

TARGETED STAKEHOLDER CONSULTATION 2021 RULE OF LAW REPORT UN HUMAN RIGHTS REGIONAL OFFICE FOR EUROPE (OHCHR)

This document presents the UN Human Rights Office's contribution to the targeted stakeholder consultation held by the European Commission in 2021 in the context of the second annual rule of law report.

It is a compilation of information related to Belgium, included in reports and documents of United Nations Treaty Bodies, Special Procedures and the Universal Periodic Review of the UN Human Rights Council, presented in a summarized manner. It also refers to statements and reports of the UN High Commissioner for Human Rights and her Office. The cited material covers the period 2018-2020.

It mentions both positive developments and challenges to the rule of law in Belgium, as well as recommendations issued by the UN Mechanisms on how these challenges can be addressed and how the rule of law can be further strengthened.

In light of the methodology proposed by the European Commission the submission is divided in four pillars: national justice systems, anti-corruption frameworks, media pluralism and freedom and other institutional issues related to the checks and balances essential to an effective system of democratic governance.

BELGIUM REVIEW

Justice System

➤ *Quality of justice*

The UN Human Rights Committee, in its 2019 concluding observations, expressed concerns about the fact that Belgian nationals suspected of terrorism or war crimes may be tried in third countries, without respect for the legal guarantees of the right to a fair trial and of the other rights contained in the Covenant on Civil and Political Rights. The Committee stated Belgium should ensure that Belgian nationals suspected of acts of terrorism or war crimes are brought to justice in accordance with the rights contained in the Covenant ([CCPR/C/BEL/CO/6](#), para 13, 14).

Similar concerns about Belgian nationals being at risk of being subjected to torture or other cruel, inhuman or degrading treatment, an unfair trial and the death penalty were raised by the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism in her country visit report in 2019 ([A/HRC/40/52/Add.5](#), para 15). Several Special Procedures mandate-holders, notably the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary executions, initiated a dialogue with Belgium on the matter ([BEL 1/2020](#), [BEL 4/2019](#), [BEL 1/2018](#), available at

<https://spcommreports.ohchr.org/Tmsearch/TMDocuments>).

In February 2021, UN Human Rights experts called on 57 countries, including Belgium, to repatriate women and children from the camps in northeast Syrian camps. The experts expressed concern that people held in the camps were exposed to violence, exploitation, abuse and deprivation in conditions and treatment that may well amount to torture or other cruel, inhuman or degrading treatment or punishment under international law, with no effective remedy at their disposal. The experts recalled the urgent need for justice, truth and reparation for all of the victims of the very serious violations of human rights and humanitarian law that have occurred in the region. In that context, the continued detention, on unclear grounds, of women and children in the camps was a matter of grave concern and undermined the progression of accountability, truth and justice

(<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26730>).

In the report on its 2019 country visit to Belgium, the UN Working Group of Experts on People of African Descent expressed deep concern about the lack of representation of people of African descent in the judiciary, law enforcement, government service, the correctional services, the federal and regional parliaments and municipal councils, noting that these institutions do not reflect the diversity of the population ([A/HRC/42/59/Add.1](#), para 43).

➤ ***Efficiency of the justice system***

The UN Committee on the Rights of the Child welcomed in its 2019 concluding observations the extension of the right to legal assistance to every suspect from the first interrogation and the establishment of the family and youth court back in 2014. It nevertheless remained seriously concerned that, under the 2013 amendment to the act on municipal administrative penalties, the age for imposing such penalties was lowered from 16 to 14 years old, and that new penalties were introduced. The Committee urged Belgium to eliminate all possibility that a child be tried in an adult court or detained with adults, and to review the act on municipal and administrative penalties with a view to ensuring that it is not applicable to children and that sanctions for antisocial behaviour can only be imposed within the juvenile justice system([CRC/C/BEL/CO/5-6](#), para 46, 47).

The UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, in her country visit report of 2019, strongly welcomed the exception set out in article 141bis of the Penal Code, which excludes from the scope of application of general criminal law relating to terrorist offences “acts by armed forces in a situation of armed conflict as defined in and subject to international humanitarian law” and “acts by the armed forces of a State in the context of their official tasks, insofar as those tasks are subject to other provisions of international law”. The Special Rapporteur urged relevant authorities to ensure that it is duly reflected in relevant criminal prosecutions ([A/HRC/40/52/Add.5](#), para 24).

In its 2019 concluding observations, the UN Human Rights Committee noted the measures taken by Belgium to improve conditions of detention but remained concerned about the high rate of overcrowding. The Committee encouraged Belgium to improve living conditions at detention facilities (including through the use of alternatives to detention) pursuant to the UN

Standard Minimum Rules for the Treatment of Prisoners, and to ensure implementation of Act No. 2019011569 of 23 March 2019 on the organization of the prison service and the status of prison staff, so as to ensure the minimum staffing levels at prisons, including during strikes ([CCPR/C/BEL/CO/6](#), para 33, 34).

