



**Shadow report of the Ligue des Droits Humains
to the United Nations Human Rights Committee
with a view to the examination of the sixth periodic report of the Belgian State**

September 2019

Introduction

For more than 100 years, the Ligue des Droits Humains (hereinafter, LDH) has been fighting, in complete independence from political power, against violations of fundamental rights in Belgium. As a counter-power, the LDH observes, informs and calls on public authorities and citizens to remedy situations that infringe fundamental rights.

This contribution by the LDH is structured around the List of Issues drawn up by the Committee for the submission of Belgium's sixth periodic report on the International Covenant on Civil and Political Rights. The responses provided by the Belgian State in its report have been taken into account in order to avoid any repetition. The LDH therefore aims only to supplement, qualify if necessary, the report submitted by Belgium, and to formulate recommendations.

Before this exercise, the LDH would like to stress that in order to assess the general human rights situation in Belgium, it is necessary to briefly introduce the subject by referring to the political climate in 2019. The recent European, federal and regional elections on 26 May saw a significant breakthrough by nationalist and/or extreme right-wing parties at different levels of power. Thus, a Flemish nationalist party (the Nieuw-Vlaamse Alliantie) remains the leading party in the country when a far-right nationalist party (the Vlaams Belang) comes in second place in terms of votes. In Flanders, almost one in two voters chose for a nationalist and/or far-right party. The consequences for the respect of human rights are potentially significant.

For example, Vlaams Belang campaigned with discriminatory and racist images and slogans and spent 800,000 euros to disseminate xenophobic propaganda to young people on social networks. It is not surprising that an extreme right-wing party campaigns with racist prejudices and simplistic slogans, but that this same party is making such a breakthrough in the elections and is thus at the doors of the institutions is a harbinger of a particularly worrying new reality.

The LDH would like to stress that it is in this worrying climate of uncomplexed extreme right-wing extremism that this new legislature is opening. She therefore invited the Committee to keep this new situation in mind when preparing its recommendations. It also invites the Belgian authorities to take into account these recommendations and to remedy these breaches of international human rights law, particularly so that the Belgian State has justified its place in the United Nations Security Council in the name of its great attention to this right. It would therefore be appropriate to put words into action.

B. Specific information on the implementation of articles 1 to 27 of the Covenant, including with regard to the Committee's previous recommendations

Constitutional and legal framework for the implementation of the Covenant (art. 2)

4. Establishment of a Federal Institute for the Protection and Promotion of Human Rights

On May 12, 2019, a law was passed establishing a Federal Institute for the Protection and Promotion of Human Rights, with the declared objective of complying with the Paris Principles.

The establishment of such an institution is indeed necessary to fill the gaps and limitations of the current institutional architecture for the protection of fundamental rights. Many international bodies monitoring respect for fundamental rights – for example, United Nations or Council of Europe - have recommended for many years that Belgium set up such an institution. The Belgian State has made several commitments to this, both at national and international level. It is therefore to fill this gap that this law was adopted.

Although this step forward is to be welcomed, a number of questions remain unanswered.

First of all, fundamental rights are a cross-cutting issue, affecting the competencies of all entities in the country. As a global supervisory body of the fundamental rights situation in Belgium, a level A institution with regard to the criteria of the Paris Principles must be able to monitor the respect and implementation of rights and freedoms in all matters that are the subject of public action, whether they are the responsibility of the federal State, the regions or the communities, or even the local authorities. One of the contributions of this new institution should be to help clarify the responsibilities of each entity in the country in the implementation of Belgium's international human rights obligations. However, it is only a federal body... which does not therefore cover all the prerogatives of the federated entities.

Secondly, the prerogatives of this institution are relatively limited. For example, it will not be possible for individuals to file a complaint with the Commission. Rather, the Institute is conceived as an advisory body, which may greatly limit its possibilities for action.

Finally, there is a real risk that it may be an empty shell. Indeed, without significant budgetary, human and political investment in this structure, it may not be able to fully appreciate the challenges of defending fundamental rights in Belgium.

For all these reasons, the LDH is pleased with this progress but remains extremely reserved about the true scope of this evolution. Adopted at the end of the legislature without any real debate, legitimate questions on the extension of its powers, on its referral of complaints by individuals and on the means at its disposal have not yet been answered.

The LDH therefore continues to defend the advent of a genuine NHRI competent to respect all the fundamental rights applicable in Belgium and endowed with the resources commensurate with its mission.

Counter-terrorism measures (arts. 2, 7, 9, 10, 14 and 17)

5. Fight against terrorism and respect for fundamental rights

The Counter-Terrorism Vigilance Committee (T Committee) is a group involving various members of civil society (NGOs, lawyers, academics) who met following a statement: since 2003, an increasing number of measures adopted to combat terrorism have violated certain human rights and fundamental freedoms. On the occasion of the publication of its 2019 annual report, Committee T unfortunately highlighted issues that are still relevant in the fight against terrorism and which call for increased vigilance in the context of respect for fundamental rights.

These include successive amendments to the Criminal Code, either to introduce new offences (provocation of terrorism, entry and exit with terrorist intent, among others) or to modify the scope of some of them. These new provisions are often very vague, which poses a problem with regard to the principle of legality: it is becoming increasingly difficult to determine whether or not a behaviour is punishable.

