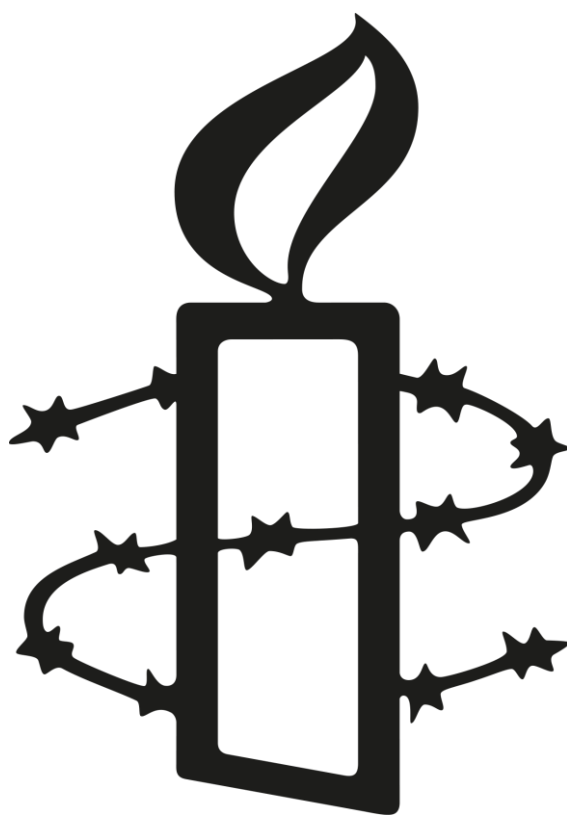




BELGIUM: MUST STEP UP EFFORTS ON HUMAN RIGHTS PROTECTION

AMNESTY INTERNATIONAL SUBMISSION FOR THE UN UNIVERSAL PERIODIC
REVIEW, 38TH SESSION OF THE UPR WORKING GROUP, 5 MAY 2021

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INTRODUCTION

This submission was prepared for the Universal Periodic Review (UPR) of Belgium in May 2021. It includes Amnesty International's evaluation of the implementation of recommendations made to Belgium in its previous UPR, including in relation to commitments to establish a National Human Rights Institution, to establish a national preventative mechanism (or several visiting bodies for the prevention of torture and other cruel, inhuman or degrading treatment or punishment for all places of detention) and to respect the rights of asylum-seekers and migrants.

The submission also assesses the national human rights framework in place in the country and looks at specific measures that the governments should take to ensure respect and more effective protection and promotion of human rights. Particular attention is paid to how the state must ensure that business activities do not negatively impact human rights, to mechanisms for detention monitoring and to actions needed to counter racism and related forms of discrimination.

Amnesty International raises concern about the unacceptable incidence of sexual violence, and violations of the rights of detainees, asylum seekers, refugees and migrants. The submission reiterates the need to tackle ethnic profiling by the police. Amnesty International also raises concern regarding ongoing irresponsible arms transfers.

In 2020, the COVID-19 pandemic had a severe impact on Belgium, which had one of the highest per capita death tolls. Some human rights concerns with the state's initial and ongoing responses are highlighted in the submission. Specific attention is given to the human rights of residents of care homes.

An earlier version of this submission was shared with OHCHR in October 2020. The current version contains updated information up to 11 November 2020.

FOLLOW UP TO THE PREVIOUS REVIEW

Of the 232 recommendations made pursuant to Belgium's second UPR in 2016, Belgium accepted 185 recommendations, partly accepted 2 and rejected 45 recommendations.¹ Belgium consulted with civil society in the UPR follow-up process, most notably by hosting a roundtable meeting at the end of 2019.² The state published a short report by way of mid-term-evaluation.³

The state made significant progress on recognizing the human rights of transgender people by removing degrading and unnecessary medical requirements from its laws, but some obstacles remain in place.⁴ Belgium also achieved important but unfinished progress toward establishing a National Human Rights Institution fully compliant with the Paris Principles.⁵ The state also made improvements to prison oversight mechanisms and prisoners' legal status.⁶

Despite these positive developments, Amnesty International considers Belgium's overall efforts on key recommendations made during the previous review to have been slow and insufficient. The continued delays in ratifying the Optional Protocol to the Convention Against Torture (OPCAT)⁷ and failure to adopt a National Action Plan Against Racism⁸ are telling examples.

Belgium took regressive steps regarding the detention of migrants⁹ and continued to flout the principle of non-refoulement.¹⁰

¹ Report of the Working Group on the Universal Periodic Review: Belgium, UN Doc A/HRC/32/8 and its Addendum: Views on conclusions and/or recommendations, commitments and replies presented by the State under review, UN Doc A/HRC/32/8/Add.1.

