



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

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COMMITTEE AGAINST TORTURE
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**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION**

Concluding observations of the Committee against Torture

BELGIUM

1. The Committee considered the second periodic report of Belgium (CAT/C/BEL/2) at its 850th and 853rd meetings, held on 12 and 13 November 2008 (CAT/C/SR.850 and 853), and adopted, at its 860th meeting (CAT/C/SR.860), held on 19 November 2008, the following concluding observations.

A. Introduction

2. The Committee welcomes the second periodic report of Belgium but regrets that the report was submitted four years late. The Committee expresses its appreciation for the extensive written replies to its list of issues (CAT/C/BEL/Q/2 and Add.1) as well as the very detailed additional information provided orally during the consideration of the report. Lastly, the Committee welcomes the constructive dialogue it enjoyed with the high-level delegation sent by the State party and thanks it for its frank and precise responses to the questions asked.

B. Positive aspects

3. The Committee welcomes the progress made by the State party in the protection and promotion of human rights since its consideration of the State party's initial report in 2003 (CAT/C/52/Add.2). The Committee notes with satisfaction that, since its consideration of the initial report, the State party has ratified the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women on 17 June 2004 and signed the

Convention on the Rights of Persons with Disabilities and its Optional Protocol and the International Convention for the Protection of All Persons from Enforced Disappearance on 13 December 2006 and 20 December 2006 respectively. The Committee encourages the State party to accede fully to those instruments.

4. The Committee takes note with satisfaction of the adoption or entry into force of the following laws:

- (a) Act of 12 January 2005 on principles governing the administration of prison establishments and the legal status of detainees;
- (b) Act of 18 May 2006 prohibiting invocation of (a state of) necessity to justify torture;
- (c) Act of 15 September 2006 amending the Act of 15 December 1980 on the entry, temporary and permanent residence and removal of aliens, which incorporates the subsidiary protection mechanism covering certain asylum-seekers who do not meet the criteria for the granting of refugee status but in respect of whom there are substantial grounds for believing that they would be in real danger of being subjected to “serious violations”, such as the death penalty, execution, torture or inhuman or degrading treatment or punishment, if returned to their country of origin;
- (d) Act of 15 May 2007 amending the Act of 1 October 1833 and the Act of 15 March 1874 concerning extradition, which enhances the protection of fundamental human rights during extradition procedures and expressly provides that extradition shall be denied when there are substantial grounds for believing that a flagrant miscarriage of justice may occur or has occurred or that the individual in question may be in danger of being subjected to torture or other inhuman or degrading treatment.

5. The Committee likewise welcomes with satisfaction the following measures:

- (a) The adoption of minimum standards for places of detention available to the police as well as the requirement that chronological deprivation of liberty registers be kept;
- (b) The measures adopted following the tragic death of Semira Adamu, in particular the establishment of a commission to review the instructions relating to expulsion and the specific training provided to police officers responsible for carrying out deportations;
- (c) The reform of the Council of State and the creation of the Aliens Litigation Council pursuant to the Act of 15 September 2006;
- (d) The reopening of any criminal proceedings resulting in a conviction if the European Court of Human Rights subsequently rules that the convicted individual’s basic rights were violated during the proceedings;
- (e) The imposition of specific restrictions on the expulsion of aliens, in particular those contained in a ministerial directive of 7 July 2005 concerning situations in which aliens are not to be deported from Belgium if they can demonstrate lasting ties to the country;
- (f) The Federal Action Plan 2004-2007 to combat domestic violence.

C. Subjects of concern and recommendations

Expulsion of aliens

6. The Committee notes with concern the inadequate external monitoring of deportations in the State party by the Standing Committee on the Supervision of the Police Services (Committee P) and the General Inspectorate of the Federal and Local Police and the lack of monitoring of deportations of aliens by non-governmental organizations (NGOs), which do not have access to cells or the deportation zone (arts. 3 and 11).

The State party should ensure frequent, independent and effective monitoring, which would benefit all parties by helping to combat impunity. The Committee recommends in particular that the Belgian authorities adopt alternative measures aimed at enhancing monitoring, such as the use of videotaping and monitoring by civil society, especially NGOs.

