



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

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## Committee against Torture

Forty-fifth session

1–19 November 2010

### List of issues prior to the submission of the third periodic report of Belgium (CAT/C/BEL/3)\*

### Specific information on the implementation of articles 1 to 16 of the Convention, including with regard to the Committee's previous recommendations

#### Article 1

1. In the light of the Committee's previous concluding observations (para. 14),<sup>1</sup> please provide information on any steps taken to amend article 417 bis of the Criminal Code with a view to ensuring that the general definition set out in that article contains all the elements of the definition contained in article 1 of the Convention.

#### Article 2<sup>2</sup>

2. In the light of the concluding observations of the Committee (para. 12) and the observations of several other treaty bodies, please provide updated information on the efforts the State party is continuing to make to establish an independent national institution

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\* This list of issues was adopted by the Committee at its forty-fifth session in accordance with the new optional procedure introduced at its thirty-eighth session, which consists in drafting and adopting lists of issues and transmitting them to States parties before they submit their scheduled periodic report. The replies to this list of issues will constitute the report of the State party under article 19 of the Convention.

<sup>1</sup> Paragraph numbers in brackets refer to the Committee's previous concluding observations, issued as document CAT/C/BEL/CO/2.

<sup>2</sup> The issues raised under article 2 could also apply to other articles, including but not only article 16. As indicated in general comment No. 2, paragraph 3: "The obligation to prevent torture in article 2 is wide-ranging. The obligations to prevent torture and other cruel, inhuman or degrading treatment or punishment (hereinafter 'ill-treatment') under article 16, paragraph 1, are indivisible, interdependent and interrelated. The obligation to prevent ill-treatment in practice overlaps with and is largely congruent with the obligation to prevent torture. (...) In practice, the definitional threshold between ill-treatment and torture is often not clear." See also section V of general comment No. 2.

for the protection of fundamental rights in accordance with the Paris Principles relating to the status of national institutions and on the outcome of political discussions in that respect.

3. In the light of the Committee's concluding observations (para. 21) and the concluding observations of the Human Rights Committee (CCPR/C/BEL/CO/5, para. 17), please describe the steps taken to guarantee:

(a) The rights of detainees immediately following detention, including their right of access to a lawyer;

(b) The registration of a person from the time of arrest until the person is placed in detention by court order.

4. In the light of the Committee's previous concluding observations (para. 24), please describe the steps taken to adopt appropriate measures to prevent, combat and punish all forms of violence against women and girls. Do such measures include:

(a) Adopting specific legislation criminalizing all acts of violence against women and girls, particularly within the family? Please provide information on and the number of complaints concerning violence against women, and on related investigations, charges brought, convictions and sanctions imposed on perpetrators;

(b) Training judges, prosecutors and members of the police force in the strict application of the relevant criminal provisions?

(c) Strengthening cooperation with NGOs working in the field of violence against women?

(d) Introducing programmes for the rehabilitation of and assistance to victims and facilitating access to such programmes? Please give details of decisions taken to provide victims with redress and compensation.

5. Please give details of the results of the third national action plan against violence within couples 2008–2009 and of the draft fourth national action plan 2010–2014. Please indicate to what extent the Institute for Equality between Women and Men has been involved in those action plans and give details of its role and contribution.

6. In the light of the Committee's concluding observations (para. 25), please provide information on measures taken to:

(a) Increase efforts to address the root causes of trafficking in persons. Please provide updated information on police action plans and programmes dealing with human trafficking and on the human and financial resources allocated to policies and programmes in this field;

(b) Strengthen international cooperation, in particular with countries of origin, destination and transit, in order to ensure successful prosecutions. Please give the number of prosecutions, convictions and criminal sanctions against the perpetrators of such acts;

(c) Focus on the protection of and compensation for victims and assist them through counselling and reintegration measures;

(d) Ensure that adequate support services are provided to victims of human trafficking, including those who do not cooperate with the authorities, and consider granting victims temporary residence permits. Please indicate whether the provisions of the Act of 15 September 2006 have been amended accordingly;

(e) Ratify Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms, which prohibits all forms of discrimination, the Framework Convention for the Protection of National Minorities and the Council of Europe Convention on Action against Trafficking in Human Beings.

7. Article 417 ter of the Belgian Criminal Code implements the provisions of article 2, paragraph 3, of the Convention whereby invoking an order from a superior to justify torture is prohibited. What administrative or judicial mechanism is provided to allow a subordinate to query or even refuse to obey the order of a superior that in the former's eyes involves acts of torture?

