

## Belgium

Belgium is a constitutional and parliamentary monarchy, governed under a federal state (Constitution, art. 1). Power is exercised by the Federal authority, the Communities (the French Community, the Flemish Community and the German-speaking Community) and the Regions (the Flemish Region, the Walloon Region and the Brussels-Capital Region) (Constitution, art. 2 & 3).

### 1. Discrimination in the family

#### a) Overarching legal framework for marriage

The law provides women with the same rights as men to enter into marriage and marriage is based on the consent of both spouses (Civil Code, art. 143 & 146). Forced marriage is punishable with imprisonment of three to five years and a fine (Penal Code, article 391). An attempt to force someone to marry by using violence or threats is punishable with two months to three years of imprisonment and a fine (Penal Code, art. 391).

Civil marriage is mandatory before the celebration of customary or religious marriage and the law includes a punishment of a fine for those who proceed a marriage celebration before the civil marriage (Penal Code, art. 267).

The Civil Code provides for the regulation of informal or de-facto unions through the legal cohabitation provision (art. 1475). Two persons who live together can declare to the office in charge to be cohabitating, which gives them certain rights and legal protection (Civil Code, art. 1475).

The National Action Plan to Combat All Forms of Gender-Based Violence (2015-2019) includes forced marriage as a form of gender-based violence (IEWM, 2015). It also recommends a set of measures to be taken with regards to forced marriage notably assessment and monitoring, developing the detection tools, increasing data collection and launching a study on the prevalence of forced marriage in the country (IEWM, 2015). Preventive measures involve (i) awareness raising campaigns targeting the relevant groups such as parents, local religious organisations (ii) creation of a pool of community entertainers to sensitise to forced marriage and (iii) trainings of professionals including public servants, magistrates, victim care officers, desk clerk, forensic pathologists, police interrogators, medical staff and municipal official (IEWM, 2015).

Victims of forced marriage can seek help in existing shelter and support services for victims of intimate partner violence, however there are no specific structures or services for victims of forced marriage (IEWM, 2015). There is a helpline dedicated to victims of forced marriage, which was developed by the French Community (IEWM, 2015).

#### b) Early marriage

The legal age of marriage in Belgium is 18 years old for women and men (Civil Code, art. 144). The family court can allow a marriage before the legal age upon the request of the minors, the parents or

the guardians under extenuating circumstances (Civil Code, art. 145). There are no public measures regarding child marriage.

### **c) Household responsibilities**

There is no legal discrimination against women's legal rights to be recognised as the head of household, to be the legal guardians of their children or to choose where to live. The Civil Code grants equal responsibilities to married couples regarding the expenses of marriage and the administration of marital properties (art. 221 & 215). Women and men have the same rights to be the legal guardians of their children and share the same rights and responsibilities with regards to their children (Civil Code, art. 373 & 203). Additionally, the conjugal home is fixed upon a common agreement between the spouses; in case there is no agreement, the family court decides (Civil Code, art. 214). The Constitution recognises, inter alia, the right of everyone to choose where to live, notably through the principle of non-discrimination and equal enjoyment of rights and liberties for women and men (art. 11bis), the inviolability of domicile (art. 15) and the rights to private properties (art. 16).

### **d) Divorce**

The Civil Code provides women and men with the same rights to initiate a divorce and to finalise a divorce or an annulment (art. 229). The Civil Code stipulates that women are provided with the same rights as men to be the legal guardians of their children and share the same parental authority after divorce (art. 374).

### **e) Inheritance**

The law provides daughters with the same rights as sons to inherit land and non-land assets (Civil Code, art. 745). Female surviving spouses are granted the same rights as male surviving spouses to inherit land and non-land assets (Civil Code, art. 745bis). Women and men have the same right to make a will (Civil Code, art. 895).

## **2. Restricted Physical integrity**

### **a) Violence against women**

There is no specific law in Belgium addressing all forms of violence against women and including specific provisions for investigation, prosecution and punishment of the perpetrator or protection and support services for victims.