² A/HRC/32/8 Recommendation 138.53 (Poland).

³ Following the first round of the UPR, Belgium published a more comprehensive mid-term review, available at http://lib.ohchr.org/HRBodies/UPR/Documents/session11/BE/BelgiumImplementation_fr.pdf. The mid-term evaluation of the second cycle, *2ème EPU de la Belgique : évaluation à mi-parcours - 19 décembre 2019* is available at <http://lib.ohchr.org/HRBodies/UPR/Documents/Session24/BE/BEUPR2midtermrapport.docx>.

⁴ A/HRC/32/8 Recommendations 138.105 (Israel) - 138.106 (Spain). Because parts of the law were found to discriminate against gender-fluid and non-binary persons, a Constitutional Court decision annulled part of the law – see Constitutional Court - Arrêt n° 99/2019 of 19 June 2019. The law is available at http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2017062503&table_name=loi

⁵ A/HRC/32/8 Recommendations 138.21 (Ecuador), 138.22 (Fiji), 138.23 (Tunisia), 138.24 (Hungary), 138.25 (Nepal), 138.26 (Slovenia), 138.27 (Philippines), 138.28 (Republic of Korea), 138.29 (Denmark), 138.30 (Georgia), 138.31 (Netherlands), 138.32 (Egypt), 138.33 (Togo), 138.34 (Morocco), 138.35 (India), 138.36 (Norway), 138.37 (Australia), 138.38 (Ireland), 138.39 (Kazakhstan), 138.40 (Namibia), 138.41 (Bulgaria), 138.42 (Germany), 138.43 (South Africa), 138.44 (Panama), 138.45 (Portugal), 138.46 (Chile), 138.47 (France), 138.48 (Uruguay), 138.49 (Lithuania), 138.50 (Indonesia), 138.51 (Bahrain), 138.52 (Kyrgyzstan).

⁶ A/HRC/32/8 Recommendations 138.3 (Norway), 138.4 (Kazakhstan), 138.5 (Liechtenstein); 139.11 (Bulgaria) & 141.18 (Fiji) (noted)

⁷ A/HRC/32/8 Recommendations 138.1 (D.R. Congo), 138.2 (Chile), 138.3 (Norway), 138.4 (Kazakhstan), 138.5 (Liechtenstein), 138.6 (Togo), 138.7 (United Kingdom), 138.8 (Denmark), 138.9 (FYR Macedonia), 138.10 (Morocco), 138.11 (Slovenia), 138.12 (Djibouti), 138.13 (Philippines), 138.14 (Portugal), 138.15 (Senegal), 138.16 (Tunisia) (Azerbaijan) (Ukraine) (Zambia) (Estonia) (France) (Georgia) (Honduras) (Hungary) (Lebanon) (Lithuania) (Montenegro) (Poland), 138.17 (Costa Rica), 140.1 (Czech Republic).

⁸ A/HRC/32/8 Recommendations 140.11 (Brazil), 140.12 (Uzbekistan), 140.13 (South Africa), 140.14 (Botswana), 140.15 (Côte d'Ivoire), 140.16 (France), 140.17 (Iran), 140.18 (Namibia), 140.19 (Norway).

⁹ Related recommendations include: A/HRC/32/8 Recommendations 139.24 (Chile) and 139.25 (Mexico), 140.34 (Japan).

¹⁰ A/HRC/32/8 Recommendation 139.26 (Argentina).

THE NATIONAL HUMAN RIGHTS FRAMEWORK

HUMAN RIGHTS INSTITUTION

Amnesty International cautiously welcomed the creation in 2019 of the Federal Human Rights Institute (FHRI), which held its inaugural meeting on 2 September 2020.¹¹

The FHRI cannot be considered to be fully compliant with the Paris Principles because the FHRI has not been “given as broad a mandate as possible”.¹² The Institution only covers “fundamental rights that fall under federal competency” and additionally cannot work on matters that “are dealt with by sectoral institutions for the promotion and the protection of human rights.”¹³

Amnesty International also regrets that the FHRI has not been mandated with setting up 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 complaints procedure.¹⁴

DETENTION MONITORING

The OPCAT remains unratified. Although all necessary legislative steps have been completed,¹⁵ the instrument of ratification had not been deposited at the time of writing. The government first

¹¹ *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. The inaugural meeting was held on 2 September 2020. RTBF, *Olivier De Schutter devient président du nouvel Institut des droits de l'Homme*, 3 September 2020, https://www.rtbf.be/info/belgique/detail_olivier-de-schutter-devient-president-du-nouvel-institut-des-droits-de-l-homme?id=10575879

¹² 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>

¹³ 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>.

¹⁴ Federal Government Agreement of 30 September 2020, p85.

