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Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Consideration of reports submitted by States parties under article 19 of the Convention

Third periodic report of States parties due in 2012, submitted in response to the list of issues (CAT/C/BEL/Q/3) transmitted to the State party pursuant to the optional reporting procedure (A/62/44, paras. 23 and 24)

Belgium*, **, ***

[25 July 2012]

* The second periodic report submitted by Belgium is contained in document CAT/C/BEL/2 and was considered by the Committee at its 850th and 853rd meetings, held on 12 and 13 November 2008 (CAT/C/SR.850 and 853). For its consideration, see CAT/C/BEL/CO/2.

** In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

*** The annexes to this report may be consulted in the files of the secretariat.

I. Introduction

1. The present report is submitted pursuant to article 19.1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified by Belgium on 25 June 1999 (Act of 9 June 1999 which entered into force on 7 November 1999). This report has been prepared in accordance with the new optional reporting procedure adopted by the Committee against Torture at its thirty-eighth session (May 2007) and accepted by Belgium on 31 March 2011.

2. The report describes changes in legislation and legal and administrative practices and new policies in relation to the substantive articles of the Convention, adopted since Belgium submitted its second report (CAT/C/BEL/2), its interim written responses (CAT/C/BEL/Q/2/Add.1) and its follow-up responses to several concluding observations (CAT/C/BEL/CO/2/Add.1), in reference to the list of issues prior to reporting adopted by the Committee against Torture at its forty-fifth session (CAT/C/BEL/Q/3). A general description of the way in which the Government of Belgium operates is set out in the common core document (HRI/CORE/BEL/2011), which was submitted on 29 July 2011 and updated in July 2012 (annex 1).

3. Contacts were made with civil society for the preparation of the Belgian report. In April 2012, a letter was sent to 24 organizations, drawing their attention to the list of issues prior to reporting raised by the Committee with respect to Belgium and the various ways in which they could take part in the process of monitoring the Convention. On 4 July 2012, a meeting took place between representatives of the Belgian authorities (Foreign Affairs, Federal Department of Justice — including prisons, police and the Aliens Office) and six civil society organizations (Liga voor Mensenrechten, Amnesty International Vlaanderen and Amnesty International Belgique Francophone, Platform for Minors in Exile, Child Rights Coordination for NGOs (CODE) and Defence for Children International (DCI)). The Federal French-Speaking Mediator and the National Commission on the Rights of the Child (CNDE) also took part in that meeting. In addition, the Institute for Equality between Women and Men (IEFH) and the Centre for Equal Opportunities and Action against Racism (CECLCR) were also consulted for the preparation of the present third report of the Belgian Government.

II. Specific information on the implementation of articles 1 to 16 of the Convention, including with regard to the Committee's previous recommendations

Article 1

Reply to the list of issues prior to reporting, 1 – Applicability of articles 417 *bis et seq.* of the Criminal Code to public officials[1]

4. The Belgian Government has not changed its position on this issue. Indeed, there is no need to amend article 417 *bis* of the Criminal Code as it covers all acts of torture, inhuman and/or degrading treatment, whatever the perpetrator's status. Furthermore, article 417 *ter* and *quater* of the Criminal Code refer explicitly to acts perpetrated by "a public

[1] CAT/C/BEL/CO/2, 19 January 2009, concluding observations, para. 14; see CAT/C/BEL/Q/2/Add.1, 28 October 2008, Question 1.

officer or official, an agent or officer of the police acting in the line of duty" as an aggravating circumstance for offences of torture and inhuman treatment. Thus, the penalty for torture is imprisonment of from 10 to 15 years, but is increased to from 15 to 20 years where the offence is committed by a public official. The penalty for inhumane treatment is imprisonment of from 5 to 10 years but it is similarly increased to from 10 to 15 years where the offence is committed by a public official. Since articles 417 *bis* (Definitions), *ter* and *quater* (Penalties) are inseparable, it would seem to be unnecessary to amend article 417 *bis* of the Criminal Code as requested by the Committee. Note, moreover, that articles 417 *ter* and *quater* of the Criminal Code also state that an order from a superior officer or a public authority may not be invoked as a justification of the crimes of torture or inhuman treatment (see Question 7 below). Given the interrelatedness of articles 417 *bis et seq.* of the Criminal Code it cannot therefore reasonably be argued that article 417 *bis* of the Criminal Code would not apply to law enforcement officers.

Article 2

Reply to the list of issues prior to reporting, 2 – Establishment of a national institution for human rights[2]

5. As yet, Belgium has no national institution for human rights in conformity with the Paris Principles. However, several specific institutions[3] already carry out some of these functions. The establishment of a national human rights institution has been an issue in Belgium for a number of years. Discussions have taken place on this subject since the Government agreement of 2003 regarding such an establishment. In 2006, the opinion of the Office of the United Nations High Commissioner for Human Rights was requested on two specific options: (1) the extension of the mandate of the Centre for Equal Opportunities and the Fight against Racism, or (2) the establishment of a Belgian Commission of Fundamental Rights, as proposed by a group of non-governmental organizations (NGOs). In practice, the opinion of the Office of the United Nations High Commissioner for Human Rights assessed the two options but did not advocate either one in particular. Second, the establishment of a national institution for human rights was not included in successive Government agreements, until the recent new Government agreement of 1 December 2011 which provides that: "In keeping with our international commitments, a national commission for human rights should be established in consultation with the Communities and Regions. Account shall be taken of existing institutions". This commitment stems more specifically from a recommendation of the Committee for Human Rights of 2010, urging the Belgian State to work towards the establishment of a national institution for human rights. This led Belgium, as part of its first universal periodic review in May 2011, expressly to approve the recommendations in that regard.

6. However, any discussion on this matter must take account of the institutional structure of the country. Because the federal Government, the three Communities and the three Regions each have powers relating to human rights, the establishment of a national institution for human rights must necessarily entail negotiation with all these entities.

[2] CAT/C/BEL/CO/2, 19 January 2009, concluding observations, para. 12; see also CCPR/C/BEL/CO/5, 18 November 2010, para. 8.

[3] These include: the Centre for Equal Opportunities and the Fight against Racism, established in 1993 (see status B of the Subcommittee on Accreditation of the International Coordinating Committee of National Institutions for Human Rights), the Institute for Equality of Men and Women, established in 2002, the National Commission for the Rights of the Child, established in 2007 (representing all levels of government and civil society), the Federal Mediators' Association, established in 1997 and the Commission on Privacy Protection, established under the Act of 8 December 1992.

Furthermore, account must be taken of the existing institutions which already have human rights responsibilities and the ongoing debate on the designation of national preventive mechanisms for the ratification of the Optional Protocol (see Question 36 below), which is still considering the possibility of establishing a national human rights institution in future in Belgium, in accordance with the Paris Principles.

Reply to the list of issues prior to reporting, 3 – Rights of persons immediately following detention[4]

7. The Act of 13 August 2011 amending the Code of Criminal Investigation and the Pretrial Detention Act of 20 July 1990 granting rights to all interviewees and all persons deprived of liberty, including consulting and being assisted by a lawyer, introduce the new framework for access to a lawyer for judicial detention (Belgian Government Gazette, 5 September 2011, entering into force on 1 January 2012, annex 2). The College of Principal Public Prosecutors issued Circular COL 8/2011 of 23 September 2011 on the organization of legal assistance from the first hearing under the Belgian criminal procedure (annex 3), supplemented by Circular COL 12/2011 of 23 November 2011 concerning minors (see Question 18 below). Given the importance of the changes introduced by the Act of 13 August 2011, and in view of their interrelatedness, the Belgian Government wishes to explain their main thrust in detail here, and refer to it subsequently regarding other relevant issues. Finally, regarding Question 3(b), the Belgian Government would refer the Committee to its replies to Questions 14 and 21.

Mandatory pre-hearing notifications

8. At hearings of persons *in any capacity whatsoever* the following information must be provided: (1) At the beginning of any hearing, the grounds for the hearing are briefly explained to interviewees and they are informed that: (a) they may ask for all the questions asked and the answers given to be recorded in the language used; (b) they may request that a particular investigative measure or hearing be carried out; (c) their statements may be used as evidence in court; and (d) they may not be compelled to incriminate themselves. All this information is accurately set down in the record of the hearing (art. 47 *bis*, para. 1, of the Code of Criminal Investigation). This information complements the existing safeguards in article 47 *bis*, paragraph 1, 2-5 of the Code of Criminal Investigation: right to use the documents in one's possession, right to read the record and correct or supplement the statements made, right to an interpreter or right to make the statement in one's chosen language.

9. For hearings concerning offences with which the interviewee may be charged, the law provides for a more comprehensive notification procedure, with additional information to be provided before the hearing. The grounds for the hearing are briefly explained to interviewees and they are informed that: (1) they may not be compelled to incriminate themselves; (2) they have the option, after stating their identity, to make a statement, to answer the questions asked or to remain silent; (3) they are entitled, prior to the first hearing, to consult privately with a lawyer of their choice or with a lawyer designated for them (art. 47 *bis*, para. 2, of the Code of Criminal Investigation).

Principle of the letter of rights in writing

10. The Act establishes the principle of giving interviewees a letter of rights in writing before the first hearing (art. 47 *bis*, para. 4, of the Code of Criminal Investigation). The

[4] CAT/C/BEL/CO/2, 19 January 2009, concluding observations, para. 21; see also CCPR/C/BEL/CO/5, 18 November 2010, para. 17.

Royal Decree of 16 December 2011 (Belgian Government Gazette of 23 December 2011) provides two models for the letter of rights, depending on whether or not the interviewee is deprived of his or her liberty. These models must be translated into the official languages of the European Union (EU). The Federal Department of Justice has actually decided to translate the letter of rights into 52 languages. It has so far been translated into 47 languages. The models are included in automated files of police departments, prosecution offices and examining magistrates so that they can easily be printed and given to interviewees (annex 4).

Access to a lawyer for persons not deprived of their liberty

11. Persons not deprived of their liberty and questioned about offences that they could be charged with are entitled, prior to the first hearing, to consult privately with their lawyer or a lawyer designated for them. For reasons of feasibility, practicality and effectiveness, the legislature has established a system to guarantee this right, provided that it relates to acts for which the person may be charged with an offence and for which the punishment may entail an arrest (imprisonment for one year or more), with the exception of the offences referred to in article 138,6, 6 *bis* and 6 *ter* of the Code of Criminal Investigation (this concerns mainly traffic offences — if the offence is serious, as soon as the person is deprived of their liberty, they may first consult a lawyer on that account). For other offences, people are at liberty and therefore free to consult a lawyer. There are no specific rules for them.

12. If the first hearing was held on the basis of a summons in writing that mentions these rights — the right to remain silent, the right to consult a lawyer prior to the first hearing, the summary notice of the offence in relation to which it will be heard — the person is presumed to have consulted a lawyer prior to the hearing. If the first hearing does not take place following a summons or if it does not mention these rights, the hearing may be postponed once at the request of the person to give him the opportunity to consult a lawyer. The legislator has left open the organizational arrangements for the consultation (by telephone or face-to-face) to enable the most effective possible means to be found. If the person does not have sufficient means, articles 508/13 to 508/18 of the Judicial Code are applied (a lawyer is designated to assist them entirely or partially free of charge).

Access to a lawyer for persons deprived of their liberty

13. Owing to the structure of Belgian legislation, the articles on the rights of persons deprived of their liberty are divided between the Code of Criminal Investigation and the Pretrial Detention Act. Accordingly, a general provision has been included in article 47 *bis*, paragraph 3 of the Code of Criminal Investigation, which specifically addresses communication with persons deprived of their liberty. They are informed pursuant to paragraphs 1 and 2 of the Code of Criminal Investigation (above), but being deprived of their liberty gives them additional rights of which they must be informed. For reasons of transparency and clarity, the actual organization of access to a lawyer was included in the Pretrial Detention Act of 20 July 1990.

14. The right to private consultation with a lawyer prior to the first examination by the police or, failing that, by the Crown Prosecutor or the examining magistrate (art. 2 *bis*, para. 1, of the Pretrial Detention Act). This is a right of anyone deprived of liberty under articles 1 or 2 of the Pretrial Detention Act, or in execution of a warrant as referred to in article 3. If they have not chosen a lawyer or the lawyer is unable to assist, contact is made with the standby service organized by the French-speaking, German-speaking or Flemish bar association, or by the President of the bar association or his deputy. Once contact has been made with the chosen or standby lawyer, the private consultation with the lawyer (lasting no more than 30 minutes) must take place within two hours. The hearing may then begin.

The private consultation may take place by telephone or face-to-face. The legislator has provided that if the private consultation has not taken place within two hours, a private telephone consultation takes place with the standby service. After this, the hearing can begin. All this information is accurately set down in the record (contact with the chosen lawyer or the bar association standby: means, date and time; waiting time of the lawyer, duration and organization of the private consultation, any telephone contact after two hours, telephone contact in the event of waiver of the right to a private consultation, the waiver procedure followed and any practical problems encountered in applying the provisions).

15. The right to be assisted by a lawyer during hearings taking place within the period referred to in articles 1,1, 2, 12 or 15 *bis* of the Pretrial Detention Act (art. 2 *bis*, para. 2 of the Pretrial Detention Act) and during questioning by the examining magistrate (art. 16, para. 2 (2) of the Pretrial Detention Act). This relates to hearings for persons who are apprehended in the act of committing a felony or a misdemeanour, persons in respect of whom there is solid evidence of culpability of a crime or an offence and who are placed at the disposal of the courts, or in execution of an arrest warrant referred to in article 3. By enshrining the principle of assistance by a lawyer in chapter 1 of the Pretrial Detention Act within the first 24 hours after the arrest, the legislature made a deliberate choice because the person is in a vulnerable position at that time. After the 24 hour period (extended in exceptional cases to 48 hours, see below) and the first hearing before the examining magistrate, the person can communicate freely with his lawyer (art. 20, para. 1 of the Pretrial Detention Act). The Act of 13 August 2011 did not alter this principle. Indeed, the legislature took account of the existing laws and procedures in the Code of Criminal Investigation which guarantee the extended rights to a defence in Belgian proceedings based on the principle of the confidentiality of the investigation, and are considered sufficient to ensure a fair trial.

16. Aim and purpose of the assistance of a lawyer (art. 2 *bis*, para. 2 (3) of the Pretrial Detention Act). This is intended to allow a check of: (1) respect for the interviewee's right not to incriminate himself and his freedom to choose whether to make a statement, to answer questions put to him or to remain silent; (2) the way in which the interviewee is treated during the hearing, in particular manifest unlawful pressure or coercion; (3) notification of rights to a defence (art. 47 *bis* of the Code of Criminal Investigation) and the legality of the hearing. The lawyer may have any rights violations he believes he has observed noted forthwith in the record of the hearing.

17. The possibility of interrupting the hearing (art. 2 *bis*, para. 2 (4) of the Pretrial Detention Act) for up to 15 minutes to allow further private consultation, once only at the request of the interviewee or his lawyer, or if new offences are disclosed that are unrelated to the facts hitherto notified to the interviewee, pursuant to article 47 *bis*, paragraph 2, indent 1 of the Code of Criminal Investigation.

18. Order extending the constitutional 24-hour arrest period (art. 15 *bis* of the Pretrial Detention Act). The Act of 13 August 2011 added a new Chapter II/1 to the Pretrial Detention Act, allowing it to be extended by means of an order. The legislator justified this choice by the extremely short period to ensure proper and effective access to a lawyer. An extension order is not subject to appeal, may not be renewed and is issued by the judge at the request of the Crown Prosecutor or his deputy. Detention under the order may not exceed 24 hours. The order must state grounds for the new arrest period: solid evidence of guilt regarding a crime or an offence and the circumstances of the case. As an additional safeguard, the person is entitled to a further private 30-minute consultation with the lawyer. Unless the order extending the statutory period is duly served, the person is released.

Waiver of the right of access to a lawyer and additional safeguards + possible exceptions

19. Only adults, whether or not deprived of their liberty, may waive, in a voluntary and considered manner, their right to a private consultation with a lawyer prior to the first hearing. The waiver must be given in writing in a signed and dated document. Persons deprived of their liberty have an additional safeguard (art. 2 *bis*, para. 1 (5) of the Pretrial Detention Act) since a waiver may be given only after a private telephone conversation with the standby service. If the police find the interviewee "weak or vulnerable", the rules for the protection of minors apply (see Question 18 below). Only an adult deprived of liberty may waive the assistance of a lawyer during the hearing or examination by the examining magistrate (art. 16, para. 2 (2) of the Pretrial Detention Act). Finally, pursuant to article 2 *bis*, paragraph 5 of the Pretrial Detention Act, in the light of the particular circumstances of the case and for compelling reasons, the Crown Prosecutor or examining magistrate may exceptionally by reasoned decision derogate from the rights provided for in paragraphs 1 and 2 (rights to prior consultation and assistance from a lawyer).

Change of status of the interviewee

20. If, during the hearing of a person who was not initially a suspect, it emerges from certain evidence that the person may be charged with an offence, he or she is informed of his or her rights under paragraph 2 and paragraph 3 if applicable, and he or she is given the letter of rights (art. 47 bis, para. 5, of the Code of Criminal Investigation). The hearing is adjourned to give the person time to exercise all the rights accorded to suspects.

Penalty

21. Article 47 *bis*, paragraph 6 of the Code of Criminal Investigation provides that no sentence may be handed down against a person solely on the basis of statements made in violation of paragraphs 2, 3 and 5, with the exception of paragraph 4 (see letter of rights) on the prior private consultation or assistance of a lawyer during the hearing.

Additional rights for persons deprived of their liberty[5]

22. Article 2 *bis*, paragraph 3 of the Pretrial Detention Act. This concerns the right to notify a trusted individual of the arrest. Indeed, anyone who is deprived of their liberty pursuant to articles 1, 2 or 3 of the Pretrial Detention Act is entitled to have the examiner or a person designated by him notify a trusted individual of his arrest, using the most appropriate means of communication. Exceptions may be made to this rule, on a case-by-case basis, by reasoned decision of the Crown Prosecutor or the examining magistrate for the case, where, on account of the notification of that information, there are serious grounds for fearing that attempts may be made to dispose of evidence, that there is collusion between the person concerned and third parties or that the person concerned might evade justice. This is a temporary decision, entailing a postponement of the notification for the time required to protect the interests of the investigation.

23. Article 2 *bis*, paragraph 4 of the Pretrial Detention Act. This provision provides for the *right to medical assistance* for anyone deprived of their liberty pursuant to articles 1, 2 or 3 of the Pretrial Detention Act. Without prejudice to this right, the person concerned has the ancillary right to request an examination by a doctor of his choice. The individual must

[5] Note that, since the amendment of the Policing Act, administrative detainees have had the right to a doctor and the right to notify a trusted individual. Moreover, in practice these rights were also applied by extension to judicial detainees.

bear the costs of any such examination. The police force contacts the duty doctor or the doctor chosen by the individual.

Reconstruction of the crime scene

24. The new Act supplemented article 62 of the Code of Criminal Investigation, requiring the examining magistrate to be accompanied by the suspect, the plaintiff and their lawyers during reconstructions of the crime scene.

Legal aid

25. Several sections of the Act of 13 August 2011 entitle people with insufficient means to assistance from a designated lawyer, either entirely or partially free of charge, under articles 508/13 to 18 of the Judicial Code, for the new rules on access to a lawyer (arts. 47 *bis*, para. 2 (2) of the Code of Criminal Investigation and 2 *bis*, para. 1 (2) of the Pretrial Detention Act).

Other specific aspects, notably information and standby lawyers

26. Now that the lawyer is present during hearings and crime-scene reconstructions, articles 47 *bis*, para. 7 and 62 (3) of the Code of Criminal Investigation point out that he is bound by confidentiality of the two stages of the investigation.

