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NATIONS COMMITTEE ON THE  
ELIMINATION OF  
DISCRIMINATION AGAINST  
WOMEN

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# INTRODUCTION

Amnesty International submits the following information to the United Nations (UN) Committee on the Elimination of Discrimination against Women (CEDAW), in advance of its examination of Belgium's seventh periodic report in October 2014, on the implementation of the Convention on the Elimination of All Forms of Discrimination against Women (the Convention).

This submission focuses on policy concerns relating to the constitutional, legislative and institutional framework, violence against women, including rape and sexual violence, and stereotyped roles and prejudices and harmful practices, including legal gender recognition.

## POLICY (ARTS. 2 AND 3)

Belgium is a federal State, in which the state powers are divided among and exercised by the Federal authority, the Communities and the Regions. The Communities and the Regions have the same standing and power as the Federal authority. All authorities are competent in parallel to apply the human rights set forth in the international instruments ratified by Belgium.<sup>1</sup> As this Committee has noted, the "Federal Government has the primary responsibility and is particularly accountable for the full implementation of [...] the Convention [on the Elimination of all forms of Discrimination Against Women]."<sup>2</sup> Nonetheless, in keeping with the State's constitutional setup which is characterized by the equality of powers for the federated and federal level, the Communities and the Regions can and should make systematic and continuous efforts to achieve full and uniform implementation of all the provisions of the Convention, along with the Federal Government.

In such a Constitutional setup, coordination between the different state entities is essential. This coordination has often been noted as lacking.<sup>3</sup> This is the case for specific themes that

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<sup>1</sup> For further information see also: Core document forming part of the reports of States parties – Belgium, HRI/CORE/BEL/2012, §17-20, 85, 110; Art. 1, Art. 143, §1 of the Belgian Constitution.

<sup>2</sup> CEDAW/C/BEL/CO/6, §12

<sup>3</sup> See also: CEDAW/C/BEL/CO/6, §15: "While recognizing that the existence of a large number of federal, Community and regional structures on the advancement of women is directed towards ensuring focused attention on the implementation of women's rights in the country, the Committee notes that those structures, with different levels of autonomy and authority, lack **coordination** and thus may affect accountability and the State party's responsibility regarding the uniformity of results in the implementation of the Convention."; CEDAW/C/BEL/Q/7, §3: "Please provide concrete information on the

warrant special attention (including rape and other forms of sexual violence) but also in a broader sense.

So far, efforts towards a coordinated approach have been limited to certain specific issues. This is the case for instance for the consecutive action plans on domestic violence.<sup>4</sup> A similar action plan exists aimed at eradicating homophobic and transphobic discrimination and violence.<sup>5</sup> The scope of these action plans is fairly narrow. An overarching strategy and/or framework in which these (and other) action plans are integrated, is lacking. There is no overarching strategy on the elimination of gender based discrimination nor on human rights as a whole. Amnesty International considers that such an overarching human rights action plan, with clear benchmarks and indicators could be beneficial – certainly in light of the complexities of the State's structure. It could also prove useful in order to harness, streamline and follow up on the many initiatives the different governments take to tackle a specific human rights problem.

Another problem is that often the plans lack clear timelines, measurable benchmarks and that they are rarely subject to public evaluation (e.g. in Parliament).

The “National action plan to combat intimate partner violence and other forms of domestic violence – 2010-2014”<sup>6</sup> relates to article 3 of the Convention. 122 measures were put forward by the competent authorities (federated and federal). An update was adopted on 10 June 2013<sup>7</sup>. Only 42 of the measures were deemed completed. On nine of the decisions no action had been taken and on the remainder only partial progress was reported.

The underlying cause of these two problems (the limited nature of plans and failure to deliver outcomes) is a serious lack of coordination. In a federal country like Belgium, coordination is

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*specific measures taken to **coordinate** the policies and mechanisms of federal, community and regional structures in order to achieve full and uniform implementation of the Convention throughout the State party's territory, as recommended by the Committee in its previous concluding observations.”;*

<sup>4</sup> In 2001, Belgium adopted a first national action plan on violence against women (2001-2003). It aims to coordinate all actions of the different governments (Federal, Regions and Communities) to eradicate violence against women (sexual violence and partner violence). It was followed up by a second action plan (2004-2007) with a narrower scope, on partner violence. Two more action plans followed, covering the years 2008 and 2009, and 2010 until 2014. The fourth and last action plan, which covers not only partner violence, but also forced marriages, honour crimes and female genital mutilation, was updated on 10 June 2013. Plan d'action national de lutte contre la violence entre partenaires et d'autres formes de violences intrafamiliales (2010-2014), [http://igvm-iefh.belgium.be/fr/binaries/101123-PAN%20FR\\_tcm337-113078.pdf](http://igvm-iefh.belgium.be/fr/binaries/101123-PAN%20FR_tcm337-113078.pdf), Mise à jour 2012-2013, [http://igvm-iefh.belgium.be/fr/binaries/Mise%20%C3%A0%20jour%20PAN%202010-2014\\_tcm337-226998.pdf](http://igvm-iefh.belgium.be/fr/binaries/Mise%20%C3%A0%20jour%20PAN%202010-2014_tcm337-226998.pdf).

