hands-down-prison-sentence-to-russian-asylum-seeker-deported-from-france>; see also: <https://www.bbc.com/russian/news-57403908>.

²⁴ Amnesty International, *Diplomatic Assurances Against Torture – Inherently Wrong, Inherently Unreliable*, April 2017, AI Index: IOR 40/6145/2017, https://www.ohchr.org/Documents/HRBodies/CAT/GCArticle3/AI_Briefing.pdf

²⁵ §22 of CAT/C/BEL/CO/3.

²⁶ Amnesty International's European Institutions Office, *Concerns on Belgium's disregard for the European Court of Human Rights' Interim Measure in the case of Nizar Trabelsi – Open letter to the Rapporteur on the Urgent need to deal with new failures to co-operate with the European Court of Human Rights, mr. Kimmo Sasi*, Ref: B1543, 28 March 2014, https://www.amnesty.eu/wp-content/uploads/2018/10/B1543_PACE_rapporteur_Trabelsi_case-Mar2014.pdf.

²⁷ Commission chargée de l'évaluation de la politique du retour volontaire et de l'éloignement forcé d'étrangers, *Rapport intérimaire présenté au Ministre de l'Asile et de Migration*, February 2019, https://dofi.ibz.be/sites/dvzoe/FR/Documents/DEF_RAPPORTINTERIMAIRE_FR.pdf.

focused on detention and forced removal, including by raising the possible punishment for irregular stay to one year imprisonment.²⁸

Civil society organisations criticised the Commission's narrow and partial approach and hosted an alternative conference in September 2019, presenting a report outlining six key human rights compliant recommendations, including a plea to shift the dominant paradigm on migration away from criminalization and repression.²⁹

4.5.1 RECOMMENDATIONS

Amnesty International recommends that the Belgian authorities establish a permanent commission to monitor and review return policies, with a broad mandate and a representative membership including civil society and independent experts.

5. PERSONS IN DETENTION (ARTICLE 11 – LOIPR §§ 29-35)

5.1 PRISONERS' LEGAL STATUS AND OVERSIGHT MECHANISMS

The rights of detainees in prisons are specified primarily in the Law 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. The law's entry into force and implementation is an ongoing process. Many human rights bodies and civil society organisations, including this Committee,³⁰ the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment (CPT),³¹ the Human Rights Committee³² and Amnesty International³³ have expressed concern about the delayed entry into force of key provisions of the Dupont Act.

In recent years, the law has been amended and progress has been made on the implementation of elements of the Dupont Act.³⁴ Two notable examples are:

- The changes to and entry into force of the articles of the Dupont Act pertaining to monitoring bodies within each prison (the Oversight Committees) and the reform the Central Prison Monitoring Council (CPMC) (articles 26-27 and 29-31). As a result, the Central Prison Monitoring Council (CPMC) is now

²⁸ Commission chargée de l'évaluation de la politique du retour volontaire et de l'éloignement forcé d'étrangers, *Rapport Final présenté au Ministre de l'Asile et de Migration*, September 2020, https://dofi.ibz.be/sites/dvzoe/FR/Documents/CommissionBossuyt_RapportFinal_FR.pdf

²⁹ 11.11.11, Amnesty International Belgium, Avocats.be, Beweging.net, Caritas International Belgium, CNCD, JRS, Liga voor Mensenrechten, Ligue des droits humains, Minerva, Nansen, Orbit, Plate-Forme Mineurs en Exil, Point d'Appui, UNICEF and Vluchtelingenwerk Vlaanderen, *Au-delà du retour – A la recherche d'une politique digne et durable pour les personnes migrantes en séjour précaire ou irrégulier*, June 2020, https://www.amnesty.be/IMG/pdf/20200611_fr_au-delà_du_retour.pdf

³⁰ §14 CAT/C/BEL/CO/3

³¹ §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.

³² Point 18 of CCPR/C/BEL/CO/5

³³ 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.

³⁴ For an overview of some of the legal evolutions, see: Amnesty International, *Belgium: Submission to the United Nations Human Rights Committee*, 13 September 2019, p11, <https://www.amnesty.org/en/documents/eur14/1041/2019/en/>.

established by law³⁵ and mandated by the Federal Parliament (and not by executive decree like the CPMC's predecessor)³⁶ and its members are appointed by the Federal Parliament.³⁷

- The entry into force of the provisions of the Dupont Act about complaint procedures for detainees (articles 147-166) on 1 October 2020. The complaints are dealt with in first instance at the level of the Oversight Committees and, upon appeal, at the level of the Central Prison Monitoring Council.³⁸

Articles of the Dupont Act stipulating detainees' rights to health care have not entered into force (articles 87-97). This includes the provision that detainees should enjoy the same standards of health care that are available in the community (art. 88). That these articles still have not entered into force is particularly troubling given repeated concerns about insufficient access to health care for detainees and "extreme working conditions" for health care professionals working in prisons.³⁹

5.1.1 RECOMMENDATIONS

Amnesty International recommends that the Belgian authorities fully implement the provisions on the rights of detainees in the Law on Principles of Prison Administration and Prisoners' Legal Status.