The Institute for the Equality of Women and Men (2015) oversees the implementation of the National Action Plan to Combat All Forms of Gender-Based Violence (2015-2019) (IEWM, 2015). The National Action Plan covers multiple forms of gender-based violence, namely intimate partner violence, female genital mutilation, forced marriage, honour-based violence, sexual violence and prostitution (IEWM, 2015). Six overall objectives constitute the National Action Plan, notably (i) to pursue an integrated policy to combat gender-based violence and gather quantitative and qualitative data about all forms of violence (ii) to prevent violence (iii) to protect and support victims (iv) to investigate, prosecute and adopt protective measures (v) to incorporate the gender dimension in asylum and migration policy and (vi) to fight against violence at the international level (IEWM, 2015). The National Action Plan

entails a measure to increase the financial support for NGOs and civil society organisations (IEWM, 2015).

Furthermore, refugee status can be granted in Belgium for fear of gender-based persecution (CEDAW, 2014). However, services available to asylum seekers fleeing due to fear of gender-based persecution are inadequate, notably unaccompanied asylum-seeking girls are not always assigned female guardians and asylum-seekers women are not systematically provided with female lawyers or interpreters (CEDAW, 2014).

The CEDAW Committee (2014) stresses the lack of available data on violence against women encompassing age, ethnicity, nationality, relationship between the victims and the perpetrators and the number of women murdered by their partner or former partner.

### **b) Domestic violence**

The Penal Code includes several provisions that can be prosecuted as domestic violence, such as voyeurism (art. 371/1), rape (art. 375), indecent behaviour (art. 372), abandonment of the family (art. 391bis), murder (art. 393), injuries and beatings (art. 398) and harassment (art. 442bis, 442ter).

Domestic violence is included in the Penal Code as an aggravating factor. When the offense is committed toward a spouse or cohabitant or former partner, the sentence will be doubled in case of imprisonment and added two additional years in case of reclusion (art. 410). Additionally, the law stipulates that the victims can be entitled to the enjoyment of the conjugal residence in case of domestic violence between spouses (Civil Code, art. 223). The legal definition of domestic violence includes physical, sexual, psychological and economic violence (IEWM, 2015). Additionally, the Law on Entry on the Territory, the Stay, the Settlement and the Removal of Aliens does not consider domestic violence as a ground for obtaining residence (CEDAW, 2014).

The National Action Plan to Combat All Forms of Gender-Based Violence (2015-2019) foresees prevention measures regarding domestic violence, notably trainings for a wide range of professionals and education campaigns (IEWM, 2015). Moreover, the National Action Plan envisages to provide victims with specialist support services and shelters in appropriate numbers, with general support services including medical, psycho-social and judicial assistance and with round-the-clock telephone helplines (IEWM, 2015).

Despite legislation in place, the Committee on Economic, Social and Cultural Rights (2013) highlighted the prevalence of domestic violence and increased vulnerability to domestic violence of women and girls with disabilities in the countries. Furthermore, the CEDAW Committee (2014) stressed an under-reporting of number of domestic violence cases, notably due to mistrust towards the police and the judiciary and silence and fear from victims. The CEDAW Committee (2014) noted the lack of shelters available to women victims of domestic violence and the restricted access faced by migrant women due to financial constraints.

### **c) Rape**

The legal framework addresses sexual violence under the provision regarding indecent behaviour, which is punishable with imprisonment of one month to five years; increased penalties are included if

the victim is a minor (Penal Code, art. 373). Rape is criminalised under article 375 of the Penal Code and is based on the lack of consent. There is notably a lack of consent when the act was imposed with violence, constraint, threat, surprise or ruse or has been made possible by the vulnerability of the victim (Penal Code, art. 375). The crime of rape is punishable for five to ten years of imprisonment (Penal Code, art. 375). Increased penalties for aggravated forms of rape and sexual violence are included in the legal framework (Penal Code, art. 375, 376, 377).

The National Action Plan to Combat All Forms of Gender-Based Violence (2015-2019) includes measures regarding the prevention of sexual violence, notably trainings for professionals who deal with sexual violence, assisting victims of rape and sexual violence with medical support and legal assistance and educational campaigns targeting groups that are particularly vulnerable to rape such as students (IEWM, 2015). Additionally, the CEDAW Committee (2014) reported on the publication of a checklist of good practices for police officers who deal with sexual violence cases.