27. The Federal Department of Justice has entrusted the bar associations with organizing a standby service that can meet the new requirements of the Act of 13 August 2011. A substantial budget was allocated for the organization of this service. In this respect, the bar associations have set up a website and a call centre to ensure that lawyers can be designated quickly.

28. Note also that all the services and authorities concerned have established contact points where personnel in the field can ask questions about the application of the Act. They meet regularly and the multidisciplinary "Salduz Think Tank" issues answers under the leadership of the Public Prosecutor of Antwerp. These "FAQs" are posted on the websites of all stakeholders.

Assessment of the new Act of 13 August 2011

29. The implementation of the new Act is accompanied by an ongoing scientific assessment by the Criminal Policy Service of the Federal Department of Justice. Since the entry into force of the Act on 1 January 2012, the Service has issued three interim reports (annex 5) and will prepare a final report at the end of January 2013. The results of the assessment over such a short period should be treated with caution. Furthermore, the new operating procedures introduced under this new law for many of the parties involved will gradually be rolled out and, finally, further measures are still required to support their implementation. In particular, there is to be an in-depth debate on the system of free legal aid.

Reply to the list of issues prior to reporting, 4 – Violence against women and girls[6]

30. The Belgian Government does not consider it appropriate to adopt legislation specifically criminalizing all acts of violence committed against women and girls, as the

[6] CAT/C/BEL/CO/2, 19 January 2009, concluding observations, para. 24; see CEDAW/C/BEL/CO/6, 7 November 2008, concluding observations, para. 32; for more information, see the seventh CEDAW report of Belgium, which will be submitted in November 2012.

criminalization of the various possible forms of violence is already governed by a raft of legal measures (for a full overview, see annex 6). It appears that establishing an offence dealing specifically with acts of violence against women would necessarily be limited in scope, while several offences, adapted to the acts concerned and specifying aggravating circumstances, would seem to be a more effective and more targeted way forward.

31. The following are examples of existing offences: female genital mutilation (art. 409 of the Criminal Code), forced marriage (arts. 391 *sexies* of the Criminal Code and 146 *ter* of the Civil Code), marital and partner rape (art. 375 of the Criminal Code), combined with the aggravating circumstance of marital and partner violence (art. 410 of the Criminal Code). Note also that article 458 *bis* of the Criminal Code on the right to speak of those bound by professional secrecy was amended by the Acts of 30 November 2011 and 23 February 2012. Accordingly, the Crown Prosecutor can now be informed of acts of violence between partners or of female genital mutilation, without fear of breaching professional secrecy, where the individual alone or with the help of a third party is unable to protect the victim's mental or physical integrity.

32. At the judicial level, Belgium has no record to distinguish specific acts of violence against women. Indeed, the gender of the victim is not always recorded. There are figures for specific criminal offences, however, such as partner violence (tables on the number of cases recorded between 2007 and 2010, their status, the reasons for dismissal and the number of cases for which a sentence was handed down as at 10 January 2011, annex 7). For several years there has been an increase in cases, explained mainly by better records, staff training, awareness campaigns and the priority treatment given to them.

33. The Belgian judiciary and police take special care to make a measured response to any act of violence, particularly domestic or family violence. To that end, judges receive training organized by the Judicial Training Institute (IFJ), on violence against women, especially marital violence. The courses focus on the legislation, guidelines and the use of alternative court intervention. The police also receive training in this area. More specifically, in the context of assistance to victims, sessions are held each year to familiarize participants with the various ways in which the police treat victims, teach them to detect any signs of abuse and how to act appropriately in response to a request for action and initial care (annex 8). Note that the National Security Plan for 2012-2015 treats domestic violence and violence against women as a priority. This means that police security plans must specifically address these issues. It is also expected that the criminal policy guidelines on partner violence (COL 3/2006 and COL 4/2006) will continue to apply and will be enhanced, while efforts on the ground, especially proactive measures, will be stepped up. Finally, the new National Action Plan 2010-2014 (see Question 5 below) extends to other forms of domestic violence such as forced marriages, honour-related violence and female genital mutilation.

34. Belgium has an extensive network of facilities providing social and psychological support to victims, both outpatients and inpatients. In Brussels, for example, the French Community Commission (CCF) approves and subsidizes four free assistance services for victims, including two specializing in domestic violence and sexual assault. It also approves and subsidizes 27 family planning centres and 10 shelters, one of which specializes in victims of domestic violence. There is also a special hotline for them. Numerous information and awareness campaigns are conducted at regular intervals to prevent violence and encourage victims to seek help. In this context, cooperation with NGOs is important. For example, CCF supports the Réseau mariage et migration (Marriage and Migration Network) for its prevention measures and combating forced marriages, and the Groupement pour l'abolition des mutilations sexuelles association (Group for the Abolition of Sexual Mutilation) (GAMS) for awareness-raising and individual assistance to women victims. Finally, under certain conditions, citizens can obtain legal aid and voluntary legal advice

from a lawyer and/or legal assistance, entirely or partially free of charge. Financial assistance may also be granted to victims of deliberate acts of violence, where the perpetrator is unknown or insolvent.

Reply to the list of issues prior to reporting, 5 – national action plan to combat violence within couples and other forms of domestic violence[7]

35. On 23 November 2010, Belgium adopted a new national action plan to combat violence within couples and other forms of domestic violence 2010-2014 (annex 9). Thus, its scope is broader than the previous 2008-2009 plan which covered partner violence only. Through this new plan involving the federal Government, the Communities and Regions, Belgium has undertaken to implement more than 120 new measures (76 on partner violence and 46 on other forms of domestic violence). The national action plan mainly covers instances of asylum and immigration, as certain forms of violence may lead to the granting of residence permits. Moreover, its scope is not limited to Belgium, since it provides for international action that assigns a cross-cutting priority to gender equality in Belgian development cooperation.

36. The fundamental objectives of the 2010-2014 national action plan are awareness, education, prevention, protection and support for victims and perpetrators, as well as the implementation of an effective crime policy. At all levels (federal, community, regional, provincial and communal), great efforts are made to educate the general public and certain target groups (hot line, campaigns, development of tools, etc.), to inform and assist victims (brochures, website, reference persons, etc.) and to make perpetrators accountable. For example, a grant of 11,000 euros was given to "Service d'aide aux détenus de Liège I" [Assistance service for detainees in Liège I] to organize group workshops at Lantin Prison, on the accountability of perpetrators of domestic offences. A further grant of 10,000 euros was charged to the 2011 budget of the French Community. In addition, prevention programmes for young people are continuing, training courses for people working in the police, the judiciary, education and medicine and social workers has been stepped up, tools are being distributed for detecting and responding to violence, etc. Finally, important scientific research is being conducted, such as a quantitative study of the prevalence of excision in women and girls at risk of excision in Belgium (annex 10) and a qualitative study of the phenomenon of honour-related violence (annex 11).

37. Under the national action plan, the Institute for Equality between Women and Men plays a supporting role in organizing an interdepartmental meeting every three months, involving all the government departments and representatives of the ministries affected by the action plan. As coordinator, the Institute circulates information between the federal, community, regional and local levels, and acts as a driving force by handling the agenda, timelines and internal management of the action programme. In addition, it collects, analyses and disseminates the opinions and assessments and reports on measures taken as well as best practices developed at European and international levels. The action plan is also supported by a group of experts — representing the voluntary sector, people on the ground and academia. Its aim is to deliver opinions on the status of the planned measures, progress achieved and any developments to be undertaken. In this regard, a broad consultation was held in March 2012 in order to inventorize open issues that still involved difficulties.

38. The Institute for Equality between Women and Men is also implementing measures under the action plan, either on its own initiative or in cooperation with other partners. For

[7] CAT/C/BEL/2, 14 August 2007, second report of Belgium, paras. 62-68, and for more information, see the seventh CEDAW report of Belgium, which will be submitted in November 2012.

instance, the Institute commissioned a national study (2010) on the experiences of women and men in terms of physical, sexual and psychological gender-related violence (annex 12). According to the results, 12.5 per cent of respondents reported having experienced at least one act of violence by their partner or ex-partner over the past 12 months (14.9 per cent of women and 10.5 per cent of men). A brochure was prepared and translated into 17 languages, notably to inform immigrant victims of this phenomenon and of support facilities and means of redress (annex 13). Disseminated in more than 70,000 copies, it allows victims to be referred to services that can listen to them in their own language and give them help and advice. A play was also staged to address domestic violence. Furthermore, the Institute contributed to a manual providing detection tools and a comprehensive approach to violence for all professionals. Many awareness-raising campaigns have been conducted every year, especially for the International Day of struggle against violence against women. Finally, a national website on violence between partners should come on line in 2012.

39. Finally, as part of their contribution to the 2010-2014 national action plan, the French-speaking governments (French Community, Walloon Region and French Community Commission of Brussels) adopted a joint action plan to combat domestic violence, expanded to include other gender-related violence. Consisting of 110 measures, it spans the same period as the action plan and shares the same structure as regards types of violence and overall, strategic and operational objectives. A follow-up was carried out on 31 December 2011 (annex 14).

Reply to the list of issues prior to reporting, 6 – Combating trafficking in persons[8]

40. Combating trafficking in persons is a priority for the Belgian State. In 2008, a national action plan on the subject was adopted, embodying proposals on possible legislative and regulatory changes, and various measures affecting awareness, prevention, punishment of traffickers and proper protection of victims, with specific measures for minors (annex 15). The plan also covers the issues of coordination, information gathering and assessment of policy in this area. It has a duration of four years and is thus due to expire soon. A new action plan has been prepared by the Office of the Interdepartmental Team to Coordinate the Fight against Trafficking in Persons. It is based, among other things, on setting up a table of indicators of the implementation status of the previous action plan on current issues and the views the competent departments in the field. In addition, in the new National Security Plan for 2012-2015, the trafficking and smuggling of persons are once again among the top ten crimes to be combated as a priority. We would also draw attention to Directive COL 01/2007 of the Minister of Justice on combating all forms of trafficking in human beings (annex 16). In each judicial district it establishes specialist judges (for both the prosecution service and the labour inspectorate). The text provides for regular local coordination meetings between personnel in the field. COL 01/2007 also contains a list of 70 indicators for trafficking in human beings to help identify such situations. There is also a joint circular of the Ministers of Justice and the Interior, the Secretary of State for Migration and Asylum Policy and the College of Principal Public Prosecutors on trafficking in human beings (COL 4/2011) and a circular of the College of Principal Public Prosecutors on assisting illegal immigration (COL 10/2010).

[8] CAT/C/BEL/2, 14 August 2007, second report, paras. 114-117; CAT/C/BEL/CO/2, 19 January 2009, concluding observations, para. 25; see also CEDAW/C/BEL/CO/6, 7 November 2008, concluding observations, para. 42; for more information, see the seventh CEDAW report of Belgium, which will be submitted in November 2012.

41. Belgium has concluded a police cooperation agreement on trafficking in human beings with the States of origin and/or the perpetrators of trafficking (notably Moldova, Bulgaria, Romania and Morocco). Belgian liaison officers abroad (notably in Italy, Thailand and Albania) and foreign officers in Belgium - work together in consultation with the judges investigating trafficking to arrest groups of perpetrators simultaneously. Information and awareness campaigns are also conducted in victims' countries of origin by Belgian development cooperation. These mainly consist of educating women and children about the risks involved and practices of traffickers, such as the use of false documents. In particular, a brochure was drafted in 2009 to warn work permit applicants about exploitation networks and to give the details of services that can assist victims. It is available in the six diplomatic posts of the countries worst affected by trafficking. A brochure is nearing completion to raise awareness among doctors and social workers in hospitals of the symptoms that trafficking victims may exhibit, and teach them how to react appropriately. The Federal Police also contributes frequently to projects by other Belgian players with victims' countries of origin. We would point out that in 2011 judges were given specific training on trafficking in human beings and that the police often organize information sessions and publish tools to facilitate the work of investigating and identifying victims. Finally, acts of torture or trafficking may be crimes of genocide, crimes against humanity or war crimes (arts. 136 *bis et seq.* of the Criminal Code). The Belgian authorities cooperate fully with their foreign counterparts on prosecuting such crimes under the Convention against Torture and general agreements on international mutual assistance in criminal matters, and with the international criminal courts pursuant to the Act of 29 March 2004 on cooperation with the International Criminal Court and international criminal tribunals.

42. In 2010, according to data from the College of Principal Public Prosecutors, 662 criminal cases involving trafficking were referred to prosecutors. However, these figures relate to an initial classification and the investigation may eventually find that the facts do not amount to trafficking. In the same year, according to data from the judiciary's central registry, there were 64 convictions for offences involving trafficking in human beings, the principal sentences being as follows: 60 prison sentences (9 of less than one year, 30 of between one and three years, 18 of between three and five years and 3 of five years or more) and 61 fines. There were confiscations in 37 per cent of cases. These data are not exhaustive because not all the information for 2010 has yet been entered. The risk of underestimating convictions for trafficking in human beings is estimated at 15 per cent. For previous years, please refer to the data in the 2010 Annual Report on Trafficking in Human Beings of the Centre for Equal Opportunities and Action against Racism (annex 17, pages 62-72). However, these data were entered in accordance with the previous regulations (art. 380 of the Criminal Code and art. 77 *bis* of the Act of 15 December 1980 on foreigners involved in trafficking and smuggling of persons). It is therefore difficult to compare them with the new figures.

43. One of the main goals of the Belgian system is to offer trafficking victims a number of assistance and support measures. Police and inspection services inform victims of the protection status and refer them to the three shelters specializing in accommodation and assistance for trafficking victims. These centres are subsidized by the Government and their staff receive regular training in the field. They have a shelter at a discreet address and work with multidisciplinary teams (social workers, educators, criminologists, etc.) who help the victim to draw up a medical, psychosocial, administrative and legal assistance plan. The full protection scheme is set out in the circular of 26 September 2008 on the introduction of multidisciplinary cooperation for victims of trafficking in human beings and/or certain aggravated forms of trafficking (annex 18). It lays down the procedures for identification (using the indicators of COL 01/2007), referring cases, and accommodating and assisting potential victims. It also sets out the conditions to be eligible for the status of victim: (1) to

cease all relations with the alleged perpetrators, (2) to accept the assistance of a specialized centre, and (3) to cooperate with the judicial authorities.

44. There are no plans to amend the Act of 15 September 2006 as it already offers ample protection for actual and potential victims (art. 61/2 to 61/5 of the Aliens Act of 15 December 1980). No cooperation is required at the start and the person does not need to "feel" a victim to be identified, protected and receive the assistance. After a 45-day reflection period, he or she apply for the status of victim. The victim will then file a complaint or make sufficient statements to the judicial authorities to enable them to open an investigation. This is to protect the victim and any future victims of trafficking networks, and to combat them, prosecuting and sentencing the perpetrators on the basis of the information obtained, and finally to deter trafficking networks. If the victim cooperates, he or she is protected and need not appear as a witness. Criminal investigations are much more difficult without the cooperation of the victims, which may ultimately encourage the networks and make it more difficult to protect present and future victims. Note also that the European Directive (footnote 9) lays down the conditions for granting residence permits of limited duration, depending on the length of the relevant national proceedings, to foreigners who cooperate in combating trafficking in human beings or illegal immigration. The residence permit is a sufficient incentive for them to cooperate with the authorities, while being subject to certain conditions to prevent abuse (recital 9 of the Directive). Thus, there is no obligation to issue a residence permit if they do not cooperate. Furthermore, point 4.5 of the report of the Council of the European Union on the implementation of Directive states not only that all Member States require cooperation to issue a residence permit but also that other States, including Belgium, issue them to vulnerable persons without requiring cooperation (annex 19). Indeed, In Belgium such people can apply for a residence permit on humanitarian grounds (art. 9 *bis* of the Act of 15 December 1980), or their vulnerability can be taken into account, as appropriate, during the processing of an asylum application (art. 49/3 of the Act).[9]

45. The circular of 26 September 2008 also specifies the role of each player at the various stages of the procedure: police and inspection services, Aliens Office, specialized shelters and magistrates. It lays down specific guidelines for unaccompanied alien minors who are potential victims of trafficking (appointment of a guardian, assistance to the minor and cooperation of the competent authorities, see question 16 below. The circular also provides solutions to previously problematic situations. For example, it establishes a simple procedure that enables trafficking victims to be given protected status, where the exploitation took place in the context of domestic job for a diplomat. In 2011, the circular was assessed by the Bureau of the Interdepartmental Coordination Unit combating trafficking of persons. Each recommendation was reviewed before being sent for implementation by the competent service. The outcome of the review was taken into account when preparing the new action plan. A specific assessment for minors is currently in progress as there is a perceived need to follow a particular methodology for them.

46. The Council of Europe Convention on Action against Trafficking in Human Beings was ratified on 27 April 2009, following the Act of Assent of 3 June 2007. The obligations under the Convention were nevertheless taken into account in the drafting of the Trafficking Act of 10 August 2005 (e.g. regarding the aggravating circumstance associated with the status of public official). The Belgian Government is currently preparing the

[9] We would recall that this Act transposed EU Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities.

transposition of Directive 2011/36/EU of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims. In this regard, a study is being conducted with a view to possibly amending the offence, particularly in order to cover the practices of sexual slavery covered by the Directive (outside the scope of the exploitation of the prostitution of others).

47. Belgium signed Protocol 12 to the European Convention on Human Rights on 4 November 2000. The Act of 7 February 2012 approved it at federal level and the federalized institutions, with the exception of the Flemish Parliament, have adopted decrees assenting to it. When signing the Framework Convention for the Protection of National Minorities on 31 July 2001, Belgium entered the following reservation on the concept of "national minority": "The Kingdom of Belgium declares that the Framework Convention shall apply without prejudice to constitutional provisions, safeguards and principles or to the legislative standards that currently govern the use of languages. The Kingdom of Belgium declares that the notion of national minority will be defined by the inter-ministerial conference on foreign policy". A working group has been established. It has already met several times, but there is as yet no agreement in Belgium on such a definition.

Reply to the list of issues prior to reporting, 7 – Application of section 417 *ter* of the Criminal Code

48. In this connection, the Belgian Government would refer the Committee to its second report (paras. 482-490). We would add that paragraph 46 of the Code of Conduct of the police services (annex 20) provides that the officers in charge of an operation must ascertain that the orders which they give and the action which they propose should be taken have a justification in the legislation or regulations and that the methods of intervention are proportional to the goal in question. They may not order or commit arbitrary acts which may encroach on rights and freedoms. In practice, however, if illegal orders are given, especially to perpetrate crimes of torture and/or inhuman treatment, the subordinate must refuse the order based on his status, the code of ethics and the domestic and international legal framework applicable to police services. He must inform his superiors of that decision. If he is subsequently subject of proceedings, he may legitimately invoke the exception (arts. 417 *ter* and *quater* of the Criminal Code). During training, the police are informed of their obligation always to act in accordance with the law, including criminal and humanitarian law and the code of ethics (see Question 13 below).

49. The same principles apply to military personnel. Internal guidelines of the Ministry of Defence state that, in the event of a manifestly unlawful order, the subordinate must decline to carry it out. Moreover, under article 70 of the Criminal Code, an order does not constitute a legitimate reason for the use of force unless it complies with the law, is given by a competent and legitimate superior before the act is carried out, and is executed correctly. The training given to military personnel (see Question 13 below) addresses the issue of manifestly unlawful orders. Furthermore, in addition to their duty to decline to carry out the order, any military personnel learning of a crime or offence must report it forthwith to the federal prosecution service (art. 29 of the Code of Criminal Investigation). The supervisor must also report it to the federal prosecution service as an act of insubordination (a criminal offence for military personnel).