5.2 OVERCROWDING AND CONDITIONS OF DETENTION IN PRISONS

Conditions of detention in prisons remain worrying due to overcrowding, dilapidated facilities and insufficient access to basic services.⁴⁰ In addition, staff shortages, lack of adequate financial resources, poor staff security and violence by prisoners have led on several occasions to prison staff going on strike. In the absence of proper mechanisms to care for prisoners during strikes, industrial actions often had a negative impact on detention conditions, health and security for detainees.⁴¹ Following repeated criticism, in particular by the CPT⁴², 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

³⁵ Royal Decree of 19 July 2018.

³⁶ 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](#).

³⁷ M. Nève, 'Belgique: le Conseil central de surveillance pénitentiaire recrute 350 citoyens pour observer les prisons du pays', 11 July 2019. In light of the possibility of attributing the tasks of a future NPM to the CPMC, it is noteworthy that 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. Other potential areas for improvement 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.

³⁸ For a welcoming yet critical take on the organisation of these complaint bodies, see: Observatoire Internationale des Prisons, *Droit de plainte des détenus : Une bonne idée mal mise en œuvre ?* 30 September 2021, <https://www.oipbelgique.be/droit-de-plainte-des-detenus-une-bonne-idee-mal-mise-en-oeuvre/>

³⁹ See below and also: Observatoire International des Prisons – section Belge, *La réalité carcérale invisibilisée ?*, April 2021, <https://www.oipbelgique.be/la-realite-carcerale-invisibilisee/>

⁴⁰ Comité européen pour la prévention de la torture et des peines ou traitements inhumains ou dégradants (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)*, 8 March 2018, CPT/Inf (2018)8, §66, 68, 70, <https://rm.coe.int/16807913b1>. OIP Belgique. *L'Etat belge responsable de la surpopulation carcérale*, 18 January 2019, <http://oipbelgique.be/fr/?p=973>. ECtHR: *Vasilescu v. Belgium*, (64682/12) 2014, <http://hudoc.echr.coe.int/eng-press?i=003-4942877-6053241>.

⁴¹ Comité européen pour la prévention de la torture et des peines ou traitements inhumains ou dégradants (CPT). *Public Statement concerning Belgium*, Strasbourg, 13 July 2017 (CPT/Inf (2017) 18), <https://rm.coe.int/pdf/1680731786>; *Report of CPT visit during May 2016 strike*, <http://www.euractiv.com/section/justice-home-affairs/news/council-of-europe-worried-about-belgian-prisons-crisis/>; and strike reports by the Committees of oversight of Antwerp, 4 July 2018, https://www.ctrg-ccsp.be/nl/system/files/2018-07-04_antwerpen.pdf; Louvain (6 July 2018), https://www.ctrg-ccsp.be/nl/system/files/2018-07-6_leuven.pdf

⁴² 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).

detainees during prison staff strikes.⁴³ While the impact of the new law requires further assessment, press reports suggest that recent strikes continued to have a significant negative impact on prisoners' access to basic services.⁴⁴

The Council of Europe's 2020 SPACE I report showed that prison overcrowding in Belgium remains among the worst in Europe with an overall overcrowding rate of 117,2% (10.808 prisoners for a prison capacity of 9.219) on 1 January 2020. The Space I-report also shows that Belgian prisons have a 'very high' percentage of prisoners not serving a final sentence.⁴⁵

In 2020, during the 'first wave' of Covid-19 infections in Belgium, measures including extending furloughs and early release had a temporary and significant positive effect on overcrowding in prisons, reducing the population by almost 10%.⁴⁶ A group of civil society organisations welcomed this significant decrease and noted that this showed that "reducing the prison population (...) is neither unreasonable nor dangerous" and that "the unprecedented decline we have just experienced reminds us that another way is possible."⁴⁷ The release scheme ended on 16 June 2020, forcing hundreds of prisoners to return to prison.⁴⁸ The mitigation of overcrowding due to Covid-19 measures was short-term and the prison population quickly rose to over 10.000 again, leading once again to worrying overcrowding conditions. In March 2021, 148 detainees had no beds and had to sleep on a mattress on the floor in overcrowded cells.⁴⁹ In April 2021, noting a marked increase in Covid-19 infections and worsening conditions, the CPMC urgently called upon the Minister for Justice to take further measures to reduce the prison population.⁵⁰