### Article 3

8. In the light of the Committee's previous concluding observations (para. 6) and the State party's replies to those concluding observations under the follow-up procedure (CAT/C/BEL/CO/2/Add.1, paras. 2–19), please provide information on any new measures and initiatives taken by the State party to bring current expulsion, refoulement and extradition procedures and practices fully into line with article 3 of the Convention. In particular, please provide further details on:

(a) Measures taken to strengthen external monitoring of the expulsion of aliens. Please indicate whether the State party is prepared to consider allowing NGOs access to boarding areas and/or to use video in such areas;

(b) The impact and effectiveness of measures taken to prevent all cruel, inhuman or degrading treatment, particularly in relation to expulsion operations;

(c) The training given to officials dealing with the expulsion, refoulement or extradition of aliens;

(d) The number of complaints lodged with or reported to the Standing Committee on the Supervision of the Police Services (Committee P) and the outcome of prosecutions. Please indicate the measures taken to ensure that an investigation is ordered as soon as there is reason to believe that a person may have been subjected to cruel, inhuman or degrading treatment, particularly in relation to possible expulsion operations.

9. In the light of the Committee's concluding observations (para. 10), please explain whether there have been any cases of expulsion, deportation or extradition since the previous report was submitted and, if so, what competent judicial mechanisms were employed to review the decision to expel. In the cases in which the decision to expel was upheld and implemented, please indicate what steps were taken to monitor the fate of the person concerned after his or her return.

10. Please provide data disaggregated by age, sex and ethnic group and updated since the submission of the previous report on:

(a) The number of asylum applications received;

(b) The number of applications accepted;

(c) The number of applicants whose asylum applications were accepted on the grounds either that they had been subjected to torture or risked being subjected to torture if returned to their country of origin;

(d) The number of forced deportations or expulsions;

(e) The countries to which the persons concerned were expelled.

11. With regard to the deprivation of liberty of asylum-seekers and irregular migrants, please explain in more detail the reasons and grounds for detentions decided by the Aliens Office in "Dublin cases".

## Articles 5 and 7

12. Please indicate whether, since consideration of the previous report, the State party has, for any reason whatever, rejected a request for extradition that concerned a person suspected of having committed acts of torture and whether, as a result, it decided to initiate prosecution proceedings itself. If applicable, please give details on the status and outcome of the procedure.

## Article 10

13. In the light of the Committee's concluding observations (para. 26), please provide information on measures taken to:

(a) Ensure that all members of police forces and prison staff are informed of the fact that it is forbidden to resort to torture and that an order from a superior officer may not be invoked as a justification of torture. Please give details of the training given to law enforcement officials regarding their obligations under the Convention. Please indicate when and how often such training is given;

(b) Ensure that all the personnel concerned receive special training enabling them to detect signs of torture and ill-treatment. Please indicate whether the 1999 Istanbul Protocol now forms an integral part of the training given to physicians and all other professional staff involved in torture investigations. Please state how many professional staff have received such training;

(c) Provide suitable training to judges, prosecutors and members of the judiciary concerning the provisions of the Convention. Please give details of relevant training programmes developed and implemented by the Judicial Training Institute (A/HRC/14/35/Add.1, 2010, para. 12);

(d) Develop and apply a method of assessing the implementation of training and teaching programmes, their effectiveness and their impact in terms of reducing the number of cases of torture, violence and ill-treatment. Please give details of the content and practical application of the method and the results of the measures applied.

## Article 11

14. Please provide information on any new interrogation rule, instruction, method or practice, and on any police custody provisions that may have been adopted since consideration of the previous periodic report. Please indicate how often those provisions are reviewed and applied in practice.

15. Please provide statistics, disaggregated by type of offence, ethnic origin, age and sex, on the number of persons held in pretrial detention and convicted prisoners. Please give recent examples of the offences involved and measures taken.

