

TREATY BODY MONITOR

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Key facts	1
Information submitted to the Committee	1
State report	2
List of issues	2
NGO information	2
Themes and issues	3
Detention and extradition of asylum-seekers	4
Establishment of a national institution on human rights	4
Institutions of detention	4
Minors	4
Other issues	4
Conclusions and next steps	5

This report represents an abbreviated summary of the examination of Belgium before the Committee against Torture. For more detailed information on the situation of torture and other cruel, inhuman, and degrading treatment and punishment in Belgium, and a summary of the session, please check the websites of Liga voor Mensenrechten and the International Federation of Action by Christians for the Abolition of Torture, who deal with the issue thoroughly.¹ Both NGOs offer comprehensive information on their websites on Belgium's compliance with the Convention.

Key facts²

Ratification	Reservations	Party to Optional Protocol?	Other core treaties ratified
1999	None	Signed in 2005	ICERD, ICESCR, CEDAW, CRC, CRPD

¹ Liga voor Mensenrechten, www.mensenrechten.be/main.php?action=act. International Federation of Action by Christians for the Abolition of Torture (FIACAT), www.fiacat.org/en/spip.php?article518; see also the press release issued by the Liga voor Mensenrechten on 25 November 2008, at www.indymedia.be/en/node/30621

² The information in this table is sourced from the Office of the High Commissioner for Human Rights (OHCHR), and is available at www.ohchr.org/EN/Countries/Pages/HumanRightsintheWorld.aspx.

Information submitted to the Committee

State report

Belgium submitted its 2nd report to the Committee against Torture (the Committee) on 21 September 2006.³ Belgium last appeared before the Committee in May 2003.⁴ The second report was due on 25 July 2004, but was submitted only on 21 September 2006.

The report presented by Belgium is remarkably extensive, and comprises 280 articles dealing with salient issues, in particular the physical condition of interned persons in institutions of detention. The report focuses thoroughly on the technical aspects of Belgian jurisdiction with respect to the elimination and prevention of torture and other cruel inhuman or degrading treatment or punishment, and the domestication of the Convention in national law.

Belgium aimed to cover all aspects of relevance to the Committee with respect to the States fulfilment of its obligations, and focused in particular on innovations in legislation since 2003, calling attention to the *Act Concerning the Principles of the Administration of Prison Establishments and the Legal Status of Detainees and Prisoners*. This Act provides regulations as regards community spaces, contacts with the outside world, work, health care, as well as conditions linked to security considerations, recourse to force, disciplinary regimes, and the handling of complaints. The implementation of this legislation had been carried out gradually over the past three years. Reference was also made to the possible accession to the *Optional Protocol to the Convention against Torture*, which is impeded by technical problems linked with the obligation to put into place a national preventive mechanism.

List of issues

After having studied the report, the Committee provided its list of issues to the State on 9 September 2008.⁵ The list of issues was relatively short (six pages) and requested more data on the implementation of recent changes and developments in Belgian legislation. The Committee also asked the State to provide more data on specific cases; disaggregated data by age, sex and nationality of the number of asylum requests registered between 2004 and 2007; the number of requests granted; and the number of applicants whose requests were granted because they had been tortured or because they might be tortured if they were returned to their country of origin. Another central issue raised was the access to medical services for detainees.

On 21 October 2008, the State submitted extensive and thorough written responses to the list of issues in French and Spanish.⁶ They focus on specific amendments and reforms of Belgian legislation relevant to the Convention, and provide disaggregated data on alternative detention measures and the number of refugees detained in respective institutions. Reference is also made to specific cases addressed by the Committee.

NGO information

One coalition of NGOs submitted a written report to the Committee,⁷ which very critically dealt with problematic aspects concerning the situation of the implementation of the Convention within Belgian

³ CAT/C/BEL/2, available at www2.ohchr.org/english/bodies/cat/cats41.htm.

⁴ Session list available at <http://www2.ohchr.org/english/bodies/cat/sessions.htm>.

⁵ CAT/C/BEL/Q/2, available at www2.ohchr.org/english/bodies/cat/cats41.htm.

⁶ CAT/C/BEL/Q/2/Add.1, available at www2.ohchr.org/english/bodies/cat/cats41.htm

⁷ International Federation of Christians for the Abolition of Torture (FIACAT), Action by Christians for the Abolition of Torture (ACAT). The NGO report is available (only in French) at <http://www.fiacat.org/en/spip.php?article559>.

legislation, and *de facto* practice, especially with respect to institutions of detention, treatment of asylum seekers, health care provisions for detainees, and the issue of overcrowded prisons.

In a meeting between national NGOs and the Committee before the country review, NGOs reiterated a number of issues as those addressed in the Committee's list of issues, yet urged to Committee to request from the State more information on the situation in detention centres, the issue over overcrowded prisons, alternative detention measures, and the treatment of mentally impaired criminals. Other issues included that fact that parole is rarely granted, that legal principles for the rights of detainees cannot be enforced within the current framework. Another central issue, also later raised by the Committee, was that a change to the law on 26 April 2007 provided that a detainee may not be granted rights to medical assistance, food and water during the first 24 hours of his or her detention.