The rules on professional secret have also been amended, in particular by introducing a provision in the Criminal Code authorizing the lifting of professional confidentiality in the context of "case consultations" (bringing together professionals with different missions and purposes to discuss a specific case). This provision has recently been implemented through the establishment of Local Integral Security Cells (Cellules de sécurité intégrale locales (« CSIL-R »)). These cells include, among others, the Mayor and the local police, in addition to a series of other potential actors with expertise in preventing radicalization. Among these people, social workers are directly affected. With this reform, it is, among other things, access to social assistance, a fundamental right provided for in Article 23 of the Constitution, which is being undermined because of the loss of trust that may result from this lifting of professional secrecy. In addition, the very functioning of these cells makes the links between preventive and repressive components porous.

Let us also highlight the prison environment and detention management, which also pose their share of human rights problems: solitary confinement, longer periods of detention and difficulties in adjusting sentences pose a risk of inhuman and degrading treatment for a whole range of detainees with a "terrorist" label. They are not discharge or prison leave, which means that it is impossible to prepare a reclassification and reintegration plan. These people are therefore systematically forced to go to the "bottom of the grief".

In addition to prison policy, foreigners' rights are also subject to changes that create a potential confusion between migrants and threats to public security. Examples include the new possibilities for withdrawing the right of residence or forfeiting nationality on grounds of public security (without further defining the concept), which gives rise to the risk that Belgian second-class citizens may appear because of the way in which they acquire nationality.

All these and other issues (repatriation of jihadists' children, situation of victims of terrorist acts, etc.) are covered in depth in the annual report of the T Committee.

As the United Nations Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism was already able to highlight during her visit to Belgium, the LDH wishes to recall the essential role of human rights and fundamental freedoms, which are essential for a fair and effective response to the terrorist phenomenon. Indeed, this is the foundation for a harmonious life in society that respects individuals and the community. Fundamental rights must guide political action to ensure the foundations of a democratic society based on respect for the rule of law.

Non-discrimination and rights of persons belonging to ethnic, religious, linguistic or sexual minorities (arts. 2, 20, 22 and 24-27)

As a preamble, it should be noted that the reports of UNIA, the Institute for Equality of Women and Men (IEFH) and the Commission for the Evaluation of Federal Anti-Discrimination Legislation have all pointed to the lack of effectiveness of the laws adopted to combat discrimination. Two measures, in particular, appear to be particularly important to strengthen this effectiveness: 1) Improve the monitoring of compliance with this legislation; 2) Increase the dissuasive nature of sanctions.

8. Wearing the Islamic headscarf and intersectional discrimination

The question of the wearing of convincing signs, both in public spaces (or in private spaces accessible to the public) and in workplaces and training centers, remains a tense and unresolved issue in Belgium. While the state of the law in this area is clear, at least as regards adults, there are still many instances of interference in

the fundamental rights of the individuals concerned, as shown in particular by the recent conviction of Belgium by the European Court of Human Rights in the case of *Lachiri v. Belgium*.

In this respect, the LDH intervened three times in 2019 in injunctions for discrimination based on the wearing of the Islamic headscarf in two sports halls and at STIB, the main public transport operator in Brussels. In these cases, the LDH notes and highlights so-called "intersectional" discrimination: based on both religious belief and gender.

The two sports halls in question prohibit the wearing of headwear on the basis of neutrality. Unfortunately, this principle is too often invoked to justify restrictive policies in a context of widespread suspicion towards Muslims, with a disproportionate impact of these restrictions on Muslim women. For several years now, bans on the wearing of Islamic headscarves for adult women have been increasing in various areas in Belgium. The structural dimension of this exclusion also has an impact on how society perceives Muslim women.

STIB, for its part, pursues a policy of "exclusive neutrality" applied to all its staff. This policy is referred to in particular in Article 9(3) of its working regulations: "the wearing of any badge other than that of duty is prohibited to uniformed personnel, as well as to those in civilian clothing during their period of duty". STIB is the largest employer in Brussels, hiring many workers of foreign origin and low skilled, but whose staff is - according to their figures - only 10.75% women. As a leading employer in the Brussels Region, such a ban on the wearing of headgear, which is apparently neutral but inexorably leads to the exclusion of certain people, is therefore likely to affect the Brussels labour market, particularly against women of the Muslim faith, generally of non-European origin, whose employment rate is already one of the lowest in Belgium.

With regard to minors, let us note an interesting as well as recent jurisprudential evolution concerning the school framework : UNIA, La politique du réseau scolaire flamand GO! en matière de symboles religieux est contraire à la loi, Bruxelles, 27 août 2019 (<https://www.unia.be/fr/articles/la-politique-de-go-en-matiere-de-symboles-religieux-est-contre-a-la-loi>).

For the LDH, it is important to respect freedom of expression, belief and religion, including in the sphere of employment. The wearing of a clothing attribute revealing a worker's adherence to a particular belief or religion cannot ipso facto be equated with an act of proselytism, a questioning of the neutrality of an institution or an attack on a company's commercial image. In the event of conflict, pragmatic solutions should be encouraged in both the public and private sectors to keep workers who, out of religious conviction, wish to wear a particular clothing attribute in employment, while, where appropriate, taking into account the image concerns of an institution or company.

9. Discrimination on the basis of language

The Belgian State signed the Council of Europe's Framework Convention for the Protection of National Minorities on July 31, 2001, but has never ratified it. The Belgian authorities should put an end to this deficiency and eliminate any interpretative declaration that reduces the scope of the text of the Framework Convention. In the same vein, the Belgian State should ratify Protocols 12 and 16 to the European Convention on Human Rights, which it has signed but never ratified.