16. In the light of the Committee's concluding observations (para. 7) and the State party's replies to those concluding observations (CAT/C/BEL/CO/2/Add.1, paras. 20–51) and the observations of the Committee on the Rights of the Child (CRC/C/BEL/CO/3-4, para. 75), please provide updated information on suitable measures taken to accelerate efforts to provide unaccompanied minors with assistance, accommodation and follow-up. In particular, please give details on the following:

(a) The financial and human resources allocated to the special unit for unaccompanied minors, including the specialized centres for dealing with unaccompanied

minors and the planned establishment of a guardianship service, as well as the practical results of the unit's action;

(b) The homes for unaccompanied and separated juvenile asylum-seekers, including their accommodation capacity and personnel training. Please explain why such homes do not take in unaccompanied, separated children aged over the age of 13 years unless they have applied for asylum;

(c) The legal framework governing the protection of unaccompanied juvenile asylum-seekers and refugees. Please provide information on the measures taken to ensure that all unaccompanied juvenile asylum-seekers are represented by a guardian during the asylum application procedure. Please indicate whether the State party is considering revising the Guardianship Act of May 2004 in order to ensure that unaccompanied children receive the assistance of a guardian;

(d) The living conditions of such children during their stay in the country of the State party.

17. In the light of the Committee's concluding observations (para. 15), please provide information on steps taken to include an explicit prohibition of torture in the Police Service Code of Ethics (Royal Decree of 10 May 2006 establishing the Code) and to ensure that all police officers are aware of the absolute prohibition of torture. Please indicate whether the State party has taken steps to inform police officers of the sanctions to which they would be liable in the event of them failing in their obligations.

18. In the light of the Committee's concluding observations (para. 16) and the State party's replies to those concluding observations (CAT/C/BEL/CO/2/Add.1, paras. 73-79) and the observations of the Committee on the Rights of the Child (CRC/C/BEL/CO/3-4, para. 83), please provide updated information on steps taken to:

(a) Strictly apply the provisions of the Youth Protection Act, including article 15 of the Act of 13 June 2006;

(b) Ensure that minors have a lawyer and a trusted adult present at every phase of a proceeding, including during questioning by an investigating judge or a police officer. Please give details of the outcome of the consultation organized by the Minister of Justice following the Salduz and Panovits judgements handed down by the European Court of Human Rights and the scope of those judgements with respect to the protection of the rights of detained persons during police questioning (CAT/C/BEL/CO/2/Add.1, para. 75);

(c) Develop and apply a method of assessing the implementation of the pilot project for the audio- and videotaping of the questioning of minors. Please indicate how effective those measures have been in terms of protecting minors deprived of their liberty.

19. In the light of the Committee's concluding observations (para. 17), please provide information on the steps taken by the State party to bring its system of juvenile justice into line with the relevant international standards, including the provisions of the Convention on the Rights of the Child, to which Belgium is party. In particular, please indicate the steps taken to ensure that persons under the age of 18 cannot be tried as adults. Please respond to the allegations made by NGOs that the concepts of Belgian criminal law applicable to adults are increasingly being applied to minors.

20. In the light of the Committee's concluding observations (para. 19), please provide information on:

(a) The efforts the State party continues to make to prevent the ill-treatment of detainees and to establish an effective appeals procedure. Please indicate whether article 118, paragraph 10, of the Act of 12 January 2005 has entered into force and is being strictly applied;

(b) Measures taken to ensure adherence to the above-mentioned appeals procedure, which provides for the presence of a lawyer and an interpreter during court hearings;

(c) Steps taken to allow independent and impartial monitoring of such measures, for example through an oversight mechanism established outside the prison and through monitoring by civil society;

(d) Steps taken by the State party to take account of the comments of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, according to which the Act on principles governing the administration of prison establishments and the legal status of detainees and circular No. 1792 allow the prison authorities considerable room for manoeuvre and lead to practical differences of interpretation between penal establishments (CPT/Inf (2010) 24);

(e) The measures taken to establish without delay a “guaranteed service” in the prison system as recommended by the delegation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment after its visit to the Lantin prison and the interview it held with a representative of the Forest prison oversight commission.

21. In the light of the Committee’s concluding observations (para. 20) and the State party’s replies to those concluding observations under the follow-up procedure (CAT/C/BEL/CO/2/Add.1, paras. 80–86), please indicate what steps have been taken to bring police station record-keeping into line with international standards, and the principle of the protection of all persons under any form of detention or imprisonment. Please give details of the following:

(a) The status and content of the proposal to ensure the effective implementation of the Act of 25 April 2007 and article 33 bis of the Police Function Act. Please also indicate the outcome of measures taken to systematically verify compliance with the obligation to keep a register of detainees through investigation, monitoring and inspections;

(b) The measures taken to standardize the content and form of such a detention register. Please indicate whether the State party has issued a royal decree in this respect and, if so, to what extent the decree determines the content and form of the detention register and the data storage conditions;

(c) Efforts made to ensure that any signs of injury are recorded in the register immediately upon the detainee’s arrival at the police station.