The CEDAW Committee (2014) highlighted the under-reporting of cases of rape and sexual violence and the lack of prosecution regarding the ones reported. According to numbers reported by Amnesty International (2014); eight complaints of rape were recorded by the Police every day in 2013. Most of those complaints did not lead to prosecution and conviction rates are low (Amnesty International, 2014). Additionally, it is estimated that 90% of sexual offenses were not reported to the police (Amnesty International, 2014). Amnesty International (2014) conducted a survey on rape and other forms of sexual violence in Belgium, through which 2 000 persons (female and male) were interviewed. Out of the 2 000 respondents, 46% declared having been victims of serious sexual violence (Amnesty International, 2014). 24% of women reported having been raped by their partner and 13% by someone who was not their partner (Amnesty International, 2014). 16% of the respondents declared reporting to the police while 31% declared only talking to friends and family (Amnesty International, 2014).

The CEDAW Committee (2014) stressed the absence of specific shelters and centres for women victims of sexual violence with appropriate services including specialised medical, psychological and legal assistance. Amnesty International (2014) further reported that there is a lack of knowledge amongst the population but also amongst professionals who may deal with sexual violence about services available to victims.

#### **d) Sexual harassment**

The legal framework prohibits sexual harassment under the Law on Gender Equality (art. 19). The Law includes civil remedies in cases of sexual harassment (art. 23). Additionally, criminal penalties for sexual harassment range from one month to one year of imprisonment and/or a fine, with increased penalties depending on the circumstances (art. 27 & 28). There is no legislation covering sexual harassment in educational establishments, sporting establishments, public places or cyber harassment.

The CEDAW Committee (2014) noted that numerous cases of sexual harassment in the workplace were not found justified by the Labour Courts.

### e) Female genital mutilation

The Penal Code criminalises female genital mutilation and punishes any person who practiced, facilitated or favoured any form of female genital mutilation, with or without the consent of the victim, of three to five years of imprisonment (art. 409). The attempt is punishable of imprisonment of eight days to one year (Penal Code, art. 409). The same punishment will be applied for any person who incites practicing female genital mutilation, directly or indirectly (Penal Code, art. 409). Increased sentences are applied in aggravated circumstances such as if the victim is a minor or disabled, if there is a lucrative gain, if the victim is left to live with an incurable disease, or if the victim dies following the procedure (Penal Code, art. 409). If the victim is a minor and the mutilation was practiced by her parents, any ascendants, her guardian or anyone who cohabits regularly or at times in the family house, the penalties are doubled in case of imprisonment and two years are added in case of reclusion (Penal Code, art. 409). The Penal Code provides compensation and legal redress for victims (art. 44 & 45).

The National Action Plan to Combat All Forms of Gender-Based Violence (2015-2019) includes female genital mutilation as a form of gender-based violence (IEWM, 2015). Measures regarding female genital mutilation include monitoring and evaluation, notably through the continuing of the registration of FGM cases within hospitals, training for professionals and the development of a detection system amongst welcome centres, data collection and research, through the update of the study on FGM in Belgium, and prevention through the compilation of good practices to be distributed in hospitals, awareness-raising activities, and targeted activities with community members (IEWM, 2015).

The CEDAW Committee (2014) remarked the lack of enforcement and knowledge from communities and health workers about the law addressing female genital mutilation.

### f) Abortion

Abortion on request is available within 12 first weeks of pregnancy (Penal Code, art. 350). Abortion must be performed by a doctor in a medical facility, where information, social and psychological help and other services are provided (Penal Code, art. 350). The doctors examines the women's distress level and decides whether the woman can have an abortion (Penal Code, art. 350). Beyond 12 weeks, medical abortion is available if the woman's health is gravely in danger or in case of foetal unviability (Penal Code, art. 350). No one from the medical staff is under the obligation to perform an abortion, if this is the case, the woman should be informed immediately (Penal Code, art. 350).

### *More*

The CEDAW Committee (2014) remarked on the lack of data, legal provision and policies to prevent trafficking and prostitution of women and girls, as well as inadequate services delivered to women engaged in prostitution who wish to leave.

### 3. Restricted Access to productive and financial resources

#### a) Secure access to land and assets

The law provides equal rights for women as men to own, use, make decisions and use as collateral land assets irrespective of marital status (Constitution, art. 16; Civil Code, art. 544, 546, 578-581, 1594 & 2114). These rights are also guaranteed for women after separation and divorce (Civil Code, art. 1466-1470). Married women have the same rights as married men to administer marital properties (Civil Code, art. 215). The law provides joint land titling with no restrictions regarding married couples or informal unions (Civil Code, art. 577).