It is important to note that in Belgium, there is no body competent to deal with discrimination on the grounds of language: linguistic discrimination is not dealt with by any body.

10. Discrimination against transgender and intersex people

On June 25, 2017, the Belgian legislator put an end to ten years of discrimination by amending the law regulating the legal regimes relating to transgender persons, which is to be welcomed. In concrete terms, this new law puts an end to the forced psychiatry, medicalization and sterilization of transgender persons categorized, before this evolution, as suffering from mental illness. Civil status can now be changed without

having to overcome a whole series of administrative, physical and psychological obstacles.

While these advances are promising, specialized associations are waiting for further steps to totally demedicalize the course for the 16-18 age group. Similarly, at the administrative level, they are calling for the possibility of changing the gender registered before the age of 16 and facilitating the change of first name before the age of 12. They also hope to make progress in the recognition of fluid gender identities, by abolishing the irrevocability of the gender modification provided for in the new law, or even making it optional to register gender.

In addition, the particular case of intersexed people also requires rapid intervention to avoid irreversible surgical operations whose necessity is not established. However, the situation of these intersex persons is not included in the Belgian State report. It is still urgent to establish a legal framework for the protection of the fundamental rights of intersex persons in Belgium, by adapting the legislation so that the Belgian State complies with its international obligations.

Indeed, Belgian law currently in force does not guarantee the protection of the fundamental rights of intersex persons in accordance with standards defined at European and international level. The requirements of the principle of equality and non-discrimination are also not met.

Three central points must be addressed by Belgian federal, regional and community legislators:

1. as regards medical practice: intersex children are subject to normalization medical procedures in Belgium while they are in good health. These surgical and/or hormonal treatments are most of the time not justified by medical requirements. These treatments are carried out without autonomous consent and therefore constitute an attack on the physical integrity, autonomy and self-determination of intersex children.
2. on non-discrimination: intersex people are daily discriminated on the basis of their sexual characteristics. The LDH calls on Belgium to adapt its legislation and to recognise sexual characteristics as a ground of discrimination and to punish discrimination and violence on this ground.
3. training and awareness-raising: intersex people, their parents, relatives, health professionals and the general population do not have sufficient information on the situation of intersex people and, in particular, on the nature, degree of urgency, duration, frequency, contraindications, side effects and risks inherent in medical standardization procedures. The LDH asks Belgium to adapt the existing legal framework in order to ensure a complete training of health professionals in respectful behavior towards intersex people. There is also a need to raise awareness of the situation of intersex people, including through school curricula.

Prohibition of torture and cruel, inhuman or degrading treatment or punishment (art. 7)

13. and 14. Prevention of torture and cruel, inhuman or degrading treatment or punishment

Belgium, which has signed the Optional Protocol to the United Nations Convention against Torture (OPCAT), recently announced its intention to ratify it, in accordance with its many commitments to do so - both at national and international level. However, to date, no consent law has been published.

Belgium's intention to ratify the OPCAT follows the adoption of the law of December 25, 2016 reforming the existing prison monitoring system and giving the task of monitoring places of deprivation of liberty to the Central Prison Monitoring Council and the Prison Monitoring Commissions.

However, this law has been heavily criticized both by NGOs, academic authors and official bodies, such as the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and by the Prison Monitoring Commissions themselves. Indeed, this law is far from complying with OPCAT standards, in particular because its mandate covers only one type of place of deprivation of liberty (prisons), to the exclusion of all others (closed centers for foreigners, public youth protection institutions, social defense institutions, police stations, etc.), and because it could lead to problematic conflicts of interest at several levels since the functions of supervision, mediation and complaint are entrusted to the same bodies.

Therefore, it is imperative that all OPCAT principles be implemented before any ratification of this instrument, including:

- by extending the mandate of the national preventive mechanism to all places of detention;
- by guaranteeing the financial and human resources of this institution, as well as the diversity of functions within it (specialists in the law on foreigners, minors, etc.), by ensuring that its members have the required professional skills and knowledge;
- by strictly separating the monitoring functions themselves from the functions of handling and judging complaints. In this respect, the law of December 25, 2016 must be reviewed in this respect: the role of mediation between prisoners and the prison administration of the supervisory commissions is incompatible with a judicial role between these same actors.

13. c) The safe third country concept

As the Belgian State points out, the concept of a safe third country has been transposed into Belgian law but has never been applied in practice. This new concept is too imprecise, it creates a risk of too broad an interpretation and does not offer sufficient guarantees for the applicant for international protection who would be subject to this notion of a safe third country:

- the criteria and definition of this concept are based on concepts that are too vague and imprecise (there is no definition of the connection link, for example);
- Directive 2005/85/EC expressly stated that this concept could only be applied by the Member States if the authorities were satisfied that the applicant would be treated in the third country concerned in accordance with the principles detailed in Article 38; however, Belgian law states that the application may be declared inadmissible under this concept of safe third country if the CGRA "considers" that the applicant would be treated in accordance with the principles set out in the Directive;
- the burden of proof is very heavy for the asylum seeker because it is up to him to prove that this third country is not safe for him or that he does not have access to it;
- no examination to control effective access to this safe third country is planned.