22. In the light of the Committee’s concluding observations (para. 22), please indicate what measures have been taken to facilitate the granting of conditional release. Please give statistics for each year of the period under consideration regarding the number of conditional releases granted.

### **Articles 12, 13 and 14**

23. Please provide detailed statistical data, disaggregated by type of offence, ethnic origin, age and sex, on complaints lodged for acts of torture or ill-treatment committed by law enforcement officials, and on any related investigations, prosecutions and criminal or disciplinary sanctions. Specific examples of offences and sanctions should also be provided.

24. In the light of the Committee’s concluding observations (para. 11) and the State party’s replies to those concluding observations under the follow-up procedure (CAT/C/BEL/CO/2/Add.1, paras. 52–72), please indicate what steps have been taken to

ensure that, whenever persons who have lodged complaints against the security forces are then charged with resisting the police or similar offences, the cases are systematically linked. Please give the results of studies made regarding the systematic linking of complaints.

25. In its report sent to the Belgian Government and published in July 2010 (CPT/Inf (2010) 24) following a visit to the country, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment made several recommendations including that:

(a) The penal establishments, such as Bruges prison, that do have supervisory and complaints commissions, be provided with the means needed to fulfil their mission in satisfactory conditions;

(b) Specific complaint and inspection mechanisms be introduced in all establishments for juveniles, such as the “t’Knipoojje” boarding establishment of the Evergem medico-educational institute.

Please give details of the measures taken by the State party to give effect to those recommendations.

26. Please give details of all measures taken to establish an effective complaints mechanism, whereby impartial and thorough investigations of any alleged violation by law enforcement officials can be opened quickly. Please provide information in that connection regarding the progress made and results obtained from the review and assessment of the current system used to process complaints against members of the police force and prosecutions of police officers.

27. In the light of the Committee’s concluding observations (para. 8), please provide information on steps taken by the State party to allay the Committee’s concern at the inadequate functioning of the de facto appeal procedures in closed centres and, in particular, the fact that it is difficult for deported persons to lodge complaints. Please provide details of measures intended to:

(a) Ensure that deported persons are provided with ample information so that they can appeal from their country of origin;

(b) Review the complaints procedure and management in detention centres for aliens, in the light of recommendations made by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT/Inf (2010) 24, paras. 62–64), especially as regards criteria for admissibility, such as the present five-day limit;

(c) Analyse the comments made in the report of the Federal Mediators’ Association that highlight the inefficiency of the complaints procedure, the fact that appeals lodged by persons no longer held at a centre are not considered on the merits by the Complaints Commission, and the fact that the processing of complaints usually takes longer than the average duration of detention in closed centres;

(d) Ensure that reliable medical certificates are prepared systematically before and after deportation attempts.

28. In the light of the Committee’s concluding observations (para. 9), please provide information on existing 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. Please also indicate whether the State party has taken steps to extend the time limit for the registering of an emergency appeal, which is currently 24 hours.

29. Please provide information concerning redress and compensation measures, including the necessary means for rehabilitation, ordered by the courts and actually provided to victims of torture or ill-treatment perpetrated by law enforcement officials since consideration of the previous periodic report in 2008. Please indicate how many requests have been submitted, how many have been successful, the amount of compensation granted and the amount actually paid in each case.

### **Article 15**

30. Please describe the measures taken to prohibit the use of any statement obtained under torture in the course of proceedings. Please describe cases where such measures have been applied. In that connection, please describe measures taken in response to the concern expressed by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment about threats made by the police against suspects with the intention of obtaining a confession (CPT/Inf (2010) 24, para. 15).

### **Article 16**

31. In the light of the Committee's concluding observations (para. 13), please provide information on:

(a) The practical measures taken, and the outcome thereof, to combat ill-treatment, including treatment based on discrimination of any kind, and in implementation of the recommendations of the Committee on the Elimination of Racial Discrimination (CERD/C/BEL/CO/15). Please also give details of measures adopted to prevent ill-treatment of women and juvenile delinquents in places of detention;

(b) Steps taken to improve efforts to stop such ill-treatment in the Bruxelles/Ixelles et Bruxelles Midi police districts;

(c) Measures taken to prosecute and punish those responsible and on compensation granted and actually paid to victims. Please provide details of the outcome of the prosecution of 14 federal police officials on duty at the Bruxelles-Midi station, on the grounds of ill-treatment and degrading treatment inflicted on irregular immigrants and homeless persons (CPT/Inf (2010) 24, para. 14).