<sup>5</sup> Plan d'Action Interfédéral Contres les Violences Homophobes et Transphobes, [http://igvm-iefh.belgium.be/fr/binaries/Plan%20d'Action%20Interf%C3%A9d%C3%A9ral%20Violences%20Homophobes%20Transphobes\\_tcm337-224389.pdf](http://igvm-iefh.belgium.be/fr/binaries/Plan%20d'Action%20Interf%C3%A9d%C3%A9ral%20Violences%20Homophobes%20Transphobes_tcm337-224389.pdf) (in French).

<sup>6</sup> [http://igvm-iefh.belgium.be/nl/binaries/NAP\\_Engels\\_tcm336-133536.pdf](http://igvm-iefh.belgium.be/nl/binaries/NAP_Engels_tcm336-133536.pdf).

<sup>7</sup> [http://igvm-iefh.belgium.be/fr/binaries/Mise%20%C3%A0%20jour%20PAN%202010-2014\\_tcm337-226998.pdf](http://igvm-iefh.belgium.be/fr/binaries/Mise%20%C3%A0%20jour%20PAN%202010-2014_tcm337-226998.pdf) (in French).

of the utmost importance, but difficult to realize, since there is no hierarchical relationship between the different competent governments.<sup>8</sup> Amnesty International is convinced that a more strategic and coordinated approach, based on frequent structural consultation between the various authorities, is needed, so as to ensure the development of a coherent policy aimed at eliminating discrimination against women.<sup>9</sup>

The Institute for the Equality of Women and Men, an (inter)federal<sup>10</sup> government agency created in 2002, is tasked with coordinating the Belgian policy through the development and implementation of an adequate legal framework, appropriate structures, strategies, instruments and actions.<sup>11</sup> The Institute has made efforts to remedy the concerns and recommendations identified by the Committee, but it understandably lacks the means and competency to address other related human rights issues and to remedy the lack of an overarching human rights approach.

Amnesty International considers that a National Human Rights Institution (NHRI), in line with the Paris Principles, should be established.<sup>12</sup> Although the establishment of a NHRI was promised in the 2011 federal institutional agreement<sup>13</sup>, and Belgium agreed to the recommendation at the conclusion of its Universal Periodic Review before the UN Human Rights Council<sup>14</sup>, it hasn't taken the necessary steps to create an NHRI with A-Status under the Paris Principles.<sup>15</sup>

It must also be noted that Belgium does not gather data (disaggregated on the basis of gender) pertaining to all areas of the Convention, let alone analyze and evaluate such data.<sup>16</sup>

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<sup>8</sup> Core document forming part of the reports of States parties – Belgium, HRI/CORE/BEL/2012, §170 (a).

<sup>9</sup> <http://www.aivl.be/subthema/amnesty-op-bezoek-bij-de-partijen/46033>.

<sup>10</sup> The Institute for the Equality of Women and Men was created as a federal government agency in 2002, but steps were taken by the previous governments to “interfederalize” the Institute.

<sup>11</sup> <http://igvm-iefh.belgium.be/en/>.

<sup>12</sup> Paris Principles relating to the Status of National Institutions, adopted by UN General Assembly resolution 48/134 of 20 December 1993; <http://www.ohchr.org/EN/ProfessionalInterest/Pages/StatusOfNationalInstitutions.aspx>.

<sup>13</sup> Federal Institutional Agreement of 1 December 2011, p. 144; [http://premier.fgov.be/sites/all/themes/custom/tcustom/Files/Regeerakkoord\\_1\\_december\\_2011.pdf](http://premier.fgov.be/sites/all/themes/custom/tcustom/Files/Regeerakkoord_1_december_2011.pdf).

<sup>14</sup> UN HRC, Report of the working group on the universal periodic review. Belgium, A/HRC/18/3, 100.9.

<sup>15</sup> Following federal and regional elections in June 2014, regional governments were formed. The Flemish and Walloon governmental agreements remain silent on the issue of a NHRI. It is hoped that the federal government agreement, still in negotiations at the time of writing (24 September 2014) will reiterate the intention to establish a NHRI, and that effective steps in this direction will be taken in the near future.

<sup>16</sup> Exact data are lacking, for example, on the gender of victims and perpetrators of acts of violence against women, on the prevalence of female genital mutilation, and on the number of women in prostitution. Analysis and evaluation are lacking, for example, on the impact of measures to combat stereotyping in the media, on the impact of measures taken in relation to the National Action Plan to

## RECOMMENDATIONS

Amnesty International recommends that the Belgian authorities:

- Establish an overarching human rights action plan, with clear benchmarks and indicators, in order to harness, streamline and follow up on the many initiatives the different governments take to tackle a specific human rights problem.
- Adopt a more strategic and coordinated approach, based on frequent structural consultation between the various authorities, in order to ensure the development of a coherent policy aimed at eliminating discrimination against women.
- Establish a National Human Rights Institution (NHRI), in line with the Paris Principles.