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

¹⁵ 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,

wants to establish a National Preventative Mechanism (NPM). Consultations with relevant stakeholders have started, focusing in particular on how to integrate the tasks of such a mechanism with existing mechanisms and bodies.¹⁶

Belgium did make progress on improving the oversight mechanisms for prisons by reforming the Central Prison Monitoring Council (CPMC). The scope of the CPMC is limited to the 35 federal prisons in Belgium. Other places of detention are not covered by the CPMC's mandate.¹⁷

NATIONAL ACTION PLAN AGAINST RACISM AND OTHER FORMS OF DISCRIMINATION

Racism and related discriminations remain pervasive and, as the UN's Working Group on People of African Descent stated following a country visit in 2019: "(t)here is clear evidence that racial discrimination is endemic in institutions in Belgium."¹⁸ UNIA, Belgium's equality body, has reported an ever-increasing number of complaints of racial discrimination.¹⁹

Since the 2001 World Conference against Racism in Durban, Belgian authorities have repeated the intention to formulate a national action plan against racism. There has been limited progress. A 2016 study commissioned by the government was presented as preparatory to the Action Plan and in February 2020, the 'Inter-Ministerial Conference Against Racism' was established. The Conference provides the government members of the federal and federated entities a forum for coordinating measures against racial discrimination, antisemitism, faith-based discrimination and intersectional discrimination and is intended to support a future Action Plan. On 27 September 2020, the Inter-Ministerial Conference adopted a 'Starting Note'²⁰

In October 2020, the federal government committed to draw up and implement an inter-federal action plan against racism and related intolerance and discrimination. The government stated it will consult with relevant stakeholders and that the plan will have measurable objectives, and a timetable, and will specifically designate resources and responsibilities.²¹

BUSINESS & HUMAN RIGHTS

Belgium's first National Action Plan to implement the UN Guiding Principles on Business and Human Rights, adopted in 2017, focused primarily on awareness-raising and its action points were strictly voluntary. The plan is due to be reviewed in 2020 or 2021.²²

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).

¹⁶ 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>.

¹⁷ Places of detention that are outside of the CPMC's mandate include facilities for people with mental-health issues, police holding cells, juvenile detention centres, migration detention facilities and means of transport for the transfer of detainees.

¹⁸ *Statement to the media by the United Nations Working Group of Experts on People of African Descent, on the conclusion of its official visit to Belgium, 4-11 February 2019* - Brussels, 11 February 2019.

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24153&LangID=E>

¹⁹ <https://www.unia.be/nl/artikels/het-gevecht-tegen-racisme-meer-dan-ooit-actueel-in-belgie>

²⁰ Bart Somers, *Startnota interfederaal actieplan tegen racisme goedgekeurd*, 27 September 2020,

<https://www.bartsomers.be/nieuws/interfederaal-actieplan/?lid=6249>

²¹ Federal Government Agreement of 30 September 2020, p84.

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

²² Commission Interdépartementale pour le Développement Durable. *Plan d'Action National Entreprises et Droits de l'Homme*. July 2017, https://www.sdgs.be/sites/default/files/publication/attachments/plan_daction_national_entreprises_et_droits_de_lhomme_2017.compressed.pdf

Belgian law does not require companies to conduct human rights due diligence in their global operations or supply chains or to report publicly on the steps taken.²³

HUMAN RIGHTS SITUATION ON THE GROUND

RAPE AND OTHER FORMS OF GENDER-BASED VIOLENCE

Amnesty International remains deeply concerned about the high prevalence of rape and other sexual violence.²⁴ A 2019 survey commissioned by Amnesty International and SOS Viol showed that of those who responded, 24% of young people in Belgium (15 to 24 years old), 20% of women and 14% of men claimed to have been raped.²⁵ In 2019 an all-time high of 4,664 complaints for rape were registered with the police.²⁶ Many of these complaints do not lead to prosecutions and court cases, although the ratio of decisions not to prosecute has decreased from 54.08% in 2017 to 31.78% in 2019.²⁷

The apparent increased willingness to report sexual violence to the police may be partly due to initiatives and measures from government and civil society aimed at tackling the problem and to increased awareness about sexual and reproductive rights.²⁸

In November 2017, the authorities established three “Centres for Care after Sexual Violence”, in Brussels, Ghent and Liège. Civil society praised plans to establish seven more centres between 2021 and the end of 2023.²⁹ These centres provide survivors of sexual violence with different forms of assistance in one place. Survivors can get medical and psychological care, forensic investigation and evidence gathering, and they can file a complaint with a specially trained police officer present. A first evaluation by the federal gender equality body (Institute for the Equality between women and men) indicates a highly positive impact.³⁰ Other positive developments included the new legal requirement for magistrates to follow a training course on sexual