Unaccompanied minors

7. The Committee notes with satisfaction the creation within the Aliens Office of a special unit for unaccompanied minors with responsibility for processing their applications for residency. It also takes note of certain other activities, including the creation of specialized centres to deal with unaccompanied minors and the planned establishment of the Guardianship Service for Unaccompanied Minors (art. 11).

The Committee recommends that the State party accelerate its efforts to provide unaccompanied minors with assistance, accommodation and follow-up.

Effective recourse procedures in closed centres

8. The Committee is concerned at the inadequate application of appeal procedures in the closed centres, although it notes that procedures for lodging complaints exist in theory. The Committee is likewise concerned by:

(a) The fact that it is virtually impossible for persons who have been deported to lodge a complaint;

(b) The difficulty of proving allegations because the circumstances of a deportation often mean that no third party - and thus no independent witness - present, as well as the difficulty of establishing the facts because the reports made by the deporting officers frequently refer to "resistance" on the part of the deportee, allegations that are difficult to corroborate, since the alien complainant, having been deported, is not present during the investigation;

(c) The fact that the criteria for admissibility currently in force, in particular the limit of five days beginning from the moment the alleged rights violation occurred for the filing of a written complaint are too restrictive and do not provide for suspension of the deportation or expulsion (art. 13).

The State party should establish an effective and transparent system for implementing the Convention at the domestic level and provide guarantees of independence and impartiality so that victims can exercise their right to lodge a complaint. The Committee recommends that the State party:

(a) Ensure that the persons concerned are provided with ample information and consider ways of allowing complainants to appeal from their country of origin;

(b) Review the criteria for admissibility, in particular with regard to the current five-day time limit;

(c) Ensure that reliable medical certificates are regularly prepared before and after deportation.

9. While it notes that the decision of the Constitutional Court partially abrogates article 39/82 of the Act of 15 December 1980 on emergency remedies and the possibility of forced removal in the absence of any decision by the Aliens Litigation Council, the Committee remains concerned by the fact that the provisions of article 39/82 relating to the 24-hour time limit for the lodging of an emergency appeal are to remain in force until 30 June 2009 (art. 13).

The Committee recommends that the State party promptly adopt measures aimed at giving suspensive effect not only to emergency remedies but also to appeals filed by any alien against whom an expulsion order has been issued and who claims that he or she faces the risk of being subjected to torture in the country of return. The Committee, recalling the observation made in the decision of the Constitutional Court that time limits must be reasonable, also recommends that the 24-hour time limit for the registering of an emergency appeal, which is not reasonable, be extended.

Monitoring of deported persons

10. The Committee is concerned at information received from non-governmental sources with regard to the situation of certain deported individuals following their return to their country of origin. It notes with concern that the information provided by the State party regarding the monitoring and follow-up of those individuals and on guarantees of due process is insufficient, and that its compatibility with article 3 of the Convention cannot therefore be assessed. The Committee does, however, acknowledge that the State party did follow up certain cases through the intermediary of its diplomatic representatives abroad (art. 3).

The Committee recommends that the State party improve the monitoring of deported persons with a view to ensuring that no one may be removed, deported or extradited to a State where there is a serious risk that he or she might be subject to the death penalty, torture or other inhuman or degrading treatment or punishment.

Processing of complaints

11. While it takes note of the explanations provided by the delegation of Belgium with regard to the independence of Committee P and welcomes the extensive investigations undertaken, the

Committee regrets that many of the members of Committee P are police officers and individuals seconded from police services, which raises concerns as to the guarantees of independence to be expected from such an external oversight body, in particular with regard to the handling of complaints concerning police conduct and any disciplinary action taken against police officers. This problem has grown to the point that Committee P itself, in its annual report for 2006, stated that “police officers seem to receive extremely favourable treatment from the criminal justice system”. The Committee is likewise concerned at the persistent inconsistencies between complainants’ and police versions of the facts, and in particular that the laying of charges against complainants by the police may in fact be an attempt to cover up unacceptable police conduct (art. 13).

The State party should take adequate measures to guarantee the independence of Committee P by changing its membership. The Committee recommends that the State party ensure that whenever persons who have lodged complaints against the security forces are then charged with resisting the police or with similar offences, the cases should be systematically linked.

National institution

12. The Committee regrets that, despite the recommendation made by a number of treaty bodies in their concluding observations, the State party has not yet established an independent national institution with a broad mandate for the promotion and protection of human rights, in accordance with the Principles relating to the status of national institutions (see General Assembly resolution 48/134) (art. 2).