# GENDER-BASED VIOLENCE AGAINST WOMEN (ARTS. 1 AND 3)

## RAPE AND OTHER FORMS OF SEXUAL VIOLENCE – OFFICIAL FIGURES

Official statistics on rape and other forms of sexual violence in Belgium are worrying. On average, in 2013, the police registered eight complaints of rape and ten instances of sexual harassment daily.<sup>17</sup> Almost half of these complaints never make it to court. It has been reported to the Senate that 44 per cent of all complaints of rape are dropped without charge. 56 per cent of these because of a lack of evidence, and 17 per cent because the perpetrator is unknown.<sup>18</sup> Successful conviction of the perpetrator occurs only rarely. The national conviction rate, 13 per cent in 2006, is below average for Europe.<sup>19</sup> Moreover, under-

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combat intimate partner violence and other forms of domestic violence 2010-2014, and on the impact of the measures and awareness-raising campaigns to combat sexual and psychological violence or harassment at work.

<sup>17</sup> In 2013 3072 instances of rape and attempted rape were reported, and 3562 instances of harassment. Further official statistics, including for earlier years can be found here: [http://www.polfed-fedpol.be/crim/crim\\_statistieken/2013\\_trim4/pdf/nationaal/rapport\\_2013\\_trim4\\_nat\\_belgie\\_nl.pdf](http://www.polfed-fedpol.be/crim/crim_statistieken/2013_trim4/pdf/nationaal/rapport_2013_trim4_nat_belgie_nl.pdf).

<sup>18</sup> Belgian Senate, Colloquium on sexual violence, 8 March 2013, [http://www.senate.be/event/20130308-sexual\\_violence/programme.pdf](http://www.senate.be/event/20130308-sexual_violence/programme.pdf), p. 38.

<sup>19</sup> J. LOVETT and L. KELLY, *Different systems, similar outcomes? Tracing attrition in reported rape cases across Europe*, London, CWASU, 2009, 35-42: Of 100 investigated cases, only four went to trial, albeit



reporting of rape and other forms of sexual violence is a pressing concern: it has been estimated by the authorities that over 90 per cent of sexual crimes are not declared to the police.<sup>20</sup>

#### AMNESTY INTERNATIONAL SURVEY

In February 2014, Amnesty International made public the findings of a survey on rape and other forms of sexual violence in Belgium.<sup>21</sup> 2000 respondents (male and female) were asked questions about their perceptions and personal experiences of sexual violence. 46% of all respondents felt they had been a victim of what they considered serious sexual violence. 56% reported having acquaintances who have experienced sexual violence. Nearly one in four (24,9%) of the women who responded reported being raped by her partner.<sup>22</sup> 13% of female respondents reported having been raped by someone who was not her partner. One in four of female respondents reported having been sexually harassed at work. 7% of female respondents reported having been sexually abused as a child by an adult. Strikingly, respondents state that victims of sexual violence do not speak out or ask for help, mostly because of a lack of confidence in the official channels. Only 16 per cent reported the incident to the police. Respondents more often talked to friends and family as the only coping mechanism (31% of respondents). 40 per cent of the victims sought no help at all, not even talking to family and, or friends.<sup>23</sup>

The official data and the outcome of Amnesty International's survey clearly indicate that hurdles to reach existing support services (police, judiciary, and health care) are perceived as high whereas confidence in the authorities' capabilities to help victims is low.

#### KEY POLICY RECOMMENDATIONS

Several NGO's have made recommendations to the Belgian governments in order to tackle rape and sexual violence in a more efficient way.<sup>24</sup> Of the utmost importance is that the State

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that all four resulted in a conviction.

<sup>20</sup> [http://www.polfed-fedpol.be/pub/veiligheidsMonitor/2008\\_2009/reports/grote\\_tendensen\\_2008.pdf](http://www.polfed-fedpol.be/pub/veiligheidsMonitor/2008_2009/reports/grote_tendensen_2008.pdf), p. 41.

<sup>21</sup> The survey was carried out by Dedicated, an independent market research and opinion polling agency, at the instruction of Amnesty International Belgium and SOS Viol, a Brussels based NGO providing legal, psychological and social aid to rape victims.

<sup>22</sup> The question in the survey asked whether the respondent had "been forced to have sexual intercourse by a partner" rather than if they had been raped by a partner. Experience of Amnesty's partner organisations shows that women are less likely to define forced sex by a partner as rape whereas if the perpetrator is not a partner, they are more likely to define forced sex as rape.

<sup>23</sup> <http://www.amnestyinternational.be/doc/agir-2099/nos-campagnes/le-viol-en-belgique/article/belgique-1-femme-sur-4-violee-par> [http://www.amnestyinternational.be/doc/IMG/pdf/enquete\\_synthese\\_final.pdf](http://www.amnestyinternational.be/doc/IMG/pdf/enquete_synthese_final.pdf)

<sup>24</sup> The Vrouwenraad and the Conseil des Femmes Francophones de Belgique, respectively the Flemish and francophone umbrella organizations of women's NGO's, both published a dossier and an extensive list of recommendations to the authorities.  
[http://www.vrouwenraad.be/media/docs/pdf/2014/vrouwenraadeisen\\_seksueel\\_geweld\\_2014.pdf](http://www.vrouwenraad.be/media/docs/pdf/2014/vrouwenraadeisen_seksueel_geweld_2014.pdf),

party needs to ensure coordinated cooperation among all services-providing entities, ensuring focus on the victim.