²³ Amnesty International has documented cases in which Belgian companies have been implicated in human rights abuses in other countries. In one such case, Belgium took insufficient action to hold the relevant company to account. Amnesty International, *Bulldozed: How a mining company buried the truth about forced evictions in the Democratic Republic of the Congo* (Index: AFR 62/003/2014); Amnesty International, *Chains of Abuse: The global diamond supply chain and the case of the Central African Republic* (Index: AFR 19/2494/2015). See also: §12 & 13 of Committee on Economic, Social and Cultural Rights, Concluding observations on the fifth periodic report of Belgium. E/C.12/BEL/CO/5

²⁴ Amnesty International, *Belgium: Submission to the UN Universal Periodic Review*, June 2015 (Index: EUR 14/2497/2015), p7

²⁵ Research Institute Dedicated conducted the survey in October 2019. There were 2300 participants, aged between 15 and 85.

²⁶ Conseil supérieur de la Justice. *Opvolgings- en uitdiepingsrapport – Naar een betere aanpak van seksueel geweld*, June 2020, .

²⁷ The percentage of dismissals by the prosecution was 54.08% in 2017 and 31.78% in 2019 for sexual delinquency crimes. Conseil supérieur de la Justice. *Opvolgings- en uitdiepingsrapport – Naar een betere aanpak van seksueel geweld*, June 2020.

²⁸ Plan d'action national de lutte contre toutes les formes de violence basée sur le genre 2015-2019. A new National Action Plan on gender-based violence was due to be adopted in 2020. At the time of writing in September 2020, the National Action Plan had not been adopted.

²⁹ Amnesty International, *Seksueel geweld in België: Amnesty tevreden met geplande opening van nieuwe zorgcentra en roept op tot volgehouden inzet*, 1 July 2020; Nathalie Muylle, *De 3 à 10 Centres de Prise en charge des Violences Sexuelles*, 19 June 2020

³⁰ Federal Institute for the equality of women and men, *Een eerste evaluatie van de Zorgcentra na Seksueel Geweld*, 2020, https://igvm-iefh.belgium.be/sites/default/files/131_-_een_eerste_evaluatie_van_de_zorgcentra_na_seksueel_geweld_0.pdf

violence³¹, regional action plans³² and the priority attention given to the fight against sexual and gender related violence in the new federal government's plans, including the intention to develop an ambitious and sufficiently funded national action plan against gender related violence in 2021.³³

In September 2020, the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) published its first report about Belgian policies and made recommendations. GREVIO criticized the lack of specific attention to violence against women and of gender-based approaches in plans and laws. The group also regretted that the current provisions in criminal law on sexual violence are defined as offences against “family order” and “public morality” and that these should be defined as crimes against the victim's bodily integrity and sexual autonomy.³⁴

There may have been an increase in domestic violence in the context of COVID-19 response measures, and the lockdown certainly made the problem more visible. Helplines reported spikes in the number of calls about domestic violence they received.³⁵ Civil society organisations³⁶, academia³⁷, regional and federal governments took steps to monitor the problem, to raise awareness and to facilitate access to assistance for survivors and witnesses.³⁸

COUNTER TERRORISM

Belgian policies and laws aimed at countering terrorism and “radicalisation” are developed and put into practice in a complex constitutional and institutional context. The complexity and fragmentation of these policies can exacerbate the inherent human rights risks, increasing the importance of coordination, oversight and periodic review.³⁹

The March 2016 bombings revealed serious shortcomings in the mechanisms to ensure that victims' rights are respected. Victims' associations and Amnesty International called upon the government to establish mechanisms that ensure swift compensation and simple, easily accessible procedures.⁴⁰ The UN Special Rapporteur for the promotion and protection of human

³¹ Chapter 5 of the Law of 31 July 2020.

³² See for instance the Flemish Minister for Justice's communication about a first Flemish action plan against sexual violence (*Eerste Actieplan tegen Seksueel Geweld zet slachtoffers centraal*.)

³³ Federal Government Agreement of 30 September 2020.

https://www.belgium.be/en/about_belgium/government/federal_authorities/federal_government/policy/government_agreement and Sarah Schlitz, Secretary of State for Equal opportunities and Diversity, Note de politique Générale, 6 November 2020, <https://www.dekamer.be/doc/FLWB/pdf/55/1580/55K1580022.pdf>

³⁴ GREVIO did also commend that the definition of sexual violence in criminal law is based on the victim's lack of free and informed consent. GREVIO. *Baseline Evaluation Report Belgium* – 21 September 2020. GREVIO/Inf(2020)14 (paragraphe 154).

