



**International Human Rights  
Instruments**

Distr.: General  
16 November 2018  
English  
Original: French

---

**Common core document forming part of the  
reports of States parties**

**Belgium\***

[Date received: 23 July 2018]

---

\* The present document is being issued without formal editing.



## Contents

	<i>Page</i>
I. General information about the reporting State .....	3
A. Demographic, economic, social and cultural characteristics of the State .....	3
B. Constitutional, political and legal structure of the State .....	4
II. General framework for the protection and promotion of human rights.....	13
A. Acceptance of international human rights norms.....	13
B. Legal framework for protection of human rights at the national level.....	18
C. Framework within which human rights are promoted at the national level .....	23
D. Reporting process at the national level .....	27
E. Other related human rights information.....	28
III. Information on non-discrimination and equality and effective remedies .....	29
A. Non-discrimination and equality.....	29
B. Combating racism, extremism, xenophobia and anti-Semitism.....	31
C. Rights of lesbian, gay, bisexual and transgender persons in Belgium .....	32
D. Gender equality and combating gender-based discrimination .....	33
E. Rights of persons with disabilities .....	36
Annex	
Hierarchy of courts in Belgium .....	38

## **I. General information about the reporting State**

### **A. Demographic, economic, social and cultural characteristics of the State**

#### **1. General framework**

1. Belgium has an area of 30,519 km<sup>2</sup> and is bounded to the north by the Netherlands, to the east by Germany and Luxembourg, and to the south by France.

2. The country is situated in one of the most heavily populated and busiest trading areas in the world and is at the heart of a highly urbanized major economic zone that stretches from London to Milan and contains half of Europe's main cities – more than 80 urban centres with populations of over 200,000. This zone is also the main communications and trade artery in Europe.

3. Belgium is thus at the crossroads between the economic and urban backbone of Europe and the busy stretch of North Sea coastline between Le Havre and Hamburg. It has comprehensive communications networks that cover the whole country and connect it with neighbouring countries, thereby facilitating domestic travel and international links.

4. By virtue of its geographical position, Belgium has throughout its history been a meeting point, a gateway and a place of welcome for people, ideas and businesses.

5. Belgium has long been open to international cooperation. In 1921, it signed an agreement with Luxembourg to abolish restrictions on trade, establish a common customs tariff and adopt a single financial and commercial policy, paving the way for the later process of European integration. In 1951, it was a founding member of the European Coal and Steel Community, which envisaged the free movement of coal and steel products between its six members. The Belgian capital, Brussels, hosts the headquarters of several European institutions, the North Atlantic Treaty Organization (NATO) and some 850 international non-governmental organizations (NGOs).

6. Belgium, as part of the Belgian-Luxembourg Economic Union (BLEU), has the highest volume of exports per capita in the world. The Union itself accounts for 2.58 per cent of total world exports, ranking eleventh among the world's economic powers. Eighty-seven per cent of its exports, representing about two thirds of gross national product, go to other industrialized countries, including 72.3 per cent to the States members of the European Union. Its exports are highly diversified, consisting of transport equipment, non-precious metals, electrical machinery and equipment, chemicals, pharmaceuticals, plastics, textiles, gems, etc.

#### **2. Population**

7. In 2005, the population of Belgium passed the 10.5 million mark. A century earlier, it was barely 6 million and growing at a steady 1 per cent a year.

8. The country now has about 11.4 million inhabitants. According to the latest forecasts of the Federal Planning Bureau, the population will have risen to 11.5 million by 2020 and possibly 12.6 million by 2050, largely as a result of immigration.

9. The proportion of foreigners in the population has risen fast over the past century. In 1920, they represented only 2 per cent of the total population; today they account for over 11.9 per cent. The proportion of foreigners in the population is expected to rise further still. Between 1998 and 2008 the number of immigrants per year rose fivefold, from 11,700 to 63,900. At the beginning of 2018, net migration stood at 44,536.

10. However, the most significant demographic change will not be the increase in the number of inhabitants but changes in the age structure of the population. In the mid-twentieth century, about a tenth (11 per cent) of the population was over 65 years of age; today the figure is about a fifth (18.7 per cent) and it may reach a quarter (26 per cent) by 2050.

11. This phenomenon, known as “population ageing”, can be observed in practically all industrialized countries, but is particularly pronounced in Belgium. In fact, according to a

United Nations report on the subject, Belgium, with 23 per cent of its population over the age of 60, is among the 10 countries with the oldest populations in the world.

12. The causes of population ageing are well known: lower mortality and fertility rates. Over the past century, Belgium has witnessed a spectacular fall in infant mortality, from over 150 per 1,000 live births in 1900 to less than 10 per 1,000 in 2010 (8 per 1,000 for boys and 6 per 1,000 for girls) and 3.6 per 1,000 in 2017 (3.9 per 1,000 for boys and 3.2 per 1,000 for girls). At the same time, there has been a considerable increase in life expectancy, from an average of 45 years at the beginning of the twentieth century to 81.4 years today (79 years for men and 83.6 years for women).

13. The other cause of population ageing is the fall in the fertility rate. As in most other industrialized countries, since the 1960s the fertility rate in Belgium has fallen to below 2 children per woman, from an average of 2.64 children per woman for the period 1960–1964 to only 1.6 for 1980–1999. The fertility rate currently stands at about 1.68 children per woman. It is forecast to rise to 1.8 within a few years but, as in most other industrialized countries, will probably remain below replacement level (2.1 children) at least until 2050.

14. Some figures on the number of inhabitants per region and the origin of foreigners: as at 1 January 2018, Belgium had 11,376,070 inhabitants, of whom 5,778,164 were women and 5,597,906 were men. This figure includes all Belgians and foreigners whose main residence is in Belgium, but excludes international civil servants and the like and military personnel stationed in the country.

15. In 2017, the Flemish Region had 6,552,967 inhabitants, the Walloon Region (including the German-speaking area) 3,624,377 and the Brussels-Capital Region 1,198,726.

16. As at 1 January 2018, the number of nationals of European Union countries living in Belgium was 907,000, or 66.9 per cent of the total foreign population. The five countries from outside the European Union with the highest number of nationals living in Belgium are Morocco, Turkey, the Democratic Republic of the Congo, Afghanistan and India. Nationals of the Maghreb countries and Turkey represent 30 per cent of the non-European Union foreign population. In all, 42 per cent of the foreigners resident in Belgium live in Flanders, 27 per cent in the Walloon Region and 31 per cent in the Brussels-Capital Region.

## **B. Constitutional, political and legal structure of the State**

### **1. General framework**

17. In 1831, the country's constituent assembly established a democratic State ruled by law and based on a flexible separation of powers, in the form of a parliamentary monarchy and a decentralized unitary State (State, provinces, communes).

18. This State structure underwent a transformation with the establishment of a federal State composed of communities and regions.

19. The distribution of power is based essentially on a transfer of jurisdiction, both *ratione materiae* and *ratione loci*, exercised by the federal authorities, the communities and the regions.

20. The communities and regions are not subordinate entities, like the provinces and communes, but have the same standing as the federal authority. In terms of their jurisdiction, they have the same power as the federal authority, since their legislation, in the form of decrees and ordinances, has equal force in law.

21. The 1994 Constitution stipulates that Belgium comprises:

(a) Three communities: the French Community, the Flemish Community and the German-speaking Community;

(b) Three regions: the Walloon Region, the Flemish Region and the Brussels-Capital Region;

(c) Four language regions: the French-speaking region, the Dutch-speaking region, the bilingual Brussels-Capital Region and the German-speaking region. Every commune in the country belongs to one of these language regions.

The communities and regions are federated entities with their own political bodies. The language regions are simply political divisions of Belgian territory.

22. The federal authority not only has jurisdiction over matters for which it is explicitly assigned responsibility by the Constitution and the law; it also exercises powers that are not expressly conferred on the communities and regions.

## 2. Federal legislative power

23. Federal legislative power is exercised collectively by the King, the House of Representatives and the Senate.

24. The members of the two chambers represent the nation, not just the people who elected them. As required by the Constitution, the elected members of each chamber are divided into a French-language group and a Dutch-language group in the manner prescribed by law.

25. The two chambers convene automatically each year and must remain in session for at least 40 days. The King announces the closure of the session. He may adjourn or dissolve the chambers under the conditions established by the Constitution. Any parliamentarian appointed as a minister by the King vacates his seat and resumes his term of office only when his ministerial functions have ended.

26. The power to initiate legislation is vested in each branch of the federal legislature: bills (submitted by the executive) and proposals for legislation (submitted by the parliament) are brought before the upper or lower house.

27. Except in the case of the budget and laws requiring a qualified majority, a so-called alarm bell mechanism operates to prevent the adoption of any bill or proposed legislation containing provisions that might seriously affect relations between the language groups. In such cases, parliamentary discussion is suspended for 30 days pending a reasoned opinion from the Council of Ministers.

28. The House of Representatives has 150 members elected by direct universal suffrage. To be eligible, candidates must meet the following requirements:

- Be Belgian
- Enjoy civil and political rights
- Be at least 21 years of age and be resident in Belgium

29. The term of office of a deputy is five years; such office cannot be held concurrently with that of a member of a regional or community parliament or minister.

30. The House of Representatives has sole political oversight of federal government policy (endorsement and motion of no confidence). Likewise, it has exclusive jurisdiction over budgetary matters since it alone passes the law on State accounting and approves the budget. The House also has exclusive jurisdiction over the naturalization process, the criminal and civil liability of ministers and the size of the armed forces.

31. The Senate is composed of 50 senators, as follows: 29 senators appointed by the Flemish Parliament; 10 by the Parliament of the French Community; 8 by the Walloon Parliament; 2 by the French language group of the Brussels Parliament; and 1 by the Parliament of the German-speaking Community; and a total of 10 (6 Dutch-speaking and 4 French-speaking) co-opted senators, appointed on the basis of the results of the elections to the House.

32. The configuration of the Senate seeks to ensure that the federated entities (senators from community and regional parliaments) are represented.

33. The minimum age requirement to be elected senator is 18 years.

34. In a limited number of matters, the Senate has the same powers as the House (perfect bicameral system), namely: the declaration of the revision of the Constitution and the revision and coordination of the Constitution; the laws to be adopted by a qualified majority; certain matters in the field of international relations (laws for the approval of treaties); certain matters concerning the organization of the courts and tribunals and legislation relating to the Council of State; matters that must be settled by both assemblies under the Constitution (for example, provisions relating to the monarchy); the provisions relating to the institutions of the German-speaking Community; the provisions relating to the financing of political parties and the control of election spending; provisions relating to the organization of the Senate and the status of the senator.

35. The Senate has exclusive jurisdiction over the resolution of conflicts of interest between the federal and the federated parliamentary assemblies. In addition, draft instruments for the approval of international treaties, which must be adopted by the two assemblies, are presented by the Government first to the Senate and then to the House, thus giving the Senate a greater role in international affairs.

### **3. Federal executive power**

36. Federal executive power, as regulated by the Constitution, rests with the King. In fact, the executive is a structure with two heads, since it includes the King and ministers. The Constitution confers on the King a number of powers whose scope has evolved over time, even though the actual text of the Constitution has not changed.

37. The person of the King is inviolable:

- At the civil level: no action may be brought against him except in matters relating to his estate, in which case he is represented by the administrator of the civil list;
- At the criminal level: no prosecution may be brought against him;
- At the political level: only the minister who countersigns or endorses the royal enactment bears responsibility. These privileges apply only to the King himself, not to members of his family.

38. The King ascends the throne only after taking an oath before the two chambers in joint session. The King appoints and dismisses ministers, such offices being reserved exclusively for Belgians.

39. The Council of Ministers has a maximum of 15 members, with as many French-speaking as Dutch-speaking ministers (principle of parity), with the possible exception of the Prime Minister.

40. Ministers are accountable to the House of Representatives. No minister can be prosecuted or investigated for any opinions expressed in the exercise of his or her duties.

41. Ministers can only be tried by a court of appeal for offences committed in the exercise of their duties, or for offences that were not committed in the exercise of their duties but for which they are tried while in office. The law determines how to proceed against them, at both the prosecution and the trial stage.