In its 2019 concluding observations, the UN Human Rights Committee noted that article 417 bis of the Criminal Code had not been amended to include acts of torture committed by third parties at the instigation or with the consent or acquiescence of public officials or acts of torture motivated by discrimination of any kind. The Committee was also concerned about the absence of a provision explicitly stating that evidence obtained by torture is inadmissible ([CCPR/C/BEL/CO/6](#), para 25, 26).

Other institutional issues related to checks and balances

➤ *The process for preparing and enacting laws*

In her country visit report in 2019, the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism commended Belgium's deliberative and human rights-focused approach to the exercise of emergency powers in the aftermath of the events of 22 March 2016, as an example of national best practice. With serious deliberation on the exigencies of the situation, Belgium had determined that no declaration of a state of emergency was necessary to address extant security challenges. Rather, the scope of existing law was engaged to its full potential and, where necessary, legislative augmentations followed through the mediated consideration of Parliament. These included extending the maximum duration of police detention of persons of interest from 24 to 48 hours and allowing home searches during night hours, changes that were within the scope of the State's human rights obligations. In this regard, Belgium provided a model of deliberate and composed response to terrorism, which is often directed at provoking an extreme response in order to undermine democracy ([A/HRC/40/52/Add.5](#), para 14).

➤ *Independent authorities*

In its 2019 concluding observations, the UN Human Rights Committee welcomed the law of 12 May 2019 establishing a Federal Institute for the Protection and Promotion of Human Rights. It noted however the institution was not yet operational. The Committee also noted there were several sectoral human rights institutions within the State party with various mandates, including the Interfederal Centre for Equal Opportunities (Unia), which has been granted B status by the Accreditation Subcommittee of the Global Alliance of National Human Rights Institutions. However, the Committee was unclear how these institutions will coordinate with the new federal institute, which is essential for the effective implementation of its mandate in all areas of human rights within the State party, including its ability to receive complaints ([CCPR/C/BEL/CO/6](#), para 9).

The same concerns were reiterated by the UN Committee on Economic, Social and Cultural Rights in its concluding observations in 2020. The Committee expressed concerns that the institution currently has a mandate only at the federal level, that it lacks competence to receive individual complaints and that it has not entered into a cooperation agreement with the existing national human rights institutions, such as Unia ([E/C.12/BEL/CO/5](#), para 7).

In its concluding observations in 2019, the UN Human Rights Committee noted the disparity between, on the one hand, the number of complaints alleging ill-treatment by police officers filed with the Standing Committee for Police Monitoring and, on the other hand, the number of judicial inquiries conducted by the Police Investigation Service for such acts and of convictions and disciplinary penalties handed down. The Committee was also concerned about persistent misgivings regarding the independence of the Standing Committee. The Committee recommended Belgium should ensure thorough and impartial investigations into all allegations of ill-treatment filed with the Standing Committee for Police Monitoring and take additional steps to guarantee the Committee's independence ([CCPR/C/BEL/CO/6](#), paras 26, 27).

In her country visit report in 2019, the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism noted that Belgium has signed but not ratified the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Special Rapporteur recommended that Belgium ratify the Optional Protocol without delay, and set up an effective independent National Preventive Mechanism (NPM) ([A/HRC/40/52/Add.5](#), para 45).

In the report on its 2019 country visit to Belgium, the UN Working Group of Experts on People of African Descent noted that the country has no A status NHRI. It stated that the lack of an A-status NHRI must be addressed ([A/HRC/42/59/Add.1](#), para 18, 73).

➤ ***Accessibility and judicial review of administrative decisions***

In her country visit report in 2019, the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism encouraged Belgium to ensure independent, effective and comprehensive oversight of powers related to data gathering, processing, sharing and retention in the counter-terrorism context, and ensure that relevant entities are adequately resourced. The Special Rapporteur particularly recommended independent judicial representation in the composition of the various bodies tasked with such oversight. She emphasized the importance of independent oversight covering all stages of data management and sustained transparency through the publication of annual reports. The Special Rapporteur further affirmed that, while progress had been made, further improvements were required to ensure that adequate procedural safeguards and oversight of interception of communications and surveillance be in place. In particular, prior authorization – best ensured with a judicial element – and ongoing independent oversight should be the norm, and the right to an effective remedy must be meaningfully incorporated in the context of secret surveillance measures ([A/HRC/40/52/Add.5](#), para 59, 60).

➤ ***The enabling framework for civil society***

In the report on its 2019 country visit to Belgium, the UN Working Group of Experts on People of African Descent recommended the Government to ensure funding for anti-racism associations run by people of African descent to enable them to be partners in combatting racism, and to provide adequate funding with and involve civil society organizations representing people of African descent when framing important legislation concerning them ([A/HRC/42/59/Add.1](#), para 75(h), (gg)).