50. Finally, note also that article 136 *octies*, paragraph 2 of the Criminal Code provides that the fact that the accused acted on the orders of his Government or of a superior does not exempt him from liability if, in the circumstances, the order could clearly result in a crime of genocide, a crime against humanity or a war crime. Under both international law and Belgian criminal law, acts of torture may amount to such crimes (arts. 136 *bis*, *ter* and *quater* of the Criminal Code).

Article 3

Reply to the list of issues prior to reporting, 8 – Expulsion operations[10]

51. Regarding external monitoring of expulsion operations (point (a)), article 8, paragraph 6 of Directive 2008/115/EC of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals requires States to implement an effective system of forced return. When the Directive was transposed (Act of 19 January 2012, Belgian Official Gazette of 17 February 2012, annex 21), the General Inspectorate of the Federal and Local Police (AIG) was confirmed in its role as the body for monitoring forced returns,[11] in view of its independence from the authorities deciding on expulsions (Aliens Office) and the police services responsible for implementing them (airport police at Brussels National Airport). Indeed, AIG is legally and structurally separate from and hence independent of the police and of the Aliens Office. AIG is under the authority of the Ministers of the Interior and Justice. A team of four people was set up within AIG solely to supervise forced returns, two of them being full-time members, as required by the protocol signed with the European Commission. The number of controls, up to the boarding of the aircraft or up to and into the country of return, has risen sharply as a result of funding from the European Return Fund (in 2011, there were 54 controls and 45 had already been carried out by the first quarter of 2012).[12] These European subsidies will probably be extended in 2013. In view of the designation of AIG, it was decided not to establish a new Committee (Parmentier) to avoid having several bodies with overlapping responsibilities. Funding other bodies would also disperse available budgets. Note that the organic jurisdiction of AIG will probably soon be extended to enable it to monitor the whole process of forced returns in respect of all the players involved, not only the police. In the event of an incident, AIG members, as police officers, can act directly to stop an offence and prepare any necessary report, which a member of an NGO would be unable to do. Furthermore, no restriction may be imposed on them in the course of their work (they have a general right of inspection at all times). In particular, AIG members have no problems accessing sensitive areas of airports, even the military airport, for monitoring purposes. Finally, they are also subject to professional secrecy, which guarantees the discretion of such operations, especially before they are carried out.

52. Given the stepped-up monitoring by AIG of forced returns and in the light of the above, an NGO would not seem to be necessary. Regarding the use of videos, the Belgian Government still agrees with the findings of the final report of 31 January 2005 by the Vermeersch II Commission, which took the view that it was not appropriate to use them for several reasons, mainly technical and logistical (Recommendation 7.3). AIG shares this view, considering in particular that the use of cameras would be costly in terms of personnel and equipment, would raise problems regarding the privacy of other people present, would offer only fragmented shots and would be difficult to implement.

53. Regarding points (b) and (c), since there have been no major incidents during expulsion operations since 2008, it can be inferred that training has been effective. Like all

[10] CAT/C/BEL/CO/2, 19 January, 2009, concluding observations, para. 6 and CAT/C/BEL/CO/2/Add.1, 28 March 2011, follow-up responses, paras. 2-19; see CAT/C/BEL/Q/2/Add.1, 21 October 2008, questions 4, 8, 9, 14, 15 and 17, and see also CCPR/C/BEL/CO/5, 18 November 2010, para. 21.

[11] Royal Decree of 19 June 2012 amending the Royal Decree of 8 October 1981 on access to the territory, residence, establishment and expulsion of aliens, and the Royal Decree of 20 July 2001 on the operation and staffing of AIG in the context of forced return (Belgian Government Gazette, 2 July 2012). Until now, while Committee P also supervised repatriations, its action was nevertheless limited since, in 2004, the Minister of the Interior specifically entrusted this task to AIG.

[12] The number of controls performed by AIG in previous years are as follows: 36 in 2007, 18 in 2008, 17 in 2009 and 12 in 2010.

police officers, airport police at Brussels National Airport receive basic, ongoing and functional training which places the emphasis on respect for human rights (see Question 13 below). In view of their mission, staff are even more aware of respect for human rights and the vulnerability of aliens to be expelled. In this regard, compulsory specific training is provided to airport police at Brussels National Airport, lasting six months and containing a substantial practical component (modules on techniques for managing violence, how to react to an uncooperative person, etc.) as well as more theoretical aspects (entry controls, forged documents, etc.). All future escorts also take part in training scenarios. The possibility of extending this training and making it into official in-service training is being considered. So far, we can say that the teaching staff have developed real expertise enabling them to perform their duties in accordance with the Code of Police Ethics and internal instructions. We would also stress that the establishment of the SEFOR service (awareness, monitoring and return) of the Aliens Office has led to an increase in voluntary returns, because it informs people who have received an expulsion order of their rights, obligations and the opportunity to leave the country voluntarily. Otherwise, people are expelled by force. There is a pre-identification procedure whereby the competent departments try to reach an agreement on travel documents before detaining people to be expelled, which greatly reduces the time they are held in detention. Finally, the Aliens Office often organizes training for its staff on legislative and regulatory changes and also provides training for police officers who apprehend illegal residents, so that the procedures are followed and the necessary information is given to all the services and individuals concerned. Finally, the SEFOR service provides training for municipal administrations to ensure that they provide relevant information on return to those concerned, when notifying them of expulsion decisions.

54. On the point (d), from 2006 to the present, AIG has received only six complaints from individuals alleging that they were victims of unlawful use of violence during repatriation. The cases were referred to the judicial authorities after the required reports had been drafted. AIG was neither asked to follow up these investigations nor informed of their outcome. From 2007 until the present, AIG has written, at its initiative, one report making allegations against a police officer over an expulsion. Pursuant to article 14 *bis* of the Act of 18 July 1991 on monitoring of the police and intelligence services and the Threat Analysis Coordination Agency, Committee P is investigating the activities and methods of AIG. Committee P therefore conducts a marginal check on how AIG carries out its mission to monitor expulsions. In addition, individuals may lodge complaints about expulsions with Committee P: there were six complaints in 2010 and four in 2011.[13] The judicial authorities can also entrust the Committee P investigation department with investigations into expulsions (2010-2011: one case only in 2011).[14] The figures for convictions for police violence (see Question 23 below) do not indicate the precise context of offences, particularly whether or not they were committed during an expulsion.

Reply to the list of issues prior to reporting, 9 – Cases of expulsion, deportation or extradition, review of decisions and monitoring the fate of the person concerned after expulsion (including diplomatic guarantees)[15]

55. The Minister or his representative decides to expel an alien by Ministerial Transfer Order or Royal Expulsion Decree (arts. 20 to 26 and art. 43, para. 2 of the Aliens Act of 15

[13] The figures for complaints filed with Committee P in previous years are as follows: four complaints in 2007, two in 2008 and five in 2009.

[14] The figures for judicial investigations entrusted to the Committee P investigation department in previous years are as follows: two cases in 2007, none in 2008 and one case in 2009.

[15] CAT/C/BEL/CO/2, 19 January 2009, concluding observations, para. 10; see CAT/C/BEL/Q/2/Add.1, 21 October 2008, question 10, CAT/C/BEL/2, 14 August 2007, paras. 16-19 and 28-30.

December 1980), only after consideration of evidence provided by the alien and the foreseeable consequences of his or her expulsion to the country of destination, taking account of the overall situation there and the circumstances of the individual concerned. A check is always made that the alien does not run a risk of being transferred to a country where his life would be endangered within the meaning of article 3 of the European Convention on Human Rights. The Minister or his representative takes account of the opinions of the competent authorities, such as the General Commissariat for Refugees and Stateless Persons if the alien has applied for asylum, and the judicial authorities when he issues an expulsion order or decides to implement it. The Belgian Government applies the principle of *non-refoulement* (art. 33 of the Geneva Convention), the European Court of Human Rights (arts. 3 and 8), paragraph 2 of the preamble to the Dublin rules,[16] articles 18 and 19 of the Charter of Fundamental Rights of the European Union and the Treaty on the Functioning of the European Union (art. 78, para. 1).

56. Account is always taken of the alien's right to respect for private and family life when considering each case. It is important to find a balance with the protection of public order and national security, while abiding by the principle of proportionality. Indeed, the expulsion measure must strike the right balance between the interests of the alien and the protection of public order and crime prevention. According to the jurisprudence of the European Court of Human Rights, this balance must take account of the following factors: (1) regarding the protection of private and family life: the level of social integration and the presence of relatives in Belgium and the intensity of family ties, the birth of the alien in Belgium or his age on arrival, opportunities to integrate in the country of origin (knowledge of the language, the presence of family, frequency of returns, etc.) and ties with that country or another; (2) regarding the protection of public order and national security: the gravity of the offence, the nature of the charges and the reasons for the conviction, the nature and importance of the sentence, recidivism and the risk of recidivism, the duration of the expulsion (in Belgium, 10 years) and illegal residence. Indeed, when an illegal resident commits a crime, it is essential to assess the importance of his family life and attachments in Belgium in relation to the gravity of the acts committed. This assessment will vary depending on each case and requires an individual examination of each case.

57. Appeals for suspension and cancellation or repatriation and expulsion orders may be lodged with the Aliens Litigation Council. The Minister or his representative rules on applications for reports and lifting these measures. When people are expelled they are listed in the SIS database. If they return and are intercepted in the country, the police will contact the C-SIS office to have them taken back into custody (if possible) to serve the remainder of their sentences.

58. Since 2008, there have been six expulsion cases (one in 2008 and five in 2010) and three more sensitive cases that led to one removal order and the conviction of two people on terrorism charges who invoked article 3 of the European Convention on Human Rights to avoid expulsion. The residence situation was analysed in each of these cases. Indeed, all judgments must be final and all procedures closed (e.g. asylum or application for a residence permit on humanitarian grounds). As mentioned above, the right to respect for private and family life is duly taken into account. In addition, routine checks are carried out such as consultation of the Schengen system, request of a list of prison visits, or contact with State Security. To date, three people subject to a transfer order have not yet been expelled. In two cases, the Council of State overturned the decision of the Aliens Litigation Council cancelling the expulsion order and the appeal for annulment is again pending. In

[16] EU Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national.

the third case, an action for annulment before the Aliens Litigation Council is pending. We would recall that the Aliens Litigation Council examines possible violations of the European Convention on Human Rights, notably article 3 thereof (torture and/or inhuman or degrading treatment).

59. Regarding extradition orders, they are issued by the Government, in principle, after consulting the Indictment Division (arts. 1 and 3 of the Act of 15 March 1874). There is a need to check that all the conditions for extradition are met (in form and substance and grounds for refusal) and respond to any objections raised by the person whose extradition is requested. Certain conditions or grounds for refusal are required (e.g. respect for human rights or an offence that is political rather than terrorism, see Question 35 below). Issues relating to the respect of fundamental rights are raised increasingly often, such as: risk of the death penalty, risk of life imprisonment without possible release; risk of torture or inhuman or degrading treatment; risk of a miscarriage of justice or violation of due process, and risk of discrimination. If any of these risks is found to apply, extradition is prohibited under the extradition provisions or the jurisprudence of the European Court of Human Rights. The difficulty is to assess how real is the risk invoked in relation to the benchmarks. According to figures from the Federal Department of Justice, 75 people were extradited from Belgium to other countries between early January 2008 and 12 July 2012 (diplomatic guarantees were sought in three cases), while 76 people were extradited from other countries into Belgium.

60. Regarding the risk of the death penalty, article 2 *bis* (3) of the Act of 15 March 1874 (as amended by the Act of 15 May 2007) states that "When the offence for which extradition is requested is punishable by death in the requesting State, the Government shall grant extradition only if the requesting State gives formal assurances that the death penalty will not be carried out". If such assurances are obtained and considered sufficient, extradition may take place. This type of guarantee has already been requested. Similarly, it is common to ask for guarantees that a person will be retried with a due hearing of the parties, where there is a conviction in absentia in the requesting State. Guarantees are sometimes required regarding the possibility of early release, in the case of a life sentence, or the type of institution in which the person will be detained after his extradition.

61. The question as to whether diplomatic guarantees can prevent other risks, notably the risk of torture where this exists, is a very sensitive issue. The European Court of Human Rights has recently clarified its jurisprudence on this point. It considers that States must at least seek diplomatic assurances where there is a risk of a person being subjected to ill-treatment (Case of *MS v. Belgium*, 31 January 2012, para. 131). Moreover, the Court considers that there is nothing to prevent such guarantees being sought, even in cases where torture is being systematically practised in the destination country (Case of *Othman (Abu Qatada) v. United Kingdom*, 17 January 2012, para. 193), and that it will only be in rare cases that the general human rights situation in a country will mean that no weight at all can be given to diplomatic assurances (para. 188). Finally, the Court laid down a non-exhaustive list of criteria that can be taken into consideration for assessing the reliability of diplomatic assurances required (para. 189), especially if they are specific or are general and vague, the length and strength of bilateral relations between the States, including the receiving State's record in abiding by similar assurances, and whether compliance with the assurances can be objectively verified through diplomatic or other monitoring mechanisms.

62. Finally, extradition orders can be challenged before the Council of State. In the event of suspension and/or annulment, a new order may be issued that takes account of the judgment. Furthermore, the European Court of Human Rights has already declared itself competent to hear appeals to suspend the surrender of a person whose extradition is sought and who alleges a risk of violation of his fundamental rights. The Council Chamber and the

judge have already declared themselves competent to entertain an application for release of a person, especially if his detention, solely on grounds of extradition, exceeds a period of time. Finally, according to the Court of Cassation, the investigating jurisdictions are competent to consider an application for release at any stage of the extradition process.

Reply to the list of issues prior to reporting, 10 – Data on asylum and expulsions[17]

63. The Belgian Government has more detailed statistics since the previous report. Accordingly, it would refer the Committee to a number of annexes. The number of asylum applications registered since 2008 has risen significantly: there were 12,252 cases in 2008, 17,186 in 2009, 19,941 in 2010, 25,479 in 2011 and 7,571 new cases registered up to April 2012 (annex 22). The Belgian Government would refer the Committee to the website of the Aliens Office for more details, notably two tables with figures from 1991 to the present day, showing the number of applications per month and asylum seekers' countries of origin (annex 23) and other figures and comments in its activity report (annex 24).

64. Since 2008, the figures for the granting of refugee status (RS) and subsidiary protection (SP) are as follows: 2008 (2,143 RS and 394 SP), 2009 (1,889 RS and 418 SP), 2010 (2,107 RS and 711 SP) and 2011 (2,857 RS and 1,094 SP). The figures of the General Commissariat for Refugees and Stateless Persons (CGRA) are public (annex 25). There is no information on the number of applications for asylum or subsidiary protection accepted on grounds of torture or fear of torture in the country of origin, as the General Commissariat database does not record this type of information.

65. Finally, the number of persons repatriated (expelled from Belgium) and returned (from its borders) since 2008 are as follows: 1,333 in 2008, 1,557 in 2009, 2,106 in 2010, 2,751 in 2011 and 501 so far in 2012 (annex 26). The Committee will also find an annex showing the breakdown of repatriations by country of origin, Dublin repatriations and repatriations to other EU Member States on the basis of a bilateral agreement, along with information on the main countries of origin of expelled aliens (annex 27).

Reply to the list of issues prior to reporting, 11 – Detention in "Dublin cases"

66. The law provides for two types of detention in the context of the implementation of the Dublin rules (see para. 55). The first relates to the period necessary for determining the State responsible for processing the asylum application (at the border and within the country). This concerns asylum seekers which the Belgian Government knows have applied for asylum in another Member State. An asylum seeker is detained where there is a risk that he will not leave voluntarily, because his application for asylum has been rejected or is still pending in another state, or because the asylum seeker has been registered by another State as an illegal migrant, or his residence permit/visa had expired and he left the country to come to Belgium. Such persons are detained on the basis of article 51/5, paragraph 1 (2) of the Aliens Act of 15 December 1980 and article 71/2 *bis* of the Royal Decree of 8 October 1981 on aliens. Detention is restricted to the time necessary to determine the State responsible or up to one month, extendible for one month in very complex cases.

67. The second type of detention (either at the border or within the country) follows a Dublin decision to the effect that a country other than Belgium is responsible for the asylum application. As in the first case, it is assumed that the asylum seeker will not leave voluntarily. Moreover, the terms of transfer must be determined with the responsible State and it may request a controlled transfer (arts. 19, para. 3 and 20, para. 1(d) of the Dublin rules). Finally, according to article 19, paragraph 4 of the rules: "Where the transfer does

[17] CAT/C/BEL/Q/2/Add.1, 28 October 2008, question 11 (data for 2004-2007).

not take place within the six months' time limit, responsibility shall lie with the Member State in which the application for asylum was lodged". Here, the legal basis for detention is article 51/5, paragraph 3 (4) of the Aliens Act. It may not exceed one month, but this does not include the period during which the asylum seeker was held in the first type of detention.

Articles 5 and 7

Reply to the list of issues prior to reporting, 12 – Rejection of requests for extradition and prosecution of perpetrators[18]

68. Since 2008, Belgium has received several requests for the extradition of persons suspected of having committed violations of international humanitarian law that can also be described as torture or cruel, inhuman or degrading treatment. None of those requests made any mention of the Convention against Torture as a basis for extradition. However, in view of the allegations made, Belgium has always considered these requests from the standpoint of the Convention against Torture which, in some cases, was actually the only applicable convention between Belgium and the requesting State. Since 2008, Belgium received a total of nine extradition requests of this type from two different States: three in 2009, three in 2010, two in 2011 and one in 2012. Of these requests, seven were not accepted since the persons whose extradition was sought were of Belgian nationality. For six requests, a judicial investigation was opened in Belgium, based on the principle *"aut dedere, aut judicare"*. For the seventh request, the judicial enquiry already open in Belgium about the person whose extradition was sought was extended to include the facts set out in the arrest warrant, under the same principle. The eighth request appeared to concern a person not resident in Belgium. The requesting State was asked for additional information to check his identity. Finally, the ninth application was received in 2012 and is currently being considered by the relevant departments.

69. Finally, please note that it was notably on the basis of the Convention against Torture that in 2005 Belgium requested Senegal to extradite Hissène Habré, the former President of Chad, accused among other other things of crimes of genocide, crimes against humanity, war crimes and acts of torture. On 19 February 2009, in the absence of any proceedings by Senegal against the person concerned and owing to persistent differences between Belgium and Senegal regarding the interpretation and application of the Convention, Belgium brought the matter before the International Court of Justice (case "Questions relating to the Obligation to Prosecute or Extradite"). In particular, Belgium contended that Senegal was in breach of its obligation *"aut dedere, aut judicare"* provided for in the Convention. Belgium and Senegal made their statements in July 2010 and August 2011 and submissions hearings were held in March 2012 (annex 28). The Court handed down its ruling on 20 July 2012. The Court upheld Senegal's obligation under the 1984 Convention to submit immediately the prosecution brief against Hissène Habré to its competent judicial authorities or, failing that, to extradite him.

[18] CAT/C/BEL/Q/2/Add.1, 21 October 2008, question 16.

Article 10

Reply to the list of issues prior to reporting, 13 – Training on the Convention[19]

70. While the police force does not organize specific training on torture, it is addressed in a more general context. Respect for human rights is, in fact, the guiding principle of training of police officers throughout their entire career. All courses (Belgian, European or international) are devised in accordance with highly specific standards and criteria and are subject to a process of continuous assessment and improvement. The prohibition of torture is incorporated into various modules of basic and in-service training (annex 8). Police officers are trained in the framework of national law (criminal law, status of the police, code of ethics) and international law, focusing on their action. Police officers' respect for human rights is subject to continuous assessment and, if necessary, sanctioned by the statutory appraisal and/or disciplinary procedures or legal proceedings (see Question 26 below).