42. The King appoints or dismisses federal secretaries of State, who, as assistants to ministers, are members of the federal government but not of the Council of Ministers.

43. The King confers ranks in the armed forces and makes appointments to positions in the general administration and foreign service, except in cases prescribed by law.

44. The King sanctions and promulgates the necessary laws and regulations and decrees for the implementation of laws.

45. The King appoints judges. Their decisions and judgments are implemented on his behalf. The King has the right to waive all or part of a sentence (he may also reduce it, modify it or grant a probationary period), except what is decided in respect of ministers and members of community and regional governments. He also has the right to mint coinage in execution of the law, to confer honorary titles of nobility and to award military honours in keeping with the requirements of the law.

#### 4. Organization of the courts

46. Under the Constitution, the organization of the Belgian courts and tribunals is under the jurisdiction of the federal authorities.

47. The role of the judge in a court (*a magistrat du siège*, called a *juge* in a *tribunal* and a *conseiller* in a *cour*) is to rule on litigation. The Judicial Code determines if professional judges sit alone or in threes. Lay judges sit in labour courts, commercial courts, sentence enforcement courts, labour appeal courts and assize courts.

48. The public prosecution service upholds the law and the interests of society and prosecutes offenders in the courts.

49. Cases concerning civil rights are heard exclusively by a *tribunal*. Cases concerning political rights are heard by a *tribunal* unless otherwise provided for by law. A court may only be established by virtue of a law. As a rule, court hearings are public. All judgments are to state the reasons on which they are based. They are to be delivered in public hearings.

##### (a) Status of judges

50. Judges are appointed by the King. The Constitution stipulates that the nomination of judges and the appointment of chief prosecutors must be preceded by a reasoned submission to the High Council of Justice. The High Council of Justice is a unique independent body with a threefold mission:

- To exercise external control over the functioning of the judicial system, including the processing of complaints
- To submit opinions to political leaders with a view to improving the functioning of the judiciary
- To play a decisive, and objective, role in the judicial appointment process

51. The Judicial Code provides that judges are to be appointed to trial courts attached to courts of appeal, to commercial courts (future business courts) attached to courts of appeal, to the labour tribunal(s) attached to labour courts, to the Crown prosecutor's offices attached to courts of appeal and to labour prosecutor's offices attached to labour courts. By way of exception, in Eupen, judges are appointed to trial courts, labour tribunals and the commercial courts simultaneously. Prosecutors are appointed to both the Crown prosecutor's office and labour prosecutor's office. There are three entry points to a career as a judge:

(a) Competitive examination for admission to the judicial training course, open to lawyers with at least 2 years' experience; the course gives access to the bench and the prosecution service and lasts for 2 years;

(b) Professional aptitude test, aimed at experienced lawyers and offering direct access to the judiciary provided that the candidate has the requisite experience as set out in the Judicial Code (10 years' experience at the bar for those wishing to become a judge and 5 years' for those wishing to become a prosecutor);

(c) Oral test, aimed at lawyers whose career in law spans at least 20 years, or 15 years if they have also performed a job requiring an in-depth knowledge of law for at least another 5 years.

52. These examinations are organized by the High Council of Justice.

53. The Belgian Constitution guarantees the independence of judges in the exercise of their duties. The prosecution service investigates and prosecutes individual cases independently, without prejudice to the right of the minister concerned to order prosecutions and issue binding directives on criminal policy, including investigation and prosecution policy. The Constitution also states that the salaries and pensionable age of members of the judiciary are to be determined by law. Judges may only be removed or suspended by a decision of a court. Since 1 September 2014, apart from the dismissal of prosecutors, serious disciplinary action against judges and judicial staff has been taken by non-permanent French-speaking and Dutch-speaking disciplinary courts in Namur and

Ghent respectively. Chief prosecutors, clerks and secretaries retain jurisdiction to bring disciplinary proceedings and impose minor penalties. A judge may only be moved if he or she receives a new appointment and consents to the move.

**(b) Judges and courts**

54. The courts of justice form a hierarchy. The Court of Cassation is at the top; it does not examine the merits of cases but ensures that the law is correctly applied. Below this, there are the trial courts, which deal with points of fact and law. A distinction is made between courts of first instance, which are the first to hear a case, and courts of second instance or appeal courts, which hear cases that have already been tried.

**(c) Hierarchy of courts in Belgium (see annex)**

55. Courts of first instance, labour tribunals, commercial courts, magistrate's courts and police courts are all lower courts. Appeal courts and labour courts are courts of second instance.

56. Courts of first instance are divided into civil, criminal, family and youth divisions. The courts of first instance in Antwerp, Brussels, Ghent, Mons and Liège have divisions known as sentence enforcement courts. As well as a president, presidents of divisions and vice-president(s), a court of first instance has one or more family and youth court judges, investigating judges and judges hearing attachment proceedings. The sentence enforcement court is composed of a (professional) judge attached to the sentence enforcement court and an associate judge specialized in imprisonment and another in social reintegration. The social protection division of the sentence enforcement court has exclusive jurisdiction over the monitoring of persons in psychiatric facilities (persons with mental disorders that undermine or seriously alter their capacity to judge or control their actions who are under supervision because of the danger that they pose to themselves or society). The division is composed of a sentence enforcement court judge and two associate judges (one specialized in clinical psychology and the other in social reintegration). The social protection commissions were replaced with social protection divisions under the law of 5 May 2014. Previously, the social protection commissions were composed of a sitting or honorary judge who served as president, a lawyer and a doctor.

57. The civil court hears appeals against judgments handed down by magistrate's courts or police courts, as the case may be. The criminal court hears appeals against judgments handed down by the police court. The family court is also competent to hear appeals against certain decisions rendered in first instance by magistrate's courts.

58. Belgium is divided into five large judicial areas: Antwerp; Brussels; Ghent; Mons; and Liège. Each has an appeal court and a labour appeal court. The areas are divided into 12 judicial districts. There is a court of first instance for every district. The labour courts form a group of nine courts and the commercial courts a group of nine.

59. Lay judges appointed for five years (the period applicable to the professional category to which they belong) sit in labour appeal courts (as judges and social advisers, or *conseillers sociaux*) and commercial courts (where they are called *juges consulaires*), alongside professional judges.

60. There is one magistrate's court per judicial canton (*canton judiciaire*). The number of cantons will be gradually reduced to 162. There are 15 police courts (at least one per judicial district).

61. Each of the 10 provinces and the administrative district of the Brussels-Capital Region have an assize court. An assize court is constituted each time an accused person is referred to it. It consists of 3 professional judges (a president and two associate judges) and a jury made up of 12 jurors and 1 or more alternates drawn at random from the general public.

62. The Court of Cassation, as the guarantor of the courts' and tribunals' compliance with the law, has three divisions: one for criminal matters; one for labour law cases; and one for civil and commercial matters.



**(d) Public prosecution service**

63. The public prosecution service is staffed by judges from a prosecutor's office dealing with criminal law (*parquet*) or labour law (*auditorat*), who exercise the prosecutorial function within the jurisdiction of the court or tribunal for which they work.

64. As a rule, each court of first instance has a prosecutor's office (*parquet*) comprising a Crown prosecutor, prosecutors of divisions, senior deputies and deputies. There is a deputy Crown prosecutor in the judicial district of Brussels. Deputy public prosecutors may specialize in tax affairs or be assigned to posts at youth courts, or (in Antwerp, Brussels, Ghent, Mons and Liège) specialize in sentence enforcement. In total, Belgium has 14 prosecutors' offices.

65. The prosecutor's office attached to an appeal court (*parquet général*) is headed by a prosecutor general whose job is to apply directives on criminal policy within the court's jurisdiction and to supervise the judges working for the office or for the prosecutor's office attached to labour appeal courts. The prosecutor general is assisted by a senior advocate general, advocates general and deputy prosecutors general.

66. The labour prosecutor's office generally comprises a labour prosecutor, labour prosecutors of divisions, senior deputies and deputies. There is a deputy Crown labour prosecutor in the judicial district of Brussels.

67. The prosecutor's office attached to a labour appeal court (*auditorat général*) is headed by the prosecutor general of the ordinary appeal court, assisted by a senior advocate general, advocates general and deputies.

68. Cases in assize courts are prosecuted by the prosecutor general of the appeal court, who may delegate this function to another prosecutor.

69. Cases before the Court of Cassation are brought by the Court's prosecutor general with assistance from a senior advocate general and advocates general; the prosecutor general does not bring a prosecution in such cases but rather advises the Court.

70. The federal prosecutor's office (*parquet fédéral*) comprises a federal prosecutor and federal judges. The federal prosecutor performs, in the cases determined by law, all the functions of the prosecution service in criminal matters brought before appeal courts, assize courts, courts of first instance and police courts.

71. The College of Prosecutors General is made up of prosecutors general attached to the courts of appeal. The College decides on all the appropriate steps for the implementation and coordination of criminal policy and the functioning and coordination of the prosecution service. It is also responsible for providing the Minister of Justice with information and opinions, on its own initiative or at the Minister's request, on any matter relating to the tasks of the prosecution service.

**5. Communities**

72. Each of the community and regional entities has a parliament and a government.

73. Jurisdiction in the Flemish Region is exercised by the organs of the Flemish Community. The Flemish Region and Community therefore share a single set of institutions. Jurisdiction in the French Community, the German-speaking Community, the Walloon Region and the Brussels-Capital Region is exercised by their own organs.

**(a) Parliaments**

74. The Flemish Parliament has 124 members, of whom 118 are directly elected in the Flemish Region and 6 are directly elected by voters in the Brussels-Capital Region who do not cast their votes in favour of a list of candidates belonging to the French-language group for the elections to the Parliament of the Brussels-Capital Region.

75. The Parliament of the French Community has 94 members, of whom 75 are members of the Parliament of the Walloon Region and 19 are elected by the French-language group of the Parliament of the Brussels-Capital Region.

76. The Parliament of the German-speaking Community consists of 25 directly elected representatives.

77. The term of office of a member of a parliament is in general incompatible with that of a member of the House of Representatives or a senator, with the exception of senators who are appointed by a regional or community parliament.

78. Each parliament has limited “constitutive autonomy”, which means they can adopt, by a qualified majority, decrees dealing with issues relating to elections and to the composition and operation of the parliament and government.

79. Members of community and regional parliaments are elected for a term of five years. All of them are replaced after five years; the parliaments cannot be dissolved before the end of the parliamentary term.

**(b) Governments**

80. The members of community and regional governments are elected by their parliaments, but are not necessarily members of parliament. They are sworn in by the speaker of the parliament that elected them. Their political and judicial responsibilities are based on those of their federal counterparts.

**(c) Subject-matter jurisdiction of communities**

81. Such jurisdiction covers the following matters:

*Cultural matters*

82. The constituent body did not make a detailed list of the subjects that come under the heading of “cultural matters”. Lawmakers, in a law adopted by a qualified majority, identified 18 items in this area such as language protection, the arts, cultural heritage, support for the press, youth policy, leisure activities and intellectual, ethical, artistic and social pursuits.

*Education*

83. Responsibility for virtually all education, from nursery schools to universities, has been transferred to the communities.

84. In this area, federal jurisdiction is limited to establishing when compulsory schooling is to start and to finish, the minimum requirements for awarding qualifications and the pension scheme.

*Use of languages*

85. The French and Flemish communities are empowered to regulate the use of languages in three areas: administrative matters; education in establishments set up and subsidized by public authorities; employer-employee relations; and companies’ legal instruments and documents as required by laws and regulations.

86. The communities are not competent to regulate the use of languages for services that operate beyond the language region in which they are based, for the federal and international institutions designated by law whose activities cover more than one community and for communes with a special language regime.

87. The federal authorities are responsible for these services, institutions and communes. They are also responsible for the regulation of the use of languages in the bilingual Brussels-Capital Region and the German-speaking region.

