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## **National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1\***

### **Belgium**

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## **I. Methodology and consultation process**

1. The Kingdom of Belgium launched the preparatory process for its universal periodic review in December 2009 by holding an information session on this new practice for the various stakeholders, including civil society. The Public Federal Foreign Affairs Service coordinated the drafting of the country report, to which the various institutions concerned contributed, including the federated entities and autonomous public bodies concerned with human rights. In November 2010, the draft report was presented to non-governmental organizations who were then allowed to make comments and suggest improvements. Belgium had undertaken, in light of its election to the Human Rights Council, to prepare its country report in a transparent manner and in close cooperation with civil society which it would also include in the follow-up to the review. The draft report was finally approved by the Council of Ministers in January 2011.

## **II. Overview of the State under review**

### **A. Constitutional provisions for human rights**

2. Title II of the Constitution of Belgium (“On Belgians and their rights”) recognizes many fundamental civil, political, economic, social and cultural rights. These constitutional principles have recently been amended once again. Article 22 bis, added in 2000, provides for the moral, physical, psychological and sexual integrity of children. The article was amended in 2008, and now includes the best interests of the child. As of 2002, Article 11 bis introduced equality between men and women by encouraging, *inter alia*, equal access to elected and public office. In 2005, the abolition of capital punishment was enshrined in Article 14 bis of the Constitution. Article 191 guarantees protection for foreigners commensurate with that afforded Belgian nationals.

### **B. State structure**

3. Belgium is a constitutional monarchy and a parliamentary democracy. The King is head of the federal executive power. In other regards, his function is largely ceremonial. The classic division of powers is observed in Belgium: legislative power (parliaments and the King (at the federal level) or parliaments and governments (in the federated entities)), executive power (either the King and the Government at the federal level, or the governments at the federated entities level), and the judiciary which guarantees independent justice.

4. Belgium has three official languages: French, Dutch and German. The structure of the Belgian State is complex. It evolved from a unitary to a federal State made up of three communities (French, Flemish and German-speaking) and three regions (Flemish, Walloon and Brussels-Capital). This State reform began in 1970 and unfolded in five phases. It is not, however, entirely complete.

5. The federal authority has residual powers while the communities and regions exercise powers that have been devolved to them. The Communities are responsible for personalizable, linguistic and cultural matters, such as education, health care and culture, while the purview of the Regions relates to territorial matters, such as agriculture, the economy, public works and housing.

6. Belgian federalism is a cooperative brand of federalism. There is no hierarchy between (the laws of) the federal level and (those of) the federated entities. If the laws of

one authority are likely to prejudice the interests or powers of another, there is provision for consultation or a review, including by the Constitutional Court. The federated entities can also cooperate with each other in certain fields, and with the federal authority if necessary. Such cooperation may be formalized in an agreement.

### **C. The judiciary**

7. To enforce the rule of law, judicial power is exercised by independent courts and tribunals. The Belgian court system consists of civil, criminal and specialized courts. The jurisdiction of appeals, labour, district and police courts, courts of first instance, and labour and trade tribunals is determined by the nature and seriousness of cases. The Court of Cassation ensures that the courts and tribunals respect the law. The Higher Council of Justice processes complaints about the operation of justice and has investigative power. An appeal procedure is available to all persons and corporate bodies which can demonstrate to the State Council a concern in any administrative irregularities. Governments and parliaments as well as any person or corporate body can bring an action before the Constitutional Court, which reviews laws, decrees and orders. In 2003 its purview was expanded to include all constitutionally-recognized human rights.

### **D. National institutions for the protection of human rights**

8. Although a national commission for human rights has not yet been established, there are many specific mechanisms that address human rights issues.

9. The mission of the Centre for Equal Opportunity and Action to Combat Racism is to promote equal opportunities, combat all forms of distinction, exclusion, restriction or preference based on preset criteria,<sup>1</sup> ensure that foreigners' fundamental rights are respected, and support the fight against slavery and human trafficking. The Institute for the Equality of Men and Women is, for its part, responsible for guaranteeing and promoting equality of women and men and combating all forms of gender-based discrimination and inequality. These organizations may, inter alia, help and support victims of discrimination through official procedures, conduct studies, make recommendations to public authorities, and participate in legal cases concerning the application of anti-discrimination laws.

10. The federal mediator and those of the federated entities, who are accountable to their respective parliaments, deal with complaints about the acts and operations of their own administrative authorities. They can also hear complaints concerning alleged human rights violations committed by an administrative authority.

11. The Standing Committee on the Supervision of Police Services (P Committee) is the external body responsible for the overall monitoring of police, investigative and oversight services and of policing by all authorized civil servants. It reports to Parliament.

12. The main mandate of the Commission for the Protection of Privacy, responsible for ensuring the protection of privacy in the handling of personal data, is to answer requests for information and process the complaints it receives.

13. With regard to children's rights, the National Commission for the Rights of the Child, established in 2005 and operational since 2007, is a platform for dialogue that brings together federal, community and regional authorities as well as associations dealing with children's rights. Its main mission is to draft and submit the periodic report on the implementation of the United Nations Convention on the Rights of the Child, and to contribute to drafting other documents on children's rights which Belgium is obliged to submit to international bodies. The Commission studies and monitors the implementation

of recommendations made by the Committee on the Rights of the Child, and may make suggestions or non-binding recommendations to the competent authorities.<sup>2</sup> There are also several independent institutions at the federated entity level: the Commissioner for the Rights of the Child for the Flemish Parliament and the Delegate-General for Children's Rights within the French Government and Community. They receive and process complaints and may make recommendations relating to their mandate.

14. Belgium has also established the Inter-ministerial Commission for Humanitarian Law which coordinates measures to implement international humanitarian law instruments.

## **E. The international human rights obligations of Belgium**

15. Belgium is a party to the main international human rights instruments<sup>3</sup> and has therefore assumed extensive obligations in terms of protecting these rights. It has also signed the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights; and the International Convention for the Protection of All Persons from Enforced Disappearance, and has launched the process to ratify these instruments. Although respecting the rights of migrants is important to Belgium, at this juncture it is not, like the other European Union members, in a position to consider becoming party to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

16. Belgium cooperates fully with the special procedures of the United Nations Human Rights Council, to which it has extended a permanent invitation, as well as with the treaty bodies to which it regularly submits its periodic reports on the implementation of its obligations. It recently submitted its reports to the Committee on the Rights of the Child and to the Human Rights Committee, and took note of their recommendations.<sup>4</sup> It has also welcomed the Working Group of Experts on People of African Descent (June 2005), the Special Rapporteur on the sale of children, child prostitution and child pornography (December 1998), and the Special Rapporteur on the independence of judges and lawyers (October 1997).

17. At the regional level, Belgium is also a party to most of the human rights instruments adopted by the Council of Europe<sup>5</sup> and also comes under the authority of the European Court of Human Rights, which is competent to hear private actions. It recently welcomed the European Committee for the Prevention of Torture (October 2009), the Council of Europe Commissioner for Human Rights (December 2008), the European Commission against Racism and Intolerance (September 2008), and a joint electoral monitoring mission from the Organization for Security and Co-operation in Europe/Office for Democratic Institutions and Human Rights (June 2007 and October 2006).

## **III. Promotion and protection of human rights in the field**

### **A. The police**

18. The Belgian police strives to respect human rights in all its acts. Since 2009 especially, it has continued to integrate human rights regulations more fully into its activities, for example by seeking to moderate the use of coercive measures and combat racist acts within the police. Various training courses covering issues such as flexible measures (e.g. proportional use of force) and appropriate police behaviour (e.g. an ethnical or multicultural approach), have been designed for administrative and judicial police staff.