Certain measures aimed at avoiding the virus' spread inside the penitentiary system restricted the rights of detainees, for instance by severely reducing detainees' contact with relatives. Like in many other countries, the spread of Covid-19 in prisons and other detention facilities in Belgium has also highlighted pre-existing flaws.⁵¹ In some places of detention, there were serious concerns about inadequate provision for the maintenance of personal hygiene.⁵²

In 2021, Covid-19-outbreaks led to measures to partially or completely lockdown 17 prisons⁵³, further limiting the severely reduced contact prisoners were able to have with the outside world.⁵⁴ In the prison of Saint-Gilles, for instance, where the majority of detainees are held on remand, the conditions were already substandard before the pandemic due to systematic overcrowding, dilapidated facilities, vermin and

⁴³ 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 (I)*.

⁴⁴ Press reported, for instance, that a strike in the prisons of Forrest, Saint-Gilles and Berkendael in April 2021 protesting against understaffing meant prisoners had to stay in their cell, could not shower and could not be visited: De Standaard, 'We werken in een onmogelijke situatie', 9 April 2021, https://www.standaard.be/cnt/dmf20210409_94893855.

⁴⁵ Aebi, M. F., & Tiago, M. M. (2021). *SPACE I -2020–Council of Europe Annual Penal Statistics: Prison populations*. Strasbourg.

⁴⁶ E.g. the population went from 10,825 on 05 March 2020 to 9,634 two months later on 05 May 2020 "Mesures liées au confinement: les prisons belges comptent 1.610 détenus en moins", Le Soir, 05 May 2020, <https://plus.lesoir.be/298926/article/2020-05-05/mesures-liees-au-confinement-les-prisons-belges-comptent-1610-detenus-en-moins>

⁴⁷ Ligue des droits humains, Observatoire Internationale des Prisons – section belge, CAAP, GENEPI, *Surpopulation carcérale : des effets inattendus de la pandémie...*, 11 June 2020, <https://www.liguedh.be/surpopulation-carcerale-des-effets-inattendus-de-la-pandemie/>

⁴⁸ "Les détenus en "congé Covid" rentrent en prison ce mercredi", *L'Echo*, 16 June 2020, <https://www.lecho.be/economie-politique/belgique/general/les-detenus-en-conge-covid-rentrent-en-prison-ce-mercredi/10233630.html>

⁴⁹ <https://www.senate.be/www/?Mlval=/Vragen/SchriftelijkeVraag&LEG=7&NR=1137&LANG=nl>

⁵⁰ Conseil Central de Surveillance Pénitentiaire, *Opsluiting in de gevangenis, steeds moeilijker*, 27 April 2021, <https://ctrq.belgium.be/wp-content/uploads/2021/04/persbericht-27-april-2021.pdf>

⁵¹ Amnesty International, *Forgotten behind bars*, 18 March 2021, Index number: POL 40/3818/2021, <https://www.amnesty.org/download/Documents/POL4038182021ENGLISH.PDF>

⁵² Conseil Central de Surveillance Pénitentiaire, *Prisons: le Gouvernement appelé à renforcer d'urgence les mesures sanitaires et humanitaires*, 30 March 2020 ; RTBF, *Situation au centre fermé de Merksplas : Myria demande que des mesures soient prises*, 16 April 2020 ; Wouter Wanzeele & Kaat Severs, *Coronavirus legt problemen in gevangenis-bloot (Op-ed)*, 8 May 2020. Ana Lazaro - EuroNews, *Covid-19: Belgium's overcrowded prisons a 'powder keg' for infections*, 30 April 2020.

⁵³ It concerns the facilities in Hoei, Nijvel, Ieper, Sint-Gillis, Merksplas, Brugge, Itter, Marche-en-Famenne, Dinant, Marneffe, Doornik, Namen, Hasselt, Paifve, Dendermonde, Jamioux and Ghent, see: <https://www.dekamer.be/doc/CCRA/pdf/55/ac445.pdf>

⁵⁴ <https://www.vrt.be/vrtnws/nl/2021/04/22/gentse-gevangenis-in-lockdown-ik-kan-niet-op-bezoek-en-zelfs-v/>

unhygienic conditions.⁵⁵ During the lockdown in February-March of 2021, the Observatoire International des Prisons (OIP) described the conditions in Saint-Gilles as “nightmarish” for detainees, reporting among other concerns: delayed hearings, no activities, no visits, no exercise, no possibility for showers, limited food, limited access to psychological and psychosocial help, suspension of furloughs, reduced staff by nearly 50% and a marked increase in the number of suicide attempts.⁵⁶