13. (d) Diplomatic assurances and the principle of non-refoulement

In its report, the Belgian State argues that "the principle of non-refoulement is an absolute principle which is always taken into consideration by the Belgian authorities when examining a removal or extradition file" and that "diplomatic guarantees are never used to remove illegally staying foreigners".

This is not true: in September 2017, the Secretary of State for Asylum and Migration concluded an agreement with the Sudanese dictatorial power to have Sudanese persons identified, known as "in transit", and detained mainly at the Vottem detention center in order to their expulsion. This agreement made it possible to expel identified Sudanese from the territory without any verification with regard to compliance with Article 3 of the European Convention on Human Rights (ECHR), in violation of the principle of non-refoulement.

Acts of torture against these persons have been alleged following their deportation to Sudan. The case was referred to the European Court of Human Rights for one of them and the LDH drafted a third intervention to defend the principle of non-refoulement violated in this case.

Following these events, MYRIA, the Federal Migration Centre, notes that Belgium has established a practice to examine the risk of violation of Article 3 ECHR in the event of return and in the absence of an application for international protection. The police services' "right to be heard" questionnaire has been adapted; the questions asked during the social interview on arrival in a detention center have also been adapted; and a registration of an "implicit asylum application" is provided for in cases where the person is at risk under Article 3 ECHR.

The LDH asks that a clear procedure be included in the law for any person who alleges a risk in the event of forced return, as does the Conseil d'Etat, which also recommends it.

14. Inhuman and degrading treatment by law enforcement officials

In their recommendations to the Belgian State, the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), the UN Committee against Torture (CAT) and the UN Human Rights Council stated, *inter alia*, that "The State party should take the necessary measures to effectively combat ill-treatment, including that based on any form of discrimination and punish the perpetrators in an appropriate manner". Despite this, it is worth noting the persistence of allegations of ill-treatment by the police and even convictions by the European Court of Human Rights.

To support these recommendations, the Belgian State should:

- Guaranteeing the identification of members of the police force: the Act of April 4, 2014 amending Article 41 of the Act on the police function of August 5, 1992, with a view to guaranteeing the identification of police officers and police officers while improving the protection of their privacy, aims to enable police officers to be identified in all circumstances, in accordance with the case law of the European Court of Human Rights. However, this law has never entered into force due to the lack of implementing decrees. Despite this absence, some police areas are already enforcing the law. The result is an uneven and differentiated application that varies from police area to police area. Therefore, these decrees should be urgently adopted, on the one hand to bring this law into force where it is not yet applied, and on the other hand to ensure uniform application throughout the country;
- Guarantee the right to film police interventions: it is important to remember that there is no general prohibition against photographing or filming police actions. With the exception of certain exceptional and limited cases, citizens and journalists have the right to film or photograph police interventions, whether to inform or collect evidence of the conduct of events. This right should be strongly reaffirmed by the Belgian authorities;
- Ensure the independence of the Investigation Department of the Standing Committee on the Control of Police Services (Committee P), in accordance with international recommendations. Although it describes itself as an independent institution, Committee P is criticized by many international organizations for its lack of independence and objectivity, particularly because of the composition of its Investigation Service. This department is composed of police officers from different departments who are responsible for monitoring the work of law enforcement officers. On this point, the United Nations Committee against Torture has repeatedly recommended that the Belgian State take "the relevant measures to further strengthen the control and supervision mechanisms within the police, particularly Committee P and its Investigation Service, which should be composed of independent experts recruited from outside the police". For its part, the United Nations Human Rights Committee "expresses concern that doubts remain about the independence and objectivity of Committee P and its ability to deal in a transparent manner with complaints against police officers" and, more recently, similar recommendations have been addressed to Belgium by the United Nations Human Rights Council.

In addition, more specifically concerning ill-treatment of persons in an irregular situation, in October 2018, the NGO Médecins du monde published a survey on police violence against migrants and refugees in transit in Belgium. They interviewed 440 people in May, June and July 2018. "Of these 440 people, 25% reported having been victims of police violence in Belgium. 59 people agreed to participate in a more in-depth interview via a semi-directive questionnaire. After examination, 51 of these testimonies were found to be valid for a total of 101 violent acts."

- "Almost 60% of respondents reported that they had experienced violence in streets. (...)
- 64% of those arrested were forced to undress completely, which was felt to be a humiliating and degrading experience by 72%, accompanied by beatings and insults.
- Of the 13 people who refused to give their fingerprints, all were victims of torture as defined in the Istanbul Protocol. (...)
- 41% of respondents who were arrested reported that they had not received food or water for more than 15

hours. 13% also reported that they were not allowed to use a toilet, while one person even explained that they had to relieve themselves in a bucket for 48 hours.

- 41% of respondents who were arrested reported that they had not recovered the possessions they had been deprived of during their incarceration. ”

As the MYRIA report on police and transit migrants tells us, Committee P does not question these findings but does not reach the same conclusions for two reasons: its investigation focused only on mass administrative arrests of transit migrants (planned operations that generate fewer difficulties) and the method used did not allow Committee P to be in contact with migrants in conditions conducive to the issuance of relevant testimony.

To be precise, these migrants in transit are in fact "undocumented" persons on the territory: they do not want to seek asylum in Belgium and therefore have no rights. Being illegally resident in Belgium is an offence under Article 75 of the 1980 law. The LDH tirelessly calls for the decriminalization of illegal residence: this article of the law, which prevents undocumented migrants from asserting their rights in Belgium, must be deleted.