19. The Belgian police are particularly mindful of responding commensurately to violence in general, and even more so to domestic and family violence. Be it through police conduct or accepted operating procedures, the police take into account the rights of all (perpetrators, victims, third parties) as well as the legal and regulatory procedures for applying transparent and equitable justice. The code of ethics of the police force also captures the principles which govern all police activities, i.e. legality, proportionality and observance of rights and freedoms. Complaints against the police are handled by the internal oversight service, the police services inspector-general under the Ministry of the Interior, or the Standing Committee on the Supervision of Police Services which provides external oversight.

20. Since 2003, the federal police force has been developing a diversity policy whose goal is an integrated police force; since 2005, it has also been responsible for the implementation of the federal anti-racism plan. By signing the Diversity Charter in 2009, the police has also committed itself to combating any occurrence of discrimination in general, and of racism in particular. It is especially attentive to this aspect in the implementation of its operational action plans and training courses as well as in human resource management.

## **B. The prohibition of and protection against torture and cruel, inhuman or degrading treatment or punishment**

21. In accordance with the Convention against Torture, Belgium has put in place a solid legal arsenal to prevent and punish acts of torture. The Criminal Code defines the act of torture and explicitly prohibits using the doctrine of necessity as justification. Victims may seek conviction, reparation and compensation in all cases of torture, regardless of the status of the perpetrator of the illegal act.<sup>6</sup> In addition to the independent oversight of police forces (Standing Committee on the Supervision of the police forces<sup>7</sup>), another independent oversight mechanism has been established for penitentiaries: the Central Prisons Supervisory Council and the supervisory commissions that monitor treatment of detainees and compliance with the relevant regulations.<sup>8</sup> Belgium signed the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 24 October 2005. A working group composed of representatives from both the federal and federated entities has been established to consider the details of the Protocol's implementation.

## **C. Freedom of speech, the press, association and religion**

22. The Belgian Constitution guarantees freedom of association (art. 26), peaceful assembly (art. 27) and of the press (art. 25), which further categorically prohibits censorship. These freedoms, along with freedom of speech writ large, are pillars of the Belgian State.

23. In addition, the Constitution lays down two fundamental principles with regard to religion: freedom to express opinions and to participate in religious ceremonies (arts. 19 and 20), and separation of Church and State (art. 21). However, Belgium has a system of optional recognition of faiths and philosophical opinions. The act of recognition is a legislative measure and brings certain financial benefits. Recognition is granted on the basis of certain criteria such as historical presence, the number of worshipers, the ability to organize, and the interest to society. Article 181 of the Constitution provides for the salaries and pensions of religious and moral leaders. Various other legal provisions are made for subsidies and financial support by the regions, provinces and municipalities. Currently recognized faiths are Catholicism, Evangelical Protestantism, Judaism, Orthodox

Christianity, Anglicanism and Islam, as well as non-denominational creeds (organized secularism). Subsidies for Buddhism are also possible in light of its impending recognition.

## **D. The right to education**

24. The right to education in Belgium is recognized under article 24 of the Constitution, which requires on all three Communities — Flemish, French and German-speaking — to give effect to this right in compliance with international and constitutional provisions. Given that education is under Community jurisdiction, education is provided in both French and Dutch in Brussels. Federal powers in this area are very limited.

25. Education offers freedom of choice, which means that the three Communities and local authorities provide non-denominational primary and secondary education and offer the choice of studying one of the recognized religions or non-denominational moral instruction. Moreover, individuals and corporate entities are free to establish and manage educational facilities which are recognized and subsidized by the Communities according to terms set by decree. All students are entitled to enrol in the school of their choosing (the parents' choice). The Communities have adopted decrees in order to guarantee transparent enrolment processes and objective selection criteria when a school cannot meet demand.

26. Education is mandatory and free. All minors within the compulsory school-age bracket (i.e. 12 years from the age of 6), are obliged to attend school, regardless of their status. Access to primary and secondary education in a Community-organized or subsidized educational establishment is free. There are no direct costs. The Communities have taken steps to reduce indirect costs (e.g. pool admission, cultural and sports activities, photocopies, or loan of textbooks or tools). They also give education grants to underprivileged pupils. Post-secondary education is integrated into the European Higher Education Area as a result of the Bologna Declaration of 1999 which established a single system of post-secondary education (universities and higher institutions). Tuition fees are regulated and student subsidies and loans must guarantee equal access for underprivileged students.

27. Human rights education, tolerance, gender equality and respect for diversity are included in curricula or in final objectives and targets. As a rule, they are not covered by a specific course, but broached indirectly through other subjects.

## **E. Economic and social rights**

### **1. The right to the protection of health**

28. Belgium considers reliable, accessible and affordable health care to be one of its key missions. The 10.2 per cent<sup>9</sup> of GDP allotted to health care is particularly telling in this regard. One of the country's greatest successes is near-universal illness and disability coverage for its population.

29. The Belgian health-care system is basically organized on two levels: federal and regional/community. Essentially, the federal Government is responsible for regulating and funding compulsory health insurance, determining criteria for accreditation, funding hospitals, legislating on professional qualifications, registering medicines and controlling their price. Regional and community governments have territorial jurisdiction over preventive care, health education and certain aspects of health care.<sup>10</sup>

30. The organization of health care is based on the following principles: patient care,<sup>11</sup> evidence-based medicine and health policy, coherence and complementarity, a focus on continuous care before, during and after admission to a health-care facility, cooperation

between various disciplines in care programmes, and, lastly, funding tied to justified admissions and responsible practices. The coherence of the country's health policy is ensured by regular ministerial conferences on health. Occupational health and safety are addressed through the concept of workplace well-being set out in the Act of 4 August 1996 and all the relevant implementing regulations.

31. In the French Community, five-year health-promotion plans are successively drawn up on the basis of the health promotion principles of the Ottawa Charter. The Walloon Region has put in place many assistance and outpatient services and ensures, as does the Flemish Community in Flanders, accreditation of hospitals, nursing homes and care centres. On the territory of the Brussels-Capital Region, the French and Flemish Communities and the joint, French, and Flemish Community Commissions have developed a health-promotion policy that aims to ensure all persons receive a response commensurate with their needs. The policy objective of the Flemish Community is to create the conditions conducive to promoting, protecting and restoring the health and well-being of current and future populations, with a view to achieving the best possible health and well-being for each citizen. The Flemish authority has chosen health goals (and action plans) as the means of raising ad hoc concerns to the level of a coherent prevention policy.

32. Primary health care is one of the areas in which Belgian technical cooperation excels. The main objective is to provide underprivileged populations with access to reliable health care at minimal cost.

## **2. The right to decent housing**

33. There is no exhaustive official census measuring the number of homeless persons nationally. In 2007, 10,316 individuals benefited from homeless support provided through general social-aid programmes. Various measures have been taken at the federal level to help the homeless find housing and exercise their social rights:

- Any person who loses their homeless status in order to occupy a home as a primary residence, may receive a one-off installation grant
- Any homeless person who benefits from an individualized social integration plan negotiated with the Public Social Aid Centres and, if possible, an external social organization lending its support and expertise, may be eligible for a single-person integration income
- The maximum period during which a subsidy equal to the integration income is awarded by the federal State to beneficiaries having lost their homeless status, may be extended from one to two years

Among other recent improvements at the federal level are the subsidies to Public Social Aid Centres (CPAS) earmarked as a contribution to constituting rental guarantees, and the law giving CPAS a mandate to provide guidance and financial social assistance to provide energy to the poorest. Each region has jurisdiction over social housing.

## **3. The right to social security**

34. The right to social security is guaranteed under article 23 of the Belgian Constitution. There are three main social security schemes in the country: for salaried workers, self-employed workers and civil servants. Although there is some variation across these schemes, they all cover the risks defined under International Labour Organization Convention No. 102 on minimum social security standards, which Belgium has ratified.