Recommendations Amnesty International Belgium has made to the authorities include<sup>25</sup>:

- Improve coordination and cooperation both in policy and in the delivery of services. Governments of the federal and federated levels need to cooperate more actively when adopting policies to tackle sexual violence. On the ground, those services that work with victims of sexual violence (police, health care workers, professionals providing psychosocial support and legal aid workers) need better coordination as well. One way forward could be for the different relevant authorities to agree to set up a specialist centre for victims of sexual violence where the victims can receive medical and psychological care and where – if the victim so chooses – complaints can be filed and evidence gathered.
- Provide sufficient funding across governments to combat rape and other forms of sexual violence, in particular for programs aimed at prevention and follow-up care for victims and the reintegration of perpetrators.
- Statistical data collection on sexual violence is flawed. Amnesty International calls on the State party to collect and analyze data on sexual offences, disaggregated by gender, ethnicity, religion, and other relevant factors, on the type of violence experienced, as well as on the number of prosecutions, convictions and sentences imposed on the perpetrator. Belgium must collect data in accordance with the provisions of article 11 of the Convention on preventing and combating violence against women and domestic violence.
- Quantitative and qualitative analysis of the multiple reasons for the under-reporting of rape, the dropping of rape charges by the prosecutor, and the relatively low number of convictions must be carried out. It should serve as the basis for policy measures to improve the situation.

#### SENSITIZATION AND INFORMATION

The existing initiatives to help victims of sexual violence, such as leaflets produced by the Institute for the Equality of Women and Men, are insufficiently known by the public. Further sensitization efforts are necessary. Information on services and assistance should be widely disseminated, so that they are easily accessible. The Flemish Community set up a telephone help line '1712' in March 2012, where victims can get advice on how to deal with violence. This initiative must be continued and further promoted, and the authorities should engage with other communities to promote similar initiatives.

Increasing public awareness (including of professionals of police, judiciary, and health care)

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<http://www.cffb.be/images/stories/downloads/archives2013/pdf/recommandations%20violences%20derniere%20version%20corrige.pdf>.

<sup>25</sup> <http://aivl.be/sites/default/files/bijlagen/DossierVerkrachtinginBelgie18022014.pdf>.

requires more financial investment.<sup>26</sup> The importance of sensitization and education, so that young people in particular, are better informed on the possibilities of care and prosecution, must be stressed.

## POLICE

Current Minister for the Interior, Joëlle Milquet, announced in February 2014 that a checklist of good practice in responding to 'sexual offences' had been drafted so that all police-officers can use this checklist to ensure uniformity in the treatment of complaints of rape, and appropriate guidance and treatment of victims of rape.<sup>27</sup> It is unclear whether this checklist has already been used. The content and the uniform implementation of such tools must be thoroughly evaluated.

## Medical care and follow-up

Often victims of sexual violence and rape turn first to their General Practitioner or to a hospital, but there is no standardized checklist of best practice in responding to sexual violence for medical professionals. Such a checklist should be introduced,<sup>28</sup> so that appropriate care can be given and all necessary data collected in a uniform way.

Currently so-called SAS (Sexual Aggression Set)-tests are available. These tests are intended to trace DNA-materials when a rape has occurred. It is clear that the police must offer these tests to victims of rape. A far bigger problem however, is that currently over two thirds of the collected DNA-samples through the use of SAS-tests, are not analyzed.<sup>29</sup> The lack of analysis is likely to deter victims of violence from agreeing to a SAS-test, which in turn is likely to have a negative impact on the outcome of the investigations, since DNA and other medical evidence is often essential in proving the case. It is imperative that immediate priority is given to ensuring effective analysis of these tests in all cases. An evaluation of the SAS-tests has been published<sup>30</sup>, and should mandate decision-makers to improve the SAS-test analysis process without delay. Until sufficient means are available, victims should be informed of the fact that the samples may not be analyzed. This is necessary, not to deter victims from filing complaints but in order to inform victims properly. If DNA-samples are not analyzed, victims have a right to be informed about this and to know the reasons.

Urgent action is needed by the authorities to ensure prompt DNA analysis and thorough

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<sup>26</sup> <http://aivl.be/sites/default/files/bijlagen/DossierVerkrachtinginBelgie18022014.pdf>.

<sup>27</sup> <http://www.joellemilquet.be/wp-content/uploads/2014/02/20140214-CP-Campagne-de-sensibilisation-Viol.-Brisez-le-silence.pdf>

<sup>28</sup> Instituut voor de Gelijkheid van Vrouwen en Mannen, Knelpunten en aanbevelingen inzake de aanpak van seksueel geweld, 2014, 27; Vrouwenraad, [http://www.vrouwenraad.be/media/docs/pdf/2014/vrouwenraadeisen\\_seksueel\\_geweld\\_2014.pdf](http://www.vrouwenraad.be/media/docs/pdf/2014/vrouwenraadeisen_seksueel_geweld_2014.pdf)

<sup>29</sup> Vrouwenoverlegkomitee, 25 November 2013, <http://www.vrouwendag.be/standpunten/persberichten>.

<sup>30</sup>FOD Justitie, Dienst Strafrechtelijk Beleid, Eindrapport evaluatie van de COL 10/2005 inzake de Seksuele Agressieset, [http://www.dsb-spc.be/doc/pdf/SAS\\_rapport\\_nl.pdf](http://www.dsb-spc.be/doc/pdf/SAS_rapport_nl.pdf)

investigations in all cases of rape. Specialist training on good practice for medical professionals, gynecologists and general practitioners is necessary and this should be linked to a standardized checklist of best practice in responding to sexual violence as outlined above.

