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## **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 and west 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 place, a gateway and a land 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.
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 3.4 per cent of total world exports, ranking ninth among the world's economic powers. Ninety per cent of its exports, representing about two thirds of gross national product, go to other industrialized countries, including 75 per cent to the member States of the European Union. Its exports are highly diversified, consisting of transport equipment, non-precious metals, electrical machinery and equipment, chemicals and 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 10.8 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 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.

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 (17 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 thousand live births in 1900 to less than 10 per thousand in 2010 (8/1,000 for boys and 6/1,000 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 79 years today (77 years for men and 82 years for women).

13. The other cause of population ageing is the fall in the fertility rate. As in most other industrialized countries, the fertility rate in Belgium has fallen to below two children per woman, falling from an average of 2.64 children per woman in 1960–1964 to 1.6 in 1980–1999. The fertility rate currently stands at about 1.8 children per woman. It is forecast to rise to 1.85 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 2010, Belgium had 10,839,905 inhabitants, of whom 5,527,684 were women and 5,312,221 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 2010, the Flemish Region had 6,251,983 inhabitants, the Walloon Region (including the German-speaking area) 3,498,380, and the Brussels-Capital Region 1,089,538.

16. As at 1 January 2006, the number of nationals of European Union countries living in Belgium was 625,000, or 65 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 United States of America, the Democratic Republic of the Congo and Algeria. Nationals of the Maghreb countries and Turkey represent 29 per cent of the foreign population. In all, 37 per cent of the foreigners resident in Belgium live in Flanders, 35 per cent in the Walloon Region and 28 per cent in the Brussels-Capital Region.

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

### **1. General framework**

17. In 1831, the constituent body 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 configuration has been transformed by the establishment of a federal State composed of communities and regions.

19. The division of powers is based essentially on devolution of the responsibilities, both *ratione materiae* and *ratione loci*, exercised by the federal authority, 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 responsibilities, 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 federate entities with their own political bodies. The language regions are simply political divisions of Belgian territory.

22. The federal authority not only has powers to act in matters for which it has formal responsibility under the Constitution and the law; it also exercises powers that are not expressly assigned to the communities and regions.

23. The institutional agreement of 11 October 2011 signed by eight political parties, of which six currently form the Government, provides for sweeping State reform, with a more effective federal State and more autonomous regional entities. Federal authority for employment, health and personal care services, family benefits and justice will be devolved to the communities and the regions. A thorough review will also be conducted of the funding system for the communities and the regions, with more financial responsibility being given to the federate entities and a fair level of funding for the Brussels institutions. Finally, a solution was found to the problem of the Brussels-Hal-Vilvorde constituency. Currently (June 2012), the legislation devolving powers has not yet been submitted to Parliament.

## **2. Federal legislative power**

24. This power is exercised collectively by the King, the House of Representatives and the Senate.

25. 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.

26. 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.

27. 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 parliament) are brought before the upper or lower house.

28. Except in the case of the budget and laws requiring a special 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.

29. The House of Representatives has 150 members elected by direct universal suffrage. To be eligible, candidates must be Belgian, enjoy civil and political rights, be at least 21 years of age and be resident in Belgium.

30. The term of office of a deputy is four years; such office cannot be held concurrently with that of regional or community councillor or minister.

31. The House of Representatives has sole political oversight of federal government policy (investiture and motions of no confidence). Likewise, it has exclusive responsibility in budgetary matters since it alone passes the Financial Accounts Act and approves the budget. The House also has exclusive responsibility in matters of naturalization, the criminal and civil liability of ministers, and the size of the armed forces.

32. The Senate comprises 71 senators, as follows:

- 40 senators elected directly by the Dutch (25) and French (15) electoral colleges;
- 21 senators appointed from within the community councils, with 10 being appointed by the Flemish Community Council, 10 by the French Community Council and 1 by the German-speaking Community Council;
- 10 co-opted senators, chosen by senators in the above two categories, 6 being selected by Dutch-speaking senators and 4 by French-speaking senators;
- Senators by right, i.e. members of the royal family who automatically become members of the Senate at the age of 18 years but are not entitled to speak or vote until the age of 21 years.

33. The configuration of the Senate aims to meet three requirements: the need for democratic legitimacy (directly elected senators); the need for the federate entities to be represented (senators from the community councils); and the need for symbolic parity (equal numbers of senators appointed by the community councils).

34. The minimum age requirement to be elected senator is 21 years.

35. In certain 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 itself; the passage of certain laws regarded as affecting the basic structures and fundamental interests of the State; certain matters in the field of international relations (treaty-ratification instruments); the organization of the courts and tribunals and legislation relating to the Council of State; and laws approving cooperation agreements between the State, the communities and the regions.

36. The Senate has exclusive responsibility for the resolution of conflicts of interest between the federal and the federate parliamentary assemblies. In addition, draft instruments for the ratification 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 former a more important role in international affairs.

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

37. 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.

38. 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.

39. 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.

40. 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.

41. 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.

42. Ministers can only be tried by the 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.

43. 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.

44. 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.

45. The King issues the necessary regulations and decrees for the implementation of laws. He approves and promulgates the laws.

46. The King appoints judges and executes decisions and judgements, and may grant pardons. He also has the right to mint coinage in execution of the law and to confer honorary titles of nobility and award military honours in keeping with the requirements of the law.