32. Please indicate whether the State party has adopted a comprehensive approach to prevent ill-treatment in all places of detention, including prisons and closed centres for irregular aliens, and give details of that approach. Please provide information in particular on:

(a) Measures taken and their outcome in response to the Committee's concerns (para. 18) regarding prison overcrowding, the problems exacerbated by overcrowding, including the increase in the incidence of violence between inmates, the inadequacy of internal inspections, unsuitable and dilapidated buildings and poor sanitary conditions;

(b) The intake capacity and the population housed in every prison on the State party's territory, with statistics disaggregated by sex and age range (adults/minors), and the number of persons being held in pretrial detention;

(c) The Master Plan bis adopted to combat prison overcrowding and other measures either taken or planned to increase prison capacity. Please indicate alternative measures to detention, such as community service or electronic surveillance;

(d) Measures taken to improve the medical attention offered to detainees, including psychiatric treatment, by addressing problems such as dilapidated facilities,



inadequate care, the absence of ongoing treatment and the shortage of qualified medical staff, and to build on the lessons learned from the problems generated by the strike action of prison personnel, as mentioned in the Committee's concluding observations (para. 23);

(e) Measures taken to separate untried detainees from convicted prisoners in detention centres;

(f) Improved court supervision of detention conditions;

(g) The impact and effectiveness of the above measures, as well as the material, human and budgetary resources set aside for the purpose.

33. Please describe action taken to extend legislation prohibiting corporal punishment to all situations, especially the family and non-institutional facilities for children; to ensure that this legislation is strictly applied; and to conduct appropriate awareness and education campaigns.

34. Please respond to reports that special units of the police, including officials of the protection, observation, support and arrest (Posa) unit, make use of tasers, despite the Act of 9 June 2006 but with the authorization of the Federal Department of Justice.

### **Other issues**

35. Please provide up-to-date information on measures taken by the State party to respond to potential terrorist threats and specify whether they have had any effect on human rights guarantees, in law and in practice, and if so in what way. Please provide details on the steps taken by the State party to ensure that anti-terrorism measures are compatible with all its obligations under international law. Please describe the training provided in this respect to the forces of law and order, the number and nature of convictions handed down under anti-terrorism legislation and the remedies available to persons subject to anti-terrorism measures. Please indicate whether any complaints have been lodged for non-compliance with international standards and the outcome of those complaints. Please describe the measures taken in response to the recommendations made by the Council of Europe's Commissioner for Human Rights with respect to anti-terrorism legislation (CommDH (2009) 14, section VII, paras. 37 and 38).

36. Please indicate what steps have been taken to ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in accordance with the Committee's previous concluding observations (para. 27) and the recommendation of the Council of Europe's Commissioner for Human Rights (CommDH (2009) 14, paras. 10 and 56). Please also provide up-to-date information on measures taken to establish or appoint a national mechanism to carry out regular visits to places of detention with a view to preventing torture or cruel, inhuman or degrading treatment.

37. In the light of the Committee's previous concluding observations (para. 28), please indicate the measures taken to ratify the Convention on the Rights of Persons with Disabilities, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the International Convention for the Protection of All Persons from Enforced Disappearance.

**General information concerning the human rights situation in the State party, including any new measures or facts concerning the implementation of the Convention**

38. Please provide detailed information concerning any new developments that have occurred since the previous periodic report with regard to legal and institutional measures for the promotion and protection of human rights in the country, including any relevant court judgements.

39. Please provide detailed information concerning any new political, administrative or other measures taken since consideration of the previous periodic report for the promotion and protection of human rights in the country, including any national plans or programmes that may have been adopted in the field of human rights, giving details of the resources allocated, the means provided, set objectives and results obtained.

40. Please give any further information on new measures and initiatives taken to implement the Convention and follow up the Committee's recommendations since consideration of the previous periodic report in 2008, including relevant statistics and any event that has occurred in the State party and that may be of interest from the point of view of the Convention.

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