35. Belgium has also ratified the Council of Europe European Code of Social Security, as amended by its Protocol, which sets higher standards.

36. The International Labour Organization expert commission stated in its latest report that domestic legislation and practice continue to give full effect to all the provisions of that instrument. In its most recent observations on the implementation of the United Nations International Covenant on Economic, Social and Cultural Rights (2007), the Committee on Economic, Social and Cultural Rights stated that it “notes with satisfaction the high quality, comprehensiveness and almost universal coverage of the social security and health-care systems existing in the State party”. There is nonetheless room for improvement. Accordingly, in recent years, the Government has striven to strengthen the protection afforded to certain categories of the population, such as the self-employed, volunteers, home carers and artists. As part of efforts to uphold existing migrant worker rights, particularly with regard to pensions, efforts have been, and continue to be, made to expand the Belgian network of bilateral social security conventions.

#### **4. The right to work**

37. Article 23 of the Constitution also recognizes the right to work. Belgium applies this right in accordance with international conventions and European law. As a result, federal authorities and the Regions have a proactive policy to combat unemployment and increase labour force participation. Since 2004, a support plan for the unemployed has been put in place by the competent authorities. The employment policy of the Kingdom is in line with the European Union strategy for employment, which is one of the pillars of “Europe 2020”, its global economic and social strategy.

38. Since autumn 2008, employment policies have had to contend with the effects of the global financial crisis. Efforts by the authorities have mainly focused on safeguarding employment and on assistance, support and reorientation for those who had lost their jobs for economic reasons. Demographic trends, globalization, technological advances and the need to move towards a green, eco-efficient economy all call for an ambitious employment strategy over the coming years, which will depend on an improvement of the overall macroeconomic environment and investment in sustainable development.

39. Labour law is founded on legislation and numerous collective bargaining agreements, negotiated at the multi-industry, trade and firm levels, which fit into a statutory hierarchy of norms. Professional social mediators are responsible for preventing and resolving labour disputes, without prejudice to the mandates of the competent labour courts and tribunals to rule on individual labour disputes. Social partners, in addition to their participation in collective bargaining, regularly submit opinions to federal and regional government consultative committees on labour, employment and social security issues, and contribute to managing social security bodies.

40. Regarding their external social policy, federal and federated entity governments actively support the work of the International Labour Organization on international labour standards, as well as the activities promoting decent work, the Global Jobs Pact, and the follow-up to the International Labour Organization Declaration on Social Justice for a Fair Globalization (2008). The Government has made improving global work and employment conditions the fundamental focus of its policy with a view to ensuring that globalization includes a genuine social dimension.

#### **F. Respecting human rights in the fight against terrorism**

41. In 2003, in order to incorporate the European Union framework decision,<sup>12</sup> Belgium passed a law regarding terrorist offences,<sup>13</sup> which introduced Title I ter, “On Terrorist Offences”, into the Criminal Code. Caution is exercised regarding the risk of human rights violations in the fight against terrorism. For example, Parliament has held hearings to evaluate these measures. As a result, in its article 141 ter, the Criminal Code explicitly



stipulates compliance with fundamental rights in the fight against terrorism.<sup>14</sup> Moreover, article 139 of the Criminal Code, provides that organizations pursuing political, trade union, philanthropic, philosophical or religious goals cannot be considered terrorist groups.

42. Specific search and investigation methods are governed by the Act of 6 January 2003.<sup>15</sup> Legal safeguards, for both the accused who are the object of such methods and police agents who apply them, are guaranteed under the law, which also provides for judicial review. The law was amended in 2005, partly to appoint examining magistrates specialized in anti-terrorism. Data collection by the intelligence services was modified through the Act of 4 February 2010<sup>16</sup> which authorizes the use of these methods and control measures to anti-terrorism efforts and thereby strengthens the protection of fundamental rights in this field.

## **IV. Progress, best practices, difficulties and constraints**

### **A. Asylum, immigration and integration policy**

43. Belgium focuses much attention on respecting the rights of asylum-seekers and foreigners and on their social integration. In addition to international and European laws, foreigners' rights are governed by the Act of 15 December 1980 on the entry, temporary and permanent residence and removal of aliens. In 2007, Belgium overhauled its asylum procedures; in addition to incorporating European directives, the main purpose of the changes was to make the asylum process faster and more efficient. The process included the introduction into Belgian law of a subsidiary protection status through a unique procedure allowing the simultaneous consideration of refugee status and subsidiary protection. Another radical reform was the elimination of the admissibility stage of the asylum process. Asylum requests lodged with the Office of the Commissioner-General for Refugees and Stateless Persons are processed individually. During processing, particular attention is placed on vulnerable groups through, inter alia, the appointment of coordinators for gender issues and unaccompanied alien minors.

44. Both the Senate Commission on Internal Affairs<sup>17</sup> — which evaluates the asylum process — and the United Nations High Commissioner for Refugees<sup>18</sup> have underscored the quality of the asylum reform and its robust protection measures. The ability to react quickly to changes in the field and to keep the asylum claim processing backlog in check, remain a real challenge for the asylum authorities. The total number of asylum requests in Belgium was on the rise again in 2009 (12,252), after having been stable in 2007 (8,315) and 2008 (8,921).

45. Assistance to asylum-seekers and other categories of foreigners is governed by the Act of 12 January 2007 and administered by the Federal Agency for the Reception of Asylum-Seekers (Fedasil), under the supervision of the Secretary of State for Social Integration and Poverty Reduction. The topmost guiding principle in this area is to ensure that all asylum-seekers can lead their life in dignity. It provides for material aid for the duration of the asylum process and the evaluation of individual needs, and defines the right to medical, psychological and legal support. The law also guarantees access to services such as interpretation and training as well as a voluntary repatriation programme. Particular attention is placed on vulnerable groups such as torture victims, the elderly and unaccompanied minors. The latter are first placed in one of the country's two Supervision and Guidance Centres and are then transferred to another suitable facility.

46. Each identified unaccompanied minor is assigned a guardian, appointed by the Ministry of Justice, who represents the minor throughout the legal process and ensures, inter alia, suitable accommodation, schooling, health care and psychological support.

Depending on their wards' best interest, guardians also assist them in all the residency permit procedures.

47. Since July 2007, the occupation rate of shelters for asylum-seekers (minors and adults) has progressively increased to 102 per cent in September 2010. Supplementary funds released by the Government have allowed for nearly 3,500 beds to be opened since March 2009, taking the number currently available to 19,500 – which is still short of the number needed to house all those entitled under the Act of 12 January 2007. Accordingly, additional support for asylum authorities is being considered in order to shorten claims processing.

48. Foreigners subject to removal orders may return of their own volition to their country of origin, or with the assistance of the voluntary repatriation programme. The General Inspectorate of the Police is responsible for supervising the enforcement of forcible returns. This supervision can be partial or complete and can also include a pre-return and pre-departure stage, flight preparation, a transit phase, and arrival and housing services for foreigners who are forcibly removed to their country of return. A monitoring mechanism for forcible removals is currently under development.