Finally, in 2016, the LDH published a report on the persistence of ethnic profiling practices by members of the police force. Similarly, the United Nations Human Rights Council has also issued recommendations to the Belgian State on the subject aimed at: "Ensure effective coordination at the local, regional and federal levels of measures taken to monitor the prevalence of illegal ethnic profiling and racism, taking into account, in particular, the current terrorist threat facing the country; (...) Improve police training to raise awareness of the problem of racial profiling; (...) Investigate impartially all cases of ill-treatment and excessive use of force by law enforcement officials, including when such acts are motivated by racism; (...) Conduct an assessment of the use of ethnic profiling by police forces".

All these recommendations were accepted by the Belgian State, in the person of its Minister of Foreign Affairs. But despite the reports published on the subject, the testimonies of members of the police themselves and the statements of the Minister of Foreign Affairs to the United Nations Human Rights Council, the issue does not seem to be a priority for the political authorities. However, it would be appropriate for the Belgian State's speech in the United Nations forum to be no different from its domestic policy speech. The Belgian State should therefore resolutely combat this phenomenon, in particular by considering the introduction of a systematic registration of identity checks using a form by the police officers who carry out these checks, a copy of which (the receipt) should be provided to the person inspected. It could also lead to the adoption of an explicit circular from the Attorneys General concerning the prohibition of this practice as well as guidelines for the police force. Finally, it could invest in police training and make recourse mechanisms more effective, in line with the above-mentioned international recommendations.

Security of the person and treatment of prisoners (arts. 7, 9 and 10)

15. Detention of persons with mental health problems

The incarceration of mentally ill persons in prisons must be stopped: this recommendation has already been made on many occasions and the Belgian authorities are frequently sentenced on this subject, including a pilot judgment of the European Court of Human Rights. This again underlines the urgency of this issue. However, to date, although the government seems to have become aware of the importance of this issue, in particular by creating closed care facilities independent of prisons, psychiatric annexes to prisons still exist and the law of May 4, 2016 on internment and various provisions relating to justice still allows patients to be sent there. The use of psychiatric annexes in prisons as possible places of internment should be prohibited outright.

It is also essential, in the process, to improve the health care available within the prison institution and to provide appropriate treatment and care for persons with psychiatric disorders, as well as for the entire prison population. The findings in this area are alarming. In this respect, the CPT recommends "greater involvement of the FPS Public Health in the care of persons interned in prison (...)" and to provide for the transfer of competences from the FPS Justice to the FPS Health.

The CPT and the CAT have repeatedly deplored the serious lack of health care staff in view of the scale of the needs, the sometimes inadequate training of medical staff and the poor quality of dental care. The CPT and the CAT also note that there are too many waiting days (a waiting period of 6 months, in some cases, to consult a dentist) followed by an expeditious consultation, a potential source of aggravation of the patient's state of health. Among the inadequacy of the care offered, it is also necessary to mention the overmedication for mental disorders and the insufficient framework in terms of psychiatric personnel.

As recommended by the CPT, "the presence of psychiatrists and clinical psychologists must be strengthened in all the prisons visited in order to improve the psychiatric and psychological care of persons in pre-trial detention or under sentence. »

In addition, external medical staff are increasingly subject to significant payment delays, further reducing the medical supply, which is already skinny in normal times. This situation is unacceptable.

17. Overcrowding in prisons

Overcrowding in prisons is endemic in Belgium and the resulting conditions of detention result in inhuman or degrading treatment. As a result, the Belgian State has had to endure several convictions for violations of Article 3 of the ECHR.

The Belgian State must comply with the requirements of international bodies in this field, in particular the CPT and the Council of Europe Commissioner for Human Rights, by adopting a policy not consisting in the construction of new prison establishments. As the United Nations Committee against Torture points out, the State party must "consider putting in place alternative measures to increasing prison capacity." The CPT, for its part, stresses that "It is nevertheless important that priority should continue to be given to reducing the prison population and controlling it to a proportion (...). To this end, it is also necessary to ensure that attention is not disproportionately focused on increasing the total capacity of the prison stock. »

Prison expansion is a decoy, as many scientific studies have shown: the evolution of the prison population depends in fact on the criminal policies implemented.

In this respect, in view of the obvious failure of the criminal policy deployed for decades and the largely counterproductive nature of deprivation of liberty in many cases, it must be ensured that the prison sentence is truly the ultimum remedium, both with regard to preventive detention and the enforcement of sentences. This includes the use of alternative sanctions. In this respect, it would be necessary, on the one hand, to ensure the proper implementation of the cooperation agreements between the Federal State and the Communities responsible for the enforcement of labour penalties and electronic surveillance penalties, and, on the other hand, to develop new alternatives (special confiscation, day fines, etc.).

If new institutions were to be built, it is imperative to comply with the Council of Europe Prison Rules advocating the construction of small, community-based institutions accessible to families, lawyers and prison staff (unlike the Haren Prison Project, planned by the authorities in Brussels). In addition, it is essential that prison policies include objectives for the reintegration of prisoners, particularly in order to combat recidivism. In order to effectively combat the phenomenon of prison overcrowding, it is essential to fight on at least three fronts: entry into prison, time in prison and release from prison.