5.2.1 RECOMMENDATIONS

Amnesty International recommends that the Belgian authorities:

- Intensify efforts to end prison overcrowding and ensure all prison facilities and detention conditions are in line with international standards.
- Safeguard detainees’ security and rights, including the right to health care, during industrial actions.
- Only impose isolation or quarantine measures if they cannot take any alternative protective measures and ensure that any restrictions on social visits to prevent the spread of Covid-19 are temporary, and strictly necessary and proportionate⁵⁷
- Compensate cancelled contact visits and other extra restrictions by increasing other means and opportunities to contact the outside world, such as by allowing more frequent, longer, free-of-charge and safe access to phone, internet, emails or videocalls, and continued provision of food and other supplies by family members as appropriate.

5.3 ACCESS TO COVID-19-VACCINES FOR PRISONERS

In December 2020, the Belgian Advisory Committee on Bioethics released a report recommending that there be five priority groups for vaccination against SARS-COV-2. The first group was older persons living in residential care homes and older persons over 85 living alone. The second group included healthcare workers, including health care staff at prisons. It also included people aged 65-85. Group 3 included people aged 45-65 with pre-existing medical conditions and people living or working in collective structures (including psychiatric hospitals and prisons).⁵⁸ The Belgian Superior Health Council as well advised that detainees are to be considered a vulnerable population and that they should be prioritized for vaccination.⁵⁹

The eight Belgian ministers dealing with public health, convened in a so-called Inter-Ministerial Conference, only partly followed this and similar expert advice about vaccinations for detainees. Prison staff, detainees with pre-existing health concerns and detainees over 65 years old were prioritized for vaccination. The general prison population, however, is being offered vaccination at roughly the same time as the outside population.

The decision of the Inter-Ministerial Conference on the issue states that prison staff is prioritized because “Prisons are closed collectivities where several adults live together in a limited area. The risk of infection and therefore illness is higher there. It is clear that prison staff also cannot always maintain sufficient physical distance from inmates.”⁶⁰ As professor of criminology Tom Daems has argued it is startling that the same

⁵⁵ See for instance: Commission de Surveillance Sint-Gilles, *Jaarverslag van de Commissie van Toezicht van Saint-Gilles – Jaar: 2019*, December 2020, https://ctr.g.belgium.be/wp-content/uploads/2020/12/Jaarverslag-van-de-CVT-St-Gillis-2019_DEF.pdf

⁵⁶ Observatoire International des Prisons – section Belge, *Situation cauchemardesque à la prison de Saint-Gilles : y a-t-il un pilote dans l'avion ?*, 17 March 2021, <https://www.oipbelgique.be/situation-cauchemardesque-a-la-prison-de-saint-gilles-y-a-t-il-un-pilote-dans-lavion/>

⁵⁷ Amnesty International, *Forgotten behind bars*, 18 March 2021, Index number: POL 40/3818/2021, <https://www.amnesty.org/download/Documents/POL4038182021ENGLISH.PDF>

⁵⁸ https://www.health.belgium.be/sites/default/files/uploads/fields/fpshealth_theme_file/avis_75_reperes_ethiques_pour_la_vaccination_anti-covid-19.pdf

⁵⁹ Superior Health Council, Verdere informatie (advise 9618) – Prioriteiten voor Vaccinatie tegen SARS-COV-2 – fasen IB en II, April 2021, https://www.health.belgium.be/sites/default/files/uploads/fields/fpshealth_theme_file/20210421_hgr-9618-9641_fase_ib_en_ii_vweb.pdf

⁶⁰ IMC Volksgezondheid, *Untitled*, Press Statement 19 March 2021 <https://www.health.belgium.be/nl/news/imc-volksgezondheid-3>

reasoning was not applied to prioritize the vaccination of the general prison population.⁶¹ In early May 2021, while several prisons were dealing with Covid-19-outbreaks, a group of doctors that work with the Commissions of Oversight and the CPMC called for prisoners to be granted priority access to vaccination.⁶²

5.3.1 RECOMMENDATIONS

Amnesty International recommends that the Belgian authorities make every effort to prioritize prisoners in the further development and roll-out of the vaccination plans, particularly given that their confined conditions do not allow them to physically distance.⁶³

5.4 PRISON REGIMES FOR SUSPECTS OR PERSON CONVICTED OF TERRORISM RELATED OFFENCES

The UN Special Rapporteur for the promotion and protection of human rights and fundamental freedoms while countering terrorism (the Special Rapporteur)⁶⁴ and the CPT have raised concerns about prison regimes governing detainees suspected or convicted of terrorism related offences. 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.⁶⁵