³⁵ Three major platforms ‘1712’, AWEL and ‘*Écoute violences conjugales*’ all reported a significant increase in the number of calls.

³⁶ 1712, “*Bang om in uw kot te blijven?*”, May 2020, <https://1712.be/campagnes/id/686/persbericht-bang-om-in-uw-kot-te-blijven-nieuwe-campagne-over-huiselijk-geweld>; Pub, *Vrouwenraad & Prophets slope muren tegen Familiaal Geweld*, 10 April 2020, <https://pub.be/nl/vrouwenraad-en-prophets-slopen-muren-tegen-familiaal-geweld/>. Action Sociale Wallonie, *Lancement de la campagne: « Rien ne justifie la violence conjugale »*, 13 April 2020, <http://actionsociale.wallonie.be/actualites/campagne-violences-conjugales>

³⁷ Prof. Ines Keygnaert, *Eén op vier is slachtoffer van agressie tijdens eerste fase lockdown in België*, 13 May 2020, <https://www.ugent.be/nl/actueel/een-op-vier-is-slachtoffer-van-agressie-tijdens-eerste-fase-lockdown-in-belgie.htm>

³⁸ Amnesty International Belgium, *België: meer middelen tegen huiselijk geweld tijdens COVID-19-pandemie*, 8 April 2020, <https://www.amnesty-international.be/nieuws/belgie-meer-middelen-tegen-huiselijk-geweld-tijdens-covid-19-pandemie>

³⁹ 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, paragraphs 76-77, <https://www.ohchr.org/EN/Issues/Terrorism/Pages/Visits.aspx>

⁴⁰ Het Nieuwsblad, *Als er morgen opnieuw een aanslag gebeurt, belanden slachtoffers nog altijd in administratieve hel*, 23 March 2019, https://www.nieuwsblad.be/cnt/dmf20190322_04275122; Amnesty International, *Belgium: Submission to the United Nations Human Rights Committee*, 13 September 2019, page 17, <https://www.amnesty.org/en/documents/eur14/1041/2019/en/>

rights and fundamental freedoms while countering terrorism also recommended further legislative reforms.⁴¹

POLICING

Ethnic profiling by police, which violates the right to be free from discrimination, remains a problem.⁴² Amnesty's research shows that police officers acknowledge the practice exists and that the legal and policy framework for decision-making by police officers provides insufficient guidance. Though testimonies are common⁴³, the full extent of the problem is hard to assess since authorities have failed to collect thorough and disaggregated data. The absence of data on identity checks particularly hampers an adequate response to the problem.⁴⁴

Jozef Chovanec died following a violent police intervention in a holding cell at Charleroi airport in February 2018. 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.⁴⁵ 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.⁴⁶ The Committee Against Torture had already expressed its concern over how the death of Jonathan Jacob, in similar circumstances in 2010, had been handled by Belgian authorities.⁴⁷

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.⁴⁸

⁴¹ 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, paragraphs 46-51, <https://www.ohchr.org/EN/Issues/Terrorism/Pages/Visits.aspx>

⁴² Amnesty International, *On ne sait jamais, avec des gens comme vous: Politiques policières de prévention du profilage ethnique en Belgique*, May 2018, https://www.amnesty.be/IMG/pdf/rapport_profilage_ethnique.pdf

⁴³ Police officers confirmed that ethnic profiling is a reality in Amnesty International's report *On ne sait jamais, avec des gens comme vous: Politiques policières de prévention du profilage ethnique en Belgique*, May 2018, https://www.amnesty.be/IMG/pdf/rapport_profilage_ethnique.pdf. 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, https://fra.europa.eu/sites/default/files/fra_uploads/1132-EU-MIDIS-police.pdf. Also illustrated by Ligue Des Droits de l'Homme (LDH), *Contrôler et punir: étude sur le profilage ethnique*, March 2017, <http://www.liguedh.be/contrôler-punir-etude-profilage-ethnique/>; and by Hogeschool PXL, *Belevingsonderzoek. Hoe beleven jongeren hun vrijetijdsbesteding in de publieke ruimte? 2014*, <https://demos.be/kenniscentrum/document/belevingsonderzoek-hoe-beleven-jongeren-hun-vrijetijdsbesteding-in-de>

⁴⁴ A praiseworthy evolution is that some local police forces are experimenting with registration of ID-checks. Knack, *Politiezone Mechelen-Willebroek registreert voortaan elke ID-controle tegen etnisch profileren*, 10 July 2017, <https://www.knack.be/nieuws/belgie/politiezone-mechelen-willebroek-registreert-voortaan-elke-id-controle-tegen-etnisch-profileren/article-normal-876467.html>. VRT, *Politiezone Mechelen-Willebroek registreert al drie jaar controles in strijd tegen etnisch profileren: "Cultuuromslag"*, 10 June 2020, <https://www.vrt.be/vrtnws/nl/2020/06/10/project-mechelen-willebroek/>.