Further issues brought to the attention of the Committee are solitary detention of minors, the lack of adequate information provided by the State on specific cases, and the dodging of several questions posed to the State by NGOs in the past. It was also stated that detainees generally do not know how to complain about ill-treatment, and they interpret this to stand for more general problems with the legal procedure. Existing monitoring was said to be very limited, and figures were presented to show that in 2006 only very few inspections were conducted.

Finally the NGOs recommended the use of videos in detention centres and refugee camps to ensure an appropriate surveillance of staff.

All Committee members were initially present at the briefing, and showed great interest in the NGOs participation. The chair of the Committee, Mr Claudio Grossmann, even offered to extend the meeting after the scheduled two hours and to continue the dialogue informally without interpreters.

Themes and issues

The delegation of Belgium was led by Mr Jean-Yves Mines, Magistrate and Director of the Department of Justice. He was supported by a delegation consisting of representatives from the Ministry of Justice, the Police, the Interior, and the Permanent Mission in Geneva, amongst others.⁸

In the opening statement, the head of delegation outlined a number of more recent pieces of legislation, such as sizeable reductions in the number of reasons for expulsion; the existence of provisions for legal assistance available for minors; and reopening of criminal procedures of all cases where the European Court of Human Rights recommends reconsideration. As regards the accession to the *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (OPCAT), Mr Mines explained that acceding to the *Optional Protocol* has been technically impeded by the need to identify a national mechanism on preventing torture.

The delegation engaged in a constructive dialogue and welcomed the opportunity to exchange views and information with the Committee.

Legal framework and the definition of torture

At the beginning of the review, Committee chairperson Mr Grossman briefly touched upon the constitutional and legislative framework for implementation of the Convention, in particular the definition of torture within Belgian jurisdiction. Mr Grossmann expressed concern that the broad definition of torture in Belgian law

⁸ The list of members of Belgium's delegation is available at <http://www2.ohchr.org/english/bodies/cat/cats41.htm>.

posed some difficulties for effectively implementing the provisions of the Convention. In particular, Mr Grossmann suggested that the lack of conciseness facilitates the avoidance of joint responsibility for officials instigating or acquiescing in acts of torture.

Detention and extradition of asylum seekers

The Committee expressed that the current provisions for independent supervision of extradition procedures and treatment of detainees were not satisfactory. According to the Committee, the State should make efforts to conduct frequent and independent inspection to ensure the lawfulness of the practices on the ground. The Committee followed the suggestion made by NGOs and recommended the use of video cameras to supervise staff. The Committee also recommended obligatory medical tests of detainees upon arrival at an institution of detention, and to ensure there is no mistreatment of detainees upon leaving.

In response to criticisms that Belgium's complaints mechanism, the Standing Committee on the Supervision of the Police Services, was not independent, the delegation insisted that it was specifically designed to be outside the control of the Police and the Executive and could even defy the Parliament, to which it reported directly. The Committee requested that Belgium also revise the procedures of the complaints process.

Establishment of a national human rights institution

The Committee criticised that fact that there is no national human rights institution in Belgium and strongly recommended that such a body should be set up as soon as possible. Mr Mines emphasised that Belgium has a wide range of central institutions to uphold the rights of the child, the rights of disabled persons, and to prevent torture and other cruel, inhuman or degrading treatment or punishment. In this context, the State was thinking about centralising these various bodies under the framework of a single national human rights institution.

Institutions of detention

The Committee expressed concern about conditions in detention centres with respect to overcrowding. The Committee strongly recommended that Belgium ratify OPCAT, which contains provisions that would oblige the State to set up a mechanism that regularly inspects centres of detention.

Minors

The Committee expressed concern about the current legislation for the detention of minors, and urged Belgium to amend it in order to comply with the provision laid down in the *Convention on the Rights of the Child* (CRC). The Committee found it particularly worrying to deny detainees access to legal assistance during the first 24 hours of their detention, and noted that minors are even denied contact to their parents or caregivers.

The Belgian delegation confirmed that there was no legal obligation to provide access to legal assistance for minors during a 24-hour period, as a result of the State's focus on reducing the time for police custody to its very minimum. However, they informed the Committee that police are obliged to immediately contact the minor's parents or custodian.

Other issues

The Committee also engaged the delegation in discussion on the following themes: **the detention of foreigners and asylum-seekers; access for detainees with mental problems to psychiatric services**, and provisions to keep them in psychiatric institutions; **training of police and healthcare staff; domestic violence**; and **corporal punishment of children in their families**.

Conclusions and next steps

In the final remarks made by the head of delegation, Mr Mines tried to clarify a number of issues and to give answers to some of the questions brought up by the Committee. On most of the contentious points, however, Mr Mines indicated that Belgium would maintain its position.

Committee chairperson Mr Grossmann thanked Belgium for its openness and readiness to engage in a dialogue with the Committee. The date for submitting the next periodic report is 21 November 2012.

The concluding observations issued by the Committee are available on the OHCHR website.⁹

Last revised and updated: 16 December 2008.

⁹ CAT/C/BEL/CO/2, available at www2.ohchr.org/english/bodies/cat/cats41.htm

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ABOUT THE PUBLICATION

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