In August 2019, the Supervisory Commission at Iltre 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. A key concern was 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.⁶⁶

In April 2021 the Brussels Court of Appeals ordered the state to pay compensation to several detainees or former detainees of these D-Rad:ex-sections because of the lack of effective recourse against their treatment or placement in the specialised wing, confirming an earlier ruling.⁶⁷ In September 2020, a total of 12 detainees were held in two D-Rad:ex-sections, 160 detainees were being monitored in the context of concerns about their possible “radicalisation” in prisons.⁶⁸

5.4.1 RECOMMENDATIONS

Amnesty International recommends that the Belgian authorities:

- Ensure decisions on detainees’ placement in special wings, or under special security measures or regimes are taken solely following an individualized assessment, which:

⁶¹ Prof. Tom Daems, Vaccineren in Victoriaans Vlaanderen, 7 May 2021, <https://tomdaems.com/2021/05/07/vaccineren-in-victoriaans-vlaanderen/>

⁶² CTRG, *Lettre au Vice-Premier Ministre et ministre de la Justice Vince Van Quickenborne : Vaccination en prison*, 25 May 2021, <https://ccsp.belgium.be/wp-content/uploads/2021/05/Vaccination-en-prison-FR.pdf>

⁶³ See chapter 4.5 of Amnesty International, *Forgotten behind bars*, 18 March 2021, Index number: POL 40/3818/2021, <https://www.amnesty.org/download/Documents/POL4038182021ENGLISH.PDF>

⁶⁴ 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.

⁶⁵ 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. It should be noted that there are no internationally accepted definitions of “radicalization” or “violent extremism” (see also A/HRC/40/52).

⁶⁶ Commission de surveillance de la prison d’Iltre. *Rapport de fin de mandat*, August 2019. p. 32-44.

⁶⁷ RTBF, *Prisons : l’Etat belge condamné à indemniser des détenus D-radex*, 20 April 2021, https://www.rtf.be/info/belgique/detail_prisons-l-etat-belge-condamne-a-indemniser-des-detenus-d-radex?id=10744656.

⁶⁸ Figures from response to parliamentary question, see p59 of Chambres des représentants de Belgique, *Questions et réponses écrites* QRVA 55 028 <https://www.dekamer.be/QRVA/pdf/55/55K0028.pdf>

- 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
 - Is 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 solitary confinement in excess of 15 consecutive days.⁶⁹

5.5 DETENTION OF MIGRANTS, INCLUDING CHILDREN

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 effected. However, very few “less coercive measures”, or alternatives to detention, are available under Belgian law. Therefore, Belgian law and practice lack real alternatives to the detention of migrants and asylum seekers.⁷⁰ Amnesty International is concerned that migration detention is not used as a measure of last resort in Belgium.

Belgium’s laws allow for families with children to be detained for migration purposes as a measure of last resort, following exhaustion of other measures including alternatives for detention. The absence of an executive decree about such detentions had however effectively ended detention of family units including children for migration purposes in Belgium between 2011 and 2018. With the entry into force of the Royal Decree of 22 July 2018, Belgium briefly resumed the practice.⁷¹ On 4 April 2019, the Council of State suspended the Royal Decree. As a result, the practice of family detention is again on hold awaiting the Council of State’s decision on the annulment.⁷²

The October 2020 government agreement stated that detaining minors for migration purposes will not be possible.⁷³ Despite this commitment, the government is continuing to fight the case before the Council of State and thus appears to want to retain at least the legal possibility to detain family units, including children. The state also received several recommendations to prohibit the detention of minors for migration purposes during the state’s third Universal Periodic Review – it has yet to formulate a response to these recommendations.⁷⁴

The detention of children for migration purposes is strictly prohibited in international law as it can never be in their best interests.⁷⁵ In addition: “Children must not be separated from their parents and/or legal guardians.

⁶⁹ Rules 43 and 44 of the ‘Mandela Rules’. UN General Assembly, *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)* : resolution / adopted by the General Assembly, 8 January 2016, A/RES/70/175.

⁷⁰ Articles. 7, 27 §3, 51/5 and 74/6 of the law of 15 December 1980.

⁷¹ With the entry into force, on Aug. 11, 2018, of the *Royal Decree of 22 July 2018*, http://www.ejustice.just.fgov.be/cgi/loi/change_lg.pl?language=fr&la=F&cn=2018072202&table_name=loi

⁷² Conseil d’état - *Arrêt N° 244.190*, 4 April 2019, <http://www.raadvanstate.be/arr.php?nr=244190>

⁷³ Federal Government Agreement of 30 September 2020.

⁷⁴ https://www.belgium.be/en/about_belgium/government/federal_authorities/federal_government/policy/government_agreement p95.

