



LIGA VOOR
MENSENRECHTEN

Submission to the United Nations Human Rights Council on the Universal Periodic Review, Third Cycle - BELGIUM

About Liga voor Mensenrechten

1. The Liga voor Mensenrechten (Dutch-speaking League for Human Rights) is a human rights organizations that aims to inspire policy, raise awareness and critically inform the general public about human rights in Belgium. In doing so, the Liga hopes to install and maintain a human rights culture in Belgium. Its priorities are freedom and security, privacy, detention and discrimination. The Liga provides information via its website, social media, newsletter, and magazines. It organises events to raise awareness for human rights and develops strategies for human rights education. The Liga also encourages Belgian governments and municipalities to implement human rights in all relevant policy and legislation. It does this in many ways: through media pressure, lobbying and strategic legal actions. It has often won lawsuits before the Constitutional Court and the Council of State.

Summary

2. As a result of the terrorist attacks in Europe, including at Belgium's national airport in 2016, Belgian authorities took various preventive measures to combat radicalisation. These policies risk to infringe multiple human rights, mostly of Muslim youths. In this report, the Liga limits itself to discussing the Local Integral Security Cells (hereinafter: LIVC's) and their impact on human rights, as this case study is illustrative of how "deradicalization" policies are pursued in Belgium.
3. By the Act of 30 July 2018, all municipalities in Belgium were obliged to set up an LIVC.¹ These are consultation platforms organised at the level of municipalities or police zones that should enable local actors to take preventive action against radicalisation at the local level. By discussing possible radicalised persons, linked to a follow-up plan for the person concerned, the local authorities try to combat radicalisation. However, these consultation platforms have a major impact on the fundamental rights of the persons under discussion. The information that is gathered is shared, and it is not clear how or by whom. As a consequence, discussed citizens are consistently stopped, searched and checked. Their bank accounts are sometimes closed. They can no longer travel to certain countries, they are stopped on public roads and at airports. This far-reaching control can lead to violations of fundamental rights:
 - a. **Violation of the right to privacy.** There is a lack of transparency on the part of the authorities regarding the data processed on the persons concerned. Furthermore, the LIVC's can be placed in a list of measures in which socio-preventive actors are asked to break their professional confidentiality and thus the relationship of trust with their clients. Not only does this violate the client's privacy, it may also put Belgium's system of social protection under pressure.
 - b. **Violation of freedom of religion.** The measures to combat radicalization mainly affect Muslim communities. Practicing Islam or having Muslim roots is problematized.
 - c. **Violation of freedom of expression.** Radical speech is scrutinized and may lead to infringements on fundamental rights, without proof of danger.
4. There is a lack of transparency concerning databases and consequently a lack of accessibly and efficient complaint mechanisms for affected individuals.

Local Integral Security Cells and fundamental rights

5. During his previous UPR, Belgium accepted recommendations to "ensure that domestic measures in the fight against terrorism and all forms of extremism uphold fundamental

¹ Wet van 30 juli 2018 tot oprichting van lokale integrale veiligheidszellen inzake radicalisme, extremisme en terrorisme, B.S., 14 september 2018.

rights”². In practice, however Belgium authorities have failed to implement this recommendation as regard to Local Integral Security Cells.

6. LIVCs are consultation platforms at the level of municipalities that should enable local actors to take preventive action against radicalisation and “radicalised” individuals.³ Such an LIVC is organised on the mayor's initiative and further includes at least the chief of police. Furthermore, they can invite all actors they consider relevant: radicalisation officers, employees at the centres for social welfare, social workers, youth workers, teachers.⁴
7. The aim is to detect radicalisation early and to link this to a follow-up process for the involved individual. Such a follow-up trajectory can consist of psychological assistance, family support or guidance in looking for a job or training.⁵ An LIVC has a clear preventive objective. This means that it concerns matters that are not criminally punishable. LICVs are geared towards individuals who do not pose a particular threat and who are willing to cooperate with local.⁶
8. The LIVCs have a significant impact on the fundamental rights. Young people are deprived of job opportunities in the security sector, as pilots, in the army or in the police. They are consistently stopped, searched and checked. People classified as 'radicalised' can no longer travel to certain countries. They are stopped on public roads and at airports. Bank accounts are closed, making it impossible for people to pay their rent or loan.⁷ These examples show the risks to fundamental rights posed by LIVCs. The question can be raised as to whether an LIVC is a preventive measure. The consequences for the person affected are far-reaching, so arguably LIVCs are in practice a repressive measure. In addition, there are no special guarantees to the rights of children involved in these cells. Several Belgian youth organisations have consequently gone to the Constitutional Court against the practice of these cells and their adverse effects on children's rights.⁸