71. As mentioned in our second report (paras. 525-529), training for staff supervising detainees, including juveniles (in federal prisons) and psychiatric inmates (prison annexes and the social protection establishment in Paifve) is oriented towards education in human rights. These include 17 hours of introductory training on ethics: 6 hours of theory, 3 hours of case analysis and 8 hours of work on relationships at risk. The training also includes a 14-hour module on the internal status of detainees, which makes a specific study of European human rights conventions and the prevention of torture and inhuman or degrading treatment, the rules of the European Committee for the Prevention of Torture (CPT) and the European Prison Rules. In addition to the compulsory initial training, officers can attend specific training courses throughout their careers. These are analysed using the Kirkpatrick model, to evaluate relevance (matching practical needs), teaching effectiveness (what participants remembered) and practical transfer (application in the field of the skills acquired in training). Each module is reviewed annually using this analysis. For public youth protection institutes, there is a code of ethics in the French Community which provides that all youth support and protection services must comply with international conventions, in particular those mentioned above and the Convention on the Rights of the Child. The Child Rights Action Plan of the Government of the French Community also includes plans for the following two projects between 2011 and 2014: (1) Draft a document streamlining legislation on the public youth-protection institutions and improving its content, particularly on respect for the rights of young people, and (2) ensure that the rights of the child are included in the compulsory initial and continuous training, by the methods services for youth support services, judicial protection services and youth protection institutes, and by the CAP for approved services. If not, they must be included.

72. Please note that the security personnel of detention centres attend the following courses: (1) general training for managing aggression. A four-hour refresher course is given twice a year, during which the basic techniques are reviewed and exercises of scenarios carried out, (2) specific training in managing aggression to avoid the psychological impact of incidents of aggression, (3) training in intercultural communication with information on communication for specific cultures, (4) basic training in first aid and annual refresher training, and (5) training on search techniques and the possible use of means of coercion (such as Velcro bindings).

[19] CAT/C/BEL/CO/2, 19 January 2009, concluding observations, 26; see CAT/C/BEL/Q/2/Add.1, 21 October 2008, questions 17 and 18, see also CAT/C/BEL, 2, second report, paras. 165-189 and 525-529.

73. The Royal Military Academy provides training in international humanitarian law to the legal advisers on armed conflict, operating at various levels of defence command. The training does not specifically address the Convention against Torture, but the issue is integrated into the general training. The Directorate-General for Legal Support and Mediation gives training and guidelines on international humanitarian law, human rights and criminal law to lawyers and military personnel leaving for tours of duty. As already mentioned, the issue of manifestly unlawful orders is taught as well as the obligation of all military personnel to inform the federal prosecution if they learn of a crime (art. 29 of the Code of Criminal Investigation).

74. The victims of offences of all kinds who turn to the social assistance services or persons who are referred to them by the police or the personnel of the prosecution offices or the courts receive social and psychological assistance focused on the direct and indirect effects of what happened to them and on coping with the distress caused by their traumatic experience. All workers in approved services (support services for victims, shelters, family planning centres) attend training courses. In Brussels, the French Community Commission subsidizes specific training on domestic violence for workers in shelters and supports the "Intact" association in its outreach activities and training of police officers on female genital mutilation and forced marriages, covering both the cultural and legal aspects. Indeed, the 2010-2014 National Action Plan (see Question 5 above) emphasizes the need to educate professional groups and the general public on genital mutilation and to detect cases at risk. Moreover, a specific guide has been produced for professionals, while the issue of mutilation is taught in university medicine courses. Regarding violence against women, a manual offers detection tools for all professionals (see para. 38 above) and police officers are trained to recognize any signs of abuse and how to act appropriately in response to a request for action and initial care (see para. 33 above and annex 8). Finally, regarding trafficking in persons, a brochure is nearing completion to raise awareness among medical staff of the symptoms that victims may exhibit and teach them appropriate responses (see para. 41 above).

75. Finally, the Judiciary Training Institute does not organize specific training on the Convention against Torture. However, we would recall that human rights, and especially the European Convention on Human Rights, are taught in law courses in all Belgian universities. Thus, all judiciary staff have a good knowledge of the subject. The Institute organizes and/or sponsors training courses on many topics. The Belgian Government invites the Committee to consult its programme of training courses (annex 29) and gives some examples here of recent training courses: monitoring the deprivation of liberty — viewpoints on monitoring police detention centres and prisons (March 2012); the Salduz law — along with the consequences of the Salduz ruling for the police, judiciary and the bar (December 2011); sexual violence and basic training on violence within the couple (October 2011); evidence in criminal law (September 2011); and justice and human rights — a duty of care (May 2011). There is also basic annual training in international cooperation, which discusses the prohibition of torture and/or ill-treatment.

Article 11

Reply to the list of issues prior to reporting, 14 – Interrogation and custody[20]

76. The Police Code of Ethics of 2006 (annex 20) sets forth a number of the rights of persons deprived of their liberty. For instance, point 51 establishes their rights to medical

[20] CAT/C/BEL, 2 second report, paras. 190-261.

assistance, access to sanitary facilities and the supply of food and drink. Staff are responsible for any person under their surveillance. They must take the necessary steps to prevent accidents, escapes or connivance with third parties and must ensure effective surveillance to that end. They must give assistance to people under their supervision who clearly need medical care. They are to give or arrange for first aid while waiting for approved medical care services. Point 62 of the Police Code of Ethics states that investigators must take all possible care over the quality and fidelity of the recording and transcription of the hearings, interviews and confrontations that they carry out. They are to inform people of their rights, respect their right to silence, not to force them to incriminate themselves and to refrain, in order to obtain confessions or information, from resorting to violence, abuse or underhand ploys (see Question 30 below).

77. Note also that the various documents used as a basis for police work in the field have recently been updated to incorporate the changes that have occurred since the entry into force of the Act of 13 August 2011 (see Question 3 above). For instance, the Field Intervention Guide (GIT) was updated in cooperation with the judicial authorities. Finally, the police have also adopted awareness-raising and information measures such as InfoReview 042012 devoted solely to the Salduz law (annex 30).

Reply to the list of issues prior to reporting, 15 – Statistics on detention

78. The Belgian Government is providing the Committee with figures for 2009, 2010 and 2011 (annex 31). For each year, they give the average prison population (by sex, prison regime and nationality) and the average overcrowding rate. Figures are also given for juvenile facilities operated by the federal State (two new facilities were opened in 2010: Tongeren and Saint-Hubert). For 2009, the overcrowding rate was 21.8 per cent. The average population is 10,237.8 (9,833.2 men and 404.7 women, 34.7 per cent in pretrial detention, 54.1 per cent convicted prisoners and 10.4 per cent detainees). For 2010, the overcrowding rate was 17.7 per cent and the average population was 10,535.7 (10,129.1 men and 406.6 women, 34.7 per cent in pretrial detention, 54.2 per cent convicted prisoners and 10.4 per cent detainees). For 2011, the overcrowding rate was 20.2 per cent and the average population was 10,973.5 (10,531.3 men and 442.2 women, 3,736.1 in pretrial detention, 6,049.8 convicted prisoners and 1,091.4 detainees). The Belgian Government also attaches to its report figures at 3 April 2012 (annex 32). There are 11,215 detainees, including 3,565 in custody, 6,417 convicted prisoners, 10,745 men and 470 women. Finally, the Belgian Government has no statistics on detention, disaggregated by type of offence. Moreover, it does not collect data by ethnic origin of detainees.

Reply to the list of issues prior to reporting, 16 – Unaccompanied minors[21]

Point (a): Financial and human resources, training and practical results of the action taken

79. The total budget (staff costs, operating costs, equipment and guardians) of the Guardianship Service for 2011 amounted to 3,267,000 euros. In 2012, it rose to 3,704,000 euros. In 2011, the department consisted of a multidisciplinary team of 23 officers. In 2012, it had 20 officers. Recruitment is under way to hire seven new officers.

80. The figures show a steady rise in arrivals of young migrants in Belgium. From 2009 to 2011, the average increase was 30 per cent in relation to 2008. Of the 4,410 reports in

[21] CAT/C/BEL/CO/2, 19 January 2009, concluding observations, 7; see CAT/C/BEL/CO/2/Add.1, 28 March 2011, follow-up responses, paras. 20-51; see also CRC/C/BEL/CO/3-4, 18 June 2010, paras. 74 and 75.

2011, the Guardianship Service handled 2,468 young people. To identify young people whose age was in doubt, 993 medical tests were conducted in 2011, under the supervision of the Guardianship Service (figures covering the period up to 30 November): 288 young people were identified as minors and 705 as adults. In view of this increase in unaccompanied foreign minors, the Guardianship Service has made significant efforts to approve new guardians. In 2011, it approved 68 new guardians. Currently, there are about 260 active guardians. The Guardianship Service has provided basic training for new guardians, principally covering the guardianship law, psycho-social counselling and cultural issues, youth assistance and protection, education of unaccompanied foreign minors, as well as family searches and voluntary return. An information day on identifying unaccompanied foreign minors was also organized for more experienced guardians during 2011. In 2008, the Guardianship Service appointed 923 guardians. This figure rose to 1,590 guardians appointed for 2011. At the end of 2011 there were 2,485 ongoing guardianships. As part of the monitoring exercise, the Guardianship Service processed 3,319 guardians' reports and conducted more than 1,000 interviews during 2010. With the increase in unaccompanied foreign minors, the number of guardianship terminations also rose. In 2011, the Guardianship Service terminated 982 guardianships. Finally, the Service processes some 6,000-7,000 statements of outstanding receivables from guardians and interpreters a year.

81. Regarding the Office for Foreign Minors and Human Trafficking of the Aliens Office, the financial and human resources are as follows (staff and operating costs + equipment and electricity): in 2008 (447,226.71 euros), in 2009 (547,660.91 euros), in 2010 (622,547.52 euros), in 2011 (523,229.50 euros) and for 2012 (443,494.37 euros). In addition, from 2008 to 2012, the Office for Foreign Minors and Human Trafficking received the following specific training: in 2008, child psychology in a context of migration; annual training on interview techniques for minors (specialist staff for unaccompanied foreign minors, 15 people); in 2010, information on the reception of minors by the Federal Agency for the Reception of Asylum Seekers (Fedasil); in 2010, information on the voluntary return of unaccompanied minors provided by the International Organization for Migration; in 2011, psychological profile and sexuality of the child by SOS Enfants, and in 2011, introduction to language learning and development in children. On the basis of decisions concerning minors, the Office for Foreign Minors and Human Trafficking conducted at least the following hearings: 1,691 in 2008, 1,356 in 2009, 1,091 in 2010 and 939 in 2011.

82. The number of staff in the Unaccompanied Foreign Minors Team of the General Commissariat for Refugees and Stateless Persons has grown as follows: 35 in 2008 and 2009, 45 in 2010, 55 in 2011 and 79 in May 2012. To be assigned to this team, staff members must have at least one year's experience in handling the cases of adult asylum seekers. They must also have taken the "Interviewing Children" training course and have attended follow-up meetings on unaccompanied foreign minors. In 2010 a training course in communication and conflict management in intercultural situations was also given. In addition, each team member has been trained in the laws and regulations concerning minors and guardianship, and in gender issues. On the basis of decisions concerning minors, the General Commissariat conducted at least the following hearings: 525 in 2008, 494 in 2009, 830 in 2010 and 1,020 in 2011. Finally, the budget of the General Commissariat does not have a specific heading for minors. Extrapolating from the number of decisions on minors in 2011, the total budget was 776,573,017 euros for 2011 (payroll and training).

Point (b): Homes for unaccompanied foreign minors, accommodation capacity and personnel training

83. Regarding the reception system for unaccompanied foreign minors, the Belgian Government would refer the Committee to the information it provided in the follow-up

responses to the Committee's concluding observations (notably paras. 28-31 and 42-51). However, it should be noted that since October 2009, the network of homes for unaccompanied foreign minors organized by the Federal Agency for the Reception of Asylum Seekers has been hard hit by a crisis, mainly due to the increase in the number of young people reported, the time required for the Guardianship Service to identify the young person (improving significantly since 11 July 2011 — from 2-3 months to 23 days) and the small number of people leaving the Federal Agency's network once the young people have a status and can therefore benefit from other services. This crisis has entailed some changes in the organization of the homes.

84. Now, the young person usually goes first to the Aliens Office, where he presents himself as an asylum seeker. The Office reports the young person to the Guardianship Service, which sends a copy of the reception document and a lodging request to the Federal Agency for the Reception of Asylum Seekers. The minor is sent to one of the two observation and orientation centres (one in Neder-Over-Heembeek and the other in Steenokkerzeel), depending on places available. Young people claiming to be unaccompanied foreign minors whose age is in doubt are sent to a hotel while being identified, and then on to a more suitable reception centre. Regarding non-asylum seekers, only the most vulnerable young people are also accommodated at an observation and orientation centre (Neder-Over-Heembeek or Steenokkerzeel). Unaccompanied foreign minors not seeking asylum, for which the Federal Agency for the Reception of Asylum Seekers has been sentenced, have so far been sent first to a hotel, pending orientation at a reception centre. In addition, on 14 May 2012 a new observation and orientation centre was set up in a rural setting to host unaccompanied foreign minors who are not seeking asylum. It will offer more specific work for those young people who most often have difficulty adapting to the reception organized by the Federal Agency. After arriving at such a centre, young people stay there for a period ranging from 15 days up to one month and are then transferred to the most appropriate reception centre available. Young people in the rural centre remain there for between one and four months before being transferred to a place in the Federal Agency's network or to youth assistance. Whereas initially reception took place in three distinct phases (phase 1: observation and orientation centre, phase 2: second collective reception centre and phase 3: stable accommodation or supervised independent lodging) now, because of the crisis, it is as follows: pre-observation and orientation stage — where the Aliens Office doubts the young people's declared age, they are sent to a hotel if there are not enough places; phase 1: observation and orientation centre (standard or rural setting); phase 2: second collective reception centre; phase 2 *bis* for unaccompanied foreign minors: "independent" places in the federal centres, and phase 3: stable accommodation or supervised independent lodging with a local reception facility or a partner.

85. Each observation and orientation centre has 50 places. The new rural centre has 15 places, but there are plans for 30. The remaining capacity of the reception network of the Federal Agency for the Reception of Asylum Seekers is constantly changing. Note that, in five years, the number of unaccompanied foreign minors received in the network managed by Federal Agency and its partners has more than tripled: in June 2006, the network hosted only 375 young people, as against 1,280 in early April 2012. At the same time, reception capacities have been steadily increasing: in early January 2010, the network had 706 places specifically for unaccompanied foreign minors; in April 2012 there were 1,189 places and 181 unaccompanied foreign minors living in hotels. In May 2012, the Federal Agency for the Reception of Asylum Seekers organized a total of 1,190 reception places (1,120 in late December 2011), while the entire structure (including the observation and orientation centres and "collective" and "individual" local reception facilities) currently houses 1,320 unaccompanied foreign minors.

In addition to their professional training, the staff of these reception centres attends training courses organized by the Federal Agency's headquarters, the various central offices of the

partners (Red Cross) and the Union of Walloon Towns and Communes for the staff of local reception facilities who are responsible for unaccompanied foreign minors. Supervision varies according to the reception phases and is and adapted slightly depending on the infrastructure and the partner.

Point (c): Legal framework and protection of unaccompanied foreign minors

86. On this issue, the Belgian Government would essentially refer the Committee to the information it provided in follow-up responses to the concluding observations (paras. 21-27 and 35-41 in particular). It would like to make a few clarifications and provide some additional information, however.

87. In accordance with article 3, paragraph 1 of the Guardianship Act (Programme Law of 24 December 2002, as amended by the Programme Laws of 22 December 2003 and 27 December 2004), the Guardianship Service is responsible for establishing a specific guardianship for unaccompanied foreign minors. Regarding article 5, the system applies whether or not the unaccompanied foreign minor is an asylum seeker. However, the Act does not specifically provide for guardianship for European minors, but the circular dated 2 August 2007 on European unaccompanied foreign minors in vulnerable situations provides for temporary care of these minors who are not entered in one of the population registers. The Guardianship Service is a support unit and a link to the competent authorities with regard to this situation. Note that most young Roma reported by the police to the Guardianship Service come from the European Economic Area. These European minors may be entrusted to the Public Social Welfare Centre (CPAS). Indeed, article 63 of the Act of 8 July 1976 provides that any minor, over whom no one has parental authority or guardianship or physical custody is entrusted to the Welfare Centre of the commune where he or she is staying. If the conditions are met, a civil guardianship is also possible (art. 389 of the Civil Code — minors may be assigned a guardian if the parents are deceased, legally unknown or cannot exercise parental authority in a durable way). The figures of the Guardianship Service, between 2008 and 2011, indicate 458 reports of European unaccompanied minors, 274 of whom were given support. After investigation, the vast majority of them appear to be accompanied by a family member or supported by other social services and support is therefore discontinued. Note that 10 minors were redirected to a specialist centre for trafficking in persons, while 17 were followed up by youth support services or prosecution services (annex 33).

88. Specific provisions concerning residence for unaccompanied foreign minors are laid down in articles 61/14 to 61/25 (Act of 12 September 2011, Belgian Government Gazette, 28 November 2011, annex 34) of the Aliens Act of 15 December 1980 and articles 110 *sexies* to 110 *undecies* (Royal Decree of 7 November 2011, Belgian Government Gazette, 28 November 28, 2011) of its implementing order of 8 October 1981. These provisions were contained in the ministerial circular of 15 September 2005, repealed on 14 November 2011. The main changes are:

(1) The new definition of unaccompanied foreign minor (not a national of the European Economic Area, under 18, not accompanied by a person exercising parental authority or guardianship and definitely identified as a unaccompanied foreign minor by the Guardianship Service).

(2) Durable solution: (a) family reunification in the country where the parents are legally staying; (b) or return to the country of origin or to the country where the unaccompanied foreign minor is authorized or permitted to stay with guarantees of adequate reception and care, according to his or her age and degree of autonomy, by his or her parents or other adults who take care of him or her or public bodies or NGOs; (c) or authorization to stay in Belgium, taking into account the legal provisions. Note that in seeking a durable solution, the primary goal is to safeguard the family unit (art. 61/17).

During this time, the unaccompanied foreign minor is given a six-month registration certificate rather than a three-month declaration of arrival.

(3) Where the durable solution is in Belgium, a one-year temporary residence permit (a type A residence card) is issued. Then, the plan for living in Belgium is monitored for three years until a type B card (unlimited residence) is issued, provided that the person concerned is still classed as an unaccompanied foreign minor. The Royal Decree of 7 November 2011 specifies the Act's implementing procedures and measures:

(a) The data to be included in the application for a residence permit;

(b) The terms of the hearing; the guardian may ask for a lawyer to be present;

(c) Models of the documents issued, and

(d) Steps taken to establish the identity of the unaccompanied foreign minor.

89. In addition, article 74/19 (Act of 19 January 2012, annex 21) of the Aliens Act provides that unaccompanied foreign minors may not be kept in places within the meaning of article 74/8, paragraph 2 and thus confirms the practice, since April 2007, of not putting them in detention.[22] Finally, article 74/16 of the Aliens Act states that an unaccompanied foreign minor may be expelled when the Aliens Office has ensured that there are safeguards for reception and care of the unaccompanied foreign minor in his or her country of origin or in the country where he or she has permission to stay. We would stress that the Minister or his representative, before taking an expulsion decision, takes account of any durable solution proposed by the guardian and that takes due account of the best interests of the child.

