

Belgium

Written submission by deMens.nu for the UN Universal Periodic Review

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DeMens.nu

1. DeMens.nu is the Dutch speaking umbrella organisation representing, organizing and defending the humanist community in Belgium. Recognized as an official life stance organization, deMens.nu together with their French speaking counterpart, the Centre d'Actions Laïque, are the organisations through which atheists, non-believers, secularists, free thinkers, agnostics, and rationalists have their voices heard at national level. They are both members of the European and worldwide umbrella organisations of humanists; the European Humanist Federation and Humanists International.
2. DeMens.nu is active in organizing humanist moral counselling and community building in hospitals, universities, the army but also in prisons.

Summary of submission

3. The Belgian prison and detention system systematically imposes inhumane treatment on those deprived of their liberty. Many human rights violations stem from the fact that prisons are overpopulated, sustained by ageing infrastructure, understaffed and poorly adapted to the needs of inmates, especially those with complex needs. The situation is particularly concerning in the case of vulnerable categories of prisoners, including individuals with mental health problems or asylum seekers.
4. The main issues in Belgian prison system are recurrent, and what is most troubling in our observations is that the government was addressed repeatedly and extensively on these matters at both the national and international level, but has failed to take appropriate action.

Past UPR recommendations

5. During its second UPR in 2016, Belgium received and accepted several recommendations that are relevant to this submission. These include the following:
 - 5.1. *Swiftly ratify the Optional Protocol to the Convention against Torture* (United Kingdom of Great Britain and Northern Ireland and others)
 - 5.2. *Maintain endeavours to decrease overcrowding of prisons and detention facilities through continued facility construction and improvements by other means* (United States of America and others)
 - 5.3. *Continue to improve the measures so that adequate access to health care and rehabilitation services needed are in place for detained psychiatric patients* (Canada)

- 5.4. *Adopt measures to place detainees suffering mental illness in establishments that are separate from common prisons (Uruguay)*
- 5.5. *Ensure that all persons deprived of liberty are held in humane conditions, including in line with the United Nations Basic Principles for the Treatment of Prisoners and the Standard Minimum Rules for the Treatment of Prisoners (Bulgaria)*
- 5.6. *Consider developing legislation and agreements which allow for alternatives to imprisonment in cases of minor offenses (Uruguay)*
6. It noted the following recommendation:
 - 6.1. *Halt the systematic use of detention of asylum seekers at the borders (Egypt)*
7. We embrace the new legislation put in place in 2019 regarding the continuation of minimal services during prison strikes (Law of 23rd of March 2019¹, concerning the organisation of penitentiary services and the statue of the prison personnel). This was in response to the inhumane treatment that many prisoners experienced while several prison officer strikes took place, such as no warm meals and no access to psychological or medical help. We also commend Belgium on its efforts to transition to a community-based approach to mental healthcare, providing people who previously would have been hospitalized with the opportunity to choose where they wish to receive treatment and care.² We also embrace the fact that since the 1st of October 2020, prisoners are directly entitled to file a complaint to the organism responsible for monitoring prisons³.
8. However, as identified in this submission, serious deficiencies remain in its efforts to tackle the issues of prison overcrowding, access to healthcare and rehabilitation services in prisons and finding alternatives to imprisonment.

Inhumane and degrading treatment stemming from overcrowding in prisons

9. Prisons in Belgium continue to suffer from chronic overcrowding. With 120 inmates for every 100 places, Belgium currently has the second most overcrowded prisons in Europe.⁴ While at least 1,000 prisoners were granted early release as a means of managing the COVID-19 pandemic,⁵ structural reforms are urgently needed to resolve problems in the longer term.
10. In 2017, a delegation of the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) carried out a periodic visit to Belgium and found numerous examples of inhumane and degrading prison conditions, stemming from cramped and unhygienic accommodation; lack of privacy; reduced out-of-cell activities;

¹ http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&cn=2019032312&table_name=wet