The Committee recommends that the State party promptly decide on a timetable for the establishment of an independent national institution for the protection of fundamental rights in accordance with the Principles relating to the status of national institutions (see General Assembly resolution 48/134), also known as the Paris Principles.

Allegations of ill-treatment

13. The Committee notes with concern that NGOs continue to submit reports alleging ill-treatment at the hands of the police, including arbitrary arrest, racist insults, refusal to follow up complaints, physical abuse and other inhuman or degrading treatment, in particular in the Bruxelles/Ixelles (5339) and Bruxelles Midi (5341) police districts. The Committee is also concerned at the increase in the number of complaints of discrimination brought against the law enforcement authorities (art. 16).

The State party should take all necessary measures to combat effectively ill-treatment at the hands of the police, including treatment based on discrimination of any kind, and take appropriate steps to punish those responsible. The State party should also strengthen efforts to eliminate ill-treatment in the Bruxelles/Ixelles (5339) and Bruxelles Midi (5341) police districts and provide the Committee with detailed information on this matter in its next periodic report in 2012.

Definition of torture

14. While taking note of the explanation given by the State party's delegation that the definition of torture contained in article 417 bis of the Criminal Code is broader than that contained in the Convention, the Committee is still concerned that the definition contained in the Belgian Criminal Code does not explicitly include actions "by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity", as defined in article 1 of the Convention (art. 1).

The State party should consider taking the necessary legislative steps to amend article 417 bis of the Criminal Code with a view to ensuring that all elements of the definition contained in article 1 of the Convention are included in the general definition set out in article 417 bis of the Belgian Criminal Code, as recommended by the Committee in paragraph 6 of its previous concluding observations (CAT/C/CR/30/6).

Prevention of torture

15. The Committee welcomes the entry into force on 30 May 2006 of the Police Service Code of Ethics, a central tenet of which is the obligation of the police services to respect and protect human rights and fundamental freedoms and which establishes strict conditions for the use of coercive measures and of force. The Committee nevertheless regrets that the Code does not explicitly prohibit torture. It notes that the Code contains several articles relating to the way in which the police must behave when dealing with individuals deprived of their liberty but remains concerned that it makes no mention of any sanctions to which police officials may be liable if they fail to meet their obligations (art. 11).

The State party should take appropriate steps to explicitly include the prohibition of torture in the Police Service Code of Ethics and ensure that police officers perform their duties with the full knowledge that torture is prohibited in any territory under the State party's jurisdiction. The Committee likewise recommends that the Code specify the sanctions to which police officers are liable if they fail to fulfil their obligations.

Protection of minors

16. While taking note of the amendment introduced by article 15 of the Act of 13 June 2006 which gives minors the right to legal counsel when being questioned by an investigating judge, the Committee is deeply concerned that the requirement that legal counsel or a trusted adult be present during questioning of minors is rarely respected (art. 11).

The Committee recommends that the State party implement the pilot project for the audio- and videotaping of the questioning of minors, but stresses that this initiative cannot replace the presence of a third party during hearings of minors, including minors who have witnessed or been the victims of certain offences. The State party should continue its efforts to ensure that minors have a lawyer and a trusted adult present at every phase of a proceeding, including during questioning by a police officer, whether or not the minor has been deprived of liberty.

Administration of juvenile justice

17. The Committee remains concerned that pursuant to article 38 of the Youth Protection Act of 8 April 1965, persons under the age of 18 can be tried as adults. Recalling the concluding observations adopted by the Committee on the Rights of the Child in 2002 (CRC/C/15/Add.178), the Committee is concerned that a holistic approach to the problem of juvenile crime, including with respect to prevention procedures and sanctions, has not been sufficiently taken into consideration by the State party (art. 11).

The Committee recommends that the State party establish a system of juvenile justice that fully integrates into its legislation and practice the provisions of the Convention on the Rights of the Child and that it ensure that persons under the age of 18 are not tried as adults.

Prison overcrowding

18. The Committee acknowledges the measures taken by the State party to address the problem of overcrowding in prisons, such as the building of new prisons and the use of alternatives to detention, but remains concerned by the poor conditions of detention in penal establishments. The Committee is particularly concerned at the inadequacy of internal inspections, the unsuitable and dilapidated buildings and the poor sanitary conditions. It is also concerned at the increase in the incidence of violence between inmates (arts. 11 and 16).