Point (d): Living conditions of unaccompanied foreign minors during their stay

90. Whatever the phase and the facility where unaccompanied foreign minors are accommodated, they are given material assistance in the broad sense, including medical care. If necessary, they also receive counselling. During the initial reception phase (in an observation and orientation centre) organized by the federal centres, unaccompanied foreign minors are observed to draw up an initial medical, psychological and social profile to detect any vulnerability and orientate them towards appropriate care (art. 40 of the "Reception" Act of 12 January 2007). The Royal Decree of 9 April 2007 specifies the work at an observation and orientation centre.

91. The second reception phase is organized by the federal centres or their partners. Collective reception facilities of the federal centres receive unaccompanied foreign minors for a period of from four months to one year. These are open structures, receiving young people on a voluntary basis, with round-the-clock supervision. There is individual and collective follow-up. These structures provide material assistance, notably accommodation, food, medical and psychosocial support, a daily allowance and educational follow-up. Various activities are also organized there. They are specific facilities integrated into an adult reception centre. The staff provide general support and social welfare for unaccompanied foreign minors. Certain federal centres organize accommodation for 20 independent unaccompanied foreign minors: since the young person is independent, there is less supervision. More specific accommodation is organized by some partners of the Federal Agency for the Reception of Asylum Seekers, such as two local reception facilities

[22] We would also stress that since a recent Act of 16 November 2011 (Belgian Government Gazette, 17 February 2012), the detention of illegally staying families with minor children, with a view to their expulsion, is now restricted to very specific cases allowed by the Act and always for as short a period as possible.

that offer a smaller and independent structure. The most vulnerable young people are given preference for these places after their stay in an observation and orientation centre. These local reception facilities exist in the French-speaking area only and also work with youth support (the Communities), which makes more supervisory staff available.

92. The third phase takes place in "supervised independent" accommodation, organized primarily by local reception facilities but also by a partner. It is for unaccompanied foreign minors who have stayed in an observation and orientation centre for 15 days and at least four months in a collective reception centre: a federal reception centre or a facility of a partner of the Federal Agency for the Reception of Asylum Seekers (Rode Kruis, Croix Rouge, facilities of the Broeders van Liefde, etc. or a collective local reception facility specifically for minors). The young people are still entitled to material assistance. Supervision is more individual in a structure that gives more responsibility to the young people. It is a transition to greater independence. Through a plan to prepare for adult life, unaccompanied foreign minors are given tools to become independent adults.

93. The consultations conducted in 2009 with the various players involved in support and reception for unaccompanied foreign minors have been relaunched by the State Secretary for migration in particular to reach a cooperation agreement with youth support services. Recommendations were also made in April 2012 by the delegate for the rights of the child.

94. The El Paso reception centre has developed a pilot training project for unaccompanied foreign minors who are dropping out of school. This arose out of the fact that some young people find it very difficult to adapt to the educational system in Belgium, probably because it is ill-matched to their original system. To try to rebuild a relationship with their learning experiences (with a practical foundation), an educational project was set up to allow unaccompanied foreign minors access to training-through-work ventures. A special formula had to be found because the ventures are in principle restricted to adults, and unaccompanied foreign minors are subject to compulsory education in Belgium. Finally, the Ministry of Education of the French Community agreed to a formula that includes enrolment at a centre offering sandwich courses (theoretical and practical work experience, 24 hours per week), which meets the requirement for compulsory education and the training-through-work venture is the training provider for the centre. This project was subsidized by the French Community for two years (the project comes to an end in June 2012). After a 15-day trial period, an initial assessment is made. The minor can then sign up for a six-month apprenticeship. When the apprenticeship has been completed, the young person's future plans are clarified and a decision is taken as to how he or she is going to follow up on this training experience. The 25 young people who took part in the project for two years took three main paths: referral to a centre offering sandwich courses to undertake longer term training (most cases), return to the country of origin or drop out (disappearance). The instigators of the project plan to provide training in the young people's countries of origin to link training to voluntary return and development issues. In this way they also hope that the project will be recognized and that the training-through-work ventures can obtain subsidies.

95. Regarding education, mention has already been made of a specific reception centre in Flanders (OKAN) to integrate non-native speaker unaccompanied foreign minors as quickly as possible. In the French Community, there is also a system for newcomers to ensure optimum reception, orientation and integration into education through "bridging" classes. The courses are focused primarily on learning French in order to be able to join an "ordinary" class. Following the growing success of bridging classes, a more flexible arrangement will soon be put in place that is better suited to the real situation on the ground, as soon as the school year begins in September 2012. In particular, it will involve coaching and learning support to suit pupils' profiles and interim schooling for a limited

period before joining an ordinary class. Note that the reception and support of newcomers is one of the three priorities for 2011-2015 of the cohesion policy of the French Community Commission. Within that framework, it subsidizes many projects by associations working with unaccompanied foreign minors (e.g. Mentor Jeunes — social, legal and educational support, Dynamo — monitoring of individual unaccompanied foreign minors). Finally, in May 2011 the French-speaking Governments undertook to sign a memorandum of understanding on a reception policy for newly arrived migrants.

Reply to the list of issues prior to reporting, 17 – Police code of ethics[23]

96. The Belgian Government would recall that the police Code of Ethics (annex 20) does not explicitly ban torture but definitely covers it. Indeed, the Code reminds police officers of their obligation to respect and protect human rights and lays down strict conditions for the use of coercion and force (notably points 3, 46 and 49, the latter covering the respect of physical integrity and human dignity). Furthermore, several provisions of the Code explicitly prohibit inhuman and degrading treatment (see points 13, 51 and 62, the latter covering the prohibition of obtaining a confession or information by resorting to violence, abuse or underhand ploys, see Question 30 below). In the light of these provisions, members of the police force are clearly bound by the prohibition of torture which, we reiterate, is sanctioned by the Criminal Code, which is obviously applicable to public officials (see Question 1 above). Finally, we would recall that police officers are trained in criminal law, special criminal law, international humanitarian law and international conventions, including the penalties associated with such offences. Indeed, respect for human rights is a common thread throughout their training (see Question 13 above).

Reply to the list of issues prior to reporting, 18 – Youth protection[24]

97. We would recall that the Act of 13 August 2011 (see Question 3 above) provides for assistance by a lawyer for all interviewees deprived of their liberty. In the above-mentioned circular 12/2011 of 23 November 2011, the College of Principal Public Prosecutors confirmed that the Act is applicable to minors (annex 35) and derives three principles from that fact: (1) minors enjoy the same rights as adults; (2) minors may not waive any of their rights as their status as a minor entails a presumption of vulnerability; (3) minors always enjoy the additional rights provided by the Youth Protection Act of 8 April 1965, e.g. articles 49 (2) and 52 *ter* (2).

98. Under article 15 *bis* of the Pretrial Detention Act, the detention may be extended only if so ordered by the examining magistrate. A minor or a person prosecuted for an offence committed before the age of 18 may be referred to the examining magistrate by the Public Prosecutor or automatically in case of *flagrante delicto* only in "exceptional circumstances" and in case of "absolute necessity" (art. 49 of the Youth Protection Act). To answer question (a) of the Committee explicitly, the Act provides that a minor must have the assistance of a lawyer when appearing before the examining magistrate (art. 49 (2) of the Youth Protection Act)[25] and the juvenile court (art. 52 *ter* (2) of the Youth Protection Act).[26] If the minor does not have a lawyer, one is designated automatically (art. 54 *bis* of

[23] CAT/C/BEL/CO/2, 19 January 2009, concluding observations, para. 15; see CAT/C/BEL/Q/2/Add.1, 21 October 2008, question 2.

[24] CAT/C/BEL/CO/2, 19 January, 2009, concluding observations, para. 16 and CAT/C/BEL/CO/2/Add.1, 28 March 2011, follow-up responses, paras. 73-79; see CAT/C/BEL/Q/2/Add.1, 21 October 2008, question 3; see also CRC/C/BEL/CO/3-4, 18 June 2010, para. 83.

[25] Article 15 of the Act of 13 June 2006.

[26] Article 16 of the Act of 2 February 1994 amending the Youth Protection Act of 8 April 1965.

the Youth Protection Act). Apart from the possibilities set out in the above-mentioned article 49, the examining magistrate may examine a minor in only two types of case: (1) relinquishment of jurisdiction (see Question 19 below), and (2) traffic offences (art. 36 of the Youth Protection Act). In these cases, where an arrest warrant may be issued,[27] we apply the ordinary law on pretrial detention, which includes the rules of the Act of 13 August 2011 (see Question (3) above), but taking into account that minors cannot waive their rights.

99. The reader will recall that article 48 *bis*, paragraph 1 of the Youth Protection Act provides for the presence of a third party responsible for a minor deprived of his or her liberty following an arrest or released against a promise to appear or the signature of an undertaking. Article 51 thereof provides that the juvenile court must notify the parties responsible with a view to enabling them to attend. In any judicial hearing, minors interviewed, as victims or witnesses of crimes, may be accompanied by an adult of their choice, unless a reasoned decision is taken in the interests of the minor or of establishing the truth (art. 91 *bis* of the Code of Criminal Investigation).

100. The provisions on audiovisual recording were amended by the Act of 30 November 2011 amending the Act on the improvement of the approach to sexual abuse and acts of paedophilia in a position of authority (Belgian Government Gazette, 20 January 2012, annex 36). Article 92 of the Code of Criminal Investigation now reads as follows: "Paragraph 1. Hearings of minor victims or witnesses of crimes referred to in articles 372 to 377, 379, 380, paragraphs 4 and 5, and 409 of the Criminal Code shall be videotaped, unless there is a substantiated decision to the contrary taken by the Crown Prosecutor or the investigating judge taking account of the circumstances of the case and in the interests of the minor. The Crown Prosecutor or the investigating judge may order the audio-visual recording of hearings of minors who are victims of or witnesses to offences under article 91 *bis*, with their consent. If the minor is under 12 years of age, it is sufficient to inform them of the decision; Paragraph 2. The audio-visual recording of hearings of minors who are victims of or witnesses to offences other than those referred to in article 91 *bis* may be ordered, with their consent, where there are serious and exceptional circumstances. If the minor is under 12 years of age, it is sufficient to inform them of the decision". This provision will enter into force only on 1 January 2013 to allow the necessary infrastructure for audiovisual recordings of hearings of minor victims of or witnesses to offences to be set up. Recording will be used more often in future, under the new article.

101. According to the new article 47 *bis* of the Code of Criminal Investigation, the grounds for the hearing are briefly explained to interviewees and they are informed that they cannot be compelled to incriminate themselves. There is no provision for an audio or audiovisual recording for hearings of minors about offences that they may be charged with. However, the criminal policy service has a remit to assess the application of the Act of 13 August 2011 and to consider the need to make a general provision for recording. Finally, where minors are suspected of an offence, article 47 *bis* of the Code of Criminal Investigation is strictly applied, whether or not the hearing is recorded, pursuant to article 112 *ter* of the Code of Criminal Investigation.

102. The project for audiovisual recording of hearings with minors (TAM) of the integrated police force (local and federal levels) essentially aims to ensure that, within a reasonable time, any minor victim of or witness to an offence can be heard in accordance with the prescribed rules by a selected and trained investigator (TAM certificate) in premises specially equipped for the purpose. The project does not cover minors deprived of

[27] We would recall that article 16 of Pretrial Detention Act, which specifies the conditions of substance and form of the arrest warrant, does not in principle apply to minors.

their liberty. The project is ongoing. The following aspects are being considered: interview methods and techniques, assessment, training of investigators empowered to conduct hearings, facilities on the premises, purchase of equipment, etc. At 1 June 2012, there were 31 equipped rooms under the coordination of the Federal Judicial Police, allocated on the basis of geographical criteria and expediency. Four additional facilities are planned by the end of 2012.

Reply to the list of issues prior to reporting, 19 – Administration of juvenile justice[28]

103. The age of criminal responsibility is 18 years. Minors who commit an offence are subject to custodial, preventive and educational measures. The emphasis is on rehabilitation and reintegration of the minor rather than punishment or penalties. Relinquishment of jurisdiction is therefore an exceptional procedure. Preference is given to the educational approach even for minors who have committed serious crimes. Only in exceptional cases can relinquishment of jurisdiction apply to a minor, and the rules of criminal law for adults are then applied. For minors who commit serious crimes while they are over 16 years of age, the juvenile court may indeed consider that a protection measure is not or is no longer sufficient and decide to relinquish jurisdiction in favour of jurisdictions — special chamber of the juvenile court, court of appeal or court of assize — that will apply adult criminal law (art. 57 *bis* of the Youth Protection Act of 8 April 1965). We would recall, however, that the use of the procedure to relinquish jurisdiction is subject to very strict conditions and the minor is protected by procedural safeguards.

104. For instance, jurisdiction may not be relinquished unless the minor is over 16 years of age. The usual measures provided for minors must have proven inadequate, assessed on the basis of the minor's personality and his or her entourage and maturity. These are cases in which a custodial, preventive or educational measure cannot be taken for the positive development of the minor and his or her circumstances. Jurisdiction may be relinquished in two cases only: (1) the young person has already been subject to rehabilitation measures or a reparative programme; (2) the offence of which he or she is charged is referred to in articles 373 (indecent assault with violence or threats), 393-397 (murder, assassination, parricide, infanticide, poisoning), 400, 401 (assault with permanent disability or unintentional manslaughter), 417 *ter* and *quater* (torture/inhuman treatment), 471 to 475 (robbery with violence or threats with aggravating circumstances) or attempting offences referred to in articles 393 to 397. The court must give grounds for its decision to relinquish jurisdiction and refer the case to the Public Prosecutor for prosecution before the competent court, where appropriate. Finally, subject to some exceptions, the court may relinquish jurisdiction only after a social study and medical and psychological examination of the minor. The nature, frequency and severity of the offence is taken into account if they are relevant to the personality assessment. If the Public Prosecutor decides to prosecute the minor after jurisdiction is relinquished, he or she will in principle be tried by a specific chamber of the juvenile court, composed of three judges, two of whom have received the training required to perform the duties of a juvenile judge, while the third is a correctional court judge.

105. Regarding the overall approach to the problem of juvenile delinquency, it is complex to implement, given the division of powers between the Federal Government (issues on the procedure and sanctions/custodial and educational measures) and the Communities (issues

[28] CAT/C/BEL/CO/2, 19 January 2009, concluding observations, para. 17; see CCPR/C/BEL/Q/5/Add.1, 21 September, 2010, question 17(a) and question 22(a) and; CCPR/C/BEL/CO/5, 18 November 2010, para. 23.

on prevention and placement in youth protection institutions). However, discussions between the Federal Department of Justice (magistrates and the administration) and the Communities (administration and services in the field) have been going on for some time: for Flanders, Structureel overleg Agentschap Jongerenwelzijn and for the French Community, Comité de concertation des magistrats de la jeunesse et du Ministère de la communauté française). There are regular meetings for these consultations, addressing cooperation between the two sectors to achieve greater consistency in the approach to juvenile delinquency.

Reply to the list of issues prior to reporting, 20 – Prevention of abuse in prisons, special individual security regime and implementation of a guaranteed service[29]

106. Regarding questions (a) and (b), the provisions of the Principles Act of 12 January 2005 (Belgian Government Gazette of 1 February 2005) establishing a right to complain to an independent body (the supervisory commissions) have not yet entered into force. However, as noted in the 2008 interim report of Belgium (paras. 194 and 195), a detainee may also apply for interim relief to the president of a court of first instance in the event of infringement of one of the detainee's personal rights, on the ground that the situation requires urgent action, or to a court of law in the case of an application on the merits. The Council of State has declared itself incompetent to rule on measures taken to ensure the proper functioning of a prison which would justify impairment of the subjective rights of detainees, but it still exercises marginal control by establishing whether the measure in question is not in fact a disguised disciplinary punishment and that there has not been an obvious error of assessment. Finally, we would point out that much of the Principles Act, notably everything relating to detainees' day-to-day life, including special regimes and disciplinary status, is in force.

107. Regarding question (c), the Belgian Government would also refer to its 2008 interim report (paras. 196 and 197) in which it stated that the Royal Decree of 4 April 2003 amending the Royal Decree of 21 May 1965 containing the general prison regulations created both the Central Prisons Supervisory Council[30] and a local supervisory commission in every prison. The Royal Decree of 29 September 2005 amended it to make those bodies more independent, transparent and professional. Among its duties, the Council exercises independent control over the treatment of detainees and compliance in this area. Each supervisory commission exercises the same control in its assigned prison. The Act provides for other independent controls of prisons by members of parliament, mayors, the services of the Federal Mediator and examining magistrates. Finally, control is exercised by the European Committee for the Prevention of Torture and NGOs such as the International Observatory of Prisons and the League of Human Rights.

108. On 2 May 2007, Belgium concluded an agreement with the United Nations on enforcement of sentences handed down by the International Criminal Tribunal for the Former Yugoslavia (the "Agreement" and "ICTY", annex 38). Under article 6, paragraph 1 of the Agreement, the competent Belgian authorities allow periodic and unannounced visits by the International Committee of the Red Cross to check the condition of persons detained under the Agreement. To date, this has applied to only one person in Belgium. He has received three visits from the International Committee of the Red Cross since 2008. Reports on these visits have been examined in detail. They did not make any major remarks but did make recommendations for improving the individual's prison regime. Wherever possible, the Belgian authorities have responded to those recommendations.

[29] CAT/C/BEL/CO/2, 19 January 2009, concluding observations, para. 19 and CAT/C/BEL/Q/2/Add.1, 21 October 2008, questions 20 and 23; see also CPT/Inf(2010)24, report of 23 July 2010, para. 111.

[30] See the latest report for 2008 to 2010 of the Central Prisons Supervisory Council, in annex 37.

109. Regarding question (d), in its 2010 report, the European Committee for the Prevention of Torture noted that the Principles Act and Circular No. 1792 allow the prison authorities considerable room for manoeuvre, leaving some prison governors, by their own admission, in a rather uncomfortable situation, and lead to practical differences of interpretation observed by that Committee between the special security units at Bruges and Lantin. We would recall that Circular No. 1792 of 11 January 2007 translates Title VI of the Act of Principles on order, security and the use of coercion into operational instructions (supporting documents). Therefore, when the Act explicitly gives discretion to the governor, he is empowered — and duty-bound — to exercise it. The framework in which he operates is sufficiently circumscribed by the law to prevent abuses, however. Finally, in the event of abuse, control can still be exercised through legal proceedings.

110. Regarding question (e), there is currently no such guaranteed or "minimum" service in the Belgian prison system, as the unions are strongly opposed to it. Only Memorandum of Understanding No. 351 of 19 April 2010, currently under review, governs conflicts in prisons, but with no minimum service. In the event of a strike, action must be taken according to the circumstances and the officers present, whether from the prison, police or civil defence services (annex 39).

Reply to the list of issues prior to reporting, 21 – Register of detainees[31]

111. The Royal Decree to implement article 33 *bis* of the Policing Act has not yet been adopted. Meanwhile, the harmonization of the form and content of the register of detainees is continuing through internal notes and instructions. The model for administrative and judicial arrests was updated in April 2010. It is available to all police services, including local ones. It stresses the need to respect human rights and to maintain the register properly. In a note dated March 2010, the police also recommended that all departments and services use this model. Furthermore, all services are requested to note in the register any signs of injuries on persons as soon as they arrive at the station (under "apparent physical condition"). It also mentions the rights of the individual, such as the right to notify a trusted person and to have access to a medical examination. Finally, a project for a computerized register of detainees was developed and implemented about two years ago in the Federal Judicial Police of Brussels. If successful, this system could be tested in other services.