⁴⁵ Press reconstruction of the timeline of events in February 2018, including video footage, <https://www.vrt.be/vrtnws/nl/2020/08/25/tijdslijn-wat-gebeurde-er-na-het-hardhandig-politieoptreden-op/>.

⁴⁶ 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>

⁴⁷ 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/>.

⁴⁸ 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/>

Amnesty International is concerned 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.⁴⁹

RIGHT TO ASYLUM AND MIGRATION

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 such assessment.⁵⁰ 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 criticised aspects of the collaboration with the Sudanese identification mission.⁵¹ 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 breach of international human rights law.⁵²

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.⁵³ The Commission's final report, presented to Parliament in September 2020, contained worrying recommendations calling for a repressive approach focused on detention and forced removal, including by raising the possible punishment for irregular stay to one year imprisonment.⁵⁴ 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.⁵⁵

With the entry into force of a Royal Decree on 11 August 2018, Belgium resumed the practice of detention of family units for migration purposes.⁵⁶ The absence of an executive decree had effectively ended detention of children for migration purposes in Belgium since 2011. Families with children can now be detained as a measure of last resort, following exhaustion of other measures including alternatives for detention. On 4 April 2019, the Council of State suspended

⁴⁹ 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/>.

⁵⁰ Amnesty International, *Belgium: Returns to Sudan violated principle of non-refoulement*, 30 January 2018 <https://www.amnesty.be/IMG/pdf/eur1478112018english.pdf>.

⁵¹ 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

⁵² 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>

⁵³ 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.

⁵⁴ 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

⁵⁵ 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

⁵⁶ 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

the Royal Decree. The practice of family detention is again suspended awaiting the decision on the annulment.⁵⁷ The detention of children for migration purposes is strictly prohibited in international law as it can never be in their best interests.⁵⁸ In addition: “Children must not be separated from their parents and/or legal guardians. 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.”⁵⁹ The October 2020 government agreement stated that detaining minors for migration purposes will no longer be possible.⁶⁰

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 are lacking real alternatives for detention of migrants and asylum seekers.⁶¹ Amnesty International is concerned that migration detention is not used as a measure of last resort in Belgium.

ARMS TRANSFERS

Belgium’s Wallonia region⁶² continued to authorise arms transfers to members of the Saudi Arabian-led coalition in Yemen, where the weapons may be used to commit or facilitate serious violations of international human rights or humanitarian law. Saudi Arabia is the Walloon region’s most important client for arms transfers. Amnesty International also documented Minimi-machine guns that were likely sold by Belgium to the UAE in the hands of unaccountable Yemeni militias that stand accused of serious human rights violations.⁶³

DETENTION

Conditions of detention in prisons remained worrying due to overcrowding, dilapidated facilities and insufficient access to basic services.⁶⁴ 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

⁵⁷ Conseil d’état - Arrêt N° 244.190, 4 April 2019, <http://www.raadvanstate.be/arr.php?nr=244190>

⁵⁸ 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>

⁵⁹ 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>

⁶⁰ Federal Government Agreement of 30 September 2020, https://www.belgium.be/en/about_belgium/government/federal_authorities/federal_government/policy/government_agreement p95.

⁶¹ Articles. 7, 27 §3, 51/5 and 74/6 of the law of 15 December 1980.

⁶² Since 2003, arms transfer control has been a regional competence in Belgium. Four different legal regimes exist, one for each region (Flanders, Wallonia and Brussels) and one for federal transfers (for a remainder category including transfers like army purchases). Wallonia is by far the largest exporter of the four.

⁶³ Amnesty International, *When Arms Go Astray – the deadly new threat of arms diversions to militias in Yemen*, February 2019, <https://arms-uae.amnesty.org/en/>

⁶⁴ 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>.

detainees.⁶⁵ 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 detainees during prison staff strikes.⁶⁶

Measures including extending furloughs and early release in response to the COVID-19 pandemic had a positive effect on overcrowding in prisons. Other measures aimed at avoiding the virus' spread inside the penitentiary system limited the rights of detainees, for instance by severely reducing detainees' contact with relatives. In some places of detention, there were serious concerns about inadequate provision for the maintenance of personal hygiene.⁶⁷