⁷⁴ 36.58 - 36.65 of A/HRC/WG.6/38/L.5

⁷⁵ UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, *Concluding observations on the initial report of Nicaragua*, 11 October 2016, UN Doc. CMW/C/NIC/CO/1, paras 39-40 [CMW Nicaragua 2016]; UN Working Group on Arbitrary Detention (WGAD), *Revised Deliberation No. 5 on deprivation of liberty of migrants*, 7 February 2018, para 11; Inter-American Court of Human Rights (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, para 61; and UNHCR, *UNHCR’s position regarding the detention of refugee and migrant children in the migration context*, January 2017, <https://www.unhcr.org/protection/detention/58a458eb4/unhcrs-position-regarding-detention-refugee-migrant-children-migration.html>

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.”⁷⁶

5.5.1 RECOMMENDATIONS

Amnesty International recommends that the Belgian authorities:

- Ensure migration detention is only used as a measure of last resort. Restrictions to the rights of a person who is a migrant or an asylum-seeker should not be imposed when the individual is entitled to unconditional liberty and freedom. If restrictions to the rights to liberty or movement are necessary to achieve a legitimate aim, alternative non-custodial measures should be the preferred solution and should always be considered before resorting to detention.
- Prohibit the practice of migration related detention of families with children and improve and further develop less coercive measures.

6. STRIP SEARCHES (ARTICLE 11 – LOIPR QUESTION 30)

6.1 IN PRISON

In 2013, Amnesty International, this Committee and others called on the authorities to revoke an amendment to the Law on Principles of Prison Administration and Prisoners’ Legal Status that had recently entered into force and which made strip searches of prisoners a standard procedure on several occasions.⁷⁷ On 29 January 2014, the Constitutional Court annulled this provision.⁷⁸ According to the Central Monitoring Council, it subsequently took 3 years before this annulment was accepted by the prison administration.⁷⁹

Despite this regulatory rectification, however, 2019 research by the Federal Ombudsman showed a great diversity of practices in prisons and revealed significant breaches of the legal requirements for strip-searching detainees as well as deficiencies in how strip searches were conducted, leading to the risk of degrading treatment of detainees.⁸⁰

The ombudsman concluded that the objective of limiting strip searches to what is strictly necessary has not been achieved and that the risk management and control systems in place were largely insufficient to meet the goal. The ombudsman made legal and practical recommendations.⁸¹

6.2 BY POLICE AND IN ADMINISTRATIVE DETENTION

In recent years, there have been several instances where (administratively) detained people say they were subjected to strip searches for unclear reasons and in humiliating circumstances and anecdotal evidence

⁷⁶ UN Working Group on Arbitrary Detention, *Revised Deliberation No. 5 on deprivation of liberty of migrants*, UN Doc. A/HRC/39/45, 7 February 2018, <https://undocs.org/A/HRC/39/45>

⁷⁷ For further information please see: A.I. *Belgium: CAT-submission*. 2013 (Index: [EUR 14/002/2013](#)).

⁷⁸ Art. 108§2 of the Dupont Act was annulled by the [Judgement 20/2014](#) of 29 January 2014 of Belgium’s Constitutional Court.

⁷⁹ [Advice](#) of the Central Council 2017-07.

⁸⁰ Federal Ombudsman, *Naaktfouilleringen – Het Evenwicht tussen de veiligheid in gevangenissen en de waardigheid van de gedetineerden*, November 2019, http://www.federaalombudsman.be/sites/default/files/onderzoeksverslag_naaktfouilleringen_-_federale_ombudsman_0.pdf

⁸¹ « L’enquête a révélé d’importants manquements au respect des prescriptions légales encadrant la fouille à nu, mettant en cause la légitimité de certaines pratiques de fouilles à nu. »

suggest that police officers regularly use strip searches (sometimes including orders to bend over or squat) before placing someone in a police cell.

Examples of such reports are⁸²:

- In October 2018, Doctors of the World, an NGO providing health care to so-called transit migrants residing in or around the Maximilian-Park, reported that one in four of the 440 migrants they interviewed claimed to have been ill-treated by police. 64% of those that had been arrested reported to have been subjected to a strip search, 72% of which claimed this was accompanied with degrading treatment, including beatings, mocking or insults⁸³
- In August 2019, media and event-organizers reported that strip searches are used during music-festivals as a measure against drug-use, in particular when detection dogs point out a person but no drugs are voluntarily handed over or found during a superficial search.⁸⁴
- The policing of the public assemblies by the Yellow-Vest movement in 2018 and 2019 led to numerous complaints to the Committee P, including about strip-searches “without known reasons” of administratively detained people⁸⁵
- In Ghent in March 2021, following reports of a violent theft, police detained 15 youths, including 10 minors (including as young as 15). Some of those detained allege to have been subjected to insults and to strip searches.⁸⁶ A press report states that one seventeen year old girl had an allergic reaction to food given to her by the police. She was brought to hospital and said that after returning from hospital was subjected to a strip search and told to spread her legs. During interrogations, the minor was apparently told she was a witness, not a suspect.⁸⁷
- In the aftermath of the incident in Ghent, media reported several other testimonies of police officers subjecting minors to strip searches for unclear and unspecified reasons.⁸⁸