#### **4. The communities**

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

48. 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. This is not the case with the French Community, the German-speaking Community, the Walloon Region or the Brussels-Capital Region.

##### *(a) Parliaments*

49. The Flemish parliament has 124 members, of whom 118 are directly elected in the Flemish Region and 6 are members of the Dutch-language group in the parliament of the Brussels-Capital Region.

50. 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.

51. The parliament of the German-speaking Community consists of 25 directly elected representatives.

52. The mandate of a member of parliament is theoretically incompatible with that of a deputy or senator, except for community senators who represent their community in the Federal Senate. The ban on holding two offices simultaneously concerns only federal parliamentary duties and regional or community parliamentary duties. It is still constitutionally possible to be both a member of a regional council and a member of a community council.

53. Three parliaments (the Flemish parliament and the parliaments of the French Community and the Walloon Region) have limited “constitutive autonomy”, which means they can adopt, by qualified majority, decrees dealing with issues relating to elections and to the composition and operation of the parliament and government.

54. Members of community and regional parliaments are elected for a period 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*

55. 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) *Community powers*

56. Community powers cover the following matters:

57. *Cultural matters.* 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 qualified majority, identified 17 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.

58. *Education.* Responsibility for virtually all education, from nursery schools to universities, has been transferred to the communities, which are responsible for organizing the education system and for recognizing and subsidizing education provided by other authorities.

59. 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.

60. *Use of languages.* Article 30 of the Constitution provides that the language used is a matter of choice; language use can be regulated only by law, and then only for official documents and for judicial matters.

61. 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; and employer/employee relations, as well as companies’ legal instruments and documents as required by law.

62. Community jurisdiction over the use of languages is exercised over a smaller area than other community powers. The federal parliament has jurisdiction for the bilingual Brussels-Capital Region, the German-speaking region, services that operate beyond the language region in which they are based, the federal and international institutions designated by law whose activities cover more than one community, and communes with a special language regime.

63. Communities also exercise international functions within their jurisdiction.

64. Belgium is divided into four language regions:
- (a) The Dutch-speaking region, comprising the five Flemish provinces;
  - (b) The French-speaking region, comprising the five Walloon provinces except for the nine communes of the German-speaking region that belong to the province of Liège;
  - (c) The bilingual Brussels-Capital Region, comprising the 19 communes in the district of the same name;
  - (d) The special regime for the German-speaking Community.
65. The Constitution confers on this community the same powers as the two other communities, but they are determined by a simple-majority law.
66. It can also exercise certain powers drawn from the Walloon Region, on the basis of agreements reached between the governments of the two entities.
67. To avoid a proliferation of public bodies, the constituent body gave the legislature the discretion to entrust to the German-speaking Community certain tasks which are usually the responsibility of other administrative authorities.
68. The parliament of the German-speaking Community comprises 25 members elected by universal suffrage. Its government, which includes four members elected by the Council, has its own administration.
69. 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.
70. “*Person-related matters*”. This term covers matters which, by their very nature, are closely related to the individual’s personal and social development.
71. Under a special law, such matters are divided into two categories:
- (a) Health policy, which covers policy on medical care, health education and preventive medicine;
  - (b) Social assistance, which covers family policy, welfare, reception and integration of immigrants, policies on disabled persons, senior citizens and young people, and prisoners’ welfare.
72. There are exceptions to these community powers: the federal authorities are responsible for health and disability insurance and some aspects of civil law, criminal law and the organization of youth courts, as well as for the implementation of the right of every person to social assistance, mainly through public welfare centres.
73. The Communities also exercise, within their jurisdiction, certain responsibilities for scientific research, development cooperation and the supervision of subordinate entities (provinces and communes).

## 5. The regions

74. Belgium has three regions, which are distinct from the three communities: the Flemish Region, the Walloon Region and the Brussels-Capital Region. Their powers and areas of jurisdiction are the same for the first two, 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.
75. In Flanders, regional powers are exercised by the parliament and government of the Flemish Community.

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

77. Regional powers cover the following (with some exceptions that are dealt with at the federal level):

- (a) Land-use planning and the protection of monuments and places of interest;
- (b) Most environmental and water policy matters;
- (c) Rural development and nature conservation;
- (d) Housing and inspections of accommodation that poses a risk to hygiene and public health;
- (e) Various matters related to agriculture and fisheries;
- (f) Economic matters such as economic policy, regional aspects of credit policy, sales and export policy and natural resources. On this point, it should be noted that, in exercising their powers, the regions must respect the economic union and monetary unity over which the federal State presides, as determined by the law and international treaties (within the framework of the European Union). The federal authorities have exclusive jurisdiction in the following areas: monetary policy, financial policy and savings protection, prices and incomes policy, competition and trade law, commercial law and company law, entry requirements for the professions, industrial and intellectual property, quotas and licences, labour law and social security law;
- (g) Energy policy;
- (h) Important prerogatives with regard to local communities (financing, organization and supervision);
- (i) Employment (placement of workers, development of back-to-work programmes, application of the rules regarding foreigners);
- (j) Public works and transport (roads, waterways, ports, dykes, public transport); equipping and operating public airports (with the exception of Brussels National Airport);
- (k) 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;
- (l) International affairs that come under their remit.