112. Since the end of 2009, primary responsibility for systematic and regular police monitoring of places of detention has been entrusted to the General Inspectorate of the Federal and Local Police (AIG). The Investigation Service of Committee P, very active in the past in this area, has placed its experience at the disposal of AIG, notably through a list of standard questions. As part of its aforementioned mission of control over AIG (see Question 8 above), Committee P performs a marginal control on how AIG carries out that mission and hence continues to keep a close eye on the issue. In its 2010 annual report, Committee P noted that: "The differing results of the due diligence investigations conducted in connection with this issue have shown that each police district has devised its own register of detainees and that these do not always contain enough information to allow us to ensure that detainees' rights have been respected. While prison admission and release times are recorded exhaustively, it is sometimes not possible to know, for example, whether an inmate has had access to a meal, a drink, etc." (annex 40, p. 68).

[31] CAT/C/BEL/Q/2/Add.1, 21 October 2008, question 28; CAT/C/BEL/CO/2, 19 January 2009, concluding observations, para. 20; and see CAT/C/BEL/CO/2/Add.1, 28 March 2011, follow-up responses, paras. 80-86.

Reply to the list of issues prior to reporting, 22 – Conditional release[32]

113. Conditional release is a very accessible procedure as it is granted automatically when the detainee meets certain time conditions. Article 24 of the Act of 17 May 2006 (Belgian Government Gazette, 15 June 2006) on the external legal status of persons sentenced to a term of imprisonment and the rights granted to the victim regarding the means of enforcing the sentence defines conditional release as "a means of serving a custodial sentence whereby the convicted person serves the sentence outside prison, subject to compliance with conditions imposed during a given probationary period".

114. Article 25 provides as follows: "Paragraph 2. Conditional release is granted to anyone convicted of one or more custodial sentences where more than three years are to be served, provided that the convicted person has: (a) served one third of those sentences, or (b) if the judgment or sentence found that the convicted person was a repeat offender, served two thirds of those sentences, unless the length of the sentences so far served exceeds 14 years, or (c) in the case of a sentence of life imprisonment, served 10 years of that sentence, or, if the sentence for life imprisonment found that the convicted person was a repeat offender, served 16 years of that sentence; and that the convicted person meets the conditions referred to in articles 47, paragraph 1, and 48" (in other words that there are no contraindications, such as the risk of offending again or the attitude of the convicted person in relation to the victims, and that a social reintegration plan is presented).

115. The procedure is initiated automatically by a notice from the prison governor. The dossier then follows the procedure within strict statutory deadlines, so that it is ready when the convicted person meets the time conditions required for conditional release. Articles 49 *et seq.* of the Act of 17 May 2006 describe the procedure for the sentence enforcement court to grant conditional release for persons sentenced to terms of imprisonment of more than three years. The governor has to deliver an opinion no earlier than four months and no later than two months before the convicted person meets the time conditions. Then, within one month, the public prosecution service must issue a reasoned opinion and forward it to the sentence enforcement court, which will consider the case at the earliest available hearing date. It must take place no later than two months after the filing of the written request or of receipt of the governor's note. The dossier is made available to the convicted person and his lawyer at least four days before the hearing. At the hearing, the court hears them, the public prosecution service and the governor. The victim is heard on the special conditions to be applied in his or her interest. The court delivers its ruling within 14 days of adjournment for consideration. It grants conditional release where it finds that all the legal requirements are met and that the convicted person agrees to the conditions (see arts. 55 and 56). If it does not grant release, it must indicate the date on which the convicted person may apply again (six months or one year maximum, depending on the sentence) or the date on which the governor is to issue a new opinion.

116. In terms of figures, 711 conditional releases were granted in 2009, 688 in 2010 and 780 in 2011. The granting of conditional release falls under the jurisdiction of the sentence enforcing court. Thus, in accordance with the separation of powers, the executive may not interfere in the way courts deal with applications for conditional release. Note, however, that the law does not preclude any prisoner from the benefit of conditional release and prison governors make every effort to deliver their reasoned opinions to the courts within the statutory deadline. Finally, the prison authorities may grant conditional release to persons serving a prison sentence totalling no more than three years on the basis of Circular

[32] CAT/C/BEL/CO/2, 19 January 2009, concluding observations, para. 22; and see CAT/C/BEL/Q/2/Add.1, 21 October 2008, question 19, paras. 181 and 182.

No. 1771 of 17 January 2005: 6,171 were granted in 2009, 6,511 in 2010 and 6,621 in 2011.

Articles 12, 13 and 14

Reply to the list of issues prior to reporting, 23 – Statistical data on complaints, prosecutions and sentences against law enforcement officers for torture or ill-treatment[33]

117. The Belgian Government is providing the Committee with detailed statistics (annex 41). The first table summarizes the complaints alleging torture or ill-treatment by law enforcement officers, made directly to Committee P for the period 2005 to 2011. Note that complaints alleging torture or ill-treatment by law enforcement officers include complaints alleging acts of police violence lodged directly with Committee P. These figures cover allegations of police violence against both persons and property. The second table provides information on judicial investigations conducted by the Committee P Investigation Service for the same type of allegations and the same period.[34] Finally, the third table relates to convictions of police officers for torture or ill-treatment, for the period 2009-2011, as reported to Committee P by the judicial authorities pursuant to article 14 (1), of the Act of 18 July 1991 on monitoring of the police and intelligence services and the Threat Analysis Coordination Agency.[35] These data were last updated on 15 March 2012. Note that not all the judicial authorities comply with their obligation to notify all such sentences to Committee P.[36] The figures are not exhaustive, therefore. Finally, the Belgian Government is also attaching six examples of sentences handed down in 2011 (annex 42). They are mostly cases of unlawful violence (assault) against people who were under control and no longer presenting any particular danger.

118. Regarding Belgian military personnel, no complaints have been received since 2008 for acts of torture or cruel, inhuman or degrading treatment committed in Belgium or abroad.

Reply to the list of issues prior to reporting, 24 – Linking of cases of forcefully resisting the police and complaints against public officials[37]

119. Close connection is a relationship between two or more offences of a kind that, for the proper administration of justice and subject to the rights of the defence, requires cases to be tried together by the same judge, who can then appraise the facts from all angles, the validity of the evidence and the guilt of each accused. It is assessed by the trial judge. The linking of cases on the grounds of close connection is optional. Cases may also be linked at the end of the examination for the determination of the procedure. At its discretion, the

[33] CAT/C/BEL/Q/2/Add.1, 28 October 2008, question 27, see also CCPR/C/BEL/CO/5, 18 November 2010, para. 14.

[34] Note that judicial records relating to allegations of police brutality handled by the individual investigations department of the General Inspectorate of the Federal and Local Police (AIG), for the period 2006-2010, are as follows: 106 cases in 2006, 135 in 2007, 98 in 2008, 148 in 2009 and 121 in 2010.

[35] This provision states that: “The Procurator-General and the Auditor-General shall automatically communicate copies of judgments and orders concerning offences committed by members of the police services and the Threat Analysis Coordination Agency to Committee P”.

[36] In disciplinary matters, the Police Disciplinary Board handed down the following penalties for excessive use of force: 9 penalties in 2006, 12 in 2007 and 2008, 13 in 2009 and 8 in 2010.

[37] CAT/C/BEL/CO/2, 19 January 2009, concluding observations, para. 11 and CAT/C/BEL/CO/2/Add.1, 28 March 2011, follow-up responses, para. 72.

public prosecution service may decide to add documents from another criminal case to the proceedings.

Reply to the list of issues prior to reporting, 25 – Complaints mechanisms and inspection of prisons, including juvenile facilities[38]

120. Since 2009, the administration of the Federal Department of Justice is responsible for providing the members of the supervisory commissions with an office, logistical support for monthly meetings and accident insurance. Previously, it already handled the payment of their expenses, publication of notices of appointment, annual reports and correspondence. At the end of 2011, two support officials of that period were congratulated by the Chairman of the supervisory commission for the quality of service provided. Moreover, since 2011, the Supervisory Board has been allocated 100,000 euros from the Federal Department of Justice budget. These funds allow it to pay its own expenses such as the reimbursement of expenses of supervisory commission members, their insurance, the printing of the annual report, purchases of books, organizing symposia, etc.

121. Regarding point (b), in Belgium there are two strictly federal detention centres for juveniles subject to relinquishment of jurisdiction (the Tongeren facility and part of the Saint-Hubert facility). They are subject to the same complaint and inspection procedures as any other prison (see Question 20 above). In addition, juvenile detainees can apply to the Delegate-General for child rights regarding their situation and it may visit and inspect the premises, as may the members of the Chamber of Representatives, of the Senate and of the Parliament of the French Community (memorandum of understanding of 1 July 2010 between the Federal Government and the French Community). There are also two federal centres managed jointly with the Communities (the Everberg facility and part of the Saint-Hubert facility). These centres are subject to the same complaints and inspection procedures as any public youth-protection institution depending on the Communities.

122. The Decree of 4 March 1991 on assistance to young people of the French Community provides in article 37 that the court should hear disputes relating to the granting, refusal to grant or the conditions of application of an individual assistance measure (e.g. placement in a public youth-protection institution). If conciliation fails, the court settles the dispute brought before it. Its decision does not preclude a subsequent alternative agreement between the parties. Complaints from recipients of youth assistance and protection can also be addressed to the General Youth Assistance Department. The Community Youth Assistance Council has recommended setting up a service to manage and monitor complaints related to the existing inspection services. In the ongoing reform of the Decree, it has also recommended explicitly stating that young people and their families are entitled to file a complaint for infringement of their rights, by mail to the official in charge of the competent authority. Discussion is therefore under way and developments are likely. Finally, youth assistance also has a specific inspection service (art. 52 of the Decree).

123. For the Flemish Community, it is up to the institutions rather than the administration to lay down precise and complete bases of their operation. The 2009-2014 policy note of the Minister of Education does, however, aim to devise a regulatory framework for more comprehensive monitoring of youth facilities. In addition, two decrees apply in particular to public youth-protection institutions: (1) the Decree of 17 October 2003 on the quality of health care and social assistance structures, and (2) the Decree of 7 May 2004 on the status

[38] CPT/Inf(2010) 24, report of 23 July 2010, paras. 158, 171, 191 and 192; see CPT/Inf(2011)7, 22 February 2011, follow-up responses, paras. 49, 50 and 55; see also the annual report for 2010 of the Federal Mediator, paras. 44-46 and 132-134.

of minors in comprehensive youth assistance. The latter focuses on assistance enforcement measures and provides guarantees for a clear legal status of minors, regardless of the type of assistance. It governs the rights of minors and provides, *inter alia*, for the right to complain. Indeed, the minor has the right to file a complaint about the assistance received, the circumstances of life in an institution or if their rights are not respected. Parents may also file a complaint. First, minors may contact their social worker. If this initial contact is not satisfactory, they can make a complaint in accordance with the rules of their host institution. Finally, the minors may appeal to an external complaints service or mediation service ("Kind en gezin" complaints service, information and complaints line of special youth assistance, or the Flemish Child Rights Commissioner).

Reply to the list of issues prior to reporting, 26 – Effective system for handling complaints against public officials

124. In its second report (paras. 243-245), Belgium stated that its system allowed complaints against police officers to the internal control department, the General Inspectorate of the Federal and Local Police (AIG), or the Committee P. Its role in handling complaints was explained (paras. 424-428), and that of AIG (paras. 286-292) and the involvement of the judiciary and disciplinary authorities (paras. 403-406). There is therefore no need to describe again the entire system for handling complaints.

125. Regarding its assessment, article 14 *bis* (1) of the above-mentioned Act of 18 July 1991 provides as follows: "The Commissioner-General of the Federal Police, the General Inspectorate of the Federal and Local Police and commanding officers of the local police shall automatically transmit to Standing Committee P copies of complaints and reports received concerning the police services, together with a brief summary of the findings of the inquiries when they have been completed". This system gives Committee P an overview of complaints and reports concerning the police services and the outcome of their treatment within the service. Under the third subparagraph of that article, that information can be processed by Committee P for the purposes of its statutory duties of monitoring the police services, to analyse their general and overall operation and the conduct of individual police officers, and making proposals to the authorities to improve the operation of the police services. To that end, Committee P conducted a survey of monitoring of the operation of the internal control services for the period 2004-2006, in particular with a section on the handling of complaints. This survey was rerun in 2009 in respect of the internal control department of 30 local police districts. However, Committee P does not have a comprehensive system for assessing the handling of complaints against members of the police services.

126. Note also circular CP3 of 29 March 2011 (Belgian Government Gazette, 21 April 2011, annex 43) on the internal control system in the integrated dual-level police service, which sets out a reference framework for managing complaints. Annex 2 thereto provides for a (minimum) procedure in this regard for addressing administrative inquiries (neither judicial nor disciplinary). In many respects, the implementation of this Circular may fulfil the recommendations made by Committee P in the past relating to the handling of internal complaints (see annex 40, p. 120). As part of the above survey, Committee P will certainly check how the internal control services of these 30 districts apply circular CP3 in practice.

127. The Defence Ministry has a complaints management service to respond to the interventions of certain persons in specific situations relating to their various powers. An intervention is a notification in which a breach is reported, a situation is criticized, an interpretation of laws or regulations is requested or respect of certain rights, special attention to a situation or the review of a decision are also requested. The interventions section does not replace the hierarchy but acts in a complementary manner to seek a solution to a problem. In the event of an alleged violation, it informs the federal prosecution

service through the military hierarchy (art. 29 of the Code of Criminal Investigation). If the latter is informed first, it contacts the judicial authorities forthwith. Serious events, committed or reported abroad by the military must be reported immediately to the Belgian military hierarchy, and in the case of criminal offences also to the federal prosecution service. Finally, in operations under an international command (NATO, UN, EU, etc.) there is also provision for a procedure to draft reports for the chain of command of the operation.

Reply to the list of issues prior to reporting 27 – System of complaints relating to the detention of aliens (closed centres)[39]

Point (a): Information to persons subject to an expulsion measure

128. Upon arrival at the closed detention centre, the inmate is informed that he may lodge a complaint with the governor, of the independent body handling the complaint and of the procedure (factsheet in many languages and via the social team). Furthermore, it is planned regularly to question inmates on the information and its intelligibility, and to show the complaints procedure on DVD upon arrival (these measures are to be implemented during 2012).

129. We would recall that the Complaints Commission is competent only to deal with complaints about the operation of the closed centres (second report, paras. 317-319), the INAD centres and shelters for families. However, the Permanent Secretariat of the Complaints Commission does not have staff present in those places. Lodging a complaint does not preclude the enforcement of the expulsion decision. There is an information sheet on legal aid and the possible appointment of a lawyer pro bono for those without financial means. This information is available in many languages and on an audio DVD. For instance, a lawyer may inform an inmate of a closed centre of his situation and of the available legal procedures and assist and/or represent him to initiate them (e.g. appeal to the judicial authorities against detention in a closed centre or to the Aliens Litigation Council against the expulsion decision). With the help of his lawyer, the alien may still file a complaint with the Belgian authorities against the police services that expelled him and then, if necessary, with the European Court of Human Rights.

Points (b) and (c): Procedure for considering complaints on detention centres and visits by external players

130. Regarding the admissibility requirement related to the filing of the complaint within five days, note that this deadline is imposed mainly in the interest of the complainant. Extending it would not improve the handling of complaints. Indeed, analysis of complaints shows that most of them are filed immediately after the event, when everything is still fresh in memory, which can only expedite the process. In order to safeguard the rights of the complainant more effectively, article 6, paragraph 2 of the Ministerial Order of 23 January 2009 on the operating procedure and rules of the Commission and the Permanent Secretariat has nevertheless been amended by the Order of 30 June 2010 (Belgian Government Gazette, 8 July 2010, annex 44). Complaints must be now submitted within five days of the day after the day on which the complainant may be considered to have actually learned of the event or decision. Previously, the five days began to run on the date of the decision or of the event that occurred.

[39] CAT/C/BEL/CO/2, 19 January 2009, concluding observations, para. 8; CAT/C/BEL/Q/2/Add.1, 21 October 2008, question 15; see CPT/Inf(2010)24, report of 23 July 2010, para. 64; and CPT/Inf(2011)7, 22 February 2011, paras. 22 and 23; report of the Federal Mediator of June 2009 "Investigation into the operation of the closed centres managed by the Aliens Office", paras. 179-195.

131. All admissible complaints are examined thoroughly. When a complaint is filed, the management of the centre is immediately asked whether a repatriation date is scheduled. Where possible, the Permanent Secretariat of the Commission visits the facility immediately to gather the findings from the management and the inmate. If appropriate, it may attempt a conciliation between the parties concerned. If the inmate has already left the facility, the Commission no longer makes a decision on the merits for the complainant because he no longer has a "present legitimate interest". However, this does not prevent the Commission from investigating the merits of the complaint and issuing any appropriate recommendation to the management of the facility. In principle, the Commission always meets as soon as possible. However, if the Permanent Secretariat is notified that the inmate has left, there is less reason for urgency. The Secretariat is also dependent on third parties: findings have to be requested from the management of the facilities and complaints often have to be translated, and this can take some time. The Belgian Government is supplying the Committee with a table illustrating the number of complaints filed with the Commission over two years and the follow-up carried out, including conciliations (annex 45). It demonstrates that the Commission continues its work, even in the absence of the complainant. In the annexes the Committee will also find two examples (one concerning meals and the other communication with the lawyer) showing that practices have been changed at closed centres in line with the recommendations of the Commission (annex 46).

132. Finally, the Belgian Government wishes to reiterate that external players have access to the closed centres and may make any appropriate recommendations. For instance, article 42 of the Royal Decree of 2 August 2002 states that members of the Chamber of Representatives and the Senate can access the facility from 8 a.m. to 7 p.m. Other authorities also have access at any time between 8 a.m. and 7 p.m., pursuant to article 43 (the provincial governor and the mayor of the place where the facility is located). Article 44 also allows access by the following individuals and institutions and their members to closed centres in the exercise of their duties: (1) the Office of the United Nations High Commissioner for Refugees; (2) the European Commission on Human Rights;[40] (3) the European Committee for the Prevention of Torture; (4) the Centre for Equal Opportunities and Action to Combat Racism; (5) the Aliens Litigation Council; (6) the Commissioner-General for Refugees and Stateless Persons; (7) the Delegate-General for child rights and the Kinderrechtencommissaris; and (8) the United Nations Committee against Torture. The Minister or the Director-General may also allow other institutions to visit one or more closed centres for the duration and on the conditions he lays down (art. 45). Currently, 25 NGOs are entitled to visit and thereby exercise indirect control. Finally, pursuant to article 11 (2), of the Act of 22 March 1995 establishing federal mediators, in carrying out his duties, the Federal Mediator may make any observation on site (including in detention centres) and interview all persons concerned.

Point (d): Establishment of medical certificates before and after expulsion attempts

133. All inmates in closed centres are seen by a doctor, at least at the beginning and at the end of their detention. The doctor of the centre draws up the "fit to fly" certificate of fitness to return by air. Article 61 of the Royal Decree of 2 August 2002 states that "When the doctor attached to the centre raises objections about the expulsion of an inmate or takes the view that the inmate's mental or physical health is seriously compromised by his or her continued detention, holding at the Government's disposition or in residential accommodation, or any related circumstance, these objections or this opinion are submitted through official channels by the governor of the centre to the Director-General, who may suspend the execution of the expulsion or detention. If the Director-General does not agree

[40] This means here "the European Court of Human Rights", as the Commission no longer exists.

to suspend the execution of the expulsion or the detention, he must first seek the advice of a doctor at another centre. If the doctor confirms the objection or opinion of the first doctor, the Director-General must respond accordingly and suspend the execution of the expulsion or detention. Where the second doctor does not confirm the objections or opinion of the first doctor, the opinion of a third doctor shall be final. If the third doctor confirms the opinion of the first doctor, the Director-General must suspend the execution of the expulsion or detention". The alien may request an external doctor at his own expense during his stay in a closed centre. His opinion may be taken into account for the "fit to fly" certificate. If the alien feels unwell at the airport, for example, the police may always seek the assistance of the MEDA airport medical service. This is also done if the alien is injured while trying to escape or behaves aggressively. In the event of injury at the centre and/or after each failed repatriation attempt, the doctor at the centre carries out an examination. Article 61/1 states that "The doctor attached to the centre shall examine the inmate after any expulsion attempt. This examination shall take place as soon as possible and no later than 48 hours after an expulsion attempt. The inmate must cooperate with the medical examination". In all cases, the inmate may be given a medical certificate.