The Standing Police Monitoring Committee (Committee P) has repeatedly highlighted the problematic use of strip searches, including during mass administrative arrests in the context of public assemblies. The Committee P has recommended to make sure that arrest forms include information on whether the person was searched, whether (s)he was made to strip naked and which specific elements justify this search, as well as the identity of the police officer responsible.⁸⁹

6.3 RECOMMENDATIONS

Amnesty International recommends that the Belgian authorities:

- Implement and ensure follow-up to the recommendations made by the Federal Ombudsman about strip searches in prisons.
- Ensure strip searches are only conducted where an individualized risk assessment has concluded that they are absolutely necessary and proportionate in light of a concrete security need. If a body search is deemed necessary in a particular instance, the detainee should be asked to remove their upper clothes and lower clothes in two separate steps to avoid total nudity.

⁸² Further testimonies can be found in the reports of [ObsPol](#), and [PoliceWatch](#).

⁸³ Médecins du Monde, *Violences policières envers les migrants et les réfugiés en Belgique : notre rapport*, 26 October 2018.

⁸⁴ <https://www.peterdecuyper.com/festifouille/>

⁸⁵ De Tijd, *Politie ging boekje te buiten bij arrestaties van gele hesjes*, 29 May 2020, <https://www.tijd.be/politiek-economie/belgie/algemeen/politie-ging-boekje-te-buiten-bij-arrestaties-van-gele-hesjes/10229839.html>

⁸⁶ De Morgen, *Ouders nemen stappen tegen Gentse politie: 'De jongens werden naakt gefouilleerd. Dat doen ze dus met kinderen van 15'*, 17 March 2021, https://www.demorgen.be/nieuws/ouders-nemen-stappen-tegen-gentse-politie-de-jongens-werden-naakt-gefouilleerd-dat-doen-ze-dus-met-kinderen-van-15~b66455af/?utm_source=link&utm_medium=app&utm_campaign=shared%20content&utm_content=free

⁸⁷ Knack, *Aanhouding minderjarige eindigt met spoedopname en naaktfouillering*, 17 March 2021 <https://www.knack.be/nieuws/belgie/aanhouding-minderjarige-eindigt-met-spoedopname-en-naaktfouillering/article-normal-1713057.html>

⁸⁸ Humo, *'Naakt fouilleren? Dat is de normaalste zaak van de wereld'*, 9 April 2021, <https://www.humo.be/nieuws/naakt-fouilleren-dat-is-de-normaalste-zaak-van-de-wereld~b2a0f228/>

⁸⁹ Vast Comité van Toezicht op de Politiediensten, *Aanbevelingen in geval van grootschalige bestuurlijke aanhoudingen, May 2020*, https://comitep.be/document/onderzoeksrapporten/2020-05-26_Recommandations_en_cas_d_arrestations_administratives_à_grande_ni.pdf

- Require police officers to always register the use of and reason for a strip search and provide the searched person with a written statement detailing the reason for and outcome of the search as well as the identity of the police officer responsible.
- Collect and provide data on the application of strip searches by the police, upon arrest and in police custody situations.
- Further develop alternative screening methods (e.g. scans or ultrasound) to replace strip searches and body searches as much as possible.

7. ETHNIC PROFILING BY POLICE (ARTICLE 2, 3)

Amnesty International has found that ethnic profiling⁹⁰ 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.⁹¹ 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 comply with the test of legality, legitimate aim, necessity and proportionality as well as with the principle of non-discrimination which they are required to meet under international human rights law.⁹² Indeed, in particular young males from minority groups often state that they have been subjected to identity checks that seem arbitrary and discriminatory.⁹³

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.

7.1 RECOMMENDATIONS

Amnesty International recommends that the Belgian authorities:

⁹⁰ 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.

⁹¹ Amnesty International, « *On ne sait jamais, avec des gens comme vous.* ». *Politiques policières de prévention du profilage ethnique en Belgique*, 2018 (English summary).

⁹² Amnesty International, *Etnisch profileren – Analyse van het juridisch kader*, July 2017.

⁹³ 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.