78. It should be recalled that, at the moment, the communities and regions only have the powers attributed to them by a special law. Besides their fiscal powers, they do nevertheless have additional powers which allow them to:

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

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

79. The Brussels-Capital Region, which is comprised of 19 communes and which is the country's federal capital, exercises the same powers as the other two regions and has a parliament and a government (five members). As it straddles two communities, the

Brussels-Capital Region does not enjoy constitutive autonomy. This means that the parliament cannot alter its own composition, its operating principles, or the status of its members.

80. 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 — who are not members of the government.

81. Community powers in the bilingual Brussels-Capital Region are exercised by the French Community Commission, the Flemish Community Commission and the Joint Community Commission.

82. Community matters related to only the French or the Flemish community are called “uni-communitarian” and are dealt with by the French or Flemish community commission under the supervision of their respective communities.

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

84. Cultural matters which are not related to a specific community constitute the “bicultural sector” and are managed by the federal authorities (major infrastructure for arts-related activities).

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

85. The Constitution has established the principle of “federal loyalty”, which requires that neither the federation nor the federate entities should, in the exercise of their powers, 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.

86. 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:

(a) *Consultation Committee*: this is made up of 12 members, 6 representing the Federal Government and 6 representing the community and regional governments. Its powers are established by law, and it takes decisions by consensus;

(b) *Interministerial conferences*: there are 15 of these. They offer a flexible structure for consultation and dialogue, as well as a forum conducive to the negotiation of cooperation agreements;

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

87. 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 judicial, and the other half parliamentary, backgrounds), hands down judgements 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.

88. 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.

## 6. Organization of the courts

89. Under the Constitution, the organization of the Belgian courts and tribunals is the responsibility of the federal authorities.

90. 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.

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

92. 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. Jurisdiction may only be established by law. As a rule, court hearings are public. Every judgement is reasoned and handed down in a public hearing.

### (a) Status of judges

93. 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 appointments within the judiciary.

94. The Judicial Code requires judges to be appointed to one or more courts of first instance, one or more labour courts, one or more prosecutor's offices, or one or more labour prosecutor's offices. Additional judges may be appointed for an appeal court or labour appeal court. There are three entry points to a career as a judge:

(a) Competitive examination for admission to the judicial training course: this is open to lawyers with at least one year's experience. The course gives direct access to the bench and the prosecution service, and lasts for 3 years; the course that gives direct access to the prosecution service alone lasts for 18 months;

(b) Professional aptitude test: this is aimed at experienced lawyers and offers direct access to the bench 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: this can be taken by 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.

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

96. The Belgian Constitution guarantees the independence of court 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 decision of a court. Depending on which jurisdiction they come under, judges may be dismissed by appeal courts, labour appeal courts or the Court of Cassation. A judge may only be moved if he or she receives a new appointment and consents to the move.

(b) *Judges and courts*

97. 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.]

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

99. Courts of first instance are divided into civil, criminal 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 and vice-president(s), a court of first instance has one or more youth court judges, investigating judges and judges hearing attachment proceedings. Sentence enforcement magistrates — one specializing in custodial matters and the other in social reintegration — are appointed to sit alongside judges in sentence enforcement courts.

100. The civil and commercial courts hear appeals against judgements handed down by magistrate's courts or police courts, as the case may be. The criminal court hears appeals against judgements handed down by the police court.

101. Belgium is divided into five large judicial circumscriptions: Antwerp, Brussels, Ghent, Mons and Liège. Each has an appeal court and a labour appeal court. The circumscriptions are divided into 27 judicial districts, each of which has a court of first instance, a labour court and a commercial court. The labour courts form a group of 21 courts, and the commercial courts a group of 23.

102. 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.

103. There is one magistrate's court per judicial district, of which there are 187. There are 31 police courts (at least 1 per judicial district).

104. 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 three 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.

105. 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-related cases and one for civil and commercial matters.

(d) *Public prosecution service*

106. 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.

107. Each court of first instance has a prosecutor's office (*parquet*) comprising a crown prosecutor, senior public prosecutors and deputy public prosecutors. Deputy public prosecutors may specialize in tax or commercial affairs or be assigned to posts at youth courts, or (in Antwerp, Brussels, Ghent, Mons and Liège) specialize in sentence enforcement.

108. 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 deputies.

109. The prosecutor's office attached to an ordinary labour court (*auditorat du travail*) comprises a labour prosecutor, senior deputies and deputies.

110. 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.

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

112. 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.

113. 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.

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

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

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

114. 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)	
International Covenant on Economic, Social and Cultural Rights	21 April 1983	Declaration (art. 2)	
Optional Protocol to the International Covenant on Economic, Social and Cultural Rights			Signed 2009
International Covenant on Civil and Political Rights	21 April 1983	Reservation (arts. 10, 14, 19, 21, 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	
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	

<i>Main international human rights treaties</i>	<i>Date of ratification, accession or succession</i>	<i>Declarations/reservations</i>	<i>Comments</i>
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 and related treaties

<i>Other United Nations human rights and related 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 of the Exploitation and 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
Rome Statute of the International Criminal Court, 1998	28 June 2000
United Nations Convention against Transnational Organized Crime, 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