88. Communities also exercise international functions within their jurisdiction.

89. Belgium is divided into four language regions:

(a) Dutch-speaking region, comprising the five Flemish provinces;

(b) French-speaking region, comprising the five Walloon provinces except for the communes of the German-speaking region that belong to the province of Liège;

- (c) Bilingual Brussels-Capital Region, comprising 19 communes;
- (d) German-speaking region.

90. The Constitution confers on the German-speaking Community the same powers as the two other communities, but they are determined by a simple-majority law.

91. It can also exercise certain powers drawn from the Walloon Region, on the basis of agreements reached between the governments of the two entities.

92. The legislature has granted special status, in the form of “linguistic facilities”, to communes with relatively large linguistic minorities bordering on the language regions and around Brussels.

*“Person-related matters”*

93. This term covers matters which, by their very nature, are closely related to the individual’s personal and social development.

94. A special law deals with the following person-related matters:

- (a) Health policy;
- (b) Social assistance, which covers family policy, welfare, the reception and integration of immigrants, policies on persons with disabilities, older persons and young people, prisoners’ welfare and first-line legal assistance;
- (c) Organization, functioning and tasks of the community justice centres and the service responsible for ensuring that electronic surveillance is implemented and monitored;
- (d) Family benefits, with the Walloon Region and the Common Community Commission exercising jurisdiction over the French-speaking and bilingual Brussels-Capital areas respectively;
- (e) Control of films for the purpose of restricting minors’ access to cinemas.

95. There are exceptions to such community jurisdiction, with responsibility for certain domains resting with the federal authorities.

96. In community matters, the communities also exercise jurisdiction in the area of scientific research and development cooperation.

## **6. Regions**

97. Belgium has three regions, which are distinct from the three communities: the Flemish Region, the Walloon Region and the Brussels-Capital Region. The powers and areas of jurisdiction are the same for the first two regions, but the Brussels-Capital Region has its own mechanisms, mainly because of the cohabitation of French and Dutch speakers within its territory and its status as the capital.

98. In Flanders, regional jurisdiction is exercised by the parliament and government of the Flemish Community.

99. The Walloon Region and the Brussels-Capital Region have their own parliaments and governments.

100. Regional jurisdiction extends to the following matters (with some exceptions made for certain matters that are dealt with at the federal level):

- (a) Land-use planning;
- (b) The environment and water policy;
- (c) Rural development and nature conservation;
- (d) Housing and inspections of accommodation that poses a risk to hygiene and public health and specific rules concerning the renting of residential property;
- (e) Agriculture;
- (f) Economy;

- (g) Energy policy;
- (h) Subordinate authorities;
- (i) Employment policy;<sup>1</sup>
- (j) Public works and transport;
- (k) Animal welfare;
- (l) Road safety policy;
- (m) Scientific research within their jurisdiction (as in the case of the communities), including research under international and supranational agreements and instruments and research in the field of development cooperation;
- (n) International affairs that come under their jurisdiction.

101. It should be recalled that, at the moment, the communities and regions only have the jurisdiction assigned to them, the scope of which is specified by a special law. Besides their fiscal powers, they have additional powers which allow them to:

- (a) Adopt measures concerning the infrastructure needed to exercise their jurisdiction;
- (b) Establish decentralized services, institutions and enterprises or acquire an interest in them;
- (c) Adopt decrees establishing as offences breaches of their provisions and, within certain limits, the penalties for such breaches;
- (d) Carry out public expropriations.

**(a) Special status of the Brussels-Capital Region**

102. The Brussels-Capital Region, which comprises 19 communes and which is the country's federal capital, exercises the same jurisdiction as the other two regions and has a parliament and a government. Since 1 July 2014, this region also has constitutive autonomy.

103. The organization of the parliament is based on the principle of two language groups exercising their own powers and sharing responsibilities in the various parliamentary bodies. The parliament has 89 members (72 from the French-language group and 17 from the Dutch-language group). Excluding the speaker, the two groups are equally represented in the government; two ministers are French-speaking and two Dutch-speaking. There are also three secretaries of state, at least one of whom is from the Dutch-language group.

104. Community jurisdiction in the bilingual Brussels-Capital Region is exercised by the French Community Commission, the Flemish Community Commission and the Joint Community Commission.

105. Community matters related to only the French or the Flemish communities are called "uni-communitarian" and are dealt with by the French or Flemish community commissions under the supervision of their respective communities.

106. Person-related matters which cannot be linked exclusively to one community (*matières bi-personnalisables*) are managed by the Common Community Commission, which is also responsible for community matters of common interest.

107. Cultural matters which are not related to a specific community constitute the "bicultural sector" and are managed by the federal authorities.

---

<sup>1</sup> Jurisdiction in the area of employment includes the placement of workers, development of back-to-work programmes, setting and application of rules regarding foreigners, monitoring of the availability of unemployed persons and the reduction of social security contributions for workers as target groups.

**(b) Cooperation within the Belgian federal system and conflict resolution**

108. The Constitution has established the principle of “federal loyalty”, which requires that neither the federal authority nor the federated entities should, in the exercise of their jurisdiction, upset the structural balance of the whole. An intricate network of mechanisms and procedures has been set up to preserve this balance, on which good relations between the many institutional entities in Belgium depend.

109. Three mechanisms have been set up to prevent, and if necessary resolve, conflicts of interest between the various entities. Such conflicts arise from political differences (when an initiative by one entity affects the interests of one or more other entities), not from violations of a rule of law. The mechanisms are as follows:

(a) Consultation Committee, which is made up of 12 members, 6 representing the federal government and 6 representing the community and regional governments; this organ, whose jurisdiction is established by law, takes decisions by consensus;

(b) Interministerial conferences, of which there are 19, offering a flexible forum for consultation and dialogue as well as a forum conducive to the negotiation of cooperation agreements;

(c) Cooperation agreements that State entities are authorized, and in some cases required, to conclude, which can relate to the establishment and joint management of common services and institutions, the joint exercise of jurisdiction or the development of joint initiatives; in the area of international relations, for example, such agreements have been concluded between the competent entities on the representation of Belgium in international organizations and the procedures for signing international treaties.

110. The Constitutional Court is empowered to settle conflicts of jurisdiction. The Court, which is made up of 12 members (6 French-speaking and 6 Dutch-speaking, half of whom have significant judicial, and the other half parliamentary, experience), hands down judgments when a legislative body violates the rules on the separation of powers or the articles of the Constitution relating to the principle of non-discrimination or the protection of philosophical and ideological minorities.

111. Matters can be referred to the Constitutional Court by the various governments and by speakers of parliament at the request of two thirds of their members. An appeal can also be lodged by any private individual who can prove a personal interest within six months of the official publication of the contested provision.

112. A special law has created new legislation pertaining to cooperative federalism: joint decrees. Such decrees involve legislation jointly adopted by the legislatures of several federated entities. The federal State is therefore not involved. The decrees constitute an alternative to cooperation agreements. Unlike cooperation agreements, which are negotiated and drafted only at the executive level, joint decrees, like any legislation, can be amended by the competent legislative assemblies.

## **II. General framework for the protection and promotion of human rights**

### **A. Acceptance of international human rights norms**

#### **1. Ratification of main international human rights instruments**

113. The following table shows the status of the main international human rights instruments.

<i>Main international human rights treaties</i>	<i>Date of ratification, accession or succession</i>	<i>Declarations/reservations</i>	<i>Comments</i>
International Convention on the Elimination of All Forms of Racial Discrimination	7 August 1975	Declaration (art. 4) <sup>2</sup>	
International Covenant on Economic, Social and Cultural Rights	21 April 1983	Declaration (art. 2) <sup>3</sup>	
Optional Protocol to the International Covenant on Economic, Social and Cultural Rights	20 May 2014		
International Covenant on Civil and Political Rights	21 April 1983	Reservation (arts. 10, 14, 19, 21 and 22) Interpretative declaration (arts. 20 and 23)	
Optional Protocol to the International Covenant on Civil and Political Rights	17 May 1994		
Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty	8 December 1998		
Convention on the Elimination of All Forms of Discrimination against Women	10 July 1985		
Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women	17 June 2004	Declaration	

<sup>2</sup> Reservations and declarations: In order to meet the requirements of article 4 of the Convention, the Kingdom of Belgium will take care to adapt its legislation to the obligations it has assumed in becoming a party to the said Convention. The Kingdom of Belgium nevertheless wishes to emphasize the importance which it attaches to the fact that article 4 of the Convention provides that the measures laid down in subparagraphs (a), (b), and (c) should be adopted with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of the Convention. The Kingdom of Belgium therefore considers that the obligations imposed by article 4 must be reconciled with the right to freedom of opinion and expression and the right to freedom of peaceful assembly and association. Those rights are proclaimed in articles 19 and 20 of the Universal Declaration of Human Rights and have been reaffirmed in articles 19 and 21 of the International Covenant on Civil and Political Rights. They have also been stated in article 5, subparagraph (d) (viii) and (ix) of the said Convention. The Kingdom of Belgium also wishes to emphasize the importance which it attaches to respect for the rights set forth in the European Convention for the Protection of Human Rights and Fundamental Freedoms, especially in articles 10 and 11 dealing respectively with freedom of opinion and expression and freedom of peaceful assembly and association.

<sup>3</sup> Interpretative declaration: With respect to article 2, paragraph 2, the Belgian Government interprets non-discrimination as to national origin as not necessarily implying an obligation on States automatically to guarantee to foreigners the same rights as to their nationals. The term should be understood to refer to the elimination of any arbitrary behaviour but not of differences in treatment based on objective and reasonable considerations, in conformity with the principles prevailing in democratic societies.

<i>Main international human rights treaties</i>	<i>Date of ratification, accession or succession</i>	<i>Declarations/reservations</i>	<i>Comments</i>
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	25 June 1999		
Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment			Signed, 2005
Convention on the Rights of the Child	16 December 1991	Declaration (arts. 2, 13, 15, 40 and 14)	
Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict	6 May 2002	Binding declaration under art. 3: 18 years	
Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography	17 March 2006	Declaration	
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families			
Convention on the Rights of Persons with Disabilities	2 July 2009	Declaration	
Optional Protocol to the Convention on the Rights of Persons with Disabilities	2 July 2009		
International Convention for the Protection of All Persons from Enforced Disappearance	2 June 2011		

## 2. Ratification of other United Nations human rights treaties

<i>Other United Nations human rights treaties</i>	<i>Date of ratification, accession or succession</i>
Convention on the Prevention and Punishment of the Crime of Genocide, 1948	5 September 1951
Slavery Convention, 1926, as amended 1955	23 September 1923
Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others, 1949	22 June 1965
Convention relating to the Status of Refugees, 1951	22 July 1953
Protocol relating to the Status of Refugees, 1967	8 April 1969
Convention relating to the Status of Stateless Persons, 1954	27 May 1960
Convention on the Reduction of Statelessness, 1961	No

<i>Other United Nations human rights treaties</i>	<i>Date of ratification, accession or succession</i>
Rome Statute of the International Criminal Court, 1998	28 June 2000
United Nations Convention against Transnational Organized Crime, 2000, and its Protocols against the Smuggling of Migrants by Land, Sea and Air, and to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children	11 August 2004

### 3. Conventions of the International Labour Organization

<i>Conventions of the International Labour Organization</i>	<i>Date of ratification, accession or succession</i>
Weekly Rest (Industry) Convention, 1921 (No. 14)	19 August 1926
Forced Labour Convention, 1930 (No. 29)	20 January 1944
Labour Inspection Convention, 1947 (No. 81)	5 April 1957
Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)	23 October 1951
Migration for Employment Convention (Revised), 1949 (No. 97)	27 July 1953
Right to Organise and Collective Bargaining Convention, 1949 (No. 98)	10 December 1953
Equal Remuneration Convention, 1951 (No. 100)	23 May 1952
Social Security (Minimum Standards) Convention, 1952 (No. 102)	26 November 1959
Abolition of Forced Labour Convention, 1957 (No. 105)	23 January 1961
Discrimination (Employment and Occupation) Convention, 1958 (No. 111)	23 March 1977
Employment Policy Convention, 1964 (No. 122)	8 July 1969
Labour Inspection (Agriculture) Convention, 1969 (No. 129)	8 September 1997
Holidays with Pay Convention (Revised), 1970 (No. 132)	2 June 2003
Minimum Age Convention, 1973 (No. 138)	19 April 1988
Labour Relations (Public Service) Convention, 1978 (No. 151)	21 May 1991
Occupational Safety and Health Convention, 1981 (No. 155)	28 February 2011
Worst Forms of Child Labour Convention, 1999 (No. 182)	8 May 2002