² <https://www.centreforpublicimpact.org/case-study/reform-107-belgiums-transition-community-based-approach-mental-healthcare/>

³ <https://ctrg.belgium.be/klachtrecht/>

⁴ <https://infogram.com/prison-overcrowding-across-europe-1hd12y0epvew6km>

⁵ <https://www.euronews.com/2020/04/30/covid-19-belgium-s-overcrowded-prisons-a-powder-keg-for-infections>

overburdened health-care services; increased tension and hence more violence between prisoners and between prisoners and staff.⁶

11. The European Court of Human Rights (ECtHR) has ruled on more than one occasion that inhumane prison detention conditions have violated the fundamental human rights of detainees.⁷ For example, in the 2014 *Vasilescu v Belgium* case, the ECtHR found that Article 3 of the European Convention on Human Rights (on the prohibition of torture and inhuman or degrading treatment) had been violated because the applicant, while held in the prisons of Antwerp and Merksplas, had been placed in cells with no toilet facilities or access to running water, and had been exposed to secondhand smoke against his will.⁸ Article 3 was also found to be violated in the 2017 *Sylla and Nollomont v. Belgium* case, due to a combination of overcrowding and a lack of privacy with regards to hygiene facilities in the Forest and Lantin Prisons.⁹
12. For years, prison officers in prisons across Belgium have conducted successive strikes to bring attention to their poor working conditions, overcrowding and inadequate infrastructure in prisons.¹⁰ Strikes by prison staff have had severe repercussions on the human rights of detainees. In October 2019, a strike by prison guards in Antwerp meant that prisoners were unable to leave their cells, receive visitors or to shower for 12 days.¹¹ In the 2019 case of *Clasens v Belgium*, the Court found a violation of Article 3 had occurred during a prison wardens strike in Ittre prison, because the applicant had been denied physical exercise and contact with the outside world and faced day to day uncertainty about whether his basic needs would be met.¹²
13. Despite the cumulative effect of these cases and repeated promises from the government to improve conditions, human rights violations stemming from overcrowding remain commonplace in Belgium's prisons. The government's penal reform agenda has so far tended to focus on the construction of new prisons and the expansion of existing prisons. This includes the construction of a new "super prison" in Haren, which has already been criticised by civil society organisations for increasing the isolation of prisoners and imposing a greater burden on visiting family members by making them travel far outside of the city centre.¹³ In addition, criminologists have observed better results and a more humane handling of the prisoners in smaller facilities.
14. Less emphasis has been placed on structural reforms that do not involve increasing the number of places in prisons - including reducing excessive use of pre-trial detention, early releases and greater use of non-custodial sentences.¹⁴ Belgium continues to detain individuals on remand at a

⁶ <https://rm.coe.int/16807913b1>

⁷ https://www.echr.coe.int/Documents/Guide_Prisoners_rights_ENG.pdf

⁸ ECtHR, *Vasilescu v. Belgium*, No. 64682/12, 25 November 2014

⁹ ECtHR, *Sylla and Nollomont v. Belgium*, Nos. 37768/13 and 36467/14, 16 May 2017

¹⁰ <https://www.brusselstimes.com/news/belgium-all-news/56292/belgium-prison-strike-guards-strike-overcrowded-inmate-jail/>

¹¹ <https://www.vrt.be/vrtnws/en/2019/10/07/antwerp-prisoners-havent-been-able-to-shower-for-12-days/>

¹² ECtHR, *Clasens v. Belgium*, No. 26564/16, 28 May 2019

¹³ <https://www.brusselstimes.com/news/belgium-all-news/justice-belgium/59551/super-prison-in-haren-gets-green-light-from-council-of-state/>

¹⁴ <https://www.prison-insider.com/en/articles/belgique-prison-overcrowding-reaches-alarming-levels?referrer=%2Fen%2Farticles%3Fpage%3D1%26country%255B0%255D%3DBE>

high rate, with figures from 2018 showing that 35.6% of the total prison population consists of persons held in pre-trial detention.¹⁵ Under Belgian law, there is no maximum time limit to pre-trial detention,¹⁶ and the lengthy nature of the criminal justice system in Belgium means that a person may potentially be held in custody on remand for over a year.