Privacy

9. During his previous UPR, Belgium accepted recommendations to “continue to apply and respect human rights in the implementation of counter-terrorism measures, notably for the **rights to privacy**, freedom of expression and movement”⁹. Mexico also recommended Belgium to “continue the revision of anti-terrorism and **data protection** legislation and policies”¹⁰.
10. LIVCs have been set up with the explicit objective of collecting and sharing information about adults or children between different partners. It may involve sensitive information: ethnic or socio-economic background, family situation, reputation, opinion or thoughts... It is clear that the right to privacy of these adults or children may be affected.
11. A first problem that arises here is that there is no legal basis, nor any clarity in the explanation given by then competent Minister Jambon regarding the collection and

² Second cycle, Report of the Working Group on the Universal Periodic Review: Belgium, Recommendation no. 138.72 (Thailand).

³ Wet van 30 juli 2018 tot oprichting van lokale integrale veiligheidscellen inzake radicalisme, extremisme en terrorisme, B.S., 14 september 2018.

⁴ Kamer van Volksvertegenwoordigers, Wetsontwerp tot oprichting van Lokale Integrale Veiligheidscellen inzake radicalisme, extremisme en terrorisme, DOC 54 3209/001, Memorie van Toelichting, 2 juli 2018.

⁵ Vlaams Regeerakkoord 2019-2024, p. 273.

⁶ N. Henkens en I. Kastit, Radicaal voor Kinderrechten. Het deradicaliseringsbeleid anders bekeken, *Uit de Marge*, 2019, p. 35

⁷ Unia, Maatregelen en Klimaat. Gevolgen na de aanslagen. Dossiers bij Unia, 31 december 2017; N. Henkens en I. Kastit, Radicaal voor Kinderrechten. Het deradicaliseringsbeleid anders bekeken, op. cit.

⁸ Kinderrechtcoalitie, “Beroep tegen wet LIVC-R”, 18 March 2019, <https://www.kinderrechtcoalitie.be/beroep-tegen-de-wet-livc-r/>.

⁹ Second cycle, Report of the Working Group on the Universal Periodic Review: Belgium, Recommendation no. 138.71 (Republic of Korea).

¹⁰ Second cycle, Report of the Working Group on the Universal Periodic Review: Belgium, Recommendation no. 141.14 (Mexico)

processing of personal data within the framework of an LIVC. Originally it was stated that it would not be allowed for someone to be registered in a database simply because he or she was discussed at an LIVC.¹¹ However, the law also regulates that police services may use this information if a criminal investigation is started later.¹² The information must therefore be kept by police services. The Flemish Government Agreement makes it clear that this is indeed the case. A common database for the collection and sharing of information discussed at an LIVC is in preparation.¹³ The newly adopted Federal Government Agreement speaks about the creation of a large database for security data in general, and increased datasharing in the context of LIVCs specifically. This raises questions about what really happens to the information that is shared. Is this information stored somewhere? What is all this information used for? Can a person concerned defend him/herself against any incriminating information? If someone is not considered dangerous, is the file erased after the case is closed? Who will have access to that database? How will the use of the database be monitored? These are important questions in the light of the right to privacy of all residents in Belgium, which in principle should have been regulated by law before starting to discuss persons in the context of an LIVC. We can only conclude that this in itself constitutes a serious violation of the right to privacy.