### 4. Conventions of the United Nations Educational, Scientific and Cultural Organization

<i>Conventions of the United Nations Educational, Scientific and Cultural Organization</i>	<i>Date of ratification, accession or succession</i>
Convention against Discrimination in Education, 1960	No



## 5. Conventions of the Hague Conference on Private International Law

<i>Conventions of the Hague Conference on Private International Law</i>	<i>Date of ratification, accession or succession</i>
Convention relating to the Settlement of the Conflicts between the Law of Nationality and the Law of Domicile, 1955	2 May 1962
Convention on the Law Applicable to Maintenance Obligations towards Children, 1956	26 August 1970
Convention concerning the Recognition and Enforcement of Decisions relating to Maintenance Obligations towards Children, 1958	19 November 1961
Convention on the Civil Aspects of International Child Abduction, 1980	9 February 1999
Convention on Protection of Children and Cooperation in respect of Intercountry Adoption, 1993	26 May 2005

## 6. Geneva Conventions and other treaties on international humanitarian law

<i>Geneva Conventions and other treaties on international humanitarian law</i>	<i>Date of ratification, accession or succession</i>
Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 1949	3 September 1952
Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, 1949	9 September 1952
Geneva Convention (III) relative to the Treatment of Prisoners of War, 1949	9 September 1952
Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War, 1949	9 September 1952
Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts (Protocol I), 1977	20 May 1986
Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of non-international armed conflicts (Protocol II), 1977	20 May 1986
Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction, 1987 (the Ottawa Convention)	4 September 1998

## 7. Ratification of regional human rights conventions

<i>Council of Europe conventions</i>	<i>Date of ratification, accession or succession</i>
Convention for the Protection of Human Rights and Fundamental Freedoms, 1950, and all of the Protocols thereto <sup>4</sup>	14 June 1955
Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, 1952	14 June 1955

<sup>4</sup> With the exception of 12 and 16.

<i>Council of Europe conventions</i>	<i>Date of ratification, accession or succession</i>
European Social Charter, 1961 (and the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints, 1995)	16 October 1990
European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 1987	23 July 1991
Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, 1981	28 May 1993
European Convention on the Non-Applicability of Statutory Limitation to Crimes against Humanity and War Crimes, 1974	26 March 2003
European Social Charter (revised), 1996	2 March 2004
European Convention on the Compensation of Victims of Violent Crimes, 1983	23 March 2004
Council of Europe Convention on Action against Trafficking in Human Beings, 2005	27 April 2009
Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, 2007	8 March 2013
Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (the Istanbul Convention), 2014	1 March 2016

## **B. Legal framework for the protection of human rights at the national level**

### **1. Constitutional provisions relating to human rights**

114. Title II of the Constitution of Belgium (arts. 8 to 32, “Belgians and their rights”) recognizes many fundamental civil, political, economic, social and cultural rights.

115. The rights guaranteed by the Constitution include:

- Equality before the law (art. 10) and enjoyment, without discrimination, of recognized rights and freedoms (art. 11)
- Equality between men and women, including in access to elected and public office (art. 11 bis)
- Personal freedom (art. 12)
- Right to be tried by a judge assigned by law (art. 13)
- Lawfulness of penalties (art. 14)
- Abolition of the death penalty (art. 14 bis)
- Inviolability of the home (art. 15)
- Respect for property rights (art. 16)
- Freedom of thought, conscience, religion and expression (arts. 19 and 20)
- Respect for the best interests of the child (art. 22 bis)
- Right to a life consistent with human dignity, which covers the right to work, social security, decent housing, the protection of a healthy environment and cultural and social fulfilment (art. 23)
- Freedom of education (art. 24)
- Freedom of the press (art. 25)

- Right to assemble “peacefully and without arms” (art. 26)
- Freedom of association (art. 27)
- Right to submit petitions to the political authorities (art. 28)
- Freedom from interference with correspondence (art. 29)
- Freedom in the use of languages (art. 30)
- Equal protection for nationals and foreign nationals (art. 191)

## 2. Incorporation of international human rights treaties into internal law

116. The legal effect of the provisions of an international treaty depends on their recognized place in the hierarchy of internal law in the event of conflict with national provisions. In Belgium, several attempts have been made, in the course of constitutional reviews, to incorporate into law a general principle designed to give treaties the same standing as the provisions of internal law. Thus far, all such attempts have failed. The issue was resolved by the Court of Cassation, in a decision of 27 May 1971 in the case of the public limited company Fromagerie Franco-Suisse Le Ski. The Court affirmed the primacy of the provisions of international treaties having direct effects in internal law over provisions of national origin, even subsequent ones. A Belgian court may therefore apply national provisions only if they are compatible with international treaties directly applicable in internal law.

## 3. Competent bodies in the area of human rights

117. In the exercise of their functions, all the Belgian authorities are competent to apply the human rights set forth in the international instruments ratified by Belgium and in the Belgian Constitution and Belgian laws.

118. Certain courts are responsible for verifying respect for human rights.

### (a) Constitutional Court

119. The Special Act of 9 March 2003, amending the Special Act of 6 January 1989 on the Court of Arbitration (*Moniteur belge*, 11 April 2003), modified the powers of the Court of Arbitration, which became the Constitutional Court following the constitutional reform of 7 May 2007.

120. The Constitutional Court rules on applications for annulment and on questions referred for a preliminary ruling, particularly those concerning the conformity of legislative provisions (laws, decrees and ordinances) with certain constitutional provisions.<sup>5</sup>

121. Whereas the provisions concerned were once limited to articles 10, 11 and 24 of the Constitution, the procedure for assessing conformity now extends to the following:

- The whole of title II (arts. 8 to 32, “Belgians and their rights”), covering numerous fundamental rights and freedoms: the principle of equality and non-discrimination (arts. 10 and 11); equality between men and women (art. 11 bis); personal freedom (art. 12); access to a court (art. 13); *nulla poena sine lege* (no penalty without a law) (art. 14); the abolition of the death penalty (art. 14 bis); inviolability of the home (art. 15); the conditions for an expropriation in the public interest (art. 16); the prohibition of the penalty of confiscation of property (art. 17); the abolition of civil death (art. 18); freedom of religion and the freedom to express one’s opinions (art. 19); the freedom not to be compelled to participate in a religion’s acts and ceremonies (art. 20); the separation of the Church and State (art. 21); respect for privacy (art. 22); the rights of the child (art. 22 bis); social rights (art. 23); freedom and equality in education (art. 24); freedom of the press (art. 25); freedom of

<sup>5</sup> The Constitutional Court is also competent to rule on the compliance of a law, decree or ordinance with norms established by or pursuant to the Constitution in order to determine the respective powers of the State, communities and regions, as well as on any conflicts between decrees or ordinances issued by different legislatures, provided that the conflict arises over their area of application.

peaceful assembly (art. 26); freedom of association (art. 27); the right to submit signed petitions to the public authorities (art. 28); inviolability of freedom from interference with correspondence (art. 29); linguistic freedom (art. 30); and the right to consult all administrative documents (art. 32)

- Article 143 (1) on the principle of federal loyalty
- Article 170, which guarantees the principle of lawful taxation
- Article 172, which provides that no privileges with respect to taxes can be established, and that no exemption or reduction of taxes can be established except by law
- Article 191, which guarantees that all foreigners in the territory of Belgium shall enjoy protection of their persons and property, except where otherwise provided by law

122. It should be noted that, in keeping with the consistent jurisprudence of the Constitutional Court, the fundamental rights and freedoms enshrined in the Constitution and the fundamental rights conferred by international treaties having a direct effect in Belgian law are upheld in Belgium without discrimination. The Constitutional Court indirectly monitors legislation in the light of international treaties.

**(b) Administrative courts**

123. The Council of State is both an advisory and a judicial body, at the intersection of the legislative, executive and judicial branches of government. It owes its existence mainly to the legislature's desire to provide all natural and legal persons with an effective remedy for administrative acts that are prejudicial to them.

124. Its main function is therefore to suspend and nullify administrative acts (individual acts and rules) that contravene the applicable rules of law. Its rulings on petitions take the form of decisions and ordinances.

125. However, affording protection against arbitrary administrative decisions is not the Council's sole purpose. It also acts as an advisory body on legislative and regulatory matters.

126. The Council of State is also a court of cassation that hears appeals against decisions of the lower administrative courts.

127. Another administrative court that should be mentioned is the Aliens Litigation Council. It was created by the Act of 15 September 2006 reforming the Council of State and began its work officially on 1 June 2007.

128. The Aliens Litigation Council hears appeals against individual decisions taken under the laws on entry to Belgian territory, temporary and permanent residence and removal of aliens, including decisions on asylum applications by the Office of the Commissioner General for Refugees and Stateless Persons. The Council has full jurisdiction over the cases brought before it, meaning that it can overturn or uphold a decision. It also rules on applications to nullify decisions other than those of the Office of the Commissioner-General for violations of essential points of procedure.

129. The decisions of the Aliens Litigation Council are subject to administrative review by the Council of State.

**(c) Justiciability of treaties in domestic courts**

130. When no provision of an international treaty expressly determines that all or some of its provisions are self-executing in contracting States, under Belgian law it is for the court to decide whether a treaty provision is self-executing. This is a question of interpretation, which the court must resolve in the light of, inter alia, articles 31 to 33 of the Vienna Convention on the Law of Treaties of 23 May 1969. In Belgium, it is generally recognized that an international provision produces direct effects when it is clear and comprehensive, when it requires the Belgian State either to refrain from action or to take some specific

action, and when it may be invoked as a source of law by individuals without the need for any additional domestic legislation.

131. To take an example, the International Covenant on Civil and Political Rights does not specify whether its provisions are directly applicable. Consequently, in accordance with the above principles, its direct applicability is a matter to be decided by the courts. Accordingly, the Court of Cassation, in a decision of 17 January 1984, affirmed that article 9 (2) of the Covenant produced direct effects in internal law for individuals. Since then, the Court has confirmed the direct applicability of other provisions of the Covenant.

#### **4. Remedies available to the injured party**

##### **(a) Possibilities for victims of crime to exercise their rights**

132. Article 4 of the preliminary title of the Code of Criminal Procedure gives the victim of a crime the option of bringing an action before either a criminal court or a civil court. The choice is entirely up to the victim. A civil action is quite different from a public prosecution: the latter can be brought even if the offence caused no harm or if the victim is not claiming damages; a civil action can be brought even if no prosecution is initiated.

133. A civil action can theoretically be brought before a criminal court, provided that a public prosecution is brought before the same judge at the same time. In criminal cases, a civil action is ancillary to the public prosecution.

##### **(b) Criminal proceedings**

134. Victims of crime can intervene in criminal proceedings in various ways. See below for a brief summary.

##### **(c) Status of injured party**

135. A person can obtain the status of injured party by submitting a completed standard form during police questioning, submitting the form to a police station or the secretariat of the prosecutor's office at a later stage or sending the form to the secretariat of the prosecutor's office by registered mail (art. 5 bis of the preliminary title of the Code of Criminal Procedure). The injured party has the right to be informed if proceedings are discontinued, and why, or if an investigation is opened and a date set for a hearing before an investigating judge or trial court. The injured party may also submit any documents the party feels would be useful for the case file. The party also has the right to seek authorization to consult the file and obtain a copy. If the case is at the preliminary investigation stage, the application can be made to the Crown prosecutor. If the case is at the investigation stage, it may be addressed to the investigating judge. At the end of the investigation stage, when the case is before the investigating court, the injured party is notified that the file is at his or her disposal with the clerk of the court (for consultation or copying).

136. If the case is brought before a trial court, simply submitting a complaint or obtaining the status of injured party does not guarantee the award of damages.