- First of all, preventive detention should be thoroughly reformed with a view to limiting its use to the most serious crimes and offences. Indeed, the law of July 20, 1990 on preventive detention is neither respected nor properly applied. This leads to a worrying result: 35 to 40% of prisoners in Belgian prisons are actually remand prisoners. There is an urgent need to reform this legislation in order to limit the abusive use of preventive detention, in particular by limiting the offences that may justify preventive detention (offences against persons, increase in the rate of punishment allowing the use of preventive detention, etc.).

- Secondly, the federal government's recognition of the missions to assist detainees and persons subject to trial

referred to the federated entities must be strengthened and the detention plan implemented.

Although the link between the absence of a real reintegration policy for prisoners and the risk of recidivism is no longer to be established, it is noted that the education and training of prisoners during their detention is insufficient, which also constitutes an obstacle to their subsequent reintegration and promotes the risk of recidivism. There are many constraints on the organization of educational activities in prisons.

The strengthening of the federal government's recognition of the missions to assist detainees and persons subject to trial referred to the federated entities and the implementation of the detention plan are essential in this regard. This is achieved, in particular, through a more equitable redistribution of resources and by updating obsolete collaboration protocols. Therefore, a minimum offer and the mandatory presence of training, education and vocational guidance activities must be established in each prison establishment. In addition, the establishment of a detention plan must be ensured from the beginning of detention, in accordance with the law of principles of January 12, 2005.

- In addition, it is also essential to strengthen and facilitate conditional releases. Parole is increasingly becoming a marginal mode of exit for convicts. However, parole allows, in many cases, the reintegration of prisoners, while those who are going to the limit of their sentence, without any reintegration work, present a higher risk of recidivism.

The parole procedure should be facilitated and granted as quickly as possible in the absence of contraindications. This was also recommended by the CAT, which calls on the Belgian State to "take effective measures to make the granting of conditional release more accessible. »

It is essential that all the provisions relating to the external legal status of detainees come into force (the law dates from 2006!) and in particular the establishment of the judge for the enforcement of sentences responsible for monitoring releases for the shortest sentences. It is essential that reintegration work be started at the beginning of incarceration, in order to guarantee its efficiency and to avoid that prisoners go "to the fullest extent of the pain" and are finally released without any follow-up. Adequate resources must be allocated to the services responsible for preparing for reintegration in prisons (in particular psychologists and social workers) but also to the courts responsible for the enforcement of sentences and to the justice houses.

- Finally, careful consideration must be given to the guidelines for the reforms of the Criminal Codes and Criminal Investigation Codes. These have never been the subject of major reforms, but rather of disparate and repeated reforms, making these codes difficult to read and, in part, anachronistic (the Code of Criminal Investigation dates from April 17... 1878. And the Penal Code dates from June 8... 1867!). In addition, the inadequacy of the Penal Code also has the effect of encouraging prison overcrowding. A reflection on incriminations and penalties is imperative, many of which are no longer appropriate in today's society.

The reform of the Penal Code undertaken by the government is a sad case. While eminent specialists were mandated to propose such a reform, and after they had done a considerable amount of work, they were forced to resign from the Reform Commission. At issue was the way in which the government modified the initial draft presented by the Commission, in particular by placing imprisonment at the centre of criminal repression, which is not likely to reduce the prison population. Yet criminologists are unanimous: imprisonment is criminogenic, and long prison sentences are unnecessary and ineffective. The reform of the Penal Code must therefore resume on the basis laid down by the experts of the Reform Commission.

Moreover, these reforms must be an opportunity to lay the foundations for a policy of decriminalizing certain acts: the counter-productive, even harmful, effects of the criminalization of certain behaviors are obvious (narcotics, right of residence, press offence, squat, abortion, wearing the burqa, crime of lèse-majesté, etc.). Consideration should be given to the increased use of the criminal justice system, which often leads to more problems than it solves.

Finally, democratic control over the definition of criminal policy should be established. While the legal texts specify that criminal policy directives are issued by the Minister, after consulting the College of Attorneys General, criminal policy is actually issued by the College of Attorneys General, under cover of the Executive. It is imperative that effective democratic control be exercised over the definition of criminal policy, which determines the direction of criminal investigation and prosecution.

Prohibition of slavery and servitude (art. 8)

18. Refugee status for victims of trafficking

As the Belgian State points out, articles 61/2 to 61/5 of the Act of December 15, 1980 on access to the territory, residence, establishment and removal of aliens provide for the recognition of a residence status for victims of trafficking in human beings (TEH). Three conditions apply to obtain this status: sever all ties with the alleged perpetrators of the offence, accept guidance from an approved and specialized centre, and file a complaint or make statements against the operator. In practice, it is a fighter's path that often ends in a refusal. This status excludes above all a large number of victims of trafficking who arrive in Belgium and in respect of whom no criminal proceedings can take place in Belgium, as the perpetrators are outside Belgian jurisdiction. Alternative protection for victims who fall outside the TEH procedure therefore seems necessary.

The LDH recommends that the possibility of obtaining refugee status for these victims for fear of persecution by the trafficking network be developed. Because the current system is based on an assessment of the victim's cooperation and on criminal proceedings that can be dropped without the victim's consent - this does not depend on the victim but on the judge or the requisitions of the King's Prosecutor or the labour auditor in charge of the case. France and England have already established case law to this effect (while French law also provides for a residence procedure for these victims). Belgium should follow this example, as no legislative obstacle can prevent such an assessment of the Geneva Convention.