#### b) Secure access to formal financial resources

The law provides married women with the same rights as married men to open a bank account at a formal financial institution, without being required to obtain the signature of her husband to do so (Civil Code, art. 218). Additionally, the Law on Gender Equality prohibits discrimination on the basis of sex in accessing goods and services and in accessing, participating and exercising an economic, social, cultural or political activity (art. 6). This includes inter alia non-discrimination to obtain credit.

#### c) Workplace rights

The Law on Gender Equality mandates non-discrimination on the basis of sex in employment, including job advertisements, selection criteria, recruitment, hiring, terms and conditions, promotions, training, assignments and termination (art. 3 & 6). The Constitution, under article 23, mandates equal remuneration for work of equal value. The law does not prohibit women from entering certain professions. Furthermore, the law allows women to work the same night hours as men (Law on Labour, art. 35).

Maternity leave is available for women for 15 weeks, with 82% of wages during the first 30 days and 75% for the remainder (paid by the social security system) (Arrêté royal portant exécution de la loi relative à l'assurance obligatoire soins de santé et indemnités, art. 216; MISSOC, n.d.). Paternity leave is available for ten days, with 100% of wages for the first three days paid by the employers and 82% of wages for the remainder paid by the social security system (Law on Employment Contracts, art 30; Arrêté royal portant exécution de la loi relative à l'assurance obligatoire soins de santé et indemnités, art. 223bis). Parental leave is available as an individual entitlement for both parents, for a duration of 4 months each (Arrêté royal relatif à l'introduction d'un droit au congé parental dans le cadre d'une interruption de la carrière professionnelle, art. 2). Parental leave is paid at a fixed amount of 819 euros per month (Arrêté royal relatif à l'octroi d'allocations d'interruption, art. 6; MISSOC, n.d.).

Women's employment security during maternity leave is guaranteed by the Law on Labour (art. 39). The Law on Gender Equality additionally recognises that a distinction founded on pregnancy, birth-giving or maternity is considered direct discrimination on the ground of sex (art. 4). Inter alia, this prohibits employers asking about a woman's pregnancy or her intention to have children during the recruitment or promotion process.

Furthermore, the law provides women and men with the same rights to choose a profession, occupation or work and to register a business, irrespective of marital status (Civil Code, art. 216). The



specific body tasked with receiving, investigating, adjudicating and enforcing complaints based on sex discrimination in employment is the Institute for Equality of Women and Men. The Law on Gender Equality plans for damages and interests (art. 20-25) and penal provisions (art. 26-31) in cases of discrimination based on sex in employment.

Legal provisions were introduced in 2011 to increase women's participation in board positions, whereby state-owned and publicly-listed companies are required to have 1/3 of women in board positions (European Commission, 2012). The impact of the law was noted by the European Commission (2012).

The CEDAW Committee (2014) notes the persistence of the gender wage gap and the concentration of women in lower-paid and part-time work. The gender wage gap persists in Belgium, where women earn approximately 8% less than men (European Commission, 2012). The European Commission (2012) reports notably on the high proportion of women working part-time comparatively to men. Approximately, 43% of women are involved in part-time work against 9% of men (European Commission, 2012). The report shows additionally that Belgian families tend to start using childcare services when children turn three years old (European Commission, 2012).

Furthermore, the European Commission (2012) stresses the sectoral and occupational segregation in the workplace. Sectors, such as health and social work sector, employ more women (23%) than men (5%) while sectors such as construction employ more men (12%) than women (1%) (European Commission, 2012). Stereotypical concepts of typically feminine and masculine professions persist in Belgium. Women are also highly represented in low-paid occupations in comparison to men and tend to be more employed as keyboard clerks, personal service workers, cleaners and helpers, etc. (European Commission, 2012). Moreover, women remain underrepresented in decision-making positions and management positions (European Commission, 2012). Additionally, reports show an increase of discrimination cases on the grounds of pregnancy and motherhood and an increase of complaints related to sexual harassment in the workplace (CEDAW, 2014).