The Committee recommends that the State party take the necessary steps to ensure the earliest possible ratification of the Optional Protocol to the Convention and establish a national body responsible for conducting regular visits to places of detention with a view to preventing torture or any other cruel, inhuman or degrading treatment. It likewise recommends that the State party consider instituting alternative measures to detention rather than increasing prison capacity.

Special individual security regime

19. The Committee notes with satisfaction that pursuant to the Act on principles governing the administration of prison establishments and the legal status of detainees, adopted on 12 January 2005, only those detainees who pose a permanent security risk may, under certain legally prescribed conditions, be placed under an exceptional regime and welcomes the establishment of a legal framework for this regime that includes cumulative criteria for its application, a set procedure and a time limit. The Committee is concerned, however, that the right of detainees to appeal has not yet been established. The Committee is also concerned at allegations that the mandated procedure is not followed, that detainees are not able to challenge the appropriateness of such measures and that hearings are conducted without an interpreter or lawyer present (arts. 11 and 13).

The Committee recommends that the State party ensure that article 118, paragraph 10, of the Act of 12 January 2008 enters into force immediately, since abuses can occur if detainees subjected to this type of measure have no right of

appeal. Furthermore, the Committee recommends that the State party allow independent and impartial monitoring of such measures, for example through an oversight mechanism established outside the prison and through monitoring by civil society.

Register of detainees

20. The Committee notes with satisfaction that, pursuant to the Act of 25 April 2007, “any deprivation of liberty shall be entered in a register of detainees” but wonders whether this procedure is being implemented in practice. The Committee is likewise concerned that there is no provision for noting an arrested individual’s physical condition, in particular any signs of injury, in the register (art. 11).

The State party should take appropriate measures to ensure the effective implementation of the Act of 25 April 2007, systematically endeavour, through investigation, monitoring and inspections, to verify compliance with the obligation to keep a register of detainees and report on the results of these measures in its next periodic report. The Committee also recommends that the State party require that any signs of injury be recorded in the register immediately upon the detainee’s arrival at the police station.

21. While it welcomes the fact that the Act of 25 April 2007 marks a step forward in the area of administrative detention, the Committee nevertheless regrets that the Act does not recognize the right of detainees to legal assistance and that, with regard to judicial detention, the draft Code of Criminal Procedure mandates access to legal assistance only eight hours after detention, even though it is during the period immediately following detention that there is the greatest risk of intimidation and ill-treatment (arts. 2 and 11).

The State party should ensure that access to a lawyer immediately following administrative or judicial detention is guaranteed, as the Committee has stated in its previous recommendations (CAT/C/CR/30/6).

Conditional release

22. The Committee is concerned at the significant decrease in the granting of conditional release. Furthermore, prison day-release permits or prison leave, which are prerequisites for conditional release, also seem more difficult to obtain than in the past (art. 11).

The State party should take effective measures to facilitate the granting of conditional release.

Committal of mentally ill offenders

23. The Committee is concerned at the conditions of detention of psychiatric detainees in the Belgian prison system, which it has already criticized in its previous recommendations (CAT/C/CR/30/6, para. 7), in particular the lack of qualified staff, the dilapidated facilities,

inadequate care, the absence of ongoing treatment and medical examinations, and the marked deterioration of conditions during strikes by prison personnel. The Committee is also concerned at the long waiting period for the transfer of detainees from psychiatric wings to social protection institutions, which, owing to overcrowding in such institutions, can last from 8 to 15 months (arts. 11 and 16).

The Committee recommends that the State party take specific measures to remedy the problems caused by: the poor health care provided to detainees; the overcrowding of psychiatric wings; the housing of some detainees among the general prison population owing to a lack of space in the psychiatric wings; the dilapidated facilities; and the lack of activities and specialized care for detainees in the psychiatric wings. The Committee also recommends that the State party ensure that adequate specialized treatment be provided.

Violence against women and girls

24. While it welcomes measures adopted by the State party to combat and eliminate violence against women, such as the adoption of the Federal Action Plan 2004-2007 to combat domestic violence, the Committee notes with concern the lack of any coordinated national strategy or programme to combat all forms of violence against women and girls. The Committee is likewise concerned at the persistence of corporal punishment of children within the family and the fact that this practice is not prohibited by law (arts. 2 and 16).