12. A second problem is that there is no clear division between the LIVC and the Local Task Force (LTF). An LTF is organised at arrondissement level and includes intelligence services, OCAD¹⁴, the Public Prosecutor's Office and police services. An LTF is repressive and is concerned with the follow-up of, among others, returnees.¹⁵ Data flows unhindered between the preventive and the repressive. It is in fact the task of the Information Officer, a police officer who sits in both the LIVC and the LTF, to ensure the exchange of information and cases between these two bodies.¹⁶ The question is what the usefulness of an LIVC then actually is, apart from creating the possibility of sharing data about a larger group of people who do not necessarily show signs of delinquent behaviour.
13. A third problem is the role of the socio-preventive actors in an LIVC and its influence on their professional confidentiality. After all, socio-preventive actors start from a relationship of trust with their clients based on mutual respect and cooperation. In this way, no information is shared and no action is taken without the client being aware of it or even asking for it. LIVCs are calling this into question by making it possible to speak even when there is no concrete risk to a person's physical integrity. This could affect the very essence of professional confidentiality and even lead to a violation of the right to privacy.¹⁷ By asking socio-preventive actors to share information at case consultations such as the LIVCs, this relationship of trust may be broken.¹⁸ The former Minister of Justice explained that a right to speak is created within an LIVC and not a duty to speak.¹⁹ Nevertheless,

¹¹ Kamer van Volksvertegenwoordigers, Wetsontwerp tot oprichting van Lokale Integrale Veiligheidscellen inzake radicalisme, extremisme en terrorisme, DOC 54 3209/003, Verslag namens de Commissie Binnenlandse Zaken, 16 juli 2018, p. 14.

¹² Kamer van Volksvertegenwoordigers, Wetsontwerp houdende vereenvoudiging, harmonisering, informatisering en modernisering van bepalingen van het burgerlijk recht en van burgerlijk procesrecht alsook het notariaat, en houdende diverse bepalingen inzake justitie (Potpourri IV), DOC 54 2259/001, Memorie van Toelichting, 16 januari 2017, pp. 227-228.

¹³ Vlaams regeerakkoord 2019-2024, p. 273, <http://ebl.vlaanderen.be/publications/documents/138970>.

¹⁴ Body for Coordination and Analysis of Threats

¹⁵ M. De Waele (ed.), Hoe een Lokale Integrale Veiligheidscel uitbouwen?, op. cit., p. 29.

¹⁶ S. Beckers, Beroepsgeheim bij de aanpak van gewelddadige radicalisering, op. cit., p. 126.

¹⁷ Kamer van Volksvertegenwoordigers, Wetsontwerp houdende vereenvoudiging, harmonisering, informatisering en modernisering van bepalingen van het burgerlijk recht en van burgerlijk procesrecht alsook het notariaat, en houdende diverse bepalingen inzake justitie (Potpourri IV), DOC 54 2259/001, Memorie van Toelichting, 16 januari 2017, p. 221.

¹⁸ Onder andere: S. Vanden Bussche, "Lokale veiligheidscellen opereren in juridisch vacuüm", op. cit.

¹⁹ Kamer van Volksvertegenwoordigers, Wetsontwerp houdende vereenvoudiging, harmonisering, informatisering en modernisering van bepalingen van het burgerlijk recht en van burgerlijk procesrecht alsook het notariaat, en houdende diverse bepalingen inzake justitie (Potpourri IV), DOC 54 2259/001, Memorie van Toelichting, 16 januari 2017, p. 228.



there are cases where these actors experience pressure to take part in consultations.²⁰ In view of the fact that the information that is shared at an LIVC can subsequently be used in a criminal investigation, the question must finally be asked whether these socio-preventive actors are not instrumentalised in the criminal justice system in this way. As also stated by the Council of State in its advice, this puts the socio-preventive actors involved under pressure, which will not lead to cooperation.²¹ By forcing preventive actors into a repressive role, we run the risk that preventive action can no longer be taken at all. This may put pressure on our social protection system.²² In this way, an LIVC, a consultation platform which must be preventive in nature, misses its goal and does even more harm than good.²³

Freedom of religion

14. During his previous UPR, Belgium accepted recommendations to “take the necessary steps, firstly, to better protect all victims of xenophobic discrimination, especially **Islamophobia**; and secondly, to conduct awareness campaigns **to counteract amalgams between migrants, Muslims and terrorism**”.²⁴
15. Although the measures designed to combat radicalisation do not explicitly target a particular population group, we can see that in reality this has an impact mainly on Muslim communities. The development of the LIVCs also clearly shows that their main purpose is to detect or avoid Muslim extremism at an early stage. They originated from a need to follow up so-called returnees, people who had left to join a terrorist organisation in Syria or Iraq and then returned to Belgium.²⁵
16. However, the action field of the LIVCs broadened to persons who may show signs of potentially adhering to a radical form of Islam. This very broad focus on a particular population group, defined externally on the basis of a specific religion, clearly shows that the right to freedom of religion is threatened here. When people are put in a difficult position because of their religion, this can be a factor in not living religion as one would like. The securitisation of Islam is a clear violation of freedom of religion.²⁶
17. There are already examples of how this securitisation of Islam hinders the free enjoyment of religion. A young girl was reported by her teacher as radicalised because she decided