49. Regarding the fundamental rights of foreigners illegally residing in Belgium, emergency medical care is guaranteed,<sup>19</sup> as is primary education for children.<sup>20</sup> The same material assistance provided to asylum-seekers is also granted to any foreign minors residing illegally in the Kingdom with their parents in cases where the parents are unable to fulfil their maintenance duty.<sup>21</sup>

50. When foreigners do not quit the territory of their own volition, or when detention is deemed necessary, they are detained in closed centres or in open housing facilities in the case of families.<sup>22</sup> The statutory duration of detention is a maximum of five months, or eight months when public order or national security are threatened. Detention in a closed centre is enforced only for the period strictly necessary for executing removal (identification procedures, organizing the trip) to another European country, the country of habitual residence, or the country of origin. Detention orders are made on a case-by-case basis. When foreigners are detained, everything is done to prepare their return and ensure that conditions of detention respect human dignity. Foreigners detained in these facilities may file a complaint with the Complaints Commission<sup>23</sup> regarding the regime and rules applied to them. The operations of this commission have been evaluated.<sup>24</sup> Third country nationals detained in closed centres and families detained in open housing facilities are entitled to legal aid.<sup>25</sup>

51. Minors accompanied by their families are, as a rule, not detained in closed centres but live with their families in open housing<sup>26</sup> facilities while they await either refoulement, admission to the territory, a residency permit, voluntary repatriation, admittance by another member State, or removal to their country of origin or a country where they are permitted to live. Families in open housing benefit from needs-appropriate services. All families can leave the facility as long as an adult member remains there at all times. The right to a private and family life is guaranteed and children can attend school. Support staff help families, inform them of their rights and obligations, and assist them in legal procedures, and if warranted, in preparing their return to a third country, including a reintegration plan. Only in cases where family members fail to cooperate in the refoulement or actual removal can they be detained in a closed centre.

52. The right to file a complaint as a victim of a crime or offence extends to illegally residing foreigners. Bringing an action does not suspend removal measures or their enforcement, but authorities can decide on a case-by-case basis to suspend or interrupt removal.

53. Belgium lends great importance to integrating foreign persons with the goal of a multicultural society and social cohesiveness. To this end, the Communities run activities, such as support services (literacy, orientation, etc.), to foster the participation of these persons in social, economic, cultural and political life.

## **B. Rights of the child**

### **1. Coordination and monitoring mechanisms for child rights policies**

54. In Belgium, the rights of the child come under the jurisdiction of both the Federal State and federated entities, which have jointly or independently established coordination and reporting mechanisms in order to review and monitor child rights policies. Federal State Governments and the federated entities<sup>27</sup> are responsible for coordinating these policies. They draft regular reports on progress in this regard and, in addition to monitoring policies,<sup>28</sup> develop numerous action plans, including priorities and policy initiatives.<sup>29</sup>

55. The Children's Rights Commissioner in the Flemish Parliament and the Delegate-General for Children's Rights of the French-speaking Community are responsible for monitoring the proper implementation of child rights legislation. This responsibility is shared by the new Ombudsman for the German-speaking Community<sup>30</sup> and the Federal Ombudsman;<sup>31</sup> the latter may also, as part of its remit, receive complaints that might affect children's rights. In addition to these independent bodies, Belgium has implemented the recommendations of the Committee on the Rights of the Child by establishing the National Commission on the Rights of the Child, so making it possible to monitor the implementation of the Convention on the Rights of the Child more closely in Belgium.<sup>32</sup>

### **2. Youth welfare and protection**

56. Belgium has worked to establish a juvenile justice system based on protection and education. A minor who commits an "act categorized as an offence" is referred to a juvenile court, which has specialized judges at its disposal, in addition to a broad range of specific measures for minors. The youth protection legislative reforms of 2006<sup>33</sup> made it possible to establish in law a number of alternative measures to placement that had developed in practice. Under exceptional circumstances, a juvenile judge can decide to relinquish a case when it involves a minor under 16 years of age at the time of the incident and when the juvenile court deems that a protective or educational measure would be insufficient. A specific chamber in the juvenile court deals with such cases. Juveniles sentenced to imprisonment or detention, serve their sentence in detention centres for minors.

57. Each community regulates youth welfare within its jurisdiction by decree.<sup>34</sup> Within each community, specialized welfare mechanisms have been established to help juveniles at risk or in danger.<sup>35</sup> Moreover, they are responsible for the implementation of judicial measures to assist juveniles and minors who have committed offences. They enact legislation in respect of the institutions that care for young people, which they organize or subsidize.

### **3. Respect for the views of the child and participation of children**

58. Children are the subject of a specific provision in the Constitution, which recognizes, among other things, their participation in decision-making.<sup>36</sup> Children's views are taken into account in judicial and administrative proceedings (including with regard to adoption, divorce, unaccompanied foreign children and guardianship), and in the development of school policies and (local) youth policies.

#### 4. Health

59. Children benefit from comprehensive health-care coverage. In addition, in recent years medical care has been better reimbursed.<sup>37</sup> Two action plans have been developed to improve child nutrition and physical activity and to address the impact of the environment on health.<sup>38</sup> In terms of more specific policies, particular attention is given to the campaign against tobacco, drug and alcohol abuse, suicide prevention and the promotion of breastfeeding, healthy diet and exercise.

### V. Key national priorities, initiatives and commitments

#### A. Penal system and terms governing the serving of sentences

60. The Belgian Government has undertaken to develop the prison system by renovating penal establishments, improving the status of detainees, including internees, and developing mechanisms for limiting detention pending investigation or trial.

61. In order to improve the conditions of detention in penal establishments, the Federal Government has launched a “Master Plan”,<sup>39</sup> the aim of which is to increase capacity by renovating or extending existing premises or building new premises. The Master Plan is being implemented but as the major extensions will not produce any actual results, in structural terms until 2013, the Government has decided — as an interim measure pending the introduction of the new establishments — to rent Tilburg Prison<sup>40</sup> in the Netherlands,<sup>41</sup> on a temporary basis.

62. Living conditions in prisons, order and security and the disciplinary regime are regulated by the Act governing prison administration and the legal status of prisoners.<sup>42</sup> The Act was promulgated on 12 January 2005 and, inter alia, provides for the introduction of the right of complaint, and conflict resolution through mediation.<sup>43</sup> To date, however, the Act has only partially entered into force (chiefly its general principles and the provisions relating to order and security). This does not mean that the other chapters of the Act are a dead letter. Indeed, the administrative instructions given to prison administrations ensure that prisoners enjoy a number of fundamental rights, including, for example, strict respect for the right to due process where disciplinary matters are concerned, access to restorative justice activities, consultative bodies for detainees and the provision of assistance to drug addicts.

63. The status of internees<sup>44</sup> continues to present a major difficulty. Pending the entry into force of the Act of 2007,<sup>45</sup> the previous Act<sup>46</sup> remains applicable. Numerous internees are being held in prisons, rather than in specialized care facilities. The development of an external care circuit is therefore a priority. Meanwhile, care teams have been deployed in prisons, so making it possible to operate in a context in which there is a clear distinction between care<sup>47</sup> and expertise.<sup>48</sup>

64. The Belgian authorities are also investing more in alternatives to custodial sentences, including community service and criminal mediation, and in alternative means of enforcing custodial sentences, such as conditional release, limited detention (semi-detention) and electronic surveillance. In 2006, the law clearly established the external legal status of persons sentenced to deprivation of liberty<sup>49, 50</sup> on the one hand, and on the other courts for the enforcement of sentences.<sup>51</sup> These courts are multidisciplinary in nature and take decisions, inter alia, regarding release on parole, limited detention or electronic surveillance for prisoners serving sentences of over 3 years’ imprisonment. The *maisons de justice* (legal centres) in Belgium serve as probation services, providing judicial monitoring

and surveillance of penalties and alternative measures, at the request of the legal or administrative authorities, in order to prevent repeat offending.

## **B. Proper administration of justice**

65. The proper administration of justice requires the establishment of an efficient system which, by various means, offers all citizens the possibility to assert their rights. To that effect, Belgium has established a number of measures on access to justice and legal aid, in addition to increasing the effectiveness of courts of law.

66. The right to legal aid is recognized by the Belgian Constitution as fundamental to a dignified existence.<sup>52</sup> Under certain conditions, citizens are entitled to what is known as primary legal aid (an initial legal opinion), legal counsel and/or legal assistance (legal costs) free or partly free of charge.