<i>Conventions of the International Labour Organization</i>	<i>Date of ratification, accession or succession</i>
Labour Inspection Convention, 1947 (No. 81)	5 April 1957
Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87)	23 October 1951
Migration for Employment Convention (Revised), 1949 (No. 97)	27 July 1953
Right to Organize 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

<i>Conventions of the Hague Conference on Private International Law</i>		<i>Date of ratification, accession or succession</i>
Convention on Protection of Children and Cooperation in respect of Intercountry Adoption, 1993		26 May 2005
<b>6. Geneva Conventions and other treaties on international humanitarian law</b>		
<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
<b>7. Ratification of regional human rights conventions</b>		
<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		14 June 1955
Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, 1952		14 June 1955
European Social Charter, 1961		16 October 1990
Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain rights and freedoms other than those already included in the Convention and in the first Protocol thereto, 1963		21 September 1970
Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the Abolition of the Death Penalty, 1983		10 December 1998
European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 1987		23 July 1991
Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances, 2002		23 June 2003

<i>Council of Europe conventions</i>	<i>Date of ratification, accession or succession</i>
European Social Charter (revised), 1996	2 March 2004
Council of Europe Convention on Action against Trafficking in Human Beings, 2005	27 April 2009

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

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

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

116. 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);
- Liberty of person (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, 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 human rights treaties into the national legal system

117. 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 on 27 May 1971 in the case of the public limited company Fromagerie Franco-Suisse Le Ski. The Court affirmed the primacy of 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 authorities in the area of human rights

118. 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.

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

### (a) Constitutional Court

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

121. 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>1</sup>

122. 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. 8–32, “Belgians and their rights”), covering numerous fundamental rights and freedoms (principle of non-discrimination, respect for privacy and family life, respect for moral, mental and physical integrity, right to education, etc.);
- 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 provides that all foreigners in Belgian territory shall enjoy protection of their persons and property, except where otherwise provided by law.

123. 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

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<sup>1</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.

Belgian law are upheld in Belgium without discrimination. This jurisprudence shows that the Court regarded itself from the outset as being competent to determine the conformity of laws, decrees and ordinances with constitutional rights and freedoms through its procedure for assessing conformity with articles 10, 11 and 24 of the Constitution (the Constitutional Court's initial area of competence).

(b) *Administrative courts*

124. 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.

125. 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.

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

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

128. Another administrative court that should be mentioned is the Aliens Litigation Council.

129. It 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, i.e. 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.

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

(c) *Justiciability of treaties in domestic courts*

131. 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.

132. 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, paragraph 2, of the Covenant produced direct effects in internal law for individuals. Since then, the Court of Cassation has confirmed the direct applicability of other provisions of the Covenant.

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

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

133. 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.

134. 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*

135. Victims of crime can intervene in criminal proceedings in various ways (see below for a brief summary).

(c) *Status of injured party*

136. A person can obtain the status of injured party by filing a statement with the secretariat of the prosecutor's office, either in person or through a lawyer. The injured party has the right to be informed if proceedings are discontinued, and why, and to be informed 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 they feel would be useful for the case file.

137. 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.

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

(d) *Damages and civil actions*

139. A plaintiff who sues for damages in criminal proceedings enjoys certain rights:

(i) 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;

(ii) Also on certain conditions, they may ask the investigating judge to carry out further investigations.

140. 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.

141. Crime victims can sue for damages in various ways and at various times.

142. 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 plaintiff can join the criminal prosecution. They can also file a civil action when the case is brought before the judge in chambers or at the hearing before a trial court.

(e) *Private prosecution*

143. In the case of infractions and offences, the victim may take out a private prosecution. To do this, 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) *Appeals*

144. An appeal is possible if:

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

145. 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*

146. The victim 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*

147. 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 ratified it. The Court was reformed by Protocol No. 11 and again recently by Protocol No. 14, which aims to address the growing number of individual applications.

148. The judgements of the European Court of Human Rights that went 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>2</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 Convention.<sup>3</sup> A circular was adopted to ensure that the person concerned is informed of the form and deadline for challenging a conviction in absentia once they are notified of the court's decision.

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

### 1. National and regional parliaments and assemblies

149. 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 for this purpose:

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

<sup>3</sup> European Court of Human Rights, judgement in the case of *Da Luz Domingues Ferreira v. Belgium*, 24 May 2007.

(a) *Legislating to protect children*: the aim is to offer children the best possible protection of their rights by amending or adopting new legislation. A large number of laws (or decrees or ordinances in the case of the regions and communities) and decisions are adopted by parliaments, for example in the area of the rights of children 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 or written questions, as well as submitting parliamentary questions, and keep a close watch on the government's action 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 ombudsmen for human rights and children's rights;

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

(e) *Raising public awareness*: the aim is to organize 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

150. Although a national human rights institution has not yet been set up, there are several mechanisms for dealing with human rights issues:

(a) The *Centre for Equal Opportunities and Action against Racism* is responsible for promoting equal opportunities and combating all forms of discrimination, exclusion, restriction or preferential treatment based on certain criteria,<sup>4</sup> ensuring respect for the fundamental rights of foreigners and stepping up the fight against people-trafficking and smuggling. 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, paragraph 2, of the Convention on the Rights of Persons with Disabilities. It has been granted B-status by the Subcommittee on Accreditation of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights;