#### ISTANBUL CONVENTION

Belgium signed the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) on 11 September 2012, but it has not yet ratified it. The Institute for the Equality of Women and Men already announced that the Istanbul Convention shall serve as a guideline for all future initiatives and measures regarding violence against women. The future National Action Plan (NAP), for example, should be drafted in accordance with the structure of the Istanbul Convention: Prevention, Protection, Prosecution, and Policies.<sup>31</sup>

Overall, Belgium complies with many of the provisions of the Istanbul Convention. Nevertheless, improvement in some areas is necessary. Article 7 of the Istanbul Convention, for example, requires State parties to adopt and implement State-wide effective, comprehensive and coordinated policies. Article 18 of the Istanbul Convention also urges the State parties to provide for effective cooperation between all relevant state agencies, local and regional authorities as well as non-governmental organizations and other relevant organizations and entities. As already mentioned, the NAP to combat intimate partner violence and other forms of domestic violence 2010-2014 sets out a list of measures to be adopted. Many of the proposed measures have not yet been realized, and there is a need for a more strategic and coordinated approach, based on frequent and structural consultation between the various authorities, leading to effective implementation of the action plan, beyond 2014.

Article 11 of the Istanbul Convention calls on the State parties to collect relevant statistical data disaggregated by relevant categories and to support research relating to gender-based violence. Belgium does not have any specific record of acts of violence against women, as the gender of victims is not systematically encoded.<sup>32</sup>

The seventh chapter of the Istanbul Convention is dedicated to the impact of violence against women and domestic violence on policy on migration and asylum. Article 59 of the Istanbul Convention requires State parties to ensure that victims of violence whose residence status depends on that of the spouse or partner, in the event of the dissolution of the marriage or the relationship, are granted in the event of particularly difficult circumstances, upon application, an autonomous residence permit. Belgium takes a different approach. "Rather than allowing victims of domestic violence to apply for independent residence permits, the [Aliens Act] merely allows them to retain the residency rights that were granted on the basis

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<sup>31</sup> Instituut voor de Gelijkheid van Vrouwen en Mannen – Knelpunten en aanbevelingen inzake de aanpak van seksueel geweld, 13 February 2014.

<sup>32</sup> CEDAW/C/BEL/7, §69.

of their relationship with the sponsoring partner even after the relationship ceases to exist.”<sup>33</sup> Applicants for family reunification who are still waiting for their residence permits do not benefit from this protection. Undocumented migrants, and migrants whose residency rights depend on relationship with short-term residency holders, such as students or those on a fixed-term work permit, also do not fall within the scope of the protective clauses of the Aliens Act. They also do not protect women migrant victims of domestic violence married to aliens who leave the country, thereby terminating the residency rights of both.

## RECOMMENDATIONS

Amnesty International recommends that the Belgian authorities:

- Improve coordination and cooperation both in policy and in the delivery of services. Governments of the federal and federated levels need to cooperate more actively when adopting policies to tackle sexual violence. On the ground, those services that work with victims of sexual violence (police, health care workers, professionals providing psychosocial support and legal aid workers) need better coordination as well. One way forward could be for the different relevant authorities to agree to set up a specialist centre for victims of sexual violence where the victims can receive medical and psychological care and where – if the victim so chooses - complaints can be filed and evidence gathered.
- Provide sufficient funding across governments to combat rape and other forms of sexual violence, in particular for programs aimed at prevention and follow-up care for victims and the reintegration of perpetrators.
- Statistical data collection on sexual violence is flawed. Amnesty International calls on the State party to collect and analyze data on sexual offences, disaggregated by gender, ethnicity, religion, and other relevant categories, on type of violence experienced, as well as on the number of prosecutions, convictions and sentences imposed on the perpetrator. Belgium must collect data in accordance With the provisions of article 11 of the Convention on preventing and combating violence against women and domestic violence.
- Make a quantitative and qualitative analysis of the multiple reasons for the under-reporting of rape, the dropping of rape charges by the prosecutor, and the relatively low number of convictions must be carried out. It should serve as the basis for policy measures to improve the situation.
- Provide sufficient financial means for further sensitization and public awareness raising efforts and campaigns, inter alia targeted at informing young people of the possibilities of care and prosecution.

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<sup>33</sup> Articles 11 and 42 quater §44 of the Law of 15 December 1980 relating to the access to the territory residence, establishment and removal of foreigners, Human Rights Watch, “*The Law Was Against Me – Migrant Women’s Access to Protection for Family Violence in Belgium*”, 2012, 3, <http://www.hrw.org/sites/default/files/reports/belgium1112webwcover.pdf>

- Continue to promote the telephone helpline 1712 in the Flemish Community, and encourage other communities to take similar initiatives.
- Introduce a checklist of good practice for police in dealing with complaints of rape, and evaluate the content and uniform implementation of the checklist.
- Introduce a standardized checklist of good practice for medical practitioners, and provide specialist training on good practice for medical professionals, gynecologists and general practitioners.
- Systematically and promptly analyze all 'Sexual Aggression Set'-tests, unless convincing reasons would render the analysis useless or impossible. Until sufficient means are available, victims must be informed that the Sexual Aggression-Set may not be analyzed.
- Ratify the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), and draft the National Action Plan 2015 in accordance with the structure of the Istanbul Convention: Prevention, Protection, Prosecution, and Policies.
- Reform the Aliens Act to allow all family migrants whose residency rights depend on their relationship with an abusive partner to apply independently for a residence permit.