Legality of detention and security of the person (arts. 2, 9 and 10)

19. Legal aid

Access to justice is a fundamental principle of the rule of law. In its absence, citizens cannot be heard, exercise their rights, challenge any discriminatory measures or hold public authorities liable. The rule of law and access to justice are therefore two sides of the same coin. It is precisely this submission of the State to the law that characterizes this system. The right of everyone to access justice must be concrete and effective to ensure equality and respect for the law.

The past legislature has seen the adoption of measures that head-on challenge the principles underlying the right of access to justice. This prompted the LDH, along with other actors, to successfully bring an action for annulment before the Constitutional Court against the law of July 6, 2016 amending the Judicial Code with regard to legal aid. Despite this constitutional victory, the reform remains in force in its other aspects and continues to discourage access to justice for the most vulnerable, with the right of access to justice remaining an illusion for many people.

The legitimacy of this right should be strongly reaffirmed and guaranteed through the legal aid system. This guarantee requires adequate financing and could eventually involve the introduction of a form of mutualization of judicial costs. It is also necessary to simplify judicial language in order to make it more accessible to citizens.

Refugees and asylum-seekers (arts. 7, 9, 10, 12-14 and 24)

20. Detention of applicants for international protection

The Belgian State specifies that "before a person's administrative maintenance can be carried out, there must

in particular be a "significant risk of escape". But the LDH, and the associations of the Transit group with it, wonder if these applicants for protection are really locked up because of the risk of escape they present.

Contrary to what is required by law, the choice to confine an applicant for international protection has little to do with the individualized examination of his situation or with a possible risk of leak, or with the anticipation that his application for protection will ultimately be refused. The choice to confine an applicant for protection seems to be based on much more general considerations, sometimes aimed at reducing the flow of requests from certain nationalities, sometimes at responding to domestic policy considerations. To lock up as many applicants for protection of a particular nationality as possible is to give a strong signal to their compatriots that they are not welcome in Belgium, or even to try to make them believe, sometimes in a very questionable way, that their chances of obtaining asylum are very low.

To this end, the Foreigners' Office will seek, for example, to deport the asylum seekers from a country with a sharp increase in applications for protection as much as possible to the country in charge of the asylum case under the Dublin Regulation. The detention measure is then part of a deterrence arsenal. This arsenal also includes targeted letters from the State Secretariat for Asylum and Migration to the nationalities concerned. Under the cover of informing them properly, he addressed a barely veiled threat to them: that of forced eviction. When detention measures fall after the mail is sent, the deterrent effect is all the stronger. The use of the government's provision of protection seekers involved in fights in open centres appears to be a message intended to show great firmness. In practice, these detention measures are arbitrary. Their relevance and effectiveness can also be questioned, since several of the applicants for protection covered by these measures were released a few days after their detention, either because the Office of the Commissioner General for Refugees and Stateless Persons considered their need for protection to be justified or following a decision by the Chamber of the Council ordering their release.

As for the almost systematic detention of border asylum seekers, it seems to be based on practical considerations for the Aliens Office, namely the possibility of returning them without cost and without difficulties, in the event of failure of their asylum application. Indeed, the administration does not have to bear the cost of the refoulement, nor does it have to obtain a pass from the country of origin and can even ask the company responsible for the reimbursement of the costs related to detention in a closed centre. The practice of confining asylum seekers goes far beyond the strict framework provided for by law. However, the deprivation of liberty of a person who is indeed eligible for refugee status, and who may have suffered severe persecution in his or her country, poses a real risk of aggravating the consequences of such persecution.

20. Administrative detention of families

All asylum-seeking, refugee and migrant children should be treated as children. They must be free, protected and cared for. The Belgian State writes in its report that "families with minors who have to leave Belgium are no longer housed in closed centres since 2009". This is no longer accurate at this time. Since September 2018 the Belgian government has taken the decision to lock up families who are illegally residing with their minor children. Between 2006 and 2011, when it was still detaining children, Belgium was sentenced three times by the European Court of Human Rights for inhuman and degrading treatment. Following these judgments, the practice had been stopped for ten years. The federal government's decision is a real step backwards and goes against the principle of the best interests of the child.

Being a child in a migrant or refugee stay is not an illegal act. Children cannot be punished because of their migration status or that of their parents. Studies have shown that detention has a profound and lasting impact on the health and development of children, even when it is of short duration and takes place in relatively "human" circumstances. Alternatives are possible such as return homes and home support. These alternatives must be worked on and improved by the government in order to comply with the rights of the child.

The United Nations Committee on the Rights of the Child has just strongly reiterated that the use of confinement cannot be used for children in migration. He therefore called on Belgium to put an end to this

practice and to use non-custodial solutions. The inclusion in the law of the general prohibition of the detention of children in closed centres, without exception, is essential. The law of November 16, 2011 inserting an article 74/9 in the law of December 15 1980 on access to the territory, residence, establishment and expulsion of foreigners must be amended accordingly.

In April 2019, following an appeal lodged by a group of NGOs (including the LDH), the Council of State suspended the Royal Decree of July 22, 2018 and thus prevented families from being locked up in this closed centre located too close to the landing strips and unsound. Unfortunately, the Council of State did not sanction the detention of children but rather their conditions of detention. The Belgian State is therefore in the process of soundproofing the premises in order to lock up irregularly staying families again and thus facilitate their expulsion.