(b) The *Institute for Equality between Women and Men* is responsible for guaranteeing and promoting gender equality and for combating any form of gender-based discrimination or inequality. It addresses recommendations to the public authorities, organizes support for associations working in this area and can bring legal proceedings in disputes concerning gender equality;

(c) The *Federal Ombudsman* and the ombudsmen in the federate 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

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<sup>4</sup> Nationality, presumed race, skin colour, parentage, national or ethnic origin, sexual orientation, civil status, birth, wealth, age, religious or philosophical beliefs, current or future state of health, disability, political beliefs, physical or genetic characteristics and social origin.

competent to receive complaints about possible human rights violations by the administrative authorities;

(d) The *Standing Committee on the Supervision of the Police Services* (“Committee P”) is the external body responsible for overseeing the overall functioning of the police, inspection and control services and the exercise of police functions by all public servants concerned. It reports to parliament;

(e) The *Commission on Privacy Protection* is responsible for protecting privacy in the processing of personal data. Its main job is to reply to requests for information and deal with complaints submitted to it under the Act of 8 December 1992 on privacy protection in the processing of personal data;

(f) The *Inter-ministerial Commission on Humanitarian Law* coordinates the implementation of international humanitarian law instruments;

(g) The *National Commission on the Rights of the Child*, established in 2005 and operational since 2007, is a platform for consultation that brings together federal, community and regional authorities as well as child rights associations. Its main task is to draft and 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 recommendations to the relevant authorities;<sup>5</sup>

(h) *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>6</sup> and the Delegate-General for Children’s Rights appointed by the Government of the French Community receive and process complaints and can make recommendations relating to their mandate.

### 3. Dissemination of human rights instruments

151. The official texts dealing with the implementation of human rights at all levels of government are translated into the State party’s official languages and transmitted to the various parliaments, as well as 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.

152. 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 needs.

<sup>5</sup> Act of 1 May 2006 adopting the agreement on cooperation 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 (*Official Gazette*, 10 November 2006).

<sup>6</sup> Decree on the establishment of the Office of the Commissioner for Children’s Rights pursuant to the creation of the post of Commissioner for Children’s Rights (*Official Gazette*, 7 October 1997).

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

153. Awareness-raising and training in human rights are tackled differently by different public authorities. Some professionals receive both initial training and regular advanced training in human rights, and are tested on their knowledge. This group includes, in some jurisdictions, teachers and lawyers who are specialized in the rights of young people, as well as supervisors of homework clubs and holiday camps. 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**

154. Knowledge of human rights is an educational goal, taught and tested as such, in some jurisdictions; for example, the Flemish Community has issued a decree setting goals for courses on human rights, 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.

155. 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**

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

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

157. 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.

158. 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 upstream and downstream in decisions by the public authorities on policies to promote human rights.

159. These organizations include:

(a) The *Ligue des droits de l'homme* and the *Liga voor Mensenrechten*, which fight against injustice and violations of fundamental rights. They raise public awareness of these rights (violence at the hands of institutions, access to justice, respect for minorities, women's rights, etc.), challenge the government and do a lot to train adults (as part of their ongoing educational activities) and to provide teaching aids and courses for education professionals;

(b) *Coördination des ONG pour les Droits de l'Enfant* (CODE) and *Kinderrechtencoalitie Vlaanderen*: these two umbrella organizations share the aim of protecting and defending children's rights in Belgium and the rest of the world;

(c) *UNICEF Belgium*: the Belgian branch of the United Nations Children's Fund. It works to promote the Centre interdisciplinaire des droits de l'enfant, particularly towards children. With its "What Do You Think?" project, it is trying to give children a voice in the Committee on the Rights of the Child. On the basis of this project, and in consultation with "youth councils", it produces a report on children and young people in Belgium which it sends to the Committee on the Rights of the Child within the framework of the consideration of Belgium's periodic report;

(d) The *Vormen* non-profit association is a centre of expertise on education in children's and human rights in the Flemish Community, which provides it with financial support. It develops materials and methods for addressing rights-related issues in schools and elsewhere;

(e) The *Kenniscentrum Kinderrechten (KeKi)* and the *Centre Interdisciplinaire des Droits de l'Enfant (CIDE)* are two research and training centres that aim to widely disseminate child rights expertise and promote multidisciplinary studies.

160. There is also a whole range of multidisciplinary bodies (high councils, 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

161. 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

162. Belgian development cooperation is delivered within the framework of the Millennium Development Goals, with the focus on sustainable human development and combating poverty. 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 contributes directly or indirectly to the realization of social and economic rights.

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

164. In the context of multilateral cooperation, the development agency supports and funds organizations working in the field of human rights such as the Office of the United Nations High Commissioner for Human Rights, UNICEF, the United Nations Development Fund for Women (UNIFEM) (now UN-Women, the United Nations Entity for Gender Equality and the Empowerment of Women) and the United Nations Population Fund (UNFPA) (sexual and reproductive rights).

165. 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 18 partner countries. The minister for cooperation and development produces annual reports on the human rights situation in these countries for the Belgian parliament. Human rights are the focus of many initiatives and are approached in 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.

166. 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.