RIGHTS OF OLDER PERSONS IN CARE HOMES

By 18 November 2020, close to 15.000 people were estimated to have died from COVID-19 in Belgium.⁶⁸ During the pandemic's first phase in Belgium, from February until 21 June 2020, close to two thirds of those deaths were of people living in care homes, most of whom died in the care homes - not in hospital.⁶⁹ In April, following worrying media reports about the conditions in care homes, Amnesty International called upon the authorities to ensure the human rights of older persons during the pandemic.⁷⁰ Doctors Without Borders provided support in 135 Belgian care homes and concluded: "these [care homes] were forced to close themselves off and to transform into improvised hospitals, but without the necessary preparation, knowledge or resources – human as well as material."⁷¹ The organisation also reported serious inadequacies in preparedness, strategy and capacity, and stated that these shortcomings surely led to avoidable death and immense suffering by care home residents, their families and staff.⁷² Testimonies gathered by the Flemish Ombudsservice described how chaos characterised the first months of the pandemic and underlined that residents as well as staff and leadership of care homes felt abandoned and that the conditions and measures taken were often irreconcilable with the human

⁶⁵ 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

⁶⁶ 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 (1)*.

⁶⁷ 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.

⁶⁸ Figures include deaths that are presumed to be COVID-19-related but where no test was taken to confirm. Daily updated figures: <https://covid-19.sciensano.be/sites/default/files/Covid19/Meest%20recente%20update.pdf>

⁶⁹ Between 18 March and 2 June 2020, 50% of all deaths due to COVID-19 happened in hospitals, whereas 49% happened in care-homes for older people. Sciensano (ea). *COVID-19 Mortaliteit – update van de gegevens*. 26 August 2020, <https://covid-19.sciensano.be/sites/default/files/Covid19/MORTALITEIT%20COVID-19%20E2%80%93%20UPDATE%20VAN%20DE%20GEGEVENS%20-%2026%20AUGUSTUS%202020.pdf>

⁷⁰ Amnesty International Belgium, *Eén maand lockdown – voorlopige balans voor de mensenrechten in België*, 18 April 2020, https://www.amnesty-international.be/sites/default/files/bijlagen/longread_1_maand_lockdown_0.pdf

⁷¹ «Ces lieux, avant tout des résidences de vie, se sont vus contraints de fermer leurs portes et de se transformer en hôpitaux de fortune, mais sans la préparation, les connaissances et les moyens -humains et matériel- requis.» Médecins sans frontières, *Les laissés pour compte de la réponse au Covid-19 – Partage d'expérience sur l'intervention de Médecins Sans Frontières dans les maisons de repos de Belgique*, July 2020, page 29, https://www.msf-azg.be/sites/default/files/imce/Rapport_MaisonsDeRepos/MSF_lessons_learned_report_FR_FINAL.pdf

⁷² Médecins sans frontières, *Les laissés pour compte de la réponse au Covid-19 – Partage d'expérience sur l'intervention de Médecins Sans Frontières dans les maisons de repos de Belgique*, July 2020, page 29, https://www.msf-azg.be/sites/default/files/imce/Rapport_MaisonsDeRepos/MSF_lessons_learned_report_FR_FINAL.pdf

dignity of residents.⁷³ In the Federal⁷⁴, Brussels⁷⁵, Walloon⁷⁶ and Flemish⁷⁷ Parliaments, special or ad-hoc Committees have been set up to investigate their respective governments' responses.

In November 2020, research by Amnesty International showed that the various governments' responses violated the right to life, the right to health and the right to be free from discrimination of care home residents during the first phase of the COVID-19 pandemic.⁷⁸

RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW

AMNESTY INTERNATIONAL CALLS ON THE GOVERNMENT OF BELGIUM TO:

HUMAN RIGHTS INSTITUTION

- Reform the Federal Human Rights Institute so that it 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.
- Require the Federal Human Rights Institute to establish an individual complaints procedure.

OPCAT – PREVENTATIVE MECHANISM

- 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 Preventative Mechanism that can monitor all places where people are deprived of their liberty.

NATIONAL ACTION PLAN AGAINST RACISM AND OTHER FORMS OF DISCRIMINATION

⁷³ Vlaamse Ombudsdienst, *Stemmen uit de stilte*, 3 July 2020, http://www.vlaamseombudsdienst.be/ombs/nl/nieuws/pdf/20200702_stemmen_uit_de_stilte.pdf

⁷⁴ La commission spéciale Gestion Covid-19 <https://www.dekamer.be/kvvcr/showpage.cfm?language=fr§ion=/pri/covid&story=commission.xml>

⁷⁵ La commission spéciale consacrée à la gestion de la pandémie du Covid-19 <http://www.parlement.brussels/composition-de-commission-speciale-consacree-a-gestion-de-pandemie-covid-19/>

⁷⁶ La commission spéciale chargée d'évaluer la gestion de la crise sanitaire de la Covid-19 par la Wallonie (2019-2024). https://www.parlement-wallonie.be/pwpages?p=composition_com_det&id=281

⁷⁷ Commissie ad hoc ter evaluatie van het Vlaamse coronabeleid en tot opzetten van een postcoronatraject <https://www.vlaamsparlament.be/commissies/1396349>

⁷⁸ Amnesty International. *Les maison de repos dans l'angle mort de la COVID-19*. 16 November 2020. https://www.amnesty.be/IMG/pdf/20201116_rapport_belgique_mr_mrs.pdf

- Elaborate, adopt, and implement in close consultation with civil society stakeholders, a National Action Plan against racism and related forms of discrimination.