## **GENDER STEREOTYPING AND MULTIPLE FORMS OF DISCRIMINATION ARTS. 3 AND 10)**

Amnesty International recommends a comprehensive strategy to address negative gender stereotyping. Although not explicitly mentioned, special attention should be paid to the position of women and girls who suffer discrimination on multiple and intersecting grounds, such as women belonging to ethnic, religious and linguistic minorities, older women, female asylum-seekers, and women with disabilities. Migrant, refugee, and minority women are often discriminated against on the basis of their gender and ethnic or religious background.

### **BAN OF FULL FACE VEILS**

Amnesty International recommends that the Belgian governments increase measures taken to combat racism and discrimination against women from groups suffering from multiple forms

of discrimination.

Although official data are not available, fewer than 300 women are estimated to wear full face veils in Belgium.<sup>34</sup> There is also a variety of approaches to the wearing of this veil; some women fully veil themselves only for a few years, some others do so only in specific circumstances.<sup>35</sup>

On 28 April 2011, the Chamber of Representatives (Lower Chamber of the Federal Parliament) voted in favour of a federal legislation prohibiting the concealing of the face. All the members of the Chamber voted in favour except for one who voted against and two who abstained. The legislation entered into force on 23 July 2011.<sup>36</sup>

Supporters of the ban claim that to conceal the face in public could hinder the functions of law enforcement officers to tackle crime. However, domestic legislation already allows law enforcement officers to proceed with identity checks when they suspect a person has infringed or is about to infringe the law or has violated or is about to violate public order. In cases where an individual refuses to comply, he or she may be held in custody for up to 12 hours for the purpose of ascertaining his or her identity.<sup>37</sup> Therefore, the legislation banning concealment of the face does not seem to be necessary for ensuring security.

The Parliament did not consult with civil society or seek the advice of the Council of State ahead of the vote. In July 2011, two women wearing full-face veils launched proceedings before the Constitutional Court aimed at repealing the legislation. On 6 December 2012, the Court found that the law does not violate the right to freedom of religion or belief.<sup>38</sup>

Amnesty International believes that general prohibitions on the wearing of full-face veils violate the rights to freedom of religion or belief and of expression of those women who choose to wear it as an expression of their religious, cultural or personal identity or beliefs. States can deny women the possibility of wearing specific forms of dress, and thus restrict their rights to freedom of expression and to religion or belief, only in order to achieve a legitimate aim and provided that the measures put in place are proportionate and necessary to the aim sought. Assessing the legitimacy of any restriction always requires careful

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<sup>34</sup> The Centre for Equal Opportunities and the Fight against Racism estimates the overall number at 200. The Centre d'action laïque mentioned 270 in a meeting organized with the French Commission presided over by Mr. A. Gerin and aimed at inquiry the practice of the wearing full-face veils in France. See p74 of the report drafted by the Commission: <http://www.assemblee-nationale.fr/13/pdf/rap-info/i2262.pdf>

<sup>35</sup> For more information see: Eva Brems et al., "Wearing the face veil in Belgium", Human Rights Centre, University of Ghent, <http://www.ugent.be/re/publiekrecht/en/research/human-rights/faceveil.pdf> (accessed 4 January 2013)

<sup>36</sup> Law aimed at prohibiting the wearing of any dress hiding completely or predominantly the face (loi visant à interdire le port de tout vêtement cachant totalement ou de manière principale le visage), <http://staatsbladclip.zita.be/moniteur/lois/2011/07/13/loi-2011000424.html>

<sup>37</sup> Article 34 of the Law of 5 August 1992 on the Police Function

<sup>38</sup> Judgment 145/2012 of 6 December 2012 <http://www.const-court.be/public/f/2012/2012-145f.pdf> (accessed 4 January 2013).

consideration on a case-by-case basis, with reference to demonstrable facts and not presumptions, speculation or stereotyping.

Some clearly defined restrictions on the wearing of full-face veils will be legitimate, for instance, when required to show one's face in certain demonstrably high-risk locations, or for necessary identity checks. But in the absence of any demonstrable link between threats to public safety and the wearing of full-face veils, public safety cannot be invoked to justify the restriction on the right to freedom of expression and religion or belief that a ban on the wearing of full-face veils would entail.

It has been argued that a general ban on full-face veils is necessary to safeguard gender equality and protect women from being pressured or coerced into wearing it. States do have an obligation to uphold gender equality and ensure that all individuals are able to freely exercise their right to freedom of expression and other human rights such as the right to work, education and freedom of movement. They must, therefore, take measures to protect women from being pressurized or compelled to wear full-face veils against their will. Where violence or the threat of violence is employed to compel women to dress in a certain way, the appropriate response for the state is to intervene in each individual case through the family or criminal law system. States have to do so by adopting comprehensive legislation aimed at tackling all forms of violence against women, promoting awareness-raising initiatives in order to better inform women of their rights and putting in place mechanisms to seek redress. However, Amnesty International is concerned that European states including Belgium have focused so much in recent years to the wearing of full-face veils as if this practice were the most widespread and compelling form of inequality women have to face.