For parents and their children, any confinement is traumatic and violent. Legally, the confinement of children is contrary to the principle of the best interests of the child enshrined in the Belgian Constitution and in the International Convention on the Rights of the Child.

20. Asylum reform

Nothing appears in the Belgian State's 6th periodic report in points 156 et seq. concerning refugees and asylum seekers on the major reform of the asylum procedure at the beginning of 2018. However, this in-depth reform of asylum policy has changed a great deal of the legal provisions of the Act of December 15, 1980 on access to the territory, residence, establishment and expulsion of foreigners. These legislative changes have led to a drastic reduction in the fundamental rights of applicants for international protection. Nine associations, including the LDH, have brought an action for annulment before the Constitutional Court against these amendments. The appeal is still pending.

The government claimed it wanted to simplify the law for foreigners by working on a codification of migration law. On the contrary, it was a complexification of the asylum procedure: re-establishment of the admissibility filter and creation of categories of "second zone" applicants with accelerated, even expeditious procedures, in a climate of general distrust.

These laws have been the subject of extensive criticism, issued by specialized NGOs, but also by the Office of the United Nations High Commissioner for Refugees, MYRIA and the Commission for the Protection of Privacy. Among other things, they were denounced:

- the possibility of almost systematic detention of asylum seekers and persons in an irregular situation;
- the shortening of time limits for challenging a negative decision, which undermines the right of access to a judge and would allow protection seekers to be sent back to countries where they would be at risk of inhuman and degrading treatment on an accelerated basis;
- the violation of privacy and the guarantees provided for in the GDPR by giving access to telephones and computers without real consent and by generalizing the capture of facial images in the taking of biometric data for foreigners;
- and, in general, the a priori suspicion of fraud or abuse of claimants seeking protection.

The vision underlying these laws echoes other liberticidal measures that violate the most fundamental migration rights of the previous government. It is based on the stigmatization of foreigners, who are systematically attributed worrying characteristics: fraudsters, abusers, undesirables, illegal, criminals...

21. Complaints concerning administrative detention and removal

As for forced evictions, little information is available on their progress, given that civil society has no right of control over these operations and that they take place in the greatest opacity. But the testimonies that we receive regularly report violence from the agents in charge of these expulsions. Acts of violence by the police, ranging from racist statements, psychological pressure to physical violence that go beyond legal guidelines, are

reported to us.

The forced return control system is not effective. Although there is a body in Belgium responsible for this control, the General Inspection (AIG), its presence in the field is not systematic and its observation reports have not been made public for several years. Also, and above all, the fact that the AIG itself reports to the police and to the Ministers of the Interior and Justice raises questions about the truly independent nature of this authority.

With regard to the monitoring of detention conditions, the Royal Decree which determines the functioning of detention centres and the rights of detainees provides for the possibility of lodging a complaint with the Complaints Commission against any violation of a right prescribed by this Royal Decree. To do so, the prisoner must submit his complaint by mail "within five days" (the time from which this time limit is not clear) to the director of the centre, who must reply within 10 working days. A copy of this complaint and its reply shall be sent to the Director General of the Foreigners' Office and to the Permanent Secretariat of the Complaints Commission. The 2014 activity report of the Vottem closed centre indicates that a total of 13 complaints have been lodged. Of these 13 complaints, 9 were lodged by three persons. In 2014, therefore, only 7 people in total out of the 858 people who were detained there chose to file a complaint. In total, for all closed centres in 2014, only 28 complaints were lodged with the Complaints Commission. Of these, 8 were declared inadmissible by the Commission's Secretariat. Of the 20 complaints deemed admissible, 5 were declared unfounded, 10 were considered not to have a legitimate interest and the last 5 were either withdrawn or settled out of court. Most of these complaints came from the Merksplas and Vottem detention centres. In 10 years of operation (2004-2014), out of the 373 complaints lodged, only 9 have been declared partially founded. For more recent figures, in 2016, 19 complaints were filed and 11 complaints declared admissible (while 6,311 foreigners were the subject of a first closed-custody case during that year); and in 2017, 23 complaints were filed for 13 complaints declared admissible (7,105 foreigners who were the subject of a first case during that year). This low number of complaints filed and declared admissible is not a sign of an effective and fair prison system but of a serious democratic and control deficit.

Right to a fair trial (arts. 2, 14 and 26)

22. Divestiture

The protection system established in Belgium in the field of juvenile justice is a valuable system for the respect of children's rights, since it makes possible a diversity of responses and a balance between educational sanctions, individualized assistance and the right of authors and victims to participate in a restorative offer. It is important to keep it and ensure that the essential guarantees relating to it remain: detention as a last resort and for the shortest possible period of time, prevention, support, respect for the right to participate, taking into account the best interests of the child in all circumstances.

On the other hand, it is always possible in Belgium for a juvenile judge to dismiss a case concerning a young person over 16 who has committed a serious offence in order to be tried before a specific chamber of the juvenile court applying ordinary criminal law (or before the Assize Court if he has committed a non-correctable crime). However, research shows that divestment does not result in reintegration into society, quite the contrary, and therefore denies certain young people under 18 years of age the guarantees of the protection system, which nevertheless correspond to the requirement of article 40 of the CRC. This is criticized by the United Nations Committee on the Rights of the Child.

It is therefore necessary to put an end to the divestment in Belgium and the LDH deeply regrets that the Fédération Wallonie-Bruxelles has maintained this possibility in the new Code of Prevention, Youth Assistance and Youth Protection.