15. Due to chronic overcrowding in many facilities, detainees are placed in a physical proximity that is especially dangerous against the backdrop of the COVID-19 pandemic. Measures to reduce the risk of the virus spreading involved restricting the rights of prisoners ever further. Prison visits were suspended for two months at the height of the pandemic. Nivelles and Huy prisons were put under lockdown after inmates tested positive for the virus, during which the ability to leave one's prison cells for exercise and other out-of-cell activities was severely restricted.¹⁷ While many of these measures were arguably necessary in the moment to contain the virus, the pre-existing situation of overcrowding exacerbated the overall effect on prisoners' rights, including their mental health and wellbeing.

Treatment of prisoners with mental health issues

16. Access to healthcare is a fundamental right for those detained of their liberty. When organizing health care services in prisons, States must guarantee the equivalence of care, which requires care to be provided to detainees in conditions comparable to those enjoyed by patients in the outside community. The provision of health care in prison must also align with the specific needs of the prison population, inclusive of their mental health needs.¹⁸
17. Due to the lacking number of institutions for mental health issues, vulnerable detainees with complex psychiatric profiles are being held in regular facilities, despite repetitive judgements from the ECtHR declaring this practice to be incompatible with their human right to health. We are particularly worried about the constant stretching of the deadline to solve this issue, now set to 2023¹⁹.
18. Moreover, there remains a broad discrepancy between penitentiary facilities in terms of access to medical care, with some prisons offering comprehensive healthcare and psychiatric consultation and others with a basic provision of services. From an equality standpoint, there is a need to harmonize healthcare facilities across prisons as well as between prisons and the outside community.²⁰

Treatment of asylum seekers

¹⁵ <https://www.prisonstudies.org/country/belgium>

¹⁶ <https://www.fairtrials.org/wp-content/uploads/Criminal-Proceedings-and-Defence-Rights-in-Belgium-Aug-2013.pdf>

¹⁷ <https://www.brusselstimes.com/belgium/135508/early-release-inmates-jails-prison-coronavirus-indispensable-to-free-belgian-prisoners-to-cut-covid-19-risks-international-prison-observatory-warns-belgium-huy-nivelles-lockdown-coronavirus-strike-ove/>

¹⁸ The Nelson Mandela Rules, Rule 24. Third General Report on the CPT's activities covering the period 1 January to 31 December 1992, 4 June 1993, para. 38

¹⁹ <https://www.amnesty-international.be/belgie-mensenrechten-in-de-gevangenis>

²⁰ https://kce.fgov.be/sites/default/files/atoms/files/KCE_293Cs_Prisons_health_care_Synthese.pdf

19. Belgium continues to deprive asylum seekers of their liberty while they await confirmation of their immigration status. While international and Belgian law holds that detention should be a measure of last resort, in practice the systematic detention of asylum seekers arriving at the border, without appropriate safeguards for vulnerability identification, is routine and a major cause for concern.
20. In August 2018, a new facility was opened specifically intended to hold families with children in detention. A total of 19 children were detained with their families in this unit between 2018 and 2019. Following rulings by the ECtHR, the Belgian State Council suspended the practice of detaining children in April 2019.²¹
21. Despite legal guarantees, asylum seekers in detention have reported numerous violations of their rights. Many asylum seekers report being unaware of their right to free legal assistance and subsequently fail to receive a lawyer. Others report being unable to access essential health care. Furthermore, multiple concerning reports have surfaced of racist abuse and threats of violence from detention authorities.²² A 2019 report by a group of NGOs highlights appalling individual cases of abuse. In one example, an Eritrean man, with clear signs of torture on his body, committed suicide before being deported to Bulgaria, after having been detained for 4 months.²³