67. The reform of the judicial system is under way and measures to ensure more effective justice are being introduced. A number of laws and bills have been developed with a view to tackling the backlog of court cases, including by simplifying criminal procedure in respect of action for criminal indemnification proceedings,<sup>53</sup> establishing a procedural timetable<sup>54</sup> and gradually computerizing all courts and the judicial process.<sup>55</sup> A work measurement tool is currently being developed, in order to assess staffing requirements in law courts.

## **C. Action to combat racism, extremism, anti-Semitism and xenophobia**

68. Since 1981, Belgium has had an extensive body of legislation to combat racism and xenophobia. The law to punish specific acts inspired by racism or xenophobia<sup>56</sup> punishes incitement to hatred and violence and prohibits all forms of discrimination on grounds of nationality, supposed race, colour, descent or national or ethnic origin. It also penalizes groups and associations that manifestly and repeatedly advocate discrimination or public segregation. The Act of 23 March 1995 punishes the denial, minimization, justification or approval of the genocide committed by the German National Socialist regime during the Second World War. Lastly, there are a number of other regional legal and regulatory provisions to combat racial discrimination and/or to promote integration and social cohesion.

69. Belgium is also taking initiatives to combat racism, anti-Semitism and xenophobia at the European and international levels. It transmits reports to the European Commission against Racism and Intolerance. The Centre for Equal Opportunity and Action to Combat Racism is the national focal point of the RAXEN statistical data network and transmits Belgian data to the European Union Agency for Fundamental Rights (FRA). In connection with the Durban World Conference against Racism, the Centre for Equal Opportunity developed a national plan of action to combat racism, racial discrimination, xenophobia and associated intolerance.

70. The Centre for Equal Opportunity and Action to Combat Racism is an independent public service that is mandated to combat racism and racial discrimination through three main tasks, namely: handling reported cases (victim support), issuing opinions and policy recommendations and lastly, organizing training and the dissemination of information among various target groups (police, social partners, youth, employers). A monitoring unit was established in the Centre in 2004 following an increase in anti-Semitic acts, with a mandate to take stock of and combat anti-Semitism.

71. The right to equal treatment applies to all areas of social life including consumer rights, the hotel and restaurant trade, financial services, police action, employment and housing. The majority of cases reported to the Centre involve discrimination in the labour market. A significant number of reported cases concern discrimination in the education sector, including with regard to student admissions and the imposition or non-imposition of dress codes.

72. Despite all these efforts and measures, Belgium has a number of racist organizations (including some far-right groups) which are increasingly often behind acts of violence against ethnic minorities. In recent years, the Internet has also become a tool in the hands of far-right groups, which use it to disseminate their racist ideas. These acts are prosecuted on the basis of the standards mentioned above.

#### **D. Equality between women and men, gender-related discrimination and violence against women**

73. In Belgium, the various authorities legislate and develop policies on equality between women and men within their respective spheres of competence. Since February 2002, the Belgian Constitution has expressly guaranteed the principle of equality between women and men. Lawmakers are encouraged to adopt specific measures to guarantee that all citizens, men and women alike, enjoy their rights and freedoms equally and to promote equal access by all to elected and public office. Women have made considerable progress with regard to political decision-making, thanks to the introduction of quotas established by a number of laws and decrees since 2002 that require parity in the electoral lists and alternate candidates of both sexes to be included in the two top places on those lists. In general, a 1/3–2/3 rule applies to the composition of managing and advisory bodies.

74. The institutional mechanisms to combat sex discrimination and to promote sexual equality have also been substantially strengthened. The Institute for the Equality of Women and Men was established at the federal level at the end of 2002 and is tasked with ensuring respect for gender equality. Discrimination complaints offices have been established in 12 towns in the Flemish Region and there has been 1 in Brussels since July 2008. Under the protocols concluded with the Walloon Region and the French-speaking Community, the Institute for the Equality of Women and Men is developing a similar network in Wallonia. In 2003, the Walloon Government established a council for the equality of men and women, which has a consultative role. Since 2001, there has been an anti-discrimination help desk for jobseekers and employers in the Brussels-Capital Region.

75. Legislation against various forms of discrimination underwent far-reaching reforms in 2007 and 2008 at all levels of power in order to improve the protection of persons.<sup>57</sup> Sexual discrimination, including on grounds of pregnancy, maternity, childbirth and gender reassignment, in addition to incitement to discrimination, are punishable under civil and criminal law.

76. A large number of promising instruments have been developed to institutionalize efforts to combat violence in politics and in various spheres of action. The draft national action plan against domestic violence 2010–2014 aims to tackle violence between partners, genital mutilation, honour-related violence and forced marriage. The draft plan is the result of close collaboration between the federal authorities and the federated entities and brings hundreds of tangible measures drawn from a multidisciplinary approach to bear on a number of strategic objectives such as knowledge development and improving understanding, information and awareness-raising, prevention and detection of violence, assistance to victims and monitoring of perpetrators, and an appropriate approach by the police and courts. The draft action plan includes the plan already approved by the French-

speaking Community and the Walloon Region. The draft national action plan has not yet been officially approved, in view of the current government situation. A support unit has been established within the Institute for the Equality of Women and Men in order to ensure that the national action plan against domestic violence is followed up.

77. Since 2001, the performance of female genital mutilation on any girl or woman, with or without her consent, or facilitating or encouraging female genital mutilation, is punishable under Belgian law by 3 to 5 years' imprisonment. In 2007, legislation criminalizing forced marriages was introduced in Belgium.<sup>58</sup> Moreover, since 2006 an annual report measuring the salary gap between men and women at the national level has been issued to help the public authorities to take appropriate measures in that regard. As a result of all these measures, Belgium rose from 33rd to 14th place on the Global Gender Gap Index in 2010.<sup>59</sup>

## **E. People-smuggling and trafficking in human beings**

78. In accordance with a number of international recommendations, in July 2008 the Belgian Government adopted a plan of action to combat trafficking in human beings. The plan of action addresses the measures to be taken with regard to the prevention and prosecution of trafficking and to victim protection. Moreover, Belgium is a party to the Palermo Convention and the Protocol thereto, which is the benchmark international instrument on this issue.

79. The Act of 15 December 1980 on the entry, stay, residence and removal of aliens<sup>60</sup> provides for protection for the victims of trafficking or certain forms of people-smuggling together with specific provisions for unaccompanied minors. The circular of 26 September 2008<sup>61</sup> on the implementation of multidisciplinary cooperation with regard to the victims of human trafficking and/or certain aggravated forms of people-smuggling was intended to draw attention to the legal obligations of the various intervention services and to promote awareness among front-line actors of the specific measures applicable to unaccompanied foreign minors. The main objective of the new circular is to determine how (potential) victims of trafficking in human beings are to be dealt with and supported, while also specifying the criteria for them to qualify as victims.

80. In order to achieve that objective, the circular sets out the role of those involved in the various stages of the procedure (police and inspection services, the Aliens' Office, special reception centres for the victims of trafficking in human beings, public prosecutors and *auditorat* magistrates). The circular relates chiefly to the detection and referral of victims to victim reception centres, the reception, support and assistance available at such centres and the various stages of the procedure whereby victim status is granted, or not (period of reflection, course of the proceedings and residence status of victims). It also provides for specific complementary measures in respect of unaccompanied minors who are victims, taking into account their particular situation and their vulnerability.<sup>62</sup> The circular is currently being evaluated to determine whether or not it is appropriate to adopt new measures or to clarify them. The task force on minors travelling alone has investigated possible courses of action with a view to limiting the risks run by minors, including the risk of being a victim of trafficking, and has developed a mapping system in order to improve cooperation between the various competent authorities.