134. An internal memo was drafted following the recommendation of the European Committee for the Prevention of Torture on the procedure to be followed in the event of refusal to depart. It provides that if an alien refuses to depart under escort he must be examined by the centre's medical service as soon as possible and no later than the following working day. If there are indications of physical injury or if the alien reports excessive coercion, he must be examined within 24 hours and the social service or psychologist must talk to him and draw up a brief statement on the way in which the attempted expulsion was carried out. The General Coordination and Monitoring Unit of the Aliens Office must be informed of such situations to help improve the follow-up of cases. Where appropriate, it contacts the police service concerned. An internal investigation is then carried out.

Reply to the list of issues prior to reporting, 28 – Suspension and time limit for registering an emergency appeal against expulsions[41]

135. Belgian legislation has been adapted in this regard. Articles 39/82, paragraph 4 (2), and 39/83 of the Aliens Act of 15 December 1980 have been amended by the Act of 6 May 2009 laying down miscellaneous provisions on asylum and immigration (Belgian Government Gazette, 9 May 2009, annex 47). Now article 39/82, paragraph 4 provides for a time limit of five days but no less than three working days, instead of 24 hours, to allow the alien time to register an emergency appeal. Under article 39/83, unless otherwise agreed with the person concerned, no enforced expulsion is to take place earlier than five days, and at least three working days, after notification of the measure, instead of 24 hours as before. Moreover, in practice, where an alien is detained and files his emergency appeal within 15 days of notification of the decision, the Aliens Litigation Council may issue an order to prevent the expulsion of the alien pending a decision. However, the Minister has lodged several appeals with the Council of State against this type of precedent (9 and 25 June 2011 and 14 January 2012). An appeal for annulment it is not suspensory, but if it includes an application for suspension and if an enforcement decision occurs later, a suspensory application for provisional measures can be entered. Finally, we would recall that the Aliens Litigation Council examines allegations of infringement of article 3 of the European Convention on Human Rights in the case of expulsions, including in an emergency (see Question 9 above).

[41] CAT/C/BEL/CO/2, 19 January 2009 concluding observations, para. 9; CAT/C/BEL/Q/2/Add.1, 28 October 2008, questions 5 and 12.

136. Note also that since the judgment in the case of *MSS v. Belgium* of 21 January 2011 of the European Court of Human Rights, when considering emergency remedies the Aliens Litigation Council now first checks whether the necessary conditions are in place for an emergency suspension, regardless of the deadline for application pending a decision (if not in detention). In its decisions, the Aliens Litigation Council makes a systematic review of objections raised by the petitioners in the light of the requirements of the European Convention on Human Rights (annex 48). It now considers that a European State is not presumed to abide by the European Convention on Human Rights or the 1951 Geneva Convention. Thus, the Belgian Government must consider the transfer of an asylum seeker to another European State on a case-by-case basis. When examining damage that would not readily be repaired in the event of expulsion, the Aliens Litigation Council checks the likelihood and accuracy of such a claim. Moreover, the damage no longer has to be individualized, but can apply to a category of persons. Now, there is therefore a preliminary examination of the risks and reasons invoked by the alien, a shared burden of proof and the special vulnerability of aliens is taken into account, while the procedural safeguards must be observed (information in one language, deadlines, applications, decisions).

Reply to the list of issues prior to reporting, 29 – Redress and compensation measures for victims of ill-treatment perpetrated by law enforcement officials

137. Article 4 of the Preliminary Title of the Code of Criminal Investigation allows the victim of a crime to bring an action before a criminal court or a civil court. This is an absolutely free choice. It should be recalled that a civil action and a public prosecution are quite different. For instance, a public prosecution may be brought even if the offence has not caused damage or if the victim has not filed a claim for damages. A civil action may be brought before the criminal courts provided that a public prosecution is brought "at the same time and before the same court". As far as the criminal court is concerned, a civil action is subsidiary to a public prosecution. By bringing a civil action, the victim may seek compensation for material and/or moral damage. A civil action may be brought at different stages and in different ways. It can be brought by a simple statement before the examining magistrate. If no investigation has been initiated, a deposit must be paid when doing this. If an investigation is under way, the victim can join the criminal prosecution. They can also file a civil action when the case is brought before the judge in chambers or at the hearing before a trial court. The victim may also opt to take out a private prosecution. In this case, they must produce evidence of the offence committed and the civil court must wait until proceedings in the criminal court have been completed. Finally, the victim may appeal if the court rejected his claim or if he is dissatisfied with the amount awarded. However, he may not appeal against the sentence passed. Only the defendant and the Public Prosecution Service may do this.

138. To date, Belgium has no information on the number of petitions for compensation brought by victims of torture or ill-treatment perpetrated by law enforcement officers and still less on their outcomes. In this regard, the statistics produced on the non-exhaustive number of convictions of police officers in recent years (see Question 23 above and annex 41) do not provide information on the compensation awarded to the victims. In contrast to the Financial Support Board for the Victims of Deliberate Acts of Violence and Voluntary Rescuers (second report, paras. 441-449), the database does not distinguish between the perpetrator's function or the type of violence. Between 2009 and 2011, the Commission issued more than 3,500 decisions. It is likely that some awarded compensation to victims of torture. On the other hand, it is unlikely that the perpetrators were law enforcement officers as the Board covers only subsidiary cases where the perpetrator is unknown or insolvent (art. 3 1 *bis*, paragraph 1.5 of the Act of 1 August 1985). Finally, on the reception of and assistance to victims, the Belgian Government would refer the Committee to its previous explanations (2008 replies, question 31, second report, paras. 450-463: Reception of

victims by the prosecuting authorities: Role of legal advice centres and principal public prosecutors, paragraphs 468-471: Psychosocial support by the Communities to victims). Finally, we would point out that in its 2010 annual report, Committee P notes that police assistance to victims means an impeccable reception, quality treatment, relevant guidance and dissemination of useful information. It does not fall solely to the police. All police officers or civilian employees coming into contact with victims must play their part in providing this service. Moreover, Committee P made a number of recommendations between 2009 and 2011, with a view to optimizing police assistance to victims (annex 40, p. 121).

Article 15

Reply to the list of issues prior to reporting, 30 – Statements and confessions obtained under torture – Inadmissible evidence[42]

139. We would recall that Belgian legislation does not explicitly exclude evidence obtained as a result of torture. This must be viewed in the context of the evidence system in Belgium, however, where in matters of law enforcement the principle of freedom of evidence is well established and settled case-law. Indeed, the Code of Criminal Investigation does not establish any special form of evidence; it is for the trial judge to assess the probative value of the evidence on which it bases its decisions. This does not mean, however, that evidence may be sought in any way whatsoever. In other words, in order to be valid, evidence must meet four conditions: (1) it must have demonstrative value — this is a matter for the trial judge to weigh up; (2) it must be considered in a debate involving both the prosecution and defence; (3) it must be gathered in a fair manner as provided for by articles 28 *bis* and 56 of the Code of Criminal Investigation which require the Crown Prosecutor and the examining magistrate to ensure that evidence is fair and lawful; (4) the evidence may not have been obtained unlawfully, that is to say, by an act expressly forbidden by law or inconsistent with the substantive rules of criminal procedure and the general principles of law. The Belgian courts apply this principle at all times.

140. We would refer here to the "Antigone" case of the Court of Cassation, in which the basic decision dates back to 14 October 2003. It outlines the main principles of the admissibility of evidence obtained unlawfully by public officials. Thus, when forming his decision, the judge may not take account, whether directly or indirectly, of evidence obtained improperly when to be valid, certain formal conditions must be met; evidence is not reliable when obtained improperly or when used in a manner that runs counter to the right to a fair trial. This ruling was later refined by other judgments of the Court of Cassation, setting out non-exhaustive guidelines for circumstances that judges can consider when assessing at their discretion the evidence regarding the fairness of the trial as a whole (notably the judgments of 23 March 2004 — whether or not the unlawful act was committed wilfully, seriousness of the offence far in excess of its wrongfulness; judgments of 23 March 2004 and 10 March 2008 — unlawful evidence concerning only one material element of the offence, judgment of 8 November 2005 — disproportionate intrusion into privacy in relation to the offence). This system of the exclusion of evidence, through a regulated system of seeking and administering evidence, as demonstrated by the "Antigone" case, was recently recognized by the European Court of Human Rights in its judgment in case *Lee Davies v. Belgium* of 28 July 2009.

[42] CAT/C/BEL/Q/2/Add.1, 21 October 2008, question 33; see also CPT/Inf(2010)24, report of 23 July 2010, para. 15 and CPT/Inf(2011)7, 22 February 2011, follow-up responses, para. 6.

141. In its 2010 report, the European Committee for the Prevention of Torture expressed concern at threats by the police to obtain confessions and recommended reminding officers that any form of abuse — even psychological — is unacceptable and may lead to investigations and disciplinary action. In this regard, the Belgian Government would refer the Committee to its reply concerning training given to police officers (see Question 13 above) and its reply concerning the handling of complaints for offences committed by public officials (see Questions 23 and 26 above). We would recall that paragraph 62 of the Police Code of Ethics expressly states that investigators must refrain from resorting to violence, abuse or underhand ploys to obtain confessions or information (see Question 14 above) and that the Act of 13 August 2011 states that the assistance of the lawyer is intended, *inter alia*, as a means of monitoring the treatment of the interviewee, in particular of the use of manifest unlawful pressure or coercion (see Question 3, para. 16, above).

142. Upstream of the actual judicial phase, evidence and information are therefore sought, gathered and processed by the law enforcement agencies (police) in line with very strict rules in the international and domestic legal framework. Conditions are imposed, notably respect for human rights and the protection of privacy. The exchange of information at international level must also be legally founded and the countries with which cooperation is implemented are selected on the basis of guarantees in terms of human rights, in particular those aimed at preventing torture or ill-treatment to obtain evidence or information.

Article 16

Reply to the list of issues prior to reporting, 31 – Combating ill-treatment, including treatment based on discrimination[43]

143. On combating ill-treatment, including treatment based on discrimination, the Belgian Government refers the Committee to the information it has provided on the training of public officials (see Question 13 above). As we have stated, respect for human rights (including the general principle of non-discrimination) is the guiding principle of the training of all police officers throughout their careers. Accordingly, they are trained in the national and international regulatory framework, which underpins all their actions. Moreover, during their basic training, they are specifically taught how to intervene in and report offences under the legislation against discrimination and racism. In-service training is also organized on the legal framework and the application of these laws (annex 8). Police officers also attend training on diversity management and intercultural dialogue. We would stress that there is an agreement between the Centre for Equal Opportunities and the Fight against Racism and the Federal Police, under which the Centre provides the police with many training courses, and joint activities are conducted (2011 activity report, annex 49). We would also report that an information and awareness campaign about combating discrimination and the relevant legal provisions was launched in February 2010. It is intended for public officials of the French Community and Walloon Region, including members of the local police. Concerning the prevention of ill-treatment in places of detention, including women and young offenders, we would also refer to the information on training provided (see Question 13 above). Emphasis is also placed on respect for human rights and international conventions.

144. As part of their statutory duties, the police may have to resort to force, in strict compliance with the relevant legal provisions. Indeed, any use of force takes place within

[43] CAT/C/BEL/CO/2, January 19, 2009, concluding observations, para. 13.

the domestic and international legal framework, notably human rights (including the prohibition of discrimination, torture and ill-treatment). Any breach of these principles may be prosecuted in criminal or disciplinary proceedings (see Question 26 above) and may also be sanctioned through the statutory staff appraisal procedures. Regarding sanctions for perpetrators and compensation awarded to victims, the Belgian Government would refer to its previous replies (see Questions 23 and 29 above). Finally, the cases of the 14 police officers prosecuted for ill-treatment at Brussels-Midi station are still under review by the judicial authorities and are hence covered by professional secrecy. From the administrative standpoint, their handling is awaiting the outcome of the legal proceedings. From the disciplinary standpoint, however, we would stress that there have already been several voluntary resignations before the case was closed, one dismissal and several disciplinary measures taken.

145. Regarding the alleged cases of ill-treatment in the Brussels-Midi and Brussels-Ixelles police districts, they will be handled in accordance with the above principles. We would nevertheless emphasize that police training has been enhanced. We would also mention that internal instructions are always given after the occurrence of incidents, in response to then and to prevent any similar events in future. This is part of the continuous assessment of police work.

Reply to the list of issues prior to reporting, 32 – Prevention of ill-treatment in all places of detention[44]

146. The Belgian Government is aware that it is not enough to increase prison capacity (see point (c) below) to solve the problem of overcrowding. In that respect, Belgium emphasizes that it has always pursued a penal policy open to measures and sentences other than imprisonment. It would recall the following options: the Act of 29 June 1964 on the suspension of sentences, stay of execution and probation; article 21 6 *ter* of the Code of Criminal Investigation on criminal mediation; community service (Act of 17 April 2002) as an independent sentence that trial judges may impose for ordinary and minor offences, and finally, in the context of pretrial detention, conditional release or release on bail. These alternative penalties and measures are being promoted through a variety of measures: coordination structures at the federal and local levels, regularly meeting personnel in the field; training for the judiciary and the existence of a coordinator of alternative measures in each legal-advice centre which, in particular, have the task of raising awareness among personnel in the field and the general public.

147. Community service has been successful since it was introduced in 2002. For instance, from 2005 to 2011, the number of cases handled by legal-advice centres was as follows: 8,903 in 2005, 9,490 in 2006, 9,727 in 2007, 10,108 in 2008, 10,108 in 2009, 10,531 in 2010 and 9,341 in 2011. This illustrates the success of and level of recourse to alternative measures and sanctions. Note, however, that in the future, practical problems may arise regarding the availability of places where these sentences may be served at weekends or in the evenings, or the needs of the community. For pretrial detention, conditional release or release on bail is always possible. In future, we would emphasize that pretrial detention with electronic tagging will potentially affect nearly 40 per cent of the current prison population. By the end of 2012, magistrates and investigating courts will be able to use this form of house arrest. If the goal to cover 10 per cent of the current population (400 people) is achieved, this new method will have a significant effect on the

[44] CAT/C/BEL/CO/2, 19 January 2009, concluding observations, paras. 18 and 23; see CAT/C/BEL/Q/2/Add.1, 21 October 2008, questions 19, 21 and 24; see also CCPR/C/BEL/CO/5, 18 November 2010, para. 18.

prison population. Finally, the rules for serving prison sentences can also reduce the time spent in detention (see Question 22 above: electronic surveillance, limited detention, conditional release and release on bail for the purposes of expulsion). Note in particular the increase in electronic surveillance sentences (827.5 detainees in 2009, 932.6 in 2010 and 995 by mid-2012).

148. Regarding point (b) on the capacity of prisons, the Belgian Government would refer the Committee to its reply on this subject (see Question 15 above and annexes 31 and 32). On the increase in prison capacity, the Master Plan for 2008-2012-2016 for a more humane prison infrastructure plans to regain some capacity through renovations, extensions to existing sites and new buildings. This work is in full swing but the major extensions will not have an effective impact at structural level until 2013. Accordingly, the Government has decided — as an interim measure until the new facilities open — temporarily to rent the prison of Tilburg in the Netherlands. Belgium has noted with interest the report and recommendations[45] of the European Committee for the Prevention of Torture on this subject and will take the necessary steps in consultation with the Netherlands. Furthermore, new buildings are planned in Marche-en-Famenne (312 places), Leuze (312 places), Beveren (312 places) and Dendermonde (444 places). Construction work at Marche-en-Famenne began on 20 October 2011 and completion is scheduled for 2013. The Master Plan also aims to increase the accommodation capacity for inmates. It plans to build two forensic psychiatry centres, one in Ghent and the other in Antwerp, with 272 and 180 places respectively. Construction of the Ghent centre began in October 2011 and completion is scheduled for 2013. The Antwerp centre is currently subject to a planning application and completion is scheduled for 2014. Finally, there are plans to build a new facility with 1,190 places at Haren (Brussels Region) in 2016-2018.

149. Regarding the care of prisoners, we would point out, by way of example, that the French Community Commission (COCOF) supports the Cape-Iti association in its activities for prisoners and ex-prisoners. It provides the inmates of Brussels prisons with support, information on treatment and convalescent centres in Brussels and the French community, social supervision and psychological support in prison and in the centre, and accommodation, support and an opportunity for follow-up for inmates' entourage.

150. For closed centres, medical and social assistance, material welfare and hygiene are provided for in articles 52 to 61/1 of the Royal Decree of 2 August 2002 on the operation of detention centres. For the transmission of medical information to enable the necessary preventive measures to be taken, a memo was circulated to doctors of closed centres and heads of central services. These are details of the health of inmates which must be given to doctors (for example where coercion is used, to respond appropriately to an inmate's request or if the situation so dictates, e.g. epilepsy, tuberculosis, fracture of a limb, pregnancy, recent surgery, sutures, blood pressure, self-mutilation, risk of suicide, deaf-mute, etc.). The Aliens Office also has contracts with psychiatric hospitals to define cooperation on assistance to illegal residents, asylum seekers and inmates of detention centres with psychiatric problems. They may be hospitalized to improve or stabilize their mental health. After being treated in the psychiatric centre, they are repatriated, unless their psychiatric problems are such that a stay in Belgium is necessary for therapeutic and/or humanitarian reasons. Finally, there is a psychologist for inmates in every closed centre. Since mid-June 2011, there has also been a psychologist who coordinates them all.

[45] See the European Committee for the Prevention of Torture report dated 26 June 2012 addressed to the Governments of Belgium and the Netherlands on the visit to Tilburg prison from 17 to 19 October 2011.

151. On point (e), the Principles Act of 12 January 2005 provides for the separation of pre-trial and convicted inmates. However, pretrial inmates may choose to waive the rule to participate in joint activities. This is done on the basis of an explicit declaration. On point (f), there is nothing new to report since 2009. Judicial supervision of detention conditions continues to be exercised through the courts of law and the protection of personal rights. Finally, on point (g), we would refer the reader to points (c) and (d).

Reply to the list of issues prior to reporting, 33 – Prohibition of corporal punishment[46]

152. Belgium has a holistic approach to corporal punishment (prevention, enforcement, support and assistance to families). Corporal punishment is not an offence as such, but a sufficient number of criminal and civil rules apply to it directly. For instance, corporal punishment may constitute assault (arts. 398 *et seq.* of the Criminal Code) and/or degrading treatment (arts. 417 *bis et seq.*). There is provision for aggravating circumstances where ill-treatment is committed against minors by their parents or another person having authority over them. Furthermore, the child's right to respect for his or her physical and mental integrity is enshrined in article 22 *bis* of the Constitution and is protected by article 371 of the Civil Code which provides that "The child and his or her father and mother owe one another mutual respect at all ages".