## **4. Restricted Civil liberties**

### **a) Citizenship rights**

The Nationality Code provides women with the same rights as men to acquire, change and retain their nationality, regardless of their marital status (art. 12 & 22). Women are entitled on the same basis as men the right to confer nationality to their spouse and children (Nationality Code, art. 8 & 12). The Civil Code provides for both parents or one of them to register the birth of their children (art. 56). The Constitution does not recognise intersectional discrimination but article 10 guarantees equality between women and men.

Additionally, women are provided with the same rights as men to apply for identity cards and passports as well as to acquire passports and other travel documents for their minor children (Arrêté Ministériel du 19 Avril 2004 Concernant la Délivrance de Passeports, Art. 2; Loi Relative aux Registres de la Population, aux Cartes Documents de Séjour, Art. 6). The Constitution recognises inter alia the

freedom of movement under article 11 which stipulates that the enjoyment of rights and liberties of Belgians must be ensured without discrimination.

### **b) Voting**

The Electoral Code guarantees the right of every Belgian to vote (art. 1). There is no practices which may restrict those rights.

### **c) Political voice**

The Constitution provides women with the same rights as men to hold public and political office, including within the legislature, the executive and the judiciary (art. 11bis, 63 & 151). Article 11bis of the Constitution specifically stipulates that the law, decree or rule shall guarantee women and men the equal exercise of their rights and freedoms, and shall in particular promote their equal access to elective and public mandates.

With regards to measures to promote women's political participation, the Electoral Code establishes legislated candidate quotas (art. 117bis). The difference between the number of candidates of each sex should not be more than one on electoral lists (Electoral Code, art. 117bis). Additionally, the two top candidates on candidate lists and on the lists of alternates cannot be of the same sex (Electoral Code, art. 117bis). If parties do not comply, the lists shall not be admitted by the electoral authorities (Electoral Code, art. 119quinquies). The Law on Communal Elections provides for gender parity on each candidate lists and similar provisions regarding the two top candidates on candidates lists and on the lists of alternates who cannot be of the same sex (art. 23 (9)). The candidate lists which do not comply will be rejected (Law on Communal Elections, art. 26 (2)). At the federate level, the Special Law Ensuring Equal Representation of Men and Women on the Lists of Candidates for the Elections of the Walloon Regional Council, the Flemish Regional Council and the Brussels-Capital Regional Council provides for similar disposition regarding candidate lists, namely the difference between the number of candidates of each sex may not exceed one and the two top candidates from each of the lists must be of different sexes (art. 2 & 6).

Furthermore, two laws require gender parity at the federate governmental level, notably (i) the Special Law Guaranteeing the Presence of Persons of Different Sex in the Flemish Government, the French Community Government, the Walloon Government, the Brussels-Capital Government and amongst the Regional Secretaries of State of the Region of Brussels-Capital and (ii) the Law Guaranteeing the Presence of Persons of Different Sexes in the Government of the German-Speaking Community.

The CEDAW Committee (2014) notes the persistence of the underrepresentation of women in the political sphere at the decision-making level, in the diplomatic service and in international organisations, despite efforts by the Government to increase women's participation. The CEDAW Committee (2014) stresses additionally the lack of measures targeting women who face multiple grounds of discrimination, such as rural women, older women, women with disabilities and migrant women. In particular, women from ethnic and religious minorities are marginalised from the political sphere (CEDAW, 2014).



#### d) Access to justice

The Constitution recognises the equality of all Belgians before the law under article 10 and the capacity of women and men to equally sue and be sued. Additionally, a woman's testimony carries the same evidentiary weight in court as a man's (Constitution, art. 10). Furthermore, the Constitution includes elements to ensure that women and men are equally able to exercise their rights to sue by guaranteeing for instance legal assistance (art. 23). The Code of Criminal Instruction includes measures to protect the witnesses (art. 86bis).

The specialised body tasked with monitoring gender equality in Belgium is the Institute for Equality of Women and Men (European Commission, 2017). The Institute is entitled to take legal action to uphold gender equality and to receive and resolve complaints as well as to implement federal policy on gender equality and to conduct educational and public awareness raising campaigns (European Commission, 2017).

The CEDAW Committee (2014) stresses that disadvantaged groups of women, notably migrant women, elder women and women with disabilities, face multiple barriers and intersecting forms of discrimination.

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