81. The working group to raise awareness established by the Interdepartmental Coordination Unit for the Fight against Human Trafficking<sup>63</sup> is developing information and awareness-raising actions in respect of trafficking in human beings (for example, a flyer destined for embassies; ongoing information projects in medical settings). In broad terms, the working group aims to draw to the attention of various institutions the importance of training their staff in this specific issue, so that victims may obtain victim status and be

supported by a specialized reception centre; in addition, it aims to inform them of the new legislation<sup>64</sup> and on the implementation of the aforementioned circular of 26 September 2008.

## **F. Action to combat discrimination based on sexual orientation and gender identity**

82. Numerous legislative advances have been made in Belgium with regard to action to combat discrimination on grounds of sex, gender identity and sexual orientation, including the adoption of two anti-discrimination laws in May 2007 and the Act of 25 February 2003, in addition to the Act of 13 February 2003 legalizing marriage between persons of the same sex and the Act of 18 May 2006 legalizing adoption by persons of the same sex. Furthermore, the Transsexuality Act<sup>65</sup> of 10 May 2007 provides for the right to officially amend the registered forename and sex and simplifies the associated formalities.

83. Belgium also supports efforts to promote and protect the rights of homosexual, bisexual and transsexual persons at the European and international level. It has followed work on the new Council of the European Union draft directive on goods and services closely for a number of years. In March 2010, it also participated in the drafting and adoption of the Council of Europe recommendation on measures to combat discrimination on grounds of sexual orientation or gender identity. In December 2008, it also supported the United Nations General Assembly declaration on that same subject.

84. Two public institutions are competent to deal with cases of discrimination, namely, the Institute for the Equality of Women and Men (transgender and transsexual issues) and the Centre for Equal Opportunity and Action to Combat Racism (lesbian, gay and bisexual issues).

85. In the basis of the above, one might think that sexual orientation and gender identity were no longer criteria for differentiation in Belgian society. However, the Institute and the Centre register numerous reports of discriminatory incidents related to sex and gender orientation, and these reports show only part of the picture. Lesbians, gays, bisexuals and transsexuals also have a highly-developed network of organizations that is supported by public authorities. Above all, these organizations serve to disseminate information, raise awareness and provide psychosocial support. Some are also anti-discrimination focal points.

## **G. Rights of persons with disabilities**

86. Belgium ratified the United Nations Convention on the Rights of Persons with Disabilities and the Optional Protocol thereto on 2 July 2009 and has given priority to the monitoring mechanism (art. 33) that will support reporting and the day-to-day implementation of the Convention in close collaboration with persons with disabilities themselves and their representatives. The establishment of this mechanism should uphold a broad and coherent policy that will promote greater respect for the human rights of persons with disabilities.

87. Under the Act of 10 May 2007 to combat certain forms of discrimination, which supersedes the Act of 25 February 2003, direct and indirect discrimination of any kind on grounds of disability, in addition to the absence of reasonable facilities, constitutes an offence. The Centre for Equal Opportunity and Action to Combat Racism handles complaints from persons with disabilities (289 cases were opened in 2009). Of those, 40 per cent related to the goods and services sector (transport, public services, leisure, and



housing) and 30 per cent related to employment. There is also anti-discrimination legislation at the level of the Communities and the Regions.

88. Beyond the division of powers between the federated entities and the Federal State in respect of disability issues, political concerns and legislative initiatives have moved unanimously towards improving the inclusion of persons with disabilities in ordinary society and taking their needs into account in a number of areas of life (disability mainstreaming, also called handstreaming).

89. From the standpoint of equal opportunities for all, but also taking into account the specific needs of persons with disabilities, particular attention has been devoted to the accessibility of the built environment, transport, information and communication technologies (ICT) (development of mandatory standards) and the employment of persons with disabilities (action to combat inactivity and unemployment traps, development of employment support measures); in addition, attention has been given to supporting students with functional limitations (not only in special education but also, more recently, in general education, including higher education).

90. It is unfortunate that the approach to disability is at times overly medical at certain levels. The lack of integration of policies and the lack of vision are also unfortunate. In this connection, the authorities are seeking greater involvement by persons with disabilities themselves in the discussion and decision-making process. A round of discussions and activities is currently under way on this issue that seeks to take into consideration the World Health Organization's International Classification of Functioning, Disability and Health concepts more effectively.

## **H. Action to combat poverty**

91. Although our country ranks as one of the richest, 15.2 per cent<sup>66</sup> of the population live below the poverty threshold. In 2008, Belgium introduced a Federal Poverty-Reduction Plan that contains 59 specific measures relating to income, employment, health, housing and access to energy and public services. The plan has made it possible to create a new tool, the inter-federal poverty barometer, in order to raise awareness of poverty in Belgium. It is based on 15 indicators that measure the evolution of poverty in Belgium and make it possible to better target the measures to be taken in the future.

92. In addition, Belgium has a national plan of action on social inclusion and to combat poverty, as do all member States of the European Union. With regard to the 2008–2010 plan, since no clear decline in poverty has been noted in Belgium in recent years, the key challenges pinpointed in 2006 have been pursued, namely:

- Economic activation and diversity: more workers among risk groups
- Sustainable and affordable quality housing for all
- Action against child poverty: escaping the poverty trap

93. Moreover, Belgium has a specific authority, the Service for the Fight against Poverty, Insecurity and Social Exclusion, that is responsible for analysing poverty in Belgium from a human rights perspective in collaboration with various parties, including poor people's associations, social partners and the authorities.

94. Lastly, in the context of the European Year for Combating Poverty and Social Exclusion, Belgium established three priorities for itself in 2010:

- Family and child poverty
- Minimum wage and housing

- Assistance for the homeless and housing assistance

## I. Belgium's international human rights obligations

95. Belgium considers that respect for human rights per se is vital and makes it possible to contribute to the peace, security and development of any country; accordingly, Belgium seeks to strengthen the United Nations system and other organizations working to achieve these goals. As shown by its election to the Human Rights Council, Belgium attributes great importance to the promotion and protection of human rights throughout the world. In connection with its election to this organ, Belgium has voluntarily undertaken to contribute actively to the work of the Council, to enhance its performance and effectiveness, to ensure the participation of civil society in its work and to promote the universality of human rights.

96. In this context, action to combat all forms of discrimination, in particular racism, is a priority for Belgium, as established by its commitment in the framework of the World Conference against Racism and the Durban Review Conference, in addition to its presentation of a biannual resolution on the International Convention on the Elimination of All forms of Racial Discrimination to the United Nations General Assembly. Moreover, Belgium also attaches great importance to the defence of all human rights; it was, for example, actively involved in the drafting of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights and will make every effort to ratify it very shortly.

97. Furthermore, Belgium supports the Office of the United Nations High Commissioner for Human Rights (UNHCHR), including in financial terms, and attaches great importance to its independence. In addition, increasing attention is being given to women's and children's rights, as shown by the adoption of a National Action Plan on Security Council resolution 1325 (2000) on women, peace and security, the funding projects for action against sexual violence or the fourfold increase in our financial support to UNICEF since 2009. In addition, the Belgian Government has undertaken to achieve the standard of 0.7 per cent of GNP for development assistance and, at the end of 2009, it approved a budget for cooperation that should make it possible to achieve that goal. Moreover, it attaches great importance to the Millennium Development Goals and their full achievement.