## BAN ON HEADSCARVES

Amnesty International is furthermore concerned that the general ban on wearing headscarves in 'GO!' Flemish Community schools violates the right to freedom of religion and to freedom of expression, increases the discrimination faced by girls from ethnic and religious minorities and may impede equality of access to education.

Restrictions on wearing religious and cultural symbols and dress for pupils have been introduced by Belgian authorities in recent years.<sup>39</sup> For instance the Internal Regulation of the municipality of Brussels prohibits the display of any apparent political, ideological or religious sign within the school premises and in the contexts of both indoor and outdoor school activities.<sup>40</sup> This Regulation also applies to institutions providing higher education to

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<sup>39</sup> Choice and Prejudice: Discrimination against Muslims in Europe, Amnesty International, Index EUR 01/001/2012, April 2012, pp. 60-65

<sup>40</sup> Internal Regulation, Municipality of Brussels, Article 2: Declaration of Principle, Article 7.4: respect of neutrality [http://www.jacqmain.be/index.php?option=com\\_content&view=article&id=256:roi-ville-debruxelles&catid=34:reglements&Itemid=393](http://www.jacqmain.be/index.php?option=com_content&view=article&id=256:roi-ville-debruxelles&catid=34:reglements&Itemid=393)



adult students.<sup>41</sup> It is submitted that such a general ban is contrary to international law.<sup>42</sup>

Among students in Flanders, approximately 16 per cent attend schools run by GO!, which is fully funded by the Flemish Community but managed independently from the Ministry of Education. Until 2009 each school run by GO! was authorized to establish its own rules on the display of religious and cultural symbols and dress for pupils. GO! told Amnesty International that although data were not collected, approximately seven out of 10 of its schools had introduced some form of dress-code restrictions. For instance in 2009 only three schools allowed the wearing of religious and cultural symbols and dress in Antwerp, the biggest city in Flanders with a large Muslim community. GO! ran two of them (Koninklijk Atheneum Antwerpen and Koninklijk Atheneum Hoboken).

On 11 September 2009, the Board of GO! introduced a general ban prohibiting the display of religious and philosophical symbols, applying to pupils, teachers and anyone charged with pedagogical tasks within its schools. The Director of GO! motivated the ban by their intent to preserve diversity, stating that an increasing number of students chose to attend GO! Schools solely because the display of religious and philosophical symbols was still allowed; and the need to tackle group pressure against youngsters who did not want to wear religious symbols and dress. The decision of GO! was later confirmed and further detailed in a circular, issued in 2013.<sup>43</sup>

It is submitted that such a general ban violates the rights to freedom of expression and of religion or belief. Wearing religious and cultural symbols and dress is an element of the right to freedom of expression and of the right to manifest religion or belief. Under international human rights law, no restrictions are permissible on the right to hold (or not to hold) religious or other beliefs, or opinions generally. However, the right to express such opinions (freedom of expression) or to manifest one's religion or belief may be subject to certain restrictions but, as mentioned above, only where such restrictions are demonstrably necessary and proportionate for the purpose of achieving a specified legitimate aim such as the protection of public safety, order, health, or morals or the fundamental rights and freedoms of others.<sup>44</sup>

The ban has a disproportionate impact on Muslim girls who wish to exercise their rights to freedom of religion or belief and to freedom of expression by choosing to wear a headscarf. The decision to ban religious and cultural symbols and dress applied by the two GO! Schools and by other schools in the past resulted from cases of pupils wearing the headscarf. As

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<sup>41</sup> See the case of the higher education institution Francisco Ferrer, Choice and Prejudice, p. 61

<sup>42</sup> The former UN Special Rapporteur on freedom of religion or belief pointed out that "... schoolchildren are generally considered vulnerable in view of their age, immaturity and the compulsory nature of education... University students, however, have normally reached the age of majority and are generally considered to be less easily influenced than schoolchildren, and parental rights are usually no longer involved." Report of the UN Special Rapporteur on freedom of religion or belief, Asma Jahangir, 9 January 2006, EC/N.4/2006/5 para 56.

<sup>43</sup> Raad GO!, Omzendbrief inzake het verbod op het dragen van levensbeschouwelijke kentekens, [http://www.g-o.be/Net\\_eMagazineHome/Pages/OverGO.aspx?Id=97](http://www.g-o.be/Net_eMagazineHome/Pages/OverGO.aspx?Id=97)

<sup>44</sup> See, for example, Article 18.3 of the ICCPR

confirmed by GO! to Amnesty International, no other religious symbols have sparked significant controversies. This may be due to additional factors; in Antwerp, for example, the majority of Jewish pupils wearing religious symbols attend Jewish schools.<sup>45</sup> Even if some of the aims of GO! in imposing a general ban, such as protecting pupils who chose not to wear headscarves from pressure, could be considered legitimate, the proportionality and necessity of a general ban are extremely doubtful, especially considering that it may lead to drop-outs, segregation of pupils wearing the headscarf in Muslim private schools or home education.<sup>46</sup> Alternative policies, such as strengthening measures aimed at tackling bullying, could have been pursued and in instances where those resulted being ineffective, prohibitions to wear religious symbols could have been introduced at the school level.