167. Gender equality, the empowerment of women and children's rights are treated as cross-cutting issues in the work of the Belgian development agency. In particular, Belgium has quadrupled its unearmarked contributions to UNICEF since 2009, and funds a programme to combat serious violations of children's rights, including sexual violence in armed conflicts. With regard to women, the Belgian development agency focuses on their health and sexual and reproductive rights; women, peace and security, including the fight to stop sexual violence against women; girls' education; and training for women, as well as the economic empowerment of women from rural areas.

#### **D. Reporting process at the national level**

168. In Belgium, the focal point for the preparation and transmission 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.

169. 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 agency 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 is responsible for drafting a contribution on the issue concerned for inclusion in the final report. The steering agency is designated by consensus at a coordination meeting.

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

(a) In a federal country like Belgium, the levels of government, ministries or agencies 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 steering agency, but drafts and final reports are prepared by bodies attached to the executive.

171. The steering agencies then prepare their first draft. 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.

172. The draft contributions are then compiled and discussed at 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 authorities may send further comments or suggestions to the steering agency in charge of the draft.

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

174. 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.

175. When commitments are being undertaken, the final report may be subject to the political approval of the federal or federate 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.

176. 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.

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

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

178. The human rights policy pursued by Belgium is part of a wider European Union drive to promote and defend 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, as well as aiming to promote women's and children's rights and the rights of minorities and displaced persons.

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

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

179. Belgium has been harmonizing anti-discrimination legislation at the federal and federate levels on the basis of Council Directive 2000/43/EC and Council Directive 2000/78/EC. 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;
- 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;
- Flemish Community Decree of 10 July 2008 establishing 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 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 on combating certain forms of discrimination.

180. *Criteria for protection*: presumed race, skin colour, parentage, national or ethnic origin, nationality, age, sexual orientation, civil status, birth, wealth, religious or philosophical beliefs, political beliefs, language, current or future state of health, disability, physical or genetic characteristics and social origin. Pursuant to a decision of the Constitutional Court, trade union affiliation was added to this list by the Act of 10 May 2007.

181. *Prohibited behaviour*: direct discrimination, indirect discrimination, incitement to discriminate, harassment and a refusal to make reasonable adjustments for persons with a disability. A justification mechanism is provided for, with requirements that vary depending on the criterion for protection and the area of application. Base motives constitute an aggravating circumstance for a whole range of criminal offences. The anti-racism law of 30 July 1981 also covers some specific criminal offences.

182. *Areas of application*: 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.

183. *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/posting the judgement. In criminal cases, fines or prison sentences can be imposed. A person may also be stripped of their civil and political rights.

184. *Protection mechanisms*: victims and witnesses can be protected against possible reprisals, both at work and elsewhere, provided that certain procedural conditions are met.

185. *Right to take legal action*: associations defending human rights or combating discrimination, representative or professional organizations (trade unions, etc.) and the Centre for Equal Opportunities and Action against Racism can all take legal action. The Centre can only take legal action under federal laws.

186. In 2009, following the adoption of anti-discrimination legislation in the Walloon Region (6 November 2008) and the French Community (12 December 2008), these federate entities signed cooperation agreements with the Centre for Equal Opportunities and Action against Racism and the Institute for Equality between Women and Men. Fourteen contact points were set up in the main Flemish towns to give every citizen easy access to information and support if they wish to report discrimination or racism. The Centre for Equal Opportunities also signed an agreement with the Territorial Employment Pact in relation to 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, 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 jobs market.

187. The Centre for Equal Opportunities and Action against Racism was established by the Act of 15 February 1993. Every year, the Centre publishes statistics on the reports and cases it has processed within its mandate. The statistics sort information both by protection criterion and by sector (employment, housing). Some phenomena (e.g. anti-Semitism, Islamophobia or hate speech on the Internet) are also the subject of a report. The Centre's annual report includes data provided by the police and prosecutor's offices on discrimination and hate crimes.

188. The Centre for Equal Opportunities and Action against Racism promotes equality and fights against discrimination by offering courses, producing and distributing information tools (e.g. via leaflets or the Internet) and running awareness campaigns.

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

### **1. Combating racism, xenophobia and extremism**

189. On 14 July 2004, the Federal Government adopted a federal action plan to combat violence based on race, xenophobia and anti-Semitism, in line with the recommendations of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (Durban 2001).

190. The plan is to be implemented by all the governments in Belgium, and focuses on the following: implementing anti-discrimination laws; the Internet as a vehicle for racist and anti-Semitic ideologies; follow-up to complaints; countering prejudice; the media; the police; measures to protect target groups; and the introduction of a "tolerance barometer". The Centre has been given responsibility for following up on this plan.

191. The Centre for Equal Opportunities and Action against Racism is responsible for monitoring implementation of the plan.

192. As regards follow-up to complaints, a so-called "reference judge" for racism has been appointed in each judicial district to deal with race and discrimination issues.

### **2. Combating anti-Semitism**

193. 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. The Centre for Equal Opportunities and Action against Racism oversees and services the body.

194. In addition to discussions on current trends and follow-up to ongoing cases, the following priorities have been identified:

- Combating anti-Semitism and Holocaust denial on the Internet;
- Drafting a circular on the best way to identify race-based offences;
- Fighting organized racism, with the focus on combating racist and anti-Semitic ideas at neo-Nazi concerts;
- An exploratory study on the impact of the conflict in the Gaza Strip on intercultural relations and the depth of anti-Semitism in Belgium.