137. The injured party has to file a civil action with the trial court ("sue for damages in criminal proceedings"); or the party may choose to bring an action only in a civil court (see above).

##### **(d) Damages and civil actions**

138. Victims who sue for damages in criminal proceedings enjoy certain rights:

- On certain conditions and at specific times, they may ask the investigating judge to show them the prosecution file or, more specifically, the part of it that deals with the acts that led them to sue for damages
- Also on certain conditions, they may ask the investigating judge to carry out further investigations

139. If the trial court declares the civil action admissible and well founded, the plaintiff also enjoys a number of rights in the sentence-enforcement phase.

140. Victims can sue for damages in various ways and at various times.

141. They can make a simple statement before an investigating judge. If no investigation has been initiated, they must pay a deposit when doing this. If an investigation is under way, the plaintiffs can join the criminal prosecution. They can also file a civil action at the end of the investigation stage, when the case is before an investigating judge or during a hearing before a trial court, but not if the case has already been heard on appeal.

**(e) Private prosecution**

142. In the case of lesser offences (*contraventions* and *délits*), the victim may initiate a private prosecution. To do so, the victim must have the perpetrator summoned by a bailiff and must file a civil action at the hearing. A private prosecution may not be brought against a minor.

**(f) Remedies**

143. Remedies are available. The victim can lodge an appeal if:

- The trial court rejects the claim for compensation
- The victim considers the award to be too low

144. However, the victim may not appeal against the sentence handed down; only the public prosecutor can do this. An appeal means the case will be re-examined by a higher court.

**(g) Civil proceedings**

145. Victims may decide to bring a purely civil action. In this case, they must produce evidence of the offence committed and the civil court must wait until proceedings in the trial court have been completed.

**(h) Recognition of a regional human rights court**

146. Belgium has signed and ratified the European Convention on Human Rights, which established the European Court of Human Rights to oversee compliance with the Convention by the States that have ratified it. The Court was reformed by Protocol No. 11 and again by Protocol No. 14, which aims to address the growing number of individual applications. On 4 April 2018, Belgium ratified Protocol No. 15, the main aim of which is to ensure the Court's smooth functioning in keeping with previous reforms. In addition, Belgium is in the process of signing Protocol No. 16, which will allow the highest courts to request the Court to give advisory opinions on questions of principle relating to the interpretation or application of the rights and freedoms defined in the Convention or the protocols thereto.

147. The judgments of the European Court of Human Rights that have gone against Belgium have led to several changes in Belgian legislation. For example, the Court found that the refusal of the Assize Court to put case-specific questions to the jury concerning the existence of aggravating circumstances was a violation of article 6 of the Convention, which guarantees a fair hearing.<sup>6</sup> Since then, not only does the Assize Court put case-specific questions to the jury concerning the existence of aggravating circumstances, but Belgium has also amended its Code of Criminal Procedure to authorize the reopening of criminal proceedings in the event of a violation. Another example relates to the failure to notify a person of the types of remedy available against a conviction in absentia, which was also considered by the European Court of Human Rights to be a violation of article 6 of the

---

<sup>6</sup> European Court of Human Rights, judgment in the case of *Göktepe v. Belgium*, 2 June 2005.

Convention.<sup>7</sup> A circular was adopted to ensure that the person concerned is informed of the form and deadline of the procedure for challenging a conviction in absentia once they are notified of the court's decision. In a more recent example, the Court considered that the difference in treatment that derived directly from the wording of article 668 of the Judicial Code, which granted legal aid to aliens in an irregular situation only as part of the procedures provided for under Act of 15 December 1980 on the entry, temporary and permanent residence and removal of aliens, thereby excluding any other procedure, including civil actions to challenge paternity, was in violation of article 6 (1) read together with article 14. This provision was amended by article 17 of Act of 6 July 2016 amending the Judicial Code with respect to legal aid.

## **C. Framework within which human rights are promoted at the national level**

### **1. National and regional parliaments and assemblies**

148. Belgian parliamentarians at all levels of government have an important role to play in the promotion of human rights. Various options, which serve different purposes, are available to them in this regard:

(a) Legislating to protect children: the aim is to offer children the best possible protection of their rights by amending or adopting new legislation to realize these rights. A large number of laws (or decrees or ordinances in the case of the regions and communities) and decisions are adopted by the parliaments, for example in the area of children's rights in the paediatric or psychiatric wards of hospitals or in many other areas where the principles of the Convention on the Rights of the Child are applicable;

(b) Adopting other legislative measures within their power;

(c) Monitoring government action: parliamentarians raise many oral and written questions, as well as submitting parliamentary questions, and keep a close watch on the action of governments in the field of human rights. Ministers are regularly questioned in parliament on, for example, action plans for children's rights and other cross-cutting issues, the country's periodic reports to treaty-monitoring bodies, and reports on the activities of the ombudspersons for human rights and children's rights;

(d) Monitoring the use of resources: parliamentarians are encouraged to evaluate the allocation of resources to policies that affect the exercise of human rights. There is undoubtedly a need to improve this aspect of parliamentary work, although the budget for some children's rights action plans is already clearly indicated;

(e) Raising public awareness: this includes organizing events and public debates. In the area of children's rights, this is done at some levels of government by, among other things, establishing children's or students' parliaments and taking account of their recommendations in parliamentary work. Each legislature has its own projects for raising awareness among children and adults. Parliamentarians also set up ad hoc working groups on children's rights, and there are occasional interparliamentary meetings with civil society.

### **2. National human rights institutions**

149. Although a national human rights institution has not yet been set up, there are several mechanisms for dealing with human rights issues, the main ones being the following:

(a) Unia, the Inter-federal Centre for Equal Opportunities and Combating Racism and Discrimination, was created by the Act of 15 February 1993 and was

<sup>7</sup> European Court of Human Rights, judgment in the case of *Da Luz Domingues Ferreira v. Belgium*, 24 May 2007.

designated as inter-federal in March 2014.<sup>8</sup> It is also mandated to perform any task set for it by the public authorities. In this context, it was designated to perform the duties set out in article 33 (2) of the Convention on the Rights of Persons with Disabilities. It has been awarded B status by the Subcommittee on Accreditation of the Global Alliance of National Human Rights Institutions;

(b) Myria, the Federal Migration Centre, analyses migration, defends the rights of foreign nationals and combats human trafficking and smuggling. Myria promotes evidence-based policy and respect for human rights;

(c) The Institute for Equality between Women and Men is a federal public institution responsible for guaranteeing and promoting equality between men and women and combating all forms of discrimination and inequality based on sex (including pregnancy and maternity), sex changes, gender identity and gender expression. It provides aid to victims and can bring legal proceedings in disputes concerning the aforementioned grounds of discrimination.<sup>9</sup> It submits recommendations to the public authorities and carries out studies and research projects in the area of gender equality;<sup>10</sup>

(d) The Federal Ombudsperson and the ombudspersons in the federated entities, who are answerable to their respective parliaments, handle complaints about the actions and functioning of the administrative authorities within their jurisdiction. They are also competent to receive complaints about possible human rights violations by the administrative authorities;

(e) The Standing Committee for Police Monitoring (Committee P) is the external body responsible for overseeing the overall functioning of the police, inspection and monitoring services and the exercise of police functions by all public servants concerned. It reports to Parliament;

(f) The Data Protection Authority, which took over from the Commission on Privacy Protection on 25 May 2018, is responsible for ensuring respect for the fundamental principles of personal data protection. The Authority monitors the compliance of personal data processing with applicable regulation and informs citizens of their rights in that regard. It also acts as an intermediary in the context of requests relating to personal data processing, handles complaints, conducts monitoring and can impose administrative penalties for breaches of the General Data Protection Regulation of the European Union;<sup>11</sup>

(g) The Interministerial Commission on Humanitarian Law coordinates the implementation of international humanitarian law instruments;

(h) The National Commission on the Rights of the Child, established in 2005 and operational since 2007, is a consultation platform that brings together federal, community and regional authorities as well as children's rights associations. Its main task is to draft and

---

<sup>8</sup> Cooperation agreement of 12 June 2013 between the federal authority, the regions and the communities on the creation of an inter-federal centre for equal opportunities and combating racism and discrimination to serve as a common institution within the meaning of article 92 bis of the Special Act of 8 August 1980 on institutional reforms.

<sup>9</sup> With regard to aid for victims, the Institute has competence at the federal level and in the federated entities with the exception of the Flemish Community.

<sup>10</sup> The French Community, in 2008, the Walloon Region, in 2009, the French Community Commission, in 2013, and the German-speaking Community and the Brussels-Capital Region, in 2016, concluded cooperation agreements with the Institute for Equality between Women and Men, granting it the power to take on individual cases of gender-based discrimination, inform and raise awareness among the public, provide staff training and issue opinions and recommendations to community and regional authorities. Since 2014, the Institute has also had a partnership agreement with Actiris (the Brussels Regional Employment Office). The Genderkamer under the Flemish Mediation Service is responsible for guaranteeing and promoting equality between women and men and combating discrimination and inequality based on gender (gender, including sex, gender identity and gender expression) within the jurisdictions of the Flemish Region and the Flemish Community. It submits recommendations to the public authorities, organizes support for associations working in this area and can bring legal proceedings in disputes concerning equality between men and women.

<sup>11</sup> The Commission on Privacy Protection previously had an advisory rather than a monitoring role.



present the five-yearly report on the implementation of the Convention on the Rights of the Child and to help draw up other documents on children's rights that Belgium has to submit to international bodies. It examines and oversees the implementation of the recommendations of the Committee on the Rights of the Child and can make proposals and non-binding recommendations to the relevant authorities;<sup>12</sup>

(i) Independent institutions in the field of children's rights at the regional level: the Office of the Commissioner for Children's Rights at the Flemish Parliament<sup>13</sup> and the Delegate General for Children's Rights under the government of the French Community receive and process complaints and can make recommendations relating to their mandate;

(j) The Central Supervisory Council for Prisons and the supervisory commission within each prison independently monitor prisons and the treatment of detainees. These monitoring bodies were transferred to Parliament by the Act of 25 December 2016 (which entered into force on 9 January 2017) in order to strengthen their independence. Nevertheless, no royal implementing decree has yet been passed to render applicable the provisions of this law on prison oversight; oversight thus continues to be governed by Royal Decree of 21 May 1965 on the general regulation of prison establishments;

(k) In addition to these mechanisms, the bodies that either partially or fully discharge a mandate to protect fundamental freedoms concluded a cooperation agreement on 13 January 2015 in view of the importance of effective coordination among them. This common consultation platform (the Human Rights Platform<sup>14</sup>) offers an opportunity to exchange practices and methodologies and encourage cooperation between institutions, including the ombudspersons, with mandates at the federal, inter-federal and regional levels.

### 3. Dissemination of human rights instruments

150. The official texts dealing with the implementation of human rights at all levels of government are translated into the country's official languages and transmitted to the various parliaments and, in various ways, to the authorities, public services and professionals responsible for implementing human rights in practice. The official texts are also made available to the general public on the websites of the above-mentioned institutions. In October 2016, a first annual report on the cases against Belgium brought before the European Court of Human Rights, which also deals with the enforcement of its judgments, was submitted to the Federal Parliament. It was discussed in the Senate in March 2017. The second annual report was submitted to the Chamber and the Senate on 4 May 2018.

151. Some public authorities have taken two further steps: funding the publication and distribution costs of alternative reports or studies on human rights by NGOs; and having official texts or United Nations recommendations on human rights translated into a language and form accessible to children or adults who have difficulty reading or who have special requirements.

<sup>12</sup> Act of 1 May 2006 adopting the cooperation agreement between the State, the Flemish Community, the Flemish Region, the French Community, the Walloon Region, the German-speaking Community, the Brussels-Capital Region, the Joint Community Commission and the French Community Commission, establishing the National Commission on the Rights of the Child, of 19 September 2005 (*Moniteur belge*, 10 November 2006).

<sup>13</sup> Decree on the establishment of the Office of the Commissioner for Children's Rights and the creation of the post of Commissioner for Children's Rights (*Moniteur belge*, 7 October 1997).