### *Notes*

- <sup>1</sup> La nationalité, la prétendue race, la couleur de peau, l'ascendance, l'origine nationale ou ethnique, l'orientation sexuelle, l'état civil, la naissance, la fortune, l'âge, la conviction religieuse ou philosophique, l'état de santé actuel ou futur, le handicap, la conviction politique, la caractéristique physique ou génétique ou l'origine sociale.
- <sup>2</sup> Loi portant approbation de l'accord de coopération entre l'Etat, la Communauté flamande, la Région flamande, la Communauté française, la Région wallonne, la Communauté germanophone, la Région de Bruxelles-Capitale, la Commission communautaire commune et la Commission communautaire française, portant création d'une Commission nationale pour les droits de l'enfant, du 19 septembre 2005 (Moniteur Belge. 10 novembre 2006).
- <sup>3</sup> (Convention internationale sur l'élimination de toutes les formes de discrimination raciale (7/08/1975), Pacte international relatif aux droits civils et politiques (21/04/1983) et ses Protocoles facultatifs (17/05/1994 et 08/12/1998), Pacte international sur les droits économiques, sociaux et culturels (21/04/1983), Convention sur l'élimination de toutes les formes de discrimination à l'égard des femmes (10/07/1985) et son Protocole facultatif (17/06/2004), Convention contre la torture et autres peines ou traitements cruels, inhumains ou dégradants (25/06/1999), Convention internationale relative aux droits de l'enfant (16/12/1991) et ses deux Protocoles facultatifs (06/05/2002,

- 17/03/2006), Convention sur les droits des personnes handicapées (02/07/2009) et son Protocole facultatif (02/07/2009), 4 Conventions de Genève de 1949 (03/09/1952 et leurs 2 Protocoles additionnels (20/05/1986), Convention internationale relative au statut des réfugiés (22/07/1953), Convention sur la prévention et la répression du crime de génocide (05/09/1951), Statut de Rome de la Cour pénale internationale (28/06/2000).
- <sup>4</sup> <http://www2.ohchr.org/english/bodies/crc/crcs54.htm> et <http://www2.ohchr.org/english/bodies/hrc/hracs100.htm>.
- <sup>5</sup> (Convention européenne pour la sauvegarde des droits de l'homme et des libertés fondamentales (14/06/1955) et de nombreux Protocoles additionnels à cette Convention, Charte sociale européenne révisée (02/03/2004) et Convention européenne pour la prévention de la torture (23/07/1991).
- <sup>6</sup> Code Pénal Art. 417ter. Quiconque soumettra une personne à la torture sera puni de la réclusion de dix ans à quinze ans. L'infraction visée à l'alinéa premier sera punie de la réclusion de quinze ans à vingt ans lorsqu'elle aura été commise par un officier ou un fonctionnaire public, un dépositaire ou un agent de la force publique agissant à l'occasion de l'exercice de ses fonctions. (Moniteur Belge, 1er décembre 2006).
- <sup>7</sup> Loi organique du 18 juillet 1991 de contrôle des services de police et de renseignement (Moniteur Belge 26/07/1991).
- <sup>8</sup> Arrêté royal du 4 avril 2003 modifiant l'arrêté royal du 21 mai 1965 portant règlement général des établissements pénitentiaires.
- <sup>9</sup> Données : OCDE.
- <sup>10</sup> Tant à l'intérieur qu'en dehors des établissements hospitaliers.
- <sup>11</sup> On peut à cet égard citer le service de médiation fédéral 'droits du patients' créé par la loi du 22/08/2002 concernant les droits du patient.
- <sup>12</sup> Moniteur Belge., 29 décembre 2003.
- <sup>13</sup> Décision-cadre du Conseil du 13 juin 2002 relative à la lutte contre le terrorisme (2002/475/JAI).
- <sup>14</sup> « aucune des dispositions du Code pénal relatives aux infractions terroristes ne peut être interprétée comme visant à réduire ou à entraver des droits et libertés fondamentaux comme le droit de grève, la liberté de réunion, d'association et d'expression, y compris le droit de fonder, avec d'autres, des syndicats et de s'y affilier pour la défense de ses intérêts, et le droit de manifester qui s'y rattache et tels que consacrés notamment par les articles 8 à 11 de la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales ».
- <sup>15</sup> Loi du 6 janvier 2003 concernant les méthodes particulières de recherche et quelques autres méthodes d'enquête (Moniteur Belge, 12 mai 2003).
- <sup>16</sup> Moniteur Belge., 10 mars 2010.
- <sup>17</sup> <http://www.senate.be/www/webdriver?MItabObj=pdf&MIcolObj=pdf&MInamObj=pdfid&MItypeObj=application/pdf&MIvalObj=67111492>.
- <sup>18</sup> Voir *Improving Asylum Procedures: Comparative Analysis and Recommendations for Law and Practice* (mars 2010); <http://www.unhcr.org/4bab6fb56.html>.
- <sup>19</sup> Art. 57§2, loi sur les Centres publics d'aide sociale du 8 juillet 1976.
- <sup>20</sup> Article 24 de la Constitution.
- <sup>21</sup> Arrêté royal du 24 juin 2004, M.B. 01/07/2004, modifié par l'Arrêté royal du 1<sup>er</sup> juillet 2006, M.B. 03/08/2006.
- <sup>22</sup> Article 74/8, §§1er et 2 de la loi du 15 décembre 1980.
- <sup>23</sup> Commission instaurée sur base de l'article 130 de l'arrêté royal du 2 août 2002 précité et l'arrêté ministériel du 23 janvier 2009 établissant la procédure et les règles de fonctionnement de la Commission et du secrétariat permanent, visé à l'article 130 de l'arrêté royal du 2 août 2002, modifié par l'arrêté ministériel du 30 juin 2009.
- <sup>24</sup> Centre pour l'égalité des chances et la lutte contre le racisme, « La Commission des plaintes chargée du traitement des plaintes des personnes détenues en centres fermés (2004–2007) – Analyse et évaluation d'un dispositif insuffisant » (mise à jour juin 2010), à consulter sur [www.diversite.be](http://www.diversite.be).
- <sup>25</sup> Conformément aux articles 508/1 et suivants du code judiciaire.
- <sup>26</sup> Art. 74/8, §2 de la loi du 15 décembre 1980 et arrêté royal du 14 mai 2009, dont les articles ont été insérés par la loi du 15 septembre 2006 modifiant la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers.
- <sup>27</sup> Aux niveaux des entités fédérées, les politiques des droits de l'enfant sont coordonnées au niveau politique, par le Ministre flamand de la Jeunesse, qui, au sein du gouvernement flamand, est