²⁰ A. Verstraete e.a., “Gestructureerd casusoverleg tussen beroepsgeheimdragers, parket, politie en anderen”, Panopticon 2018, afl 4 (372), p. 374.

²¹ Kamer van Volksvertegenwoordigers, Wetsontwerp houdende vereenvoudiging, harmonisering, informatisering en modernisering van bepalingen van het burgerlijk recht en van burgerlijk procesrecht alsook het notariaat, en houdende diverse bepalingen inzake justitie (Potpourri IV), DOC 54 2259/001, Memorie van Toelichting, 16 januari 2017, vp. 228

²² Ibid., p. 221; waarbij de Raad van State verwees naar de druk op het recht op sociale bijstand.

²³ A. Verstraete e.a., “Gestructureerd casusoverleg tussen beroepsgeheimdragers, parket, politie en anderen”, Panopticon 2018, afl 4 (372), p. 374; UN Human Rights Council, Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism. Visit to Belgium, A/HRC/40/52/Add.5, 27 February 2019, p. 7. UN Human Rights Council, *Human rights impact of policies and practices aimed at preventing and countering violent extremism*, Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, A/HRC/43/46, 21 February 2020, p. 12.

²⁴ Second cycle, Report of the Working Group on the Universal Periodic Review: Belgium, Recommendation no. 138.68 (Algeria)

²⁵ Parlementair onderzoek naar de omstandigheden die hebben geleid tot de terroristische aanslagen van 22 maart 2016 in de luchthaven Brussel-Nationaal en in het metrostation Maalbeek te Brussel, met inbegrip van de evolutie en de aanpak van de strijd tegen het radicalisme en de terroristische dreiging, Derde tussentijds Verslag; in line with the findings in UN Human Rights Council, *Human rights impact of policies and practices aimed at preventing and countering violent extremism*, Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, A/HRC/43/46, 21 February 2020, p. 11.

²⁶ UN General Assembly, “Elimination of all forms of religious intolerance. Note by the Secretary-General”, A/73/362 5.

to wear a headscarf. Similarly, a man was marked as radicalised because his wife started to wear a headscarf.²⁷ A headscarf belongs to the freedom of religion and is not an indicator of a threat to public safety.²⁸

Freedom of expression

18. During his previous UPR, Belgium accepted recommendations to “continue to apply and respect human rights in the implementation of counter-terrorism measures, notably for the rights to privacy, **freedom of expression** and movement”.²⁹
19. A government may take action against a particular expression of opinion in order to prevent crimes. In that case, however, it must be demonstrated that what is said incites the use of violence.³⁰ It is not certain that this is always the case when someone is discussed at an LVC following a radical statement. In fact, the legislator has not defined the term radicalisation. The law of 30 July 2018 obliges municipalities to set up an LVC with the aim of detecting “any potentially problematic radicalisation in society”. It is possible to discuss people when there are indications that that person is in a radicalisation process.³¹ This scope goes far beyond what was originally intended, namely to follow up returning Foreign Terrorist Fighters.³² The final scope of the LVCs goes much further, making it possible to discuss people who have said something radical without posing any danger.³³ Given the potentially far-reaching consequences for the individuals concerned, this could violate their right to freedom of expression. The legislator would therefore do well to define the scope of the LVCs and limit it to violent extremism, in line with the recommendation of UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism.³⁴

Lack of oversight and complaint mechanisms

20. In general, affected individuals are not notified when they are marked as radicalised in any database. In most cases, they notice it when they are rejected for jobs, are consistently stopped on roads and airports or when banks refuse services. At a minimum, persons should be notified that they received a signal of radicalisation. Subsequently, they should receive a fair opportunity to challenge it. However, both of these basic elements of the process are not regulated, nor accessible, nor efficient.