<sup>14</sup> The members of this platform are Committee P, the Data Protection Authority, Unia, the Flemish Gender Ombudsperson, the Service for the Fight against Poverty, Insecurity and Social Exclusion, the Federal Ombudsperson, the Belgian Standing Intelligence Agencies Review Committee, Myria, the Higher Council of Justice, the Ombudsperson for the German-speaking Community, the Federal Ombudspersons' Association, the Institute for Equality between Women and Men, the National Commission on the Rights of the Child, the Central Supervisory Council for Prisons, the Delegate-General for Children's Rights, the Office of the Commissioner for Children's Rights and the Ombudsperson for Wallonia and the Wallonia-Brussels Federation.

**4. Raising human rights awareness among public officials and other professionals**

152. Awareness-raising and training in human rights are carried out differently by different public authorities. Some professionals receive both initial training and regular advanced in-service training to expand and test their competence in human rights. This group includes teachers, lawyers and judges who are specialized in young people and the law at certain levels of government and supervisors of homework clubs and holiday camps at other levels. More needs to be done, however, to build on, systematize and further develop such training for the appropriate occupational groups.

**5. Promotion of human rights awareness through educational programmes and government-sponsored public information**

153. Competence in human rights is an educational goal, a competence that is required and tested as such at certain levels of government; for example, the Flemish Community has issued a decree setting goals for courses on children's rights and active citizenship. Moreover, the communities devote a good deal of attention to passing on the memory of crimes of genocide to the next generation in schools.

154. Much more progress is expected to be made in future as a result of the greater focus in recent years on information, education and training in the field of human rights and, especially, children's rights. As a result, these elements are now priorities in various national, regional or community action plans.

**6. Promotion of human rights awareness through the mass media**

155. The media are very active in the area of human rights information and education and regularly work with institutions and associations to publicize human rights principles. The media are completely independent in this regard, although they may be financed or subsidized under European, federal, regional or community policies.

**7. Role of civil society, including non-governmental organizations**

156. The role of civil society in the promotion of human rights is recognized and supported at all levels of government through the provision of human or financial resources.

157. Civil society has a prime role in the decision-making process as regards the realization of fundamental rights in Belgium, as it is an official partner of the various public authorities in the monitoring, follow-up and evaluation mechanisms for the observance, protection and realization of fundamental rights. Civil society organizations are involved before, during and after decisions by the public authorities on policies to promote human rights. Civil society is consulted in the preparation of each periodic report.

158. For some specific rights, there are coordinating organizations that bring NGOs together. For example, for children's rights, there is the Kinderrechtencoalitie (Children's Rights Coalition) and Coordination des ONGs pour les droits de l'enfant (representative committee of NGOs for the rights of the child known by its French acronym CODE); the Conseil des Femmes Francophones de Belgique (Council of French-speaking Women in Belgium) and the Nederlanstalige Vrouwenraad (Dutch-speaking Women's Council) are the women's umbrella organizations in Belgium. Coordination et initiatives pour réfugiés et étrangers (representative committee acting on behalf of refugees and foreign nationals known by its French acronym CIRÉ) coordinates the work of associations in Belgium that provide reception, settlement and integration services for asylum seekers, refugees and aliens and ensures that policies are in conformity with the principles of the Universal Declaration of Human Rights.

159. There is also a whole range of multidisciplinary bodies (e.g. high councils and advisory committees) comprising government representatives, academics and representatives of civil society, whose aim is to liaise with and inform government institutions about human rights issues.

## 8. Budget allocations and trends

160. Given the complexity of the institutional arrangements in Belgium, it is not as yet possible to determine how much of the budget is allocated to fulfilling the country's human rights obligations.

## 9. Development cooperation and assistance

161. Belgian development cooperation is delivered within the framework of the Sustainable Development Goals, with the focus on eradicating poverty, protecting the planet and ensuring prosperity for all. Belgium believes that achieving the Goals is directly related to the promotion and observance of human rights in partner countries. Almost all the work done by the Directorate-General for Development Cooperation under the Federal Public Service for Foreign Affairs contributes directly or indirectly to the realization of social and economic rights.

162. Every year, this development agency subsidizes activities specifically linked to human rights in developing countries, such as support for elections or the justice system.

163. Through multilateral cooperation, the development agency supports and funds organizations working to promote human rights, including the Office of the United Nations High Commissioner for Human Rights, the United Nations Children's Fund (UNICEF) (rights of the child), UN-Women (gender equality and women's empowerment) and the United Nations Population Fund (sexual and reproductive rights).

164. In the context of bilateral cooperation, the Belgian development agency is actively involved in various ways in the promotion and protection of human rights in 14 partner countries. Human rights are the focus of many initiatives and are approached within the framework of a political dialogue at both the European and the bilateral level. The new cooperation target programmes with partner countries systematically include a clause committing the two countries to promote good governance, human rights, democracy and the rule of law. In addition, Belgium integrates a rights-based approach into its interventions on the ground.

165. The Belgian development agency also supports human rights NGOs and civil society organizations. It does this either by providing direct support to civil society organizations in partner countries or by supporting the programmes of Belgian organizations (e.g. NGOs or trade unions) that are helping their counterparts to promote awareness of and respect for human rights in their country. It also indirectly subsidizes a number of initiatives to raise public awareness in Belgium of human rights in developing countries.

166. Equality between men and women, women's empowerment and children's rights are treated as cross-cutting issues in the Development Cooperation Act of 2013 and thus in the Belgian development agency's work. In particular, Belgium has for several years been funding a programme to combat serious violations of children's rights, including sexual violence in armed conflicts. With regard to women and girls, the Belgian development agency focuses on women's health and sexual and reproductive rights, women and peace and security, including the fight to stop sexual violence against women, girls' education and training for women and the economic empowerment of women from rural areas. Since 2017, Belgium has been involved in the "She Decides" initiative launched by the cooperation ministers of the Netherlands and Belgium as well as by Denmark and Sweden.

## D. Reporting process at the national level

167. In Belgium, the focal point for the preparation and submission of reports to the United Nations is the Federal Public Service for Foreign Affairs. This institution also makes the practical arrangements for drafting these reports.

168. The first stage in drafting the reports is to list the issues to be dealt with in the report and to determine which level of government, ministry or body is responsible for each of them. A steering agency – the body considered best placed to have an overview of the issue

– is then designated for each issue. The steering agency (or agencies) is responsible for drafting a contribution on the issue concerned for inclusion in the final report. Such lead agencies are designated by consensus at a coordination meeting.

169. Two important remarks should be made at this point:

(a) In a federal country like Belgium, the levels of government, ministries or bodies responsible for, or with a general interest in, a particular issue are many and varied. Coordination is therefore of the utmost importance. The coordination process must cover a broad range of participants and must be neutral, and so capable of producing a synthesis of different points of view;

(b) The only bodies or agencies that are entitled to speak on behalf of the Government are those that report to the executive, at either the federal or the federate level. Representative or advisory bodies have no authority to speak for or on behalf of the government, although their contributions to the process are welcome. Such bodies can, of course, express their views and transmit them to the lead agency, but drafts and final reports are prepared by bodies attached to the executive.

170. The lead agencies then prepare their draft contributions. At this stage, they collect any information they consider relevant. The other levels of government, bodies or agencies are free to send them any further information they think would be useful.

171. The draft contributions are then compiled and discussed at the meetings of a coordinating body called “Coormulti”, which is based in the Federal Public Service for Foreign Affairs. At this stage, the relevant levels of government, agencies or bodies may send further comments or suggestions to the lead agency in charge of the draft.

172. If necessary, the contributions are revised and the final draft then passes through a further coordination process for final approval.

173. Civil society is consulted as a matter of course in the preparation of reports on human rights. Umbrella organizations are the civil society organizations of choice but are not the only ones consulted.

174. When commitments are being undertaken, the final report may be subject to the political approval of the federal or federated governments, so that it will carry greater political weight. The coordination process involves the relevant governments and ministries, which ensures that the report concerned has political backing.

175. The preparation of the periodic report of Belgium to the Committee on the Rights of the Child is coordinated entirely by the National Commission on the Rights of the Child, which represents a wide range of civil society organizations.

176. The principles and procedures listed above were applied in the drafting of this core document.

## **E. Other related human rights information**

177. The human rights policy pursued by Belgium is part of a wider European Union drive to promote and protect human rights. Human rights, democracy and the rule of law are core values of the European Union, enshrined in its founding treaty and reinforced by the Charter of Fundamental Rights of the European Union. Member States and candidate countries must respect human rights. European Union human rights policy stresses civil, political, economic, social and cultural rights and aims to promote women’s and children’s rights and the rights of minorities and displaced persons. The European Union is a party to the Convention on the Rights of Persons with Disabilities.

### **III. Information on non-discrimination and equality and effective remedies**

#### **A. Non-discrimination and equality**

178. Belgium has been harmonizing anti-discrimination legislation at the federal and federate levels. The various legislatures have adopted similar provisions, which makes them easier to follow despite the large number of laws in this area:

- Act of 30 July 1981 on punishing certain acts based on racism and xenophobia, as amended by the Act of 10 May 2007
- Act of 4 August 1996 on employees' welfare while at work
- Flemish Community Decree of 8 May 2002 (amended in 2004, 2007 and 2009) on proportional participation in the labour market
- German-speaking Community Decree of 17 May 2004 (amended in 2007) on guaranteed treatment in the labour market
- French Community Commission Decree of 22 March 2007 on equal treatment for persons in vocational training
- Act of 10 May 2007 on combating certain forms of discrimination
- Act of 10 May 2007 on combating discrimination between women and men (amended in 2014)
- Flemish Community Decree of 10 July 2008 on the establishment of a framework for equal opportunities and equal treatment in the Flemish Region
- Brussels-Capital Region Ordinance of 4 September 2008 on promoting diversity and combating discrimination in the civil service
- Brussels-Capital Region Ordinance of 4 September 2008 on combating discrimination and ensuring equal treatment in the area of employment
- Walloon Region Decree of 6 November 2008 (as amended by the decree of 19 March 2009, amended by the decree of 12 January 2012) on combating certain forms of discrimination
- French Community Decree of 12 December 2008 (amended in 2015) on combating certain forms of discrimination
- Brussels-Capital Region Ordinance of 19 March 2009 amending the Brussels Housing Code
- French Community Commission Decree of 3 July 2010 on combating certain forms of discrimination and implementing the principle of equal treatment
- German-speaking Community Decree of 19 March 2012 (amended in 2016) on combating certain forms of discrimination
- The Act on combating sexism in public spaces, amending the Act of 10 May 2007 on combating discrimination between women and men in order to criminalize discrimination
- Brussels-Capital Region Ordinance of 5 October 2017 on combating certain forms of discrimination and promoting equality of treatment
- Ordinance of 16 November 2017 on combating employment discrimination in the Brussels-Capital Region (situation testing)
- Miscellaneous Employment Provisions Act of 15 January 2018 (situation testing)

179. Criteria for protection include presumed race, skin colour, parentage, national or ethnic origin, nationality, age, sex, gender identity, gender expression, sexual orientation, civil status, birth, wealth, religious or philosophical beliefs, political beliefs, language, state of health, disability, physical or genetic characteristics and social origin. Pursuant to a

decision of the Constitutional Court, trade union beliefs was added to this set of criteria by the Act of 10 May 2007, a Flemish decree and a French Community decree. Sexism has been a criminal offence since 2014.<sup>15</sup>

180. Prohibited behaviour includes direct discrimination, indirect discrimination, instructing somebody to discriminate (*injonction de discriminer*), harassment, denial of reasonable accommodation for persons with disabilities and incitement to hatred, violence, discrimination or segregation. An accountability mechanism is provided for, with requirements that vary depending on the criterion for protection and the area of application. The Anti-Racism Act of 30 July 1981 covers specific criminal offences. In 2013, lawmakers introduced a possible or mandatory aggravation of the penalty for a number of offences where one of the motives is hatred, contempt or hostility towards a person on the grounds of one of the criteria for protection.