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

195. 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: 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 is, however, one remaining difference. When a woman in a heterosexual couple gives birth, her husband is assumed to be the father, but this is not the case with a homosexual couple. If a married lesbian gives birth, her female spouse is not considered to be the child's other parent. Nevertheless, Belgium was only 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. The incorporation by Belgium of Council Directive 2000/78/EC on anti-discrimination into national law in 2003 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 law provided tools under both criminal and civil law for fighting discrimination and hate crimes related to, among other things, sexual orientation. The anti-discrimination law was amended following an application to the Constitutional Court to have it nullified, but its principles were reaffirmed by the laws of 10 May 2007. The incorporation of the law into the legislation of the different federate entities is virtually complete, so that the principle of non-discrimination is now applicable in community and regional jurisdictions.

198. The latest subject to be tackled is the right to adopt, which was recognized in May 2006. In the decade after 2000, a number of countries — the Netherlands, the United Kingdom and Denmark among them — gave same-sex couples the right to adopt. The right to adoption raises questions about the recognition by law of many *de facto* situations, such as the insemination of one of the partners or single-parent adoption.

## **D. Gender equality and combating sex discrimination**

### **1. General framework**

199. The Belgian Constitution has expressly guaranteed the principle of gender equality since February 2002. In addition, lawmakers in the various legislatures are encouraged to adopt specific measures to ensure equal enjoyment of rights and freedoms by all citizens and to promote equal access by women and men to elected and public office.

200. Women have made great progress in the area of political decision-making thanks to the introduction since 2002 of quotas by laws and decrees which require parity in electoral lists, with the top two places taken by a person of each sex. A "one-third/two-thirds" rule generally applies to the composition of management and advisory bodies.

201. The different authorities legislate and draw up their own gender-equality policies within the terms of their respective mandates.

202. In 2007 and 2008, legislation against various forms of discrimination, including sex discrimination, underwent far-reaching reforms at all levels of government in order to improve the protection of individuals. Sex discrimination — including on grounds of pregnancy, maternity, childbirth or sex change — and incitement to discrimination are punishable under civil and criminal law.

203. Institutional mechanisms for combating sex discrimination and promoting gender equality have been strengthened substantially.

204. The Institute for Equality between Women and Men was set up at the end of 2002 at the federal level to ensure respect for gender equality 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.

205. Offices that deal with complaints of discrimination have been set up in 12 towns in the Flemish Region, as well as 1 in Brussels, since July 2008. Under agreements between the Walloon Region and the French Community, the Institute for Equality between Women and Men is developing a similar network in the Walloon Region. In 2003, the Walloon government established an advisory body called the Council for Equality between Men and Women. There has been an anti-discrimination help desk for job-seekers and employers in the Brussels-Capital Region since 2001.

206. Gender mainstreaming has been institutionalized by most administrations. 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 at the different stages of the decision-making and implementation process.

## 2. Gender equality in the workplace

207. Eliminating the wage gap between men and women has been a top priority for politicians, employers and unions in Belgium for several years, and is the subject of an annual report.<sup>7</sup> According to the 2010 report, female workers earn on average 11 per cent less per hour than their male counterparts.<sup>8</sup> Over a year, the gap rises to 24 per cent, since women tend to work part-time. The figures on the wage gap for 2007 are much the same as for 2006, but the gap narrowed markedly between 2004 and 2005.

208. Belgium is developing a gender-neutral job-classification system to form the basis of wage calculations. While previous systems often undervalued the functions and characteristics of typically female occupations, this evaluation tool allows employers to easily check their system.<sup>9</sup>

209. Moreover, Belgium has adopted a range of measures to increase female participation in various areas of public life.<sup>10</sup> A 2008 study entitled “*Femmes au sommet*” (Women at the

<sup>7</sup> The 2010 report on the wage gap in Belgium can be downloaded at: [www.iefh.belgium.be](http://www.iefh.belgium.be); [www.statbel.fgov.be](http://www.statbel.fgov.be); and [www.emploi.belgique.be](http://www.emploi.belgique.be).

<sup>8</sup> The 2010 report uses survey data from 2007, which therefore do not reflect the impact, if any, of the economic crisis on the wage gap.

<sup>9</sup> The tool consists of a checklist for avoiding sexism in job evaluation and classification, and has two parts: the checklist itself, and a guide to the points to be considered if such a system is to be gender-neutral. For more information, see: <http://www.emploi.belgique.be/WorkArea/showcontent.aspx?id=8560> and <http://www.emploi.belgique.be/WorkArea/showcontent.aspx?id=8562>.

<sup>10</sup> The latest law, dating from June 2011, introduces a quota of one third of women for the boards of

top)<sup>11</sup> analysed female representation in different sectors.<sup>12</sup> In addition, in order to support gender mainstreaming in practice, a database on gender-related training courses (the “Genderbase”) has been updated and another one on women who are experts in their field (the VEGA database) has been put online.

210. A gender-mainstreaming charter produced by the trade unions was widely distributed in September 2009 to mark its fifth anniversary. The aim of the charter is to encourage unions to pay more attention to the gender dimension in their activities, and so make employers aware of the need to treat women and men equally.

211. During its presidency of the Council of the European Union in the second half of 2010, Belgium put the issue of wage equality squarely on the table for discussion with the other member States of the European Union.

