



## **UPR PRE-SESSION ON BELGIUM**

**GENEVA - DECEMBER 2015**

### **1. Presentation**

This statement is delivered on behalf of the Human Rights League (Ligue des droits de l'Homme - LDH), Belgium's oldest human rights organization.

For the purpose of this UPR session, the LDH gathered together 24 human rights organizations, creating an *ad hoc* coalition of NGOs covering a large variety of human rights related issues. Consultation of those different NGO's reports gives a broad picture of the human rights situation in Belgium today, such as issues regarding economic, social and cultural rights, rights of asylum seekers, children, persons with disabilities and other vulnerable groups.

### **2. National consultation of the drafting of the national report**

A consultation about the national report, lead by the Ministry of Foreign Affairs, was held on the 12<sup>th</sup> of June 2015. Numerous different NGOs were invited and took part in this consultation, which was held in a good atmosphere and with what seemed to be particular attention by official delegates. However, NGOs still feel that the national report is biased, as it is presenting too good a picture of the human rights situation in Belgium, omitting some problematic issues and downgrading the seriousness of some other issues.

### **3. Plan of the statement**

The statement addresses the following issues: 1. the longstanding problem of the overcrowding in the prison system; 2. the dramatic situation of mental patients in prison; 3. the persistent use of illegitimate police violence; 4. the unbalanced policies adopted to combat terrorism and their impact on various human rights, mainly the right to privacy, the protection against torture and cruel or inhumane treatment and the right to liberty and security.

#### 4. Statement

##### 1. Overcrowding of the prison system

A. Belgian's prison system has been chronically overcrowded for about 30 years. Several States highlighted the need for Belgium to strongly tackle the problem (100.21 Austria; 100.35 Czech Republic; 100.36 Australia; 100.37 Djibouti; 100.38 Chile; 100.39 Ecuador; 100.40 Algeria; 100.41 and 100.42 United States; 100.44 Sweden; 100.47 Slovakia). Indeed, the overcrowding in the prison system has an impact on numerous human rights of detainees.

B. Despite what the Belgian State alleges, the situation is more dramatic than ever. Indeed, to the own admission of Belgian authorities, the numbers are rising year after year: the symbolic barrier of 10.000 detainees was reached in 2009 and the barrier of 11.000 detainees was reached in 2014. Today, there are about 11.200 detainees. It is to be noted that this increase is in no way linked to an increase in the number of crimes committed in Belgium, as attest numbers from the National Institute for Criminology (Institut National de Criminalistique et de Criminologie), but is due to various known reasons:

- too many people enter the prison system: about one third of detainees are on pre-trial detention and are presumed innocent;
- a lot of individuals should not be imprisoned: mental illness patients compose 10% of the prison population, in contradiction with international law;
- detainees are jailed for too long a term, successive penal reforms are aggravating prison sanctions: in about 10 years, the sanction for correctionalized crime passed from a maximum of 10 years to a maximum of 40 years. Those common crimes, such as murder, are more severely sanctioned in Belgium than the crime of genocide in the International Criminal Court...;
- less and less detainees can leave the prison system, as the release on parole has been strictly reduced;
- no work on reintegration in society is done and the rate of repeated offenders is very high. In the Saint-Gilles Prison (Brussels), the reintegration services cannot enter the prison since June 2015, for lack of personnel reasons.

The situation is so worrying that the European Court of Human Rights severely convicted Belgium in its 25 November 2014 Vasilescu v. Belgium decision, which is consisting of a quasi-pilot judgment, mainly due to the detention conditions, which are worsened by overcrowding.

C. The Belgian State should massively develop alternative means to sanction criminal offenses, such as electronic surveillance, community service, or probation for minor

offenses. As numerous international bodies (CPT, UNCAT, UNHRC) highlighted time and again, the sole construction of new prisons is not sufficient to tackle overcrowding. And the only solution that the Belgian government enforces is its “masterplan”, which lead to a large expansion of prison capacity with no impact on the situation, or only for a short limited time. The Belgian State should halt the development of its very expansive “masterplan” which swallows all budget available for alternative measure with no effect.

The Belgian State should also strongly limit possibilities to send presumed innocent individuals to pre-trial detention, for example by amending the criminal procedure code and stating that only offenses against people, not against objects, can justify pre-trial detention.

The Belgian State should also massively invest in reintegration into society policies, which are almost inexistent in Belgium.

## 2. Mental patients in prison

- A. Belgian’s prison system has been chronically overcrowded for about 30 years. About 10% of those imprisoned are people suffering from mental conditions who committed an offense. In prison, where they stay without a time limit, sometimes until their death, they don’t receive any treatment whatsoever. One State addressed the problem in the last UR review (103.22 Iran) but, surprisingly, Belgium didn’t support this recommendation.
- B. People suffering from mental disabilities should not be held in prison, where they don’t receive any treatment whatsoever, but in specialized institutions, hospitals or shelters where their condition could be taken care of. But in Belgium, the situation has gone from bad to worse: since 1998, Belgium has been condemned 13 times by the European Court of Human Rights, 8 times for the year 2014 alone...

Situation is so appalling that Franck Van Den Bleeken, detained in the psychiatric ward of a prison for the last 30 years without receiving any kind of treatment has been awarded the right to undergo an euthanasia. Belgian authorities allowed this individual the right to die (which is indeed his undeniable right) rather than try to treat his condition, while such a treatment is available in The Netherlands: Frank Van Den Bleeken’s will to die came after Belgian authorities refused to transfer him to The Netherlands to undergo such a treatment, but allowed him to undergo euthanasia...