181. A circular relating to policy on the investigation and prosecution of discrimination and hate crimes (No. COL 12/2013) was adopted in June 2013 with a view to standardizing the working methods of the judicial authorities and the police, thus facilitating the investigation and prosecution of discrimination and hate crimes. Lead prosecutors on matters involving discrimination and hate crimes have been appointed in each judicial district. The circular also provides for the appointment of lead police officials.

182. The areas of application include employment, goods and services, social security and social protection, references in official documents or records and access to any economic, social, cultural or political activity open to the general public. In the French Community, the scope also includes employment relations, education, health policy, welfare benefits, and membership of or involvement in a private professional organization that receives funding from the French Community. The scope of the Flemish decree on equality of opportunities, according to article 20, covers access to salaried or self-employed work or a profession, information on career options, vocational training, outplacement and back-to-work programmes, health care, education, public goods and services (including housing), welfare benefits and economic, social, cultural or political activity outside the private sphere.

183. With respect to sanctions, in civil cases, an injunction may be obtained, ordering an end to the discrimination (with a penalty for failure to comply), awarding damages to the victim, declaring a discriminatory provision null and void, or publishing or posting the judgment. In criminal cases, fines or prison sentences may be imposed. Persons may also be stripped of their civil and political rights.

184. Through protection mechanisms, victims and witnesses may be protected against possible reprisals, both at work and elsewhere, provided that certain formal requirements are met.

185. The right to take legal action has been afforded to associations defending human rights or combating discrimination, representative or professional organizations (trade unions, etc.), Unia and the Institute for Equality between Women and Men.

186. In 2017, the Federal Agency for Equality of Opportunity, established in 2016, was designated the sole contact point for hate crimes for the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe.

187. In 2012, following the adoption of anti-discrimination legislation, a cooperation agreement was concluded between the various federated entities and Unia. Fourteen contact points (*meldpunten*) were set up in the main Flemish towns and 4 were set up in the Walloon Region to give every citizen easy access to information and support if they wish to report discrimination or racism. An agreement was concluded between territorial employment pact partners and Unia within the framework of employment-related ordinances in the Brussels-Capital Region. The idea is to formalize the arrangements for cooperation in efforts to combat discrimination and promote diversity policies. Meanwhile,

---

<sup>15</sup> The Act of 22 May 2014 on combating sexism in public spaces and amending the Act of 10 May 2007 on combating discrimination between women and men in order to criminalize discrimination.

the German-speaking Community has designated the non-profit organization Prisma and the Economic and Social Council to be responsible for implementing the decree that guarantees equal treatment in the employment market.

188. The French Community, in 2008, the Walloon Region, in 2009, the French Community Commission, in 2013, and the German-speaking Community and the Brussels-Capital Region, in 2016, concluded cooperation agreements with the Institute for Equality between Women and Men, granting it the power to address individual cases of gender-based discrimination, to inform and raise awareness among the public, to organize in-service training, and to issue opinions and recommendations to community and regional authorities. Since 2014, the Institute has also been linked to Actiris (the Brussels-Capital Region employment office) through a partnership agreement.

189. Affirmative action consists in a set of special measures to promote, on an appropriate and temporary basis, the advancement of groups or individuals protected under the relevant conventions. Such action is provided for under article 10 (3) of the Act of 30 July 1981 on punishing certain acts based on racism or xenophobia, article 10 of the Act of 10 May 2007 on combating certain forms of discrimination and article 16 of the Act of 10 May 2007 on combating discrimination between men and women.

## **B. Combating racism, extremism, xenophobia and anti-Semitism**

### **(a) Combating racism, xenophobia and extremism**

190. In 2004, following the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance in Durban in 2001, the federal government adopted a national action plan on combating racism, racial discrimination, xenophobia and related intolerance. Belgium reaffirmed its commitment in 2016, accepting the recommendations on the adoption of a national action plan on combating racism, discrimination, xenophobia and related intolerance issued in the context of the universal periodic review of Belgium.

### **(b) Combating anti-Semitism**

191. The Belgian authorities are aware of the problem of anti-Semitism and have taken steps to eliminate it, including by setting up a monitoring body. On 26 April 2004, an anti-Semitism watchdog was set up, consisting of representatives of government and the Jewish community and presided over and serviced by Unia. The watchdog has been non-operational since 2013, but there are plans to reactivate it.

192. The Democracy or Barbarism Unit of the Ministry of the French Community is currently finalizing a publication entitled *Addressing Anti-Semitism through Education and Knowledge*, which will be circulated to all primary and secondary schools and college teaching departments in the French Community. The publication, which is intended for teachers and the voluntary sector, is divided into two parts: the first part contains summaries of the history of anti-Semitism and anti-Semitism today, written by experts; while the second part is pedagogical and offers guidance on addressing the issue in practical terms.

### **(c) National Roma integration strategy**

193. In February 2012, Belgium submitted its national Roma integration strategy to the European Commission. The strategy was the fruit of a partnership between federated entities, the federal authorities and representatives of civil society. Belgium established a national focal point for the Roma community, in the form of an intergovernmental working group, to follow up on and coordinate the strategy. The working methods and composition of the focal point were assessed in 2015, resulting in its transformation into an administrative working group comprising representatives of the federal government and the regional authorities. The national focal point for the Roma is responsible for overseeing intersectoral coordination in the preparation and implementation of the national Roma integration strategy.

194. The national focal point submitted a proposal for the establishment of a Belgian national Roma platform to the Directorate General for Justice of the European Commission. The platform, launched in May 2016 with the Commission's support, is designed to facilitate interactive dialogue between stakeholders and Roma communities in Belgium. Each dialogue session centres on the promotion of the socioeconomic integration of the Roma in a specific area, with particular emphasis on combating discrimination in the areas of employment, education, housing and health care. Combating discrimination is the common thread of the consultation process. The assessment of the platform's pilot year highlighted a need to afford greater attention to gender in the integration process. More needs to be done to provide a safe environment for participation. This issue remains overlooked by a number of organizations and institutions working in the field, which is why the platform has begun raising awareness through interactive dialogue. Identifying best practices for Roma integration is another common thread in the interactive process.

### **C. Rights of lesbian, gay, bisexual and transgender persons in Belgium**

195. Towards the end of the 1980s, in the wake of the introduction of same-sex civil partnerships in Denmark in 1989, there was a real debate on the legal arrangements for cohabiting couples. The idea at the time was to offer same-sex couples recognition of their relationship so that they enjoyed the same protection as married heterosexual couples. The so-called AIDS decade threw into sharp relief the insecure legal and social status of same-sex couples, including problems with inheritance rights, recognition of their relationship by family and friends, and so on. In Belgium, the adoption of a law on legal cohabitation on 23 November 1998 was a first step towards legal equality between homosexual and heterosexual couples, and the succession-related effects of legal cohabitation were settled in 2007.

196. The introduction of same-sex civil marriages in 2003 marked the beginning of true equality of rights as regards inheritance rights, divorce proceedings, joint income-tax returns, and so on. There was, however, one remaining difference. When a woman in a heterosexual couple gives birth, her husband is assumed to be the father, but this was not the case with a homosexual couple. If a married lesbian gave birth, her female spouse was not considered to be the child's other parent. Nevertheless, Belgium was the second country in the world to recognize homosexual couples' right to marry. Obviously, given that same-sex marriages are not recognized in many States, it is not unusual for such couples to face problems in having their marriage recognized abroad.

197. In 2003, European Council Directive 2000/78/EC on anti-discrimination was incorporated into Belgian law at the federal and federate levels. This was another step towards equality; in fact, Belgium took the opportunity to introduce a broader framework than the one required by Europe. In the event, discrimination was banned not only in the field of employment but also in access to goods and services. The country's anti-discrimination legislation provided tools under both criminal and civil law for fighting discrimination and hate crimes related to, among other things, sexual orientation.

198. A major step forward for same-sex couples' rights was taken when the right to adopt was recognized in May 2006. Same-sex couples' right to adopt raises the issue of the recognition of many de facto situations, such as the insemination of one of the partners in a relationship.

199. Since 1 January 2015, Belgian co-mothers have been able to establish filiation with their children without passing through adoption, meaning that same-sex couples and heterosexual couples now receive equal treatment: the co-mother married to the mother is automatically recognized as a parent, while an unmarried partner can legally recognize the child with the civil registry office. In practice, this means that children born in wedlock are automatically related to the co-mother. Children born out of wedlock may be recognized by



the co-mother, even before birth.<sup>16</sup> An equivalent solution for male same-sex couples was rejected on account of the controversy surrounding surrogate motherhood.

200. The Inter-Federal Action Plan to Combat Discrimination and Violence against Lesbian, Gay, Bisexual, Transgender and Intersex Persons 2018–2019, published in May 2018, sets out 22 objectives and 115 measures and activities organized by policy area. The Action Plan is coordinated at the federal level and includes measures falling to the federated entities, including Flanders, the French Community, the Brussels-Capital Region, the Walloon Region and German-speaking Community. This iteration of the plan builds on two previous plans published in 2013 and sets out measures to combat discrimination and violence against lesbian, gay, bisexual, transgender and, for the first time, intersex persons.

### **Protecting the human rights of transgender persons**

201. The federal State and the federated entities have passed anti-discrimination legislation that guarantees the rights of transgender persons and protects them from discrimination on the grounds of sex and sex reassignment, gender identity and gender expression.

202. The Act of 25 June 2017 reforming the regulations applicable to transgender persons concerning references to a change in registered sex in civil status records and their effects came into force on 1 January 2018. Since that date, transgender persons no longer have to meet specific medical criteria to have their registered sex and first name officially amended on civil status records and in the population register. The procedure is open to persons who believe that the sex indicated on their birth certificate does not correspond to their true gender identity. Registered sex and first name can be amended through a purely administrative procedure performed by a civil status officer. Minors may change their first name from the age of 12 and amend their registered sex from the age of 16.

203. The Flemish Community, the federal authorities, the French Community and the Brussels-Capital Region have amended their legislation to make discrimination on the grounds of gender identity or gender expression equivalent to gender-based discrimination<sup>17</sup> to protect all transgender persons from discrimination, not only those who plan to undergo, are currently undergoing or have undergone sex reassignment treatment. These two grounds have also been introduced into revised legislation on the prevention of risks at work.<sup>18</sup>

204. Various support and awareness-raising measures have been adopted in this area, including a toll-free helpline, an information centre ([www.transgenderinfo.be](http://www.transgenderinfo.be)) set up by the Flemish Community and a campaign entitled “How about you, are you pigeonholed?” (*Et toi, t'es casé?*) ([www.ettoitescase.be](http://www.ettoitescase.be)) intended to raise young people’s awareness of homophobic and transphobic stereotypes.

## **D. Gender equality and combating gender-based discrimination**

### **(a) General framework**

205. The Belgian Constitution has expressly guaranteed the principle of gender equality since February 2002. In addition, lawmakers in the various legislatures are encouraged to

<sup>16</sup> Act of 5 May 2014 establishing the filiation of the co-parent, *Moniteur belge* of 7 July 2014.

<sup>17</sup> The Decree of 28 March 2014 amending the Decree of 13 July 2007 on promoting more balanced participation by men and women in the advisory bodies and administration of the Flemish authorities and the Decree of 10 July 2008 on the establishment of a Flemish policy framework for equal opportunities and equal treatment, the Act of 22 May 2014 amending the Act of 10 May 2007 on combating discrimination between women and men, the Decree of 13 November 2015 amending the Decree of 12 December 2008 on combating certain forms of discrimination, the Ordinance of 5 October 2017 on combating certain forms of discrimination and promoting equality of treatment.

<sup>18</sup> The Act of 28 February 2014 supplementing the Act of 4 August 1996 on employees’ welfare while at work with regard to the prevention of psychosocial risks in the workplace, including violence and psychological or sexual harassment, and the Act of 28 March 2014 amending the Judicial Code and the Act of 4 August 1996 on employees’ welfare while at work with regard to judicial proceedings.

adopt specific measures to ensure the equal enjoyment of rights and freedoms by all citizens and to promote equal access by women and men to elected and public office.