BUSINESS & HUMAN RIGHTS

- Adopt legal and policy reforms to require business enterprises domiciled or headquartered in Belgium to respect human rights and to carry out human rights due diligence throughout their global operations and supply chains.

RIGHTS OF LGBTI INDIVIDUALS

- Take further legislative steps to ensure legal gender recognition happens through a quick, transparent and accessible procedure.

RAPE AND OTHER FORMS OF GENDER-BASED VIOLENCE

- Fully implement the Istanbul Convention through a sufficiently funded and detailed National Action Plan on Gender-based violence.
- Ensure care centres for survivors of sexual violence are established in places that are easily accessible from all over the country and ensure that all such centres receive structural and sufficient financing.
- Ensure adequate training for police, judicial and health care actors involved in the fight against gender-based violence;
- Collect and make available disaggregated data on sexual violence, including information on incidence, anonymized victim profiles, and outcome of judicial follow-up.
- Ensure gender-based violence remains a key priority for police and the judiciary, and that it features prominently in the National Security Plan.
- Ensure that rape and other non-consensual acts of a sexual nature are defined as violations of an individual's bodily integrity and sexual autonomy in criminal law.

COUNTER TERRORISM

- Adopt further legislative reforms to ensure adequate redress for victims of terrorism through simple, easily accessible procedures.
- Ensure rigorous and systematic oversight of policies to counter terrorism and "radicalization", including by a fully competent national human rights institution and by Parliament.
- Conduct a prompt and thorough evaluation of current or draft counter-terrorism laws, policies and practices.
- Ensure all counter terrorism laws, policies and practices are fully compliant with Belgium's international human rights obligations.

POLICING

- Amend the Police Act by incorporating an explicit prohibition of direct and indirect discrimination, and by explicitly prohibiting ethnic profiling.
- Take steps in policy and practice to combat ethnic profiling.
- Register identity checks by police and collect data to monitor and research their use.
- Commission an independent and comprehensive review into serious incidents and deaths in custody or after contact with the police, and report publicly on the findings.
- Strengthen supervision and monitoring mechanisms for the police.
- Ensure the coercive enforcement of measures to protect public health is only considered as last resort.

ASYLUM & MIGRATION

- Scrupulously observe the principle of non-refoulement by not forcibly returning any person, in any manner whatsoever, to a country where they would be at real risk of serious human rights violations.
- Establish a permanent commission to monitor and review return policies, with a broad mandate and a representative membership including civil society and independent experts.
- End and prohibit the practice of immigration detention of families with children and improve and further develop less coercive measures.
- Ensure migration detention is only used as a measure of last resort and develop alternatives for detention of migrants and asylum seekers.

ARMS TRANSFERS

- Halt any arms transfers when there is a substantial risk that the weapons will be used to commit or facilitate serious violations of international human rights law or humanitarian law.
- Increase transparency on licenses for arms transfers to allow for public scrutiny of decision-making processes.

DETENTION

- Intensify efforts to end prison overcrowding and ensure all prison facilities and detention conditions are in line with international standards.

RIGHTS OF OLDER PERSONS IN CARE HOMES

- Respect and fulfil care home residents' right to the highest attainable standard of care in order to ensure their rights to health, life and non-discrimination.
- Ensure that the public health system is adequately funded and staffed, and that care homes have sufficient specialized and trained staff, adequately equipped to guarantee respect for the rights of older persons living in care homes.

- Ensure that the human rights of older persons and residents of care homes are respected, including by ensuring that any restrictions on those rights are provided by law, necessary and proportionate to meet a legitimate aim.
- Ensure adequate representation and involvement of older people, care home residents, the social care and care home sector in planning and decision-making processes related to matters which impact care homes residents at all levels.
- Ensure a comprehensive, effective and independent review into Belgium's response to the COVID-19 pandemic and provide adequate and accessible remedy for any human rights violations as a result of acts of omission and commission as part of the government's COVID-19 response.
- Publicly demonstrate that all policies and measures in response to COVID-19 (or another public health crisis) are in line with international human rights law and standards.

ANNEX

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