²⁷ Unia, Maatregelen en Klimaat. Gevolgen na de aanslagen. Dossiers bij Unia, 31 december 2017, p.9.

²⁸ UN Human Rights Council, Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism. Visit to Belgium, A/HRC/40/52/Add.5, 27 February 2019, p. 7.

²⁹ Second cycle, Report of the Working Group on the Universal Periodic Review: Belgium, Recommendation no. 138.71 (Republic of Korea)

³⁰ EHRM, *Mart et autres c Turquie*, 19 maart 2019, §32.

³¹ Kamer van Volksvertegenwoordigers, Wetsontwerp tot oprichting van Lokale Integrale Veiligheidscellen inzake radicalisme, extremisme en terrorisme, DOC 54 3209/001, Memorie van Toelichting, 2 juli 2018, p. 8.

³² Belgische Kamer van Volksvertegenwoordigers, Parlementair onderzoek naar de omstandigheden die hebben geleid tot de terroristische aanslagen van 22 maart 2016 in de luchthaven Brussel-Nationaal en in het metrostation Maalbeek te Brussel, met inbegrip van de evolutie en de aanpak van de strijd tegen het radicalisme en de terroristische dreiging, DOC 54 1752/008, Derde tussentijds Verslag, pp. 170-171.

³³ Ibid.

³⁴ UN Human Rights Council, Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism. Visit to Belgium, A/HRC/40/52/Add.5, 27 February 2019, p. 7; UN Human Rights Council, *Human rights impact of policies and practices aimed at preventing and countering violent extremism*, Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, A/HRC/43/46, 21 February 2020, p. 5-6.

21. Firstly, there is no full and meaningful oversight over databases of police and intelligence services in Belgium.³⁵ Secondly, the steps to be taken to challenging the accusation of radicalisation are also not clear. Apart from the OCAD-databases, the existence of other databases is not known and thus not regulated. Consequently, no one is taking responsibility for signals of radicalisation. In this context, it is not feasible for citizens to understand where to turn. They could turn to Comité I (Standing Intelligence Agencies Review Committee) or the COC (Control Organ for Police Services) for a request of indirect access to databases. However, requesters need to know which database to check. These bodies can then put in a request with the data controller of the database to know whether data of the requester is in the database. It is however not possible to know what the information is that is included or where it came from. Consequently, it is also not possible for an affected individual to challenge the accuracy of that information. Additionally, it is also possible to check with the local police whether a person is in a local database. However, there is no formal procedure. Acquiring this information is based on political goodwill and local policy. Furthermore, it is not sure whether an affected person can be deleted from the database and who has the competence to decide.³⁶ This lack of transparency and accountability is extremely worrying.³⁷

Recommendations

22. The Liga voor Mensenrechten recommends Belgium that measures to combat radicalisation respect fundamental rights, including with regard to the LIVCs. Specifically, it recommends the Belgian government to:
- Define the scope of the LIVCs and limit it to cases where there are signs of violent extremism. Define violent extremism and in doing so, remove the focus on Muslim youth.
 - Do not let preventive deradicalization policies be controlled by the police and the justice system, maintain social prevention.
 - Do not oblige local socio-preventive actors to participate in a case consultation on their clients. Have confidence in the expertise and professionalism of these actors.
 - Ensure a clear separation between the LIVCs and the Local Task Force (LTF).
 - In line with the UN High Commissioner for human rights and counterterrorism³⁸, the Liga recommends that affected individuals should be notified and should get access to information held about them and to challenge the accuracy of the data. Belgium should therefore create accessible and transparent complaint mechanisms for affected individuals.
 - Belgium should further organize full and meaningful democratic oversight on databases of police and intelligence services.

³⁵ UN Human Rights Council, Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism. Visit to Belgium, A/HRC/40/52/Add.5, 27 February 2019, p. 14.

³⁶ N. Henkens en I. Kastiit, Radicaal voor Kinderrechten. Het deradicaliseringsbeleids anders bekeken, 28-29.

³⁷ In line with UN Human Rights Council, *Human rights impact of policies and practices aimed at preventing and countering violent extremism*, Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, A/HRC/43/46, 21 February 2020, p. 14.

³⁸ UN Human Rights Council, Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism. Visit to Belgium, A/HRC/40/52/Add.5, 27 February 2019, p. 14.