206. Each authority legislates and draws up its own policies on gender equality within the terms of its respective mandate.

207. The various levels of government adopted legislation between 2007 and 2008 to combat gender-based discrimination, including discrimination on the grounds of pregnancy, maternity, birth and sex reassignment (since extended to gender identity and gender expression).<sup>19</sup> The Act of 22 May 2014 on combating sexism in public spaces states that any person who, through his or her behaviour or actions, in public or in the presence of witnesses, implies that another should be regarded as inferior, belittled or sexually objectified on account of his or her sex may be punished. Furthermore, the Civil Code was amended in June 2014 to ensure that men and women have equal rights in passing surnames onto their children and adopted children.

208. The institutional mechanisms in place to combat gender-based discrimination and promote gender equality have been strengthened substantially.

209. The Institute for Equality between Women and Men was set up at the end of 2002 at the federal level to ensure respect for equality between men and women and to combat any form of gender-based discrimination or inequality. Among other things, the Institute provides assistance and support to victims of discrimination in their dealings with the justice system, conducts studies and makes recommendations to the public authorities.

210. The gender mainstreaming strategy has been institutionalized by all authorities. It entails various obligations on the part of members of the government and the administrations, such as the breakdown of statistics by sex, the development of gender indicators and the implementation of gender budgeting. For instance, the Federal Act of 12 January 2007 (known as the “gender-mainstreaming law”) requires gender to be systematically integrated as a cross-cutting issue into public policy.

**(b) Gender equality in employment and the decision-making process**

211. Eliminating the wage gap between women and men has been a top priority for politicians, employers and unions in Belgium for several years. The Act of 22 April 2012<sup>20</sup> was adopted with a view to eliminating the wage gap by making it visible and ensuring that it becomes a permanent feature of dialogue between labour and management during negotiations at the cross-industry, sectoral and company levels. Various implementing decrees were adopted in 2013 and 2014.<sup>21</sup>

212. A report on the wage gap is published annually. According to the 2017 report,<sup>22</sup> female workers earn on average 7.6 per cent less per hour than their male counterparts. Over a year, the gap rises to 20.6 per cent, since women work part-time more often than men.

213. In Belgium, a series of measures have been taken to achieve a better work-life balance. High-quality public childcare services and public health-care services for other dependants are provided. Flexible working arrangements are encouraged, such as four months of parental leave, which may be split up and is non-transferable.

---

<sup>19</sup> See above: Rights of lesbian, gay, bisexual and transgender persons in Belgium.

<sup>20</sup> Act of 22 April 2012 amending the Act of 12 July 2013 on the amendment of legislation intended to eliminate the wage gap between men and women, in force as of 1 July 2013.

<sup>21</sup> Royal Decree of 17 August 2013 implementing chapter 4, section 2, of the Act of 22 April 2012 on Eliminating the wage gap between men and women (concerning the oversight of sectoral job classifications), the Royal Decree of 25 April 2014 on the analysis report on the wage structure for female workers, the Royal Decree of 25 April 2014 on the mediator for reducing the wage gap between men and women and the Ministerial Decree of 25 April 2014 establishing sample forms to provide the basis for analytical reports on worker pay structures.

<sup>22</sup> [http://igvm-iefh.belgium.be/fr/publications/lecart\\_salarial\\_entre\\_les\\_femmes\\_et\\_les\\_hommes\\_en\\_belgique\\_rapport\\_2017](http://igvm-iefh.belgium.be/fr/publications/lecart_salarial_entre_les_femmes_et_les_hommes_en_belgique_rapport_2017).

214. Belgium has also adopted a range of measures to increase women's participation in decision-making processes in various areas.

215. Women have made great progress in the area of political decision-making thanks to the introduction in 2002 of quotas by laws and decrees that require parity in electoral lists, with the top two places taken by a person of each sex.

216. Various pieces of legislation are in place to ensure the balanced representation of men and women in the public administration, advisory bodies and certain public management and administrative bodies. In the private sector, the Act of 28 July 2011 on ensuring the presence of women on the boards of directors of autonomous public enterprises, listed companies and the National Lottery introduced a quota system whereby at least one third of all seats on a given board of directors must be reserved for the underrepresented gender. Failure to comply with this provision may be sanctioned through the revocation of appointments or the suspension of financial benefits.

**(c) Combating gender-based violence and violence in general**

217. Belgium ratified the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (the Istanbul Convention) in March 2016. The Convention offers States a platform from which to take measures in four broad areas: the prevention of violence; the protection of victims; the prosecution of perpetrators; and the elaboration of cross-cutting, comprehensive and coordinated policies.

218. On 10 December 2015, Belgium adopted a new national action plan to combat all forms of gender-based violence for the period 2015–2019,<sup>23</sup> covering intimate partner violence, sexual violence, female genital mutilation, forced marriage, honour-related violence and prostitution. It is underpinned by the implementation of the Istanbul Convention.

219. Under the new plan, which involves the federal State, the communities and the regions, Belgium is committed to implementing over 235 new measures centred on the following six overall objectives: (1) to pursue a comprehensive policy against gender-based violence and collect quantitative and qualitative data on all forms of violence; (2) to prevent violence; (3) to protect and support victims; (4) to investigate, prosecute and adopt protection measures; (5) to take account of gender in asylum and migration policy; (6) to combat violence at the international level. One of the plan's priorities is combating sexual violence, as reflected by the opening of multidisciplinary support centres for victims of sexual violence in November 2017.

220. The French-speaking entities (the French Community, the Walloon Region and the French Community Commission) have prepared a coordinated plan specifically designed to combat gender-based and domestic violence,<sup>24</sup> which has been incorporated into the national plan.

221. Both plans afford particular attention to combating violence against women and girls with disabilities.

222. In Belgium, the criminalization of acts of domestic violence is regulated by various pieces of legislation.<sup>25</sup> Female genital mutilation has been a criminal offence since 2000,<sup>26</sup>

<sup>23</sup> [http://igvm-iefh.belgium.be/fr/publications/plan\\_daction\\_national\\_de\\_lutte\\_contre\\_toutes\\_les\\_formes\\_de\\_violence\\_basee\\_surle\\_genre](http://igvm-iefh.belgium.be/fr/publications/plan_daction_national_de_lutte_contre_toutes_les_formes_de_violence_basee_surle_genre).

<sup>24</sup> The plan is structured around the following themes: (1) violence between partners and against children; (2) forced marriage; (3) female genital mutilation; (4) honour-based violence; (5) sexual violence, including rape, sexual harassment and prostitution; and (6) gender-based violence.

<sup>25</sup> The Act of 24 November 1997 provides that physical violence against a spouse or domestic partner is an aggravating circumstance, while the Penal Act of 28 January 2003 increases to a maximum of 1 year's imprisonment the penalty for aggravating circumstances defined in article 410 of the Criminal Code. In addition, the Act of 4 July 1989 amending certain provisions on the offence of rape expanded the definition of rape; spousal rape is subject to prosecution and conviction in the same way as other forms of rape and is also an aggravating circumstance.

forced marriage has been a criminal offence since the adoption of the Act of 25 April 2007, and forced legal cohabitation has been a criminal offence since the adoption of the Act of 2 June 2013.<sup>27</sup> The Act of 23 February 2012 extended the list of offences under article 458 bis of the Criminal Code, which provides that persons bound by professional secrecy have a circumscribed and conditional right to report acts of domestic violence to the Crown Prosecutor. In addition, the Act of 15 May 2002 introduces a new procedure for the removal of violent partners from the family home to cover situations where potential acts of violence have not yet been committed. The Act of 15 June 2012 establishes penalties for failure to comply with temporary barring orders issued in situations involving domestic violence.

223. Combating violence in general is a priority for the police. The National Security Plan 2016–2019 calls for an intensive and sound approach by the prosecution service and police to deal with discrimination, violent crime and offences against the integrity of the person, including domestic violence, sexual violence against adults and the sexual abuse of minors. The Framework Note on Comprehensive Security 2016–2019 sets out the same priorities.<sup>28</sup>

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

224. Belgium ratified the Convention on the Rights of Persons with Disabilities and its Optional Protocol on 2 July 2009. The competent authorities have since developed monitoring mechanisms in accordance with article 33 of the Convention to assist in the reporting process (Belgium submitted its initial report under the Convention to the Committee on the Rights of Persons with Disabilities in 2011) and implementation of the Convention:

- Various focal points have been set up at the different levels of government to implement the recommendations that the Committee issued to Belgium in September 2014.
- An inter-federal coordination mechanism has been established under the Federal Public Service for Social Security.
- Independent mechanism: an agreement has been reached between the federal government and the communities and regions to entrust the tasks set out in article 33 (2) of the Convention to Unia.
- Participation of civil society: there is close collaboration with persons with disabilities and their representatives and with associations promoting equal opportunities, combating discrimination and defending human rights.

225. These accomplishments are all consistent with a wide-ranging and coherent policy to ensure greater respect for the human rights of persons with disabilities.

226. The equality of persons with disabilities and their protection from discrimination are established in the Belgian Constitution (arts. 10 and 11) and in the legislation of the various levels of government. At the federal level, the Act of 10 May 2007 on combating certain forms of discrimination prohibits all forms of direct or indirect discrimination or incitement to discriminate or intimidate on the grounds of, among other things, disability or current or future state of health. It requires reasonable accommodation to be provided for persons with

---

<sup>26</sup> The Act of 28 November 2000 on the protection of minors under criminal law (art. 409 of the Criminal Code). Since July 2014, the law provides explicitly for the punishment not only of those practising, facilitating or supporting, with or without the victim's consent, any form of female genital mutilation, but also of anyone who advocates or incites to that practice.

<sup>27</sup> The Act of 2 June 2013, in its criminal component, increased the punishments incurred for the crimes of forced marriage (art. 391 sexies of the Criminal Code) and sham marriage (art. 79 bis of the Act of 15 December 1980) and defined forced legal cohabitation (art. 391 septies of the Criminal Code) and simulated legal cohabitation (art. 79 ter of the Act of 15 December 1980) as offences.

<sup>28</sup> [http://justice.belgium.be/sites/default/files/downloads/2016-06-07\\_note-cadre\\_de\\_securite\\_integrale\\_fr.pdf](http://justice.belgium.be/sites/default/files/downloads/2016-06-07_note-cadre_de_securite_integrale_fr.pdf).

disabilities. Denial of such accommodation can itself be considered an act of discrimination. This anti-discrimination law is applicable to many areas of public life: employment, goods and services, all economic, social, cultural or political activities, social security and social protection. It allows victims of discrimination to claim their rights and take their case to the civil courts (labour court, commercial court or court of first instance).

227. Unia is responsible for dealing with cases of discrimination, including discrimination based on disability. In mid-2009, Unia began to use a new electronic system to record and process reports and individual cases submitted under anti-discrimination legislation. Data on these cases are presented in its annual and activity reports. The collection of reports of discrimination is therefore centralized in Belgium. Offices that deal with complaints have been established throughout Belgium and four local offices were opened in the Walloon Region in 2016.

228. Notwithstanding the division of powers between the federated entities and the federal State in relation to disability, political thinking and legislative initiatives have all been headed in the same direction, that is towards the greater inclusion of persons with disabilities in society and a greater consideration of their needs in a number of areas of life (a process known as “disability mainstreaming”, which means ensuring that all public policies take account of disability-specific issues). This approach is consistent with the paradigm shift embodied in the Convention on the Rights of Persons with Disabilities.

229. From the viewpoint of equal opportunities for all, and given the specific requirements of persons with disabilities, special attention has been paid to the accessibility of the built environment, transport and information and communication technology (development of mandatory standards), communication (establishment of sign language interpretation services), respect for emotional life (training of professionals), the employment of persons with disabilities (action to forestall unemployment traps, measures to promote employment, career counselling, adaptation of workstations), social inclusion (volunteer activities), housing (platforms for advice on adaptation, supported housing), and also support for students with functional limitations (inclusion measures, not only in special education but also, more recently, in general education, including higher education).

## Annex

### Hierarchy of courts in Belgium