### **3. Protection of the human rights of transsexuals**

212. Belgium has a range of legislative texts to guarantee the rights of transsexuals and protect them from discrimination based on a sex change.

213. The Act of 10 May 2007 on transsexuality (*Official Gazette*, 11 July 2007) states that individuals who have the unchanging and irrevocable inner conviction that they belong to the sex opposite to the one on their birth certificate can, on certain conditions set out in the Civil Code, follow a simple administrative procedure to have the sex indicated on their birth certificate changed. Similarly, the Act of 15 May 1987 on surnames and first names allows such people, again on certain conditions, to apply to have their first name changed. Such a change is not discretionary but a right.

214. As regards protection against discrimination based on a sex change, both the federal State and the federate entities have passed anti-discrimination legislation that protects transsexuals, e.g. the Federal Act of 10 May 2007 on action to combat sex discrimination (*Official Gazette*, 30 May 2007) (art. 4, para. 2); the Walloon Region Decree of 6 November 2008 on combating certain forms of discrimination, including sex discrimination in the areas of finance, employment and professional training (art. 3, para. 2); the French Community Decree of 12 December 2008 on combating certain forms of discrimination (art. 2, para. 3); the Flemish Community Decree of 10 July 2008 establishing a framework for equal opportunities and equal treatment (art. 16, para. 5); and the Brussels-Capital Region ordinances of 4 September 2008 on promoting diversity and combating discrimination in the civil service and on ensuring equal treatment in the area of employment.

### **4. Combating gender violence and violence in general**

215. Since 2001, Belgian law has penalized the act of practising, facilitating or encouraging any form of female genital mutilation, whether or not the person gives her consent, with a prison sentence of 3 to 5 years. In 2007, Belgium passed legislation criminalizing forced marriages.

216. On 23 November 2010, Belgium adopted a new national action plan to combat violence within couples and other forms of domestic violence for the period 2010–2014.

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directors of government enterprises and quoted companies.

<sup>11</sup> The study can be consulted at:

[http://igvmiefh.belgium.be/fr/etudes/vrouwen\\_aan\\_de\\_top\\_in\\_belgi\\_.jsp?referer=tc:337-85311-64](http://igvmiefh.belgium.be/fr/etudes/vrouwen_aan_de_top_in_belgi_.jsp?referer=tc:337-85311-64).

<sup>12</sup> Including businesses, workers’ and employers’ organizations, the media and press, academia, professional associations, NGOs, politics, the judiciary, the army, the civil service and the Banque Nationale.

The action plan covers violence within couples, forced marriages, honour-related violence and female genital mutilation.

217. Under the new plan, which involves the federal State, the communities and the regions, Belgium is committed to implementing over 120 new measures centred on the following five overall objectives: improving people's knowledge and understanding of the issues; information and awareness-raising; prevention and detection; assistance for victims and treatment for perpetrators; and defining a suitable approach for the police and the courts.

218. Moreover, combating violence in general is a priority for the police. The national security plan for 2008–2011 calls for an intensive and smart drive by the prosecution service and police to deal with serious acts of violence by individuals (particularly killings and murders), sex offences (particularly rapes) and other serious acts of physical violence.

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

219. Belgium has ratified the Convention on the Rights of Persons with Disabilities and its Optional Protocol of 2 July 2009. The competent authorities have 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:

- A number of focal points have been set up at the various levels of government;
- An inter-federal coordination unit has been established in 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, paragraph 2, of the Convention to the Centre for Equal Opportunities and Action against Racism;
- Participation of civil society: there is close collaboration with persons with disabilities and their representatives, as well as with other associations promoting equal opportunities, fighting discrimination, defending human rights, etc.

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

221. 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 anti-discrimination provision is put into effect by the three anti-discrimination laws of 10 May 2007, i.e. the general anti-discrimination law, the anti-racism law and the law on gender. 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 grounds of, among other things, disability or current or future state of health. It requires reasonable adjustments to be made for persons with disabilities. A refusal to make such adjustments can itself be considered an act of discrimination. The anti-discrimination law is applicable to many areas of public life: employment, the goods and services sector, 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).

222. Under the Act of 15 February 1993 establishing the Centre for Equal Opportunities and Action against Racism, as amended by the acts of 25 February 2003 and 10 May 2007,

the Centre is responsible for dealing with cases of discrimination, including discrimination based on disability. In mid-2009, the Centre 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 the Centre's annual and activity reports. The collection of reports of discrimination is therefore centralized in Belgium.

223. Notwithstanding the division of powers between the federate entities and the federal State in relation to disability, for the past 10 years political thinking and legislative initiatives have all been headed in the same direction, that is, towards the greater inclusion of persons with disabilities in mainstream society ("disability mainstreaming"). This approach is quite consistent with the change in paradigm evident in the Convention on the Rights of Persons with Disabilities.

224. From the viewpoint of equal opportunities for all, and given the specific needs of persons with disabilities, special attention has been paid to the accessibility of the built-up environment, transport and information and communication technology (development of mandatory standards), as well as to employment for persons with disabilities (action to forestall unemployment traps; measures to promote employment) and support for students with functional limitations (not only in special education but also, more recently, in general education, including higher education).

## Annex

### Hierarchy of Courts in Belgium