- 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 including on the grounds of race, ethnic origin, skin colour, sex, sexual orientation, gender, gender identity, language, religion, political or other opinions or beliefs, national or social origin, economic status, 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 and outcome of 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.⁹⁴ 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.⁹⁵ 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.⁹⁶

⁹⁴ 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.

⁹⁵ ECRI, *General Policy Recommendation No. 11 on combating racism and racial discrimination in policing*, adopted on 29 June 2007, para. 46.

⁹⁶ Also: para. 47 of *Preventing and countering racial profiling of people of African descent* (above).

8. POLICING AND USE OF FORCE (ARTICLE 2 - LOIPR QUESTION 12C; ARTICLE 3 – LOIPR QUESTION 18)

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.⁹⁷ 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.⁹⁸ Both the death and its aftermath are reminiscent of how the death of Jonathan Jacob, in similar circumstances in 2010, had been handled by Belgian authorities.⁹⁹

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.¹⁰⁰

- 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 Moise 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 restrictions. His scooter collided with a

⁹⁷ 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/>.

⁹⁸ 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>

⁹⁹ 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/>.

¹⁰⁰ 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/>

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.¹⁰¹

- 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.¹⁰²

The organisation is also concerned about testimonies and videos showing aggressive and intimidating behaviour by police officers against individuals filming police operations. People must be able to document abuse and discrimination in police actions. Filming or photographing law enforcement operations is a component of the right to freedom of expression and can provide an important contribution in terms of law enforcement officials accountability.

The Committee for the Elimination of Racial Discrimination (CERD) recently expressed concern about police violence against people belonging to ethnic minorities, migrants and asylum seekers. CERD also criticised the lack of data collected by the state and the fact that the state continues to treat police's racial violence as isolated incidents and fails to adopt a "coherent and systematic approach to dealing with a situation that suggests the presence of structural discrimination".¹⁰³

This Committee¹⁰⁴, the Committee for the Elimination of Racial Discrimination¹⁰⁵, the Human Rights Committee¹⁰⁶ and civil society organisations 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.¹⁰⁷ Most recently, the CERD recommended the state to carry out a comprehensive survey aimed at streamlining and strengthening police procedures and control mechanisms, and to incorporate a coherent and systematic approach that takes into account the structural dimension of racist or other discriminatory conduct.¹⁰⁸ Belgium has generally been dismissive of such recommendations to strengthen the supervision and take action on this issue.¹⁰⁹

8.1 RECOMMENDATIONS

Amnesty International recommends the Belgian authorities to:

- Strengthen supervision and monitoring mechanisms for the police.

¹⁰¹ 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/>

¹⁰² 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/>

¹⁰³ Own translation from the French since the English language version is not yet available. Paragraph 13 of CERD/C/BEL/CO/20-22; see also Paragraphs 12 & 13 of CERD/C/BEL/CO/16-19

¹⁰⁴ Paragraph 13 of CAT/C/BEL/CO/3.

¹⁰⁵ Including paragraph 12 of CERD/C/BEL/CO/16-19 and paragraph 14 (d) of CERD/C/BEL/CO/20-22.

¹⁰⁶ Paragraphs 27-28 of CCPR/C/BEL/CO/6 and paragraph 15 of CCPR/C/BEL/CO/5.

¹⁰⁷ A/HRC/32/8 Recommendations 140.23 (Australia) 140.24 (Costa Rica).

¹⁰⁸ Paragraph 14 (d) of CERD/C/BEL/CO/20-22.

¹⁰⁹ See for instance point 9 A/HRC/32/8/Add.1

- Ensure people's ability to record or photograph police and other law enforcement officials is respected.
- Ensure the coercive enforcement of measures to protect public health is only considered as last resort, is necessary, proportionate, and non-discriminatory.
- Ensure that prompt, thorough, and transparent investigations are conducted into all incidents involving injuries 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.
- Establish a fully independent public inquiry to review all incidents involving police use of force and deaths in custody with a view to identifying lessons to be learned and to reporting publicly on the findings. The public inquiry should also draw conclusions on alleged institutional bias and racism within police and its impact on policing choices and tactics.

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BELGIUM

SUBMISSION TO THE UN COMMITTEE AGAINST TORTURE 71ST SESSION, 12-30 JULY 2021

Amnesty International submits this document in advance of consideration by the United Nations (UN) Committee Against Torture (hereinafter the Committee) of Belgium's fourth periodic report on the measures taken to give effect to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter the Convention) in July 2021.

The submission highlights Amnesty International's recent work on ethnic profiling by the police and other concerns related to policing. It also contains concerns about breaches of the principle of non-refoulement and about detention conditions and notes relevant developments in Belgium's legal framework and human rights architecture.