Evaluating the necessity of prisons in general

22. From an ethical perspective the question must be raised whether or not the detention system is effective and ethically defensible or not. The lack of healthy social and emotional experiences during detention, the feeding of the feeling of helplessness of detainees through withdrawal of all decisional capabilities, the removal of capacity of self-determination, the absence of physical and mental health sustainment, the retraction of social and family bonds, long-term isolations, the burden on future work opportunities, the societal stigmatisation, the negative emotional spiral deconstructing ego and pride are just a few of the many negative impacts prison sentences have on individual.
23. Do we as a society want to create a moment where criminals are stimulated to become good and honest citizens, thus preventing future criminality or do we want to break down any form of humanity by removing as much as we can from the personality of the detainees?
24. Such a question is useful to bear in mind when establishing rules and regulations for this specific aspect of society. The answer could lie in a balance between breaking down destructive and criminal habits and building up a more constructive and positive personality, but does one have to tear down everything in ones personality to be able to build something better? A central factor in this reasoning is the protection of society, of victims of criminal activities. This factor of victims is barely addressed by our societies and all the focus is set on the punishment and preferably as harsh as possible. Countries like Sweden that reversed this paradigm book much lower relapse,

²¹ <https://www.asylumineurope.org/news/09-04-2020/aida-2019-update-belgium>

²² https://refugee-rights.eu/wp-content/uploads/2020/01/ICCPR_127thSession_NGOSubmission_Belgium_RefugeeRightsEurope.pdf

²³ <https://www.cire.be/publication/vulnerabilite-et-detention-en-centre-ferme-recommandations/>

and much higher success of reintegration.

Recommendations

25. Despite much international criticism, Belgium has so far demonstrated a lack of political will to reform the prison system in line with the United Nations Basic Principles for the Treatment of Prisoners and the Standard Minimum Rules for the Treatment of Prisoners. We urge the recently formed government to accept the following recommendations and commit to properly addressing the issue of human rights violations in prison:
 - 25.1. Overpopulation should be tackled not only by building more facilities, but also by exploring and ***implementing new systems***, such as strengthening electronic monitoring or independent probation, work sentences and ***alternative punishments, limiting detention on remand, countering the general lengthening of the sentences and enhancing possibilities of getting out on parole.***
 - 25.2. Criminality is a societal phenomenon that results from many variables in society. Addressing the prison system is necessary but could be felt as a small patch on a big open wound. Tackling the reasons for the high numbers of criminality may seem more difficult, but in the end more rewarding for society at large. ***Poverty reduction, basic guaranteed education, wide spreading teachings on the principle of rule of law to the broad society, citizenship education and moral and ethical values transmission*** may be a few of the many options a government can and should consider
 - 25.3. The Belgian government should ***prioritize the renovation of infrastructures and continue its effort in building new and more modern adapted facilities*** for people with mental health issues
 - 25.4. Regarding ***asylum seekers***, we expect the Belgian Government to adapt its procedures for dealing with the right of asylum. ***Detention should only be used as a last resort***, when problematic situations occur. Accommodations should meet higher standards, particularly as the majority of detained asylum seekers are not guilty of any crime and thus should be kept out of penitentiary regimes. ***Access to healthcare*** should not even be a topic of discussion, as it is a fundamental human right. We also deeply regret that some asylum prisoners are ***being transferred to countries with a record of grave human rights violations***, and thus where we can expect a high risk for them to experience inhuman or degrading treatments
 - 25.5. Problematic consequences of the carceral system should not be solved only within that system, but also in the ***training of judges*** and the justice apparatus in general. We therefore strongly advise the Belgian Government to launch a broader societal debate around this issue, including ethical academics, life stances, human rights organisations, former detainees that reintegrated successfully and all different stakeholders
 - 25.6. ***Mentally ill offenders should not be incarcerated in regular prisons***, and require adequate treatment that meets their mental health needs.

25.7. Academic specialists suggest *small penitentiary structures* are more suitable, so we would advise the Belgian Government to avoid huge projects like the one in Haren.