The Committee recommends that the State party adopt and implement a coherent and comprehensive national strategy for the elimination of violence against women and girls that includes legal, educational, financial and social components. It also requests the State party to strengthen its cooperation with NGOs working in the area of violence against women. The State party should take the necessary steps to include provisions banning corporal punishment of children within the family in its legislation. The State party should guarantee women and child victims of violence access to complaint mechanisms, punish the perpetrators of such acts in an appropriate manner and facilitate victims' physical and psychological rehabilitation.

Trafficking in persons

25. While it welcomes the State party's ratification of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, the Committee is concerned that:

(a) The State party is not doing enough to address the root causes of trafficking in women;

(b) The resources allocated to that problem are still inadequate and that there is no coordinated comprehensive plan at the national level;

(c) There are gaps in international cooperation aimed at bringing those responsible for trafficking to justice;

(d) The fact that Belgium grants specific residence permits only to those victims of human trafficking who cooperate with the judicial authorities (arts. 2 and 16).

The Committee recommends that the State party ratify the Council of Europe Convention on Action against Trafficking in Human Beings, adopted in 2005, and continue to take all appropriate measures to combat all forms of trafficking in women and children. In this connection, the Committee encourages the State party to:

- (a) Focus not only on criminal justice measures and the prosecution of traffickers but also on the protection and rehabilitation of victims;**
- (b) Increase its efforts to address the root causes of trafficking in persons;**
- (c) Strengthen international cooperation, in particular with countries of origin, trafficking and transit, in order to ensure successful prosecutions;**
- (d) Assist victims through counselling and reintegration measures;**
- (e) Ensure that adequate human and financial resources are allocated to policies and programmes in this area;**
- (f) Ensure that adequate support services are provided to victims, including those who do not cooperate with the authorities;**
- (g) Consider granting victims of human trafficking temporary residence permits.**

Training

26. The Committee notes that although the State party has increased the duration of the training provided to prison staff and police and to the officials responsible for deportations, it is still too brief to ensure that they receive adequate multidisciplinary training in the field of human rights. It also regrets that little information has been provided on follow-up and evaluation of this training and that no information has been provided on the results of the training provided to the officials concerned on the effectiveness of such training in reducing the number of cases of torture and ill-treatment (art. 10). The Committee is likewise concerned that the training offered on the prohibition of torture and inhuman or degrading treatment is inadequate, as the Committee noted in its previous concluding observations (art. 10).

The State party should take the following measures:

- (a) Strengthen efforts to provide multidisciplinary training to qualify personnel in the field of human rights by including in particular thorough information on the prohibition against torture in vocational training programmes intended for prison and police personnel, as recommended in paragraph 7 of the Committee's previous concluding observations (CAT/C/CR/30/6);**

(b) Provide all personnel with appropriate specialized training in the identification of signs of torture and ill-treatment. The Committee recommends that the Istanbul Protocol (Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) form an integral part of training for physicians;

(c) Develop and implement a mechanism for evaluating the effectiveness of training and teaching programmes as well as their effectiveness in reducing the number of cases of torture, violence and ill-treatment.

27. The State party is encouraged to ratify the Optional Protocol to the Convention.
28. The Committee invites the State party to ratify the principal United Nations human rights instruments to which it is not yet a party, in particular the Convention on the Rights of Persons with Disabilities, as well as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. The Committee likewise invites the State party to ratify the International Convention for the Protection of All Persons from Enforced Disappearance.
29. The State party is encouraged to widely disseminate its reports to the Committee as well as the Committee's concluding observations, in the national languages, by means of official websites, the media and NGOs. The State party is also encouraged to distribute its reports to national human rights NGOs before submitting them to the Committee.
30. The Committee invites the State party to submit its core document in accordance with the requirements in the harmonized guidelines on reporting to international human rights treaty bodies (HRI/GEN/2/Rev.5).
31. The Committee requests that the State party provide, within one year, information on its response to the Committee's recommendations contained in paragraphs 6, 7, 11, 16, 20 and 27 above.
32. The Committee has decided to request the State party to submit its third periodic report no later than 21 November 2012.