In the past the Flemish Ministry of Education did not take a position on restrictions on religious and cultural symbols and dress in public schools, believing that the issue was better tackled at the level of each individual school.<sup>47</sup> The Ministry has not taken a stand on the introduction of a general ban on religious and philosophical symbols applying to pupils. However, the Flemish government is responsible for ensuring that the rights of the pupils to freedom of expression and to freedom of religion or belief are protected, respected and fulfilled, as well as for the organization of public education in Flanders. It has to ensure equal opportunities and treatment in all areas, including education, as foreseen by the Decree on Equal Opportunities and Treatment, adopted by the Flemish Community on 8 July 2010, which enshrines the prohibition against discrimination on the ground of religion or belief in several areas of life including education.<sup>48</sup>

## RECOMMENDATIONS

Amnesty International recommends that the Belgian authorities:

- Adopt a comprehensive strategy to address negative gender stereotyping.
- Increase measures taken to combat racism and discrimination against groups of women suffering from multiple forms of discrimination.
- Repeal the federal legislation prohibiting the concealing of the face.
- Uphold the rights of pupils and students to freedom of expression and freedom of religion by ensuring that no general ban on religious and cultural symbols or dress is

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<sup>45</sup> Meeting with with Forum der Joodse Organisaties (FJO/Forum of Jewish Organizations), Antwerp, 28 June 2011.

<sup>46</sup> For further information on these three aspects and the specific features of the Belgian educational system see: Choice and prejudice pag. 62-65

<sup>47</sup> Meeting with the Flemish Ministry of Education, Brussels, 24 June 2011.

<sup>48</sup> Decree of the Flemish Community on Equal Opportunities and Treatment, Article 20.

# LEGAL GENDER RECOGNITION (ARTS. 1, 5 AND 10)

Widespread prejudices, gender-based stereotypes and discriminatory legislation negatively affect the enjoyment of human rights by transgender individuals in Belgium.<sup>49</sup> Belgium violates the rights of transgender people to the highest attainable standard of health and to be free from inhuman, cruel and degrading treatment by requiring transgender people to undergo unnecessary medical treatments, including sterilization, in order to obtain legal recognition of their gender. The process required to obtain legal gender recognition (on official documents by the State party, and on other documents, such as diplomas) should be quick, accessible, and transparent, instead of lengthy and arduous. All information concerning changes of legal name and gender should be kept confidential. The fact that legal gender recognition is dependent on requirements that transgender must comply with, such as psychiatric assessment and compulsory sterilization or surgery, violates their rights to private life, to be free from cruel, inhuman and degrading treatment and to equal recognition before the law.

The current exclusion of minors from being able to obtain legal gender recognition because they cannot fulfill the medical requirements prescribed by the law is also at odds with international standards obliging states to take into account the child's freely expressed views regarding their own best interests, in light of their evolving capacities.

In January 2013, the Belgian government adopted a comprehensive roadmap to combat discrimination on grounds of sexual orientation and gender identity. Explicit legal protection against discrimination on grounds of gender identity and expression (besides the already existing grounds of sex and gender reassignment) is now provided.<sup>50</sup> Gender identity and expression are explicitly included as grounds for prosecution of hate crimes.

The roadmap also includes a commitment to review the 2007 law on legal gender recognition. So far, however, the law has not yet been adapted, despite all the preparatory work. Consequently, unnecessary requirements remain in the law: sterilization and surgery requirements, and the requirement that transgender people receive psychiatric diagnosis and undergo psychiatric assessment have not yet been abolished.

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<sup>49</sup> Amnesty International – 'The State decides who I am', Lack of legal gender recognition for transgender people in Europe, <http://www.amnesty.org/en/library/asset/EUR01/001/2014/en/13af83a1-85f5-476f-9fe9-b931f2b2a9f3/eur010012014en.pdf>.

<sup>50</sup> Law of 22 May 2014 on the amendment of the law of 10 May 2007 to combat discrimination of women and men in order to expand it to gender identity and gender expression, [http://www.ejustice.just.fgov.be/cgi/article.pl?language=nl&caller=summary&pub\\_date=2014-07-24&numac=2014000613#top](http://www.ejustice.just.fgov.be/cgi/article.pl?language=nl&caller=summary&pub_date=2014-07-24&numac=2014000613#top).

Steps must be taken to raise public awareness of transgender identities and the discrimination experienced by transgender people, also in the provision of medical care.

#### RECOMMENDATIONS

Amnesty International recommends that the Belgian authorities:

- Amend the current laws and practices, in particular the Law on Transsexuality of 10 May 2007, with the aim of allowing transgender people to obtain legal recognition of their gender and to change their names through a quick, transparent and accessible procedure;
- Abolish the sterilization and surgery requirements included in the Law on Transsexuality of 10 May 2007;
- Remove the requirement that transgender individuals receive psychiatric diagnosis and undergo psychiatric assessment as a precondition for legal gender recognition. Remove transgender identities from the national classification of diseases and ensure that transgender people can access the health treatments they wish on the basis of their informed consent;
- Ensure that legal gender recognition can be effectively accessed by minors on the basis of their best interests and by taking into account of their evolving capacities.



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