- compétent pour la coordination en matière de droits de l'enfant et au niveau administratif par l'Observatoire de l'Enfance, de la Jeunesse et de l'Aide à la Jeunesse de la Communauté française et l'Agence Travail Social et Culturel pour la Jeunesse et les Adultes de l'autorité flamande.
- <sup>28</sup> En Flandre, un « rapport d'incidence sur l'enfant et le jeune » doit être rédigé pour chaque projet de décret que le gouvernement flamand souhaite introduire au Parlement flamand et qui touche directement l'intérêt des personnes âgées de moins de 25 ans.
- <sup>29</sup> Le Plan d'action national consacré aux enfants (2005–2012), le Plan d'action flamand pour les droits de l'enfant (2004), le Plan flamand pour la politique de la jeunesse du gouvernement flamand (2002–2005, 2006–2009, 2010–2014), le Plan d'action triennal relatif aux droits de l'enfant du Gouvernement au Parlement de la Communauté française et le Plan d'action fédéral en deuxième partie du rapport fédéral annuel sur l'application de la Convention relative aux droits de l'enfant.
- <sup>30</sup> Décret du 26 mai 2009 instituant la fonction de médiateur pour la Communauté germanophone.
- <sup>31</sup> Voir: « Mécanismes nationaux pour la protection des droits de l'homme ».
- <sup>32</sup> Accord de coopération entre l'Etat, la Communauté flamande, la Région flamande, la Communauté française, la Région wallonne, la Communauté germanophone, la Région de Bruxelles-Capitale, la Commission communautaire commune et la Commission communautaire française, portant création d'une Commission nationale pour les droits de l'enfant, du 19 septembre 2005 (Moniteur Belge, 10 novembre 2006).
- <sup>33</sup> Loi du 8 avril 1965 relative à la protection de la jeunesse, modifiée par les lois du 15 mai (Moniteur Belge, 2 juin 2006) et du 13 juin 2006 (M.B.19 juillet 2006).
- <sup>34</sup> Le Décret du 4 mars 1991 relatif à l'aide à la jeunesse de la Communauté française, le Décret du 7 mars 2008 relatif à l'assistance spéciale à la jeunesse de l'autorité flamande, le Décret du 19 mai 2008 relatif à l'aide à la Jeunesse et visant la mise en œuvre de mesures de protection de la jeunesse de la Communauté germanophone et l'Ordonnance du 29 avril 2004 relatif à l'aide à la jeunesse de la Commission Communautaire commune de la région Bruxelles-Capitale.
- <sup>35</sup> Voir sites internet: <http://www.aidealajeunesse.cfwb.be/> (Communauté française); <http://wvg.vlaanderen.be/jeugdhelp/> (Autorité flamande); [http://www.dglive.be/desktopdefault.aspx/tabid-300/537\\_read-3830/](http://www.dglive.be/desktopdefault.aspx/tabid-300/537_read-3830/) (Communauté germanophone).
- <sup>36</sup> Art. 22 bis: « *Chaque enfant a droit au respect de son intégrité morale, physique, psychique et sexuelle. Chaque enfant a le droit de s'exprimer sur toute question qui le concerne; son opinion est prise en considération, eu égard à son âge et à son discernement. Chaque enfant a le droit de bénéficier des mesures et services qui concourent à son développement. Dans toute décision qui le concerne, l'intérêt de l'enfant est pris en considération de manière primordiale. La loi, le décret ou la règle visée à l'article 134 garantissent ces droits de l'enfant.* »
- <sup>37</sup> Les soins dentaires, les verres de lunettes, le traitement logopédique, la psychiatrie infanto-juvénile, les frais de déplacement de parents d'enfants cancéreux, etc.
- <sup>38</sup> Le Plan national Nutrition Santé (2006–2010).
- <sup>39</sup> En application de l'accord gouvernemental, le gouvernement a approuvé le « Masterplan 2008–2012–2016 pour une infrastructure carcérale plus humaine ». (Conseils des Ministres du 18 avril 2008, 19 décembre 2008 et du 12 mars 2010).
- <sup>40</sup> 500 places à partir de début 2010 et en plus 150 places à partir de 2011.
- <sup>41</sup> Conseil des ministres du 30 octobre 2009.
- <sup>42</sup> Loi de principes du 12 janvier 2005 concernant l'administration des établissements pénitentiaires ainsi que le statut juridique des détenus (Moniteur Belge, 1<sup>er</sup> février 2005).
- <sup>43</sup> Bien que le titre VIII de la loi de principes consacré aux services de plaintes ne soit pas encore entré en vigueur, on peut difficilement dire que les détenus n'ont, de nos jours, aucun moyen de porter plainte.

Tout d'abord, il existe la possibilité pour le détenu de s'adresser à la commission de surveillance qui joue un rôle de médiateur entre le détenu et la direction de l'établissement pénitentiaire. En outre, la commission de surveillance a le droit et l'obligation de signaler d'éventuels dysfonctionnements au ministre de la Justice. Il existe également une possibilité de s'adresser au Collège des médiateurs fédéraux qui consacre une grande partie de ses activités au traitement des plaintes et des problèmes venant des détenus.

À tout moment, les détenus peuvent s'adresser par écrit sous pli scellé au directeur de la prison, aux autorités législatives, politiques et judiciaires du Royaume. Finalement, le détenu peut s'adresser au

- juge de l'ordre judiciaire (notamment en référé) lorsque ses droits subjectifs sont violés ou devant le Conseil d'Etat (haute juridiction administrative) si l'administration n'a pas respecté ses obligations (c'est le cas en matière disciplinaire par exemple).
- 44 Personnes ayant commis un fait qualifié infraction mais qui sont considérées comme incapables du contrôle de leurs actes du fait d'un trouble mental.
- 45 Loi du 21 avril 2007 relative à l'internement des personnes atteintes d'un trouble mental (M.B., 13 juillet 2007).
- 46 Loi du 1<sup>er</sup> juillet 1964 de défense sociale à l'égard des anormaux, des délinquants d'habitude et des auteurs de certains délits sexuels, remplaçant la loi du 9 avril 1930. (M.B. 17 juillet 1964).
- 47 Ex: psychologues, ergothérapeutes, etc.
- 48 Services psychosociaux rendant des avis à l'intention des instances de décision.
- 49 Par statut juridique externe des détenus, on vise les «aspects *extra-muros* de la détention, c'est-à-dire ceux qui impliquent une sortie de la prison.
- 50 Loi du 17 mai 2006 relative au statut juridique externe des personnes condamnées à une peine privative de liberté et aux droits reconnus à la victime dans le cadre des modalités d'exécution de la peine (M.B., 15 juin 2006).
- 51 Loi du 17 mai 2006 instaurant des tribunaux d'application des peines (Moniteur. Belge., 15 juin 2006).
- 52 Article 23 aliéna 2° de la Constitution belge.
- 53 Loi du 13 avril 2005 modifiant diverses dispositions légales en matière pénale et de procédure pénale en vue de lutter contre l'arriéré judiciaire (Moniteur Belge, 3 mai 2005).
- 54 Loi du 26 avril 2007 modifiant le code judiciaire en vue de lutter contre l'arriéré judiciaire (Moniteur Belge, 12 juin 2007).
- 55 Le plan Cheops.
- 56 Telle que modifiée pour la dernière fois le 10 mai 2007.
- 57 Par exemple: loi du 10 mai 2007 tendant à lutter contre la discrimination entre les femmes et les hommes, décret de la Communauté flamande du 10 juillet 2008 portant le cadre de la politique flamande de l'égalité des chances et de traitement, décret de la Communauté française du 19 mai 2004 relatif à la mise en œuvre du principe de l'égalité de traitement et décret de la Communauté germanophone du 17 mai 2004 relatif à la garantie de l'égalité de traitement sur le marché du travail.
- 58 La loi du 25 avril 2007 insérant un article 391 *sexies* dans le Code pénal et modifiant certaines dispositions du Code civil en vue d'incriminer et d'élargir les moyens d'annuler le mariage forcé, publiée au *Moniteur Belge* du 15 juin 2007.
- 59 Site internet du World Economic Forum: <http://www.weforum.org/en/Communities/Women%20Leaders%20and%20Gender%20Parity/GenderGapNetwork/index.htm>.
- 60 Articles 61/2 à 61/5 insérés par la loi du 15 septembre 2006 modifiant la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers.
- 61 Cette circulaire remplace la circulaire du 1er juillet 1994 concernant la délivrance des titres de séjour et des autorisations d'occupation (permis de travail) à des étrangers(ère), victime de la traite des êtres humains et les directives du 13 janvier 1997 à l'Office des étrangers, aux parquets, aux services de police, aux services de l'inspection des lois sociales et de l'inspection sociale relative à l'assistance de la traite des êtres humains, modifiées par les directives du 17 avril 2003.
- 62 Entre autres, des mesures spéciales en ce qui concerne la détection et l'accueil, l'identification, la représentation par un tuteur, etc.
- 63 Article 4 de l'arrêté royal du 16 mai 2004 relatif à la lutte contre le trafic et la traite des êtres humains.
- 64 Entrée en vigueur le 1er juin 2007.
- 65 M.B. 11 juillet 2007.
- 66 Pourcentage de personnes ayant un revenu disponible équivalent inférieur à 60% du revenu médian national équivalent.