- C. Belgium is conscious of this problem and tries to tackle it. But it’s doing too little too slow.

For starters, Belgium should repeal the 5<sup>th</sup> of May 2014 Law that still allows people with mental condition to be put in prison.

It should also foresee that the treatment and the care of such persons depend from the Ministry of Health and not the Ministry of Justice, as the focus has to be put less on security and more on health care.

3. illegitimate police violence

- A. The persistence of illegitimate police violence, whether racially motivated or not, is still of great concern in Belgium, as it was in the last UPR (100.19 Morocco; 100.20 Austria; 101.16 Turkey; 101.21 Ecuador; 103.11 Egypt).
- B. Belgium is faced with continuous problems of police violence: the illegitimate use of force by the police has been criticized by the UNCAT, the UNHRC and the Council of Europe CPT.

In a landmark decision *Turan Cakir v. Belgium*, 10 March 2009, the European Court of Human Rights convicted Belgium for inhuman and degrading treatment by police officers, ineffectiveness of the following inquiry and the inability to bring perpetrators to justice, but also for the absence of inquiry in the plausible racist allegations made by the victim. A similar decision was recently handed to Belgium in the 28 October 2015 *Bouyid v. Belgium* decision, highlighting that nothing has been done to tackle the problem.

Impunity of police offenders is widespread. The official body Standing Police Monitoring Committee (better known as Committee Police) highlighted that between 2009 and 2012 only 39 cases established that police violence was illegitimate, despite widespread allegations of police violence by NGOs. On those 39 cases, only one led to effective prison time for the perpetrator. Of the same 39, only 6 disciplinary actions were taken, none of them leading to the dismissal of the offender.

On an other hand, police forces tend to scare potential witnesses of police misconduct. On several occasions, witnesses taking pictures or films of police misconduct have been mishandled, hurt or threatened. In 2015 alone, on at least 4 different occasions, members of Parliament, journalists and a retired judge were molested for doing their duty of controlling police action.

- C. It is utterly necessary to state in the 5 August 1992 Police Law that the right of citizens to film or picture police action should be protected and that dissuasive sanctions will be taken against wrongdoers.

Dissuasive sanctions should be taken against offenders. To fully guarantee citizens against such actions and to ensure a fair treatment by the judiciary system, a special unit of magistrate should be devoted to that issue.

#### 4. The fight against terrorism

- A. Infringement of fundamental rights in the fight against terrorism, whether regarding the right to privacy, the right to protection against torture and cruel or inhumane treatment and the right to liberty and security has not been addressed in Belgium's last UPR.
- B. Belgium has a really poor record in this area: the fight against terrorism is a justification used by Belgian authorities to allow grave breaches in human rights protection.

In the 4 September 2014 *Trabelsi v. Belgium* case, the European Court of Human Rights convicted Belgium for inhumane and degrading treatment after the extradition of a Tunisian national to the USA while there was a clear and repeated demand of the Court not to do so while the case was still pending in front of the ECHR. In violation of its international obligations, Belgium chose to knowingly violate the ECHR request and extradited Mr. Trabelsi to the USA, leading to a severe conviction by the Court.

In the case of Mr. Aarrass, a Belgian national tortured in Morocco, Belgium refuses to assist its citizen, to ask for its repatriation to Belgium or to ask that all acts of torture cease right away. Despite the clear 27 May 2014 UNCAT communication establishing without a doubt that Mr. Aarrass has been subjected to severe acts of torture.

As far as right to privacy is concerned, Belgium has a poor record. Among other things, it maintained its 30<sup>th</sup> of July 2013 data retention law despite the repealing of the 2006/24/CE EU directive by the European Union Court of Justice on which it was based. Belgium's Constitutional Court finally repealed the law, but the government announced the passing of a new law without complying with the EUCJ decision.

Furthermore, in the aftermath of the recent Paris terrorist attacks, the government announced that it plans to take measures contrary to the International Covenant on Civil and Political Rights, such as automatic imprisonment of individuals suspected of coming back from Syria or Iraq or putting suspects under electronic surveillance without the control of an independent and impartial judge, based only on secret evidence. Furthermore, the president of the principal party in the government stated his will to adopt a "Patriot Act" in Belgium, withholding constitutional liberties in the fight against terrorism.

Finally, Belgium is the first EU arms dealer to the Middle East, selling it arms massively and indiscriminately, to the point that Amnesty International recently revealed that Belgian arms were also used by the Islamic State of Iraq and the Levant.

With such a poor record, it is very surprising that Belgium has been elected to the UN Human Rights Council.

- C. Belgium should comply with all international human rights decisions and, among others, repatriate Mr. Aarrass to Belgium and make sure he's not submitted to any more acts of torture.

Belgium should fully comply with the data retention EUCJ decision and with international standards, among others the International Covenant on Civil and Political Rights, in the drafting of its new data retention law, not allowing a nationwide covering of communications surveillance, limiting its surveillance to concerned individuals and restrain to apply that surveillance to every single citizen of the country.

Belgium should respect the International Covenant on Civil and Political Rights and all relevant human rights instruments in the fight against terrorism. Therefore, it should forbid the imprisonment of individuals without a fair trial and should impose a strict control of deprivation of liberty by an independent and impartial judge. Deprivation of liberty based on secret files should be forbidden, even if only under electronic surveillance. Belgium should restrain itself to adopt a "Patriot Act" or any other instrument withholding constitutional liberties.

Belgium should stop all arms sales to the Middle East, due to the current situation, and more broadly should not sell arms to any country with a poor human rights record.