153. On 21 October 2008, a circular was adopted to remind prosecution services that "depending on the circumstances, corporal punishment of children is liable to be treated as punishable assault and/or degrading treatment". It explicitly takes over the definition of corporal punishment of the Committee on the Rights of the Child and supports existing Belgian case law. Thus, in a judgment of 12 April 1983, the Court of Cassation held that the concept of assault covers any external or internal injury, however slight, caused to the human body from the outside. In a judgment of 25 February 1987, it stated that the criminal provisions are applicable to wilful acts of violence, regardless of motive, even if the perpetrator did not intend to cause the damage. By a decision of the correctional court of Antwerp, a teacher was punished for using corporal punishment. By a judgment of 1 October 2008, the Court of Appeal of Antwerp punished a father for inhuman treatment of his children, causing them physical and mental suffering, to punish them or as an expression of their brutish upbringing. He was sentenced, notably under articles 405 *bis* (assault and battery against a minor) and 417 *quater* (inhuman treatment) of the Criminal Code, to five years imprisonment, one year of which suspended for five years. This sentence also punished the father for sexually abusing his daughters for several years.

154. On the civil level, we would draw attention to the adoption on 15 May 2012 the Act on the temporary prohibition of residence in cases of domestic violence (not yet in force). Moreover, another Act provides for criminal penalties in this area. The Crown Prosecutor may now order the temporary removal of a person from his or her residence, if there is a serious and immediate threat to the safety of one or more persons living under the same roof. The Act targets violence between partners but also covers acts of violence on children, for example. The person must immediately leave the common residence and is barred from entering, staying or being there or coming into contact with the persons named in the order. The injunction will be in force for up to 10 days. A hearing must be scheduled within that period. The justice of the peace may discharge the injunction or extend it for up to three months. We would add that the implementation of this law will have to be covered by a circular of the College of Principal Public Prosecutors.

[46] CAT/C/BEL/CO/2, January 19, 2009, concluding observations, para. 24.

155. Education and prevention campaigns are often organized by the Communities to raise awareness among the public, especially parents, of the problem of violence against children. The federated entities have set up two independent agencies: Office de la naissance et de l'enfance (Births and Children Office) for the French Community (Decree of 30 March 1983, reformed by the Decree of 17 July 2002) and Kind en Gezin (Child and Family) for the Flemish Community (Decree of 4 April 2004). They offer a multitude of information and advisory services, and family support, in terms of preventive medical and socio-educational care. They focus in particular on promoting child-friendly education, prohibiting corporal punishment and proposing educational solutions. Kind en Gezin offers brochures and information via the Internet and advice on education. There are also several initiatives open to everyone, such as educational stores and a telephone help line. Office de la naissance et de l'enfance also provides educational support to families through several channels: leaflets and brochures, family assistance, etc. In the French Community, there is also a telephone help line suitable for minors. In addition, the SOS Enfants teams prevent and treat situations in which children are victims of physical, psychological, sexual and institutional ill-treatment and neglect. Assistance is not restricted to the protection of the child but can also involve creating a space where the family can talk. Note also that the Delegate-General for Child Rights (established in the French Community in 1991), in addition to its promotional duties, also deals with individual cases. It has real and effective powers of investigation to that end. Finally, by way of example, we would mention the Yapaka programme on prevention and awareness of ill-treatment. According to the programme, to promote a non-violent upbringing, one need to set an example, to work creatively and consider that parents try their best and should not be monitored. It runs major campaigns on a regular basis. On the Dutch-speaking side, in a note of the Flemish Government (VR 2011 2309 MED 0456), the Ministers of Public Health, Welfare and Family and the Ministers of Youth, Education and Sports committed to four lines of action: (1) the signature and follow-up of a declaration of commitment on the protection of the sexual integrity of minors; (2) the development of a range of training courses for educators, social workers and trainers to teach them to manage situations of violence and ill-treatment through prevention, detection, communication and monitoring of cases; (3) the establishment of a "violence, abuse and child abuse" contact point — available since March 2012 on line 1712 and announced via a major awareness-raising campaign focusing on child abuse; (4) the joint organization on 17 December 2012 by the Ministries of Welfare, Education, Youth and Sport of a study day on unauthorized assumption of jurisdiction in violence against children and young people. For the Ministries of Welfare, Public Health and the Family, it is important to establish a uniform rule for all sectors, clearly indicating that legislation must allow for a procedure for situations of borderline behaviour which also has to be notified to the responsible officers. This is already the case for some areas.

156. In 2007 the Federal Department of Justice, the French and German Communities and the Walloon region signed a memorandum of understanding to facilitate action between the medical, psychological, social and justice sectors in the interest of the child. In 2010, the Federal Department of Justice and the Flemish Community signed a "stappenplan" which describes the various stages to be followed in an ill-treatment case: domestic abuse needs to be handled more by the assistance sector, whereas abuse outside the family should rather be directed to justice sector.

Reply to the list of issues prior to reporting, 34 – Use of tasers[47]

157. The Act of 8 June 2006 regulating economic and individual activities involving weapons (Belgian Government Gazette, 9 June 2006) classifies them into categories (including prohibited weapons such as tasers) and establishes an administrative regime for each one. Article 27 provides for exceptions to the general rules, and paragraph 1 thereof states that those rules do not apply to the weapons of the Government services listed in the implementing order. The Royal Decree of 26 June 2002 on the possession and carrying of weapons by Government services or the police (Belgian Government Gazette, 29 June 2002) lists them (police, customs and security services, etc.), and for each service, the competent minister then has to determine which service weapons are authorized, the conditions for purchasing, storing and using them, etc. For the integrated police force, the Royal Decree of 3 June 2007 (Belgian Government Gazette, 22 June 2007) lists the service weapons but does not explicitly mention the taser, which is considered a "special" weapon.

158. Pursuant to that Royal Decree and Circular GPI 62 of 14 February 2008 on the weapons of the integrated police force, the Minister of the Interior authorizes the purchase of special weapons on the basis of a reasoned request and subject to strict conditions, including the condition that each officer who carries the weapon be designated by name and have followed specific training in which he is trained to use it and administer first aid to any victims. In addition, the validity of this permit is subject to attending specific, regular and compulsory training. In this way, Belgium has taken the necessary steps to limit the purchase, carrying and use of the taser. To date, only some police departments have them, but subject to very strict conditions for their use, training, reporting and control. There are two training courses: (1) the 12-hour training course on special weapons/X26 user, which can be attended only by persons having a registered licence — these are members of CGSU INT (special police units), five local Brugge-Cobra police districts and 13 local Antwerp-BBT police districts (for the police districts, it is for use only in prisons); (2) the 18-hour CED Trainer training course, attended by specialists in violence control who then go on to train others. All these courses are subject to an approval dossier drafted and approved in accordance with the procedures in force and, as such, they are also subject to a review process.

159. Furthermore, the use of the taser is subject to the strict conditions applying to the use of force laid down by article 37 of the Policing Act of 5 August 1992,[48] which are an effective safeguard against misuse. They are reviewed at all training courses on the use of a weapon and each training session, also attended by special units of the Federal Police. In particular, they are told that the mere fact of not responding to an order — in the absence of any other risk factor — is not sufficient grounds for using a taser. To date, the assessment of the risks associated with tasers is still ongoing, in accordance with the current procedures. Finally, any use of force must be reported to the Federal Police management to implement enforcement procedures or specialist support, and conduct qualitative and quantitative analyses of the events. That obligation was been reiterated in a note of the Federal Police (note DSE-061 963-f of 9 July 2010).

[47] CCPR/C/BEL/CO/5, 18 November 2010, para. 13; see CPT/Inf(2011) 7, 22 February 2011, paras. 15-18.

[48] The use of force must pursue a legitimate objective which can not otherwise be achieved, it must be reasonable and proportionate to the objective pursued and, in principle, be preceded by a warning.

III. Other issues

Reply to the list of issues prior to reporting, 35 – The fight against terrorism and its effect on human rights[49]

160. In Belgium, the fight against terrorism is conducted in accordance with the rule of law. We would recall that, pursuant to the Act of 19 December 2003, none of the provisions of the Criminal Code relating to terrorist offences may be interpreted as seeking to reduce or restrict fundamental rights and freedoms such as the right to strike, freedom of assembly, association and expression (art. 141 *ter* of the Criminal Code). The action for the annulment of the Act, notably on the grounds that it ran counter to the principle of the supremacy of the rule of law, was rejected by the former Court of Arbitration (ruling No. 125/2005, 13 July 2005), demonstrating that the legislator followed this principle when inserting articles 137 *et seq.* into the Criminal Code.

161. Legislation on terrorism was discussed in the context of the adoption of the Act of 4 February 2010 on the data collection methods of the intelligence and security services (Belgian Government Gazette, 10 March 2010, annex 50). Indeed, Parliament held hearings in February and March 2009 (parliamentary paper 522128, Chamber of Representatives) at which interviews on the fight against terrorism took place notably with the Counter-Terrorism Coordinator of the European Union, the federal prosecutor, the Prosecuting Attorney at the Court of Cassation, NGOs, and in which the emphasis was on the need for adequate sanctioning and prevention. The new Act provides for a series of specific and exceptional data-collection methods and is the counterpart, for the State security services, of the Act of 6 January 2003 on the Federal Police. It allows the civil and military Belgian intelligence and security services to use special methods (such as surveillance and wire-tapping) when there are serious threats to the internal security of the State and sustainability of the democratic and constitutional order, against external security and international relations, and against scientific or economic potential, and where those threats are linked to an activity related to espionage, terrorism — including the process of radicalization — proliferation, harmful sectarian organizations and criminal organizations (new art. 18/9 of the Act of 30 November 1998, on the intelligence and security services).

162. Two bills are currently being prepared to complement the existing legislative arsenal. The first aims to bring Belgian law into compliance with the International Convention for the Suppression of Acts of Nuclear Terrorism of 14 September 2005 and the Amendment to the Convention on the Physical Protection of Nuclear Material of 8 July 2005. The aim is to add new definitions (radioactive material, nuclear facility and device) to the law, and offences related to acts of sabotage. The second bill aims to bring Belgian law into compliance with the Council of Europe Convention for the Prevention of Terrorism of 15 May 2005 and EU Council Framework Decision 2008/919/JHA of 28 November 2008. It aims to criminalize public incitement to commit a terrorist offence, and recruitment and training for terrorism ends. The bill's explanatory memorandum stipulates that these offences, especially public incitement to commit terrorist acts, must be interpreted in the light of international obligations, including the jurisprudence of the European Court on freedom of expression. A reference to the freedom of the press and freedom of expression in other media will be added to the above-mentioned article 141 *ter* of the Criminal Code.

[49] CAT/C/BEL/Q/2/Add.1, 21 October 2008, questions 16, 25 and 35; see also CommDH (2009) 14, Commissioner for Human Rights of the Council of Europe, report of 17 June 2009, paras. 143-146 and recommendations 37 and 38.

163. Regarding extraterritorial aspects, the new Act of 6 February 2012 amending the Act of 17 April 1878 containing the Preliminary Title of the Code of Criminal Procedure regarding the prosecution of certain offences committed abroad (Belgian Government Gazette, 7 March 2012, annex 51) allows perpetrators of some of those offences to be prosecuted in Belgium, even if they are not found in Belgium. These include terrorist offences (art. 137 of the Criminal Code) and the taking of hostages (art. 347 *bis* the Criminal Code). We would also recall that, pursuant to the Act of 15 May 2007, when extradition is requested for a terrorist offence or an offence under international humanitarian law, the political clause may not be invoked to refuse extradition. However, refusal is mandatory if there are material grounds for believing that a flagrant denial of justice could be or has been committed, or that there is a danger of torture or inhuman and degrading treatment (see Question 9 above).

164. Terrorist offences are subject to the law of criminal procedure (arrest, detention, interrogation, trial, sentencing, appeal). The Act of 6 January 2003 has provided a legal basis for special methods of investigation (infiltration, observation, use of informers) and enquiries (interception of mail, discreet visual surveillance). Most of these practices had previously been used on the authority of ministerial circulars. The Act thus creates a secure legal situation both for the suspects at whom they are directed and for the police officers who have to apply them. In addition, under the Act, these measures are subject to an array of highly developed monitoring methods. The Act was amended by the Act of 27 December 2005 providing for various amendments to the Code of Criminal Investigation with a view to improving methods of enquiry in the effort to combat terrorism and serious organized crime in response to ruling 202/2004 handed down by the former Court of Arbitration on 21 December 2004, based on the absence of independent monitoring (by an examining magistrate or a regular court judge) of the use of such methods. The new Act introduced corrections as regards the definition of provocation, the scope of the summary investigation and the judicial control required where observation and infiltration methods are adopted. Moreover, the Act of 27 December 2005 makes provision for new methods of enquiry (notably collection of data on bank accounts, safe deposit boxes or financial instruments and bank transactions, discreet visual surveillance, the use of photographic equipment in observations, commission of offences by informers and direct listening) and the designation of examining magistrates specializing in the effort to combat terrorism.

165. Ruling 105/2007 issued by the Constitutional Court struck down articles 47 *ter* paragraph 1 (3), 47 *decies* paragraph 7, the second sentence of article 47 *undecies* (2), and the second sentence of article 47 *undecies* (3) of the Act of 19 July 2007 and article 235 *ter*, paragraph 6, of the Code of Criminal Investigation (articles on the application of special investigation methods for persons who have evaded serving sentences or other measures depriving them of their liberty, the commission of offences by informers in exceptional cases to maintain their position as informers and the absence of appeal against decisions of the Indictment Division concerning the check of the confidential file). The Act of 16 January 2009 provided that a decision by the Indictment Division may be subject to appeal on a point of law under article 235 *ter*. Otherwise, the reparatory bill of the Act of 27 December 2005 was not passed under the previous legislature. It did not include the commission of offences by informers. Hence, only the provision on special investigation methods for persons who have evaded serving their sentence remains to be remedied.

166. On the detention of persons in connection with terrorism, the International Committee of the Red Cross has offered its services to Belgium to visit them (convicted persons or those awaiting trial). These visits are intended to assess the conditions of their detention or internment. In April 2010, this proposal was agreed in principle.

167. Regarding the number and nature of convictions for terrorism, the following sentences were reported in answer to a parliamentary question in 2009 (not all were final

when this question was answered): in 2006, six convictions were reported (five people of Moroccan nationality and one Belgian of Moroccan origin) in 2007, three people were convicted under the Act of 19 December 2003 (two of Moroccan nationality and one Belgian of Moroccan origin) and in 2008, there were three convictions (three Belgian nationals, one of Algerian origin). Furthermore, during the period from 1 January 2009 to 31 December 2011 the number of terrorism cases (T) or other offences with a terrorism context code (CCT) recorded in the country's correctional courts: in 2009, there were 91 cases (75 T and 16 CCT); in 2010, 80 cases (74 T and 6 CCT) and in 2011, 83 cases (74 T and 6 CCT). However, none of these cases had been tried at 10 January 2012. On the other hand, some decisions were taken at first instance during the reference period, for cases filed with prosecutors before 2009; in 2010, three sentences were handed down and in 2011, one suspended sentence (annex 52). Finally, there is an Act of 1 April 2007 on insurance for victims of damage caused by terrorism.

168. At the international level, we should mention the *Sayadi-Vinck* case. These people had been placed on the list of the Sanctions Committee of the United Nations Security Council on account of their relationship with a suspected terrorist group. Their accounts and assets had been frozen. On 11 February 2005, the Court of First Instance of Brussels ordered the removal of their names from the list, but to do this, every member of the Committee had to vote in favour. Meanwhile, an individual communication was filed with the Human Rights Committee against Belgium.[50] On 9 December 2008, the Committee established an infringement of articles 12 (freedom of movement) and 17 (right to privacy) of the International Covenant on Civil and Political Rights. On 21 July 2009, the names of the persons concerned were struck off the list. This was the outcome of intense and repeated lobbying by Belgium of the relevant delegations of the United Nations Sanctions Committee.

169. In the area of training, police officers receive special training courses on terrorism (annex 8). The subject is approached from the standpoint of radicalism, which is regarded as a potential cloak for terrorism. Under the Belgian Presidency of the Council of the European Union in 2010, a specific project, Community Policing and Prevention of Radicalization (COPRA), was launched and is still in progress. The intention is to discuss and explore in future training courses all forms of radicalism that could lead to acts of terrorism, so that all field officers receive standardized training tailored to their needs. These improvements are gradually being incorporated into the training programmes. This project aims to raise awareness among police officers of the issue of radicalism through a twofold proactive and reactive approach.

170. On the international scene, when Belgium applied for election to the Human Rights Council for the period 2009-2012, it gave some undertakings on human rights. In particular, it undertook to guarantee individual fundamental rights in its own counter-terrorism provisions and to continue to strive to ensure that they operate, at international level, while respecting human rights.[51] In addition, Belgium traditionally sponsors resolutions on the protection of human rights in counter-terrorism in the Human Rights Council and the Third Committee of the United Nations General Assembly.

171. Finally, regarding the recommendation of former Commissioner for Human Rights, T. Hammerberg, first about precision regarding terrorist offences, we would recall that article 137 of the Belgian Criminal Code takes over the offences provided for in article 1 of the Framework Decision of the European Union of 13 June 2002 on combating terrorism. Furthermore, the European Commission has stated that Belgium has transposed it correctly

[50] See CCPR/C/94/D/1472/2006, *Sayadi and Vinck v. Belgium*, conclusions of 9 December 2008.
[51] A/63/801, para. 31.

to a very large extent [COM (2004) 409final and COM/2007/0681final]. In addition, note that the criminalization of terrorism must be sufficiently clear and precise, but also, to ensure its effectiveness, broad enough to take account of behaviour not provided for by the legislature. There are specific provisions to prevent abuse, however (arts. 139 and 141 *ter*).

172. On the scope of special investigation methods, there is no need to restrict these further. Indeed, the latest constitutional judgment did not cancel the provisions in that regard. We would recall that special investigation methods are subject to the principles of subsidiarity and proportionality, and the more intrusive methods may not be used where there is strong evidence that the punishable acts are or would be an offence under article 90 *ter*, paragraphs 2-4, or are or would be committed by a criminal organization (art. 324 *bis* the Criminal Code). The special investigation methods are also subject to many controls: (1) in each decentralized judicial directorate, an officer is responsible for continuous monitoring of special investigation measures in the district; (2) the use of informers is controlled by local and national handlers; (3) the Crown Prosecutor exercises permanent control over the use of special investigation techniques by police officers in his judicial district; (4) the College of Principal Public Prosecutors exercises control over the special investigation methods involving observation and infiltration, in the absence of prosecution. Lastly, control is also exercised by the examining magistrate, the Indictment Division, the trial courts and finally Parliament through an annual report.

173. The draft royal decree on police records has not yet been issued and will be amended in line with the draft European Union directive on personal data protection which is now being prepared. In this respect, we would recall that the Act of 8 December 1992 on the protection of personal data applies to the processing of counter-terrorism data, whether managed by the police or the intelligence services. Under article 6 thereof, the data may be processed only if this is necessary under a legal obligation or to carry out a mission in the general interest. Moreover, pursuant to article 5, these data must be necessary, appropriate and proportionate to the aims pursued. Under article 13, persons wishing to access their data may contact the Commission on Privacy Protection (an independent body established in Parliament), which will investigate in the police and/or intelligence services to verify that processing complies with the law. Where appropriate, individuals may also bring criminal actions against these services. Finally, note that the Organization Act on the police and intelligence services of 30 November 1998, amended in 2010, states that the data collected may not be used to restrict individual liberties, and entails compliance with the principles of subsidiarity and proportionality. Furthermore, these services may not use data protected by the professional secrecy of lawyers or doctors or by the confidentiality of sources used by journalists. The Policing Act dated 5 August 1992 provides that the police may process data on groups and individuals of specific interest to the duties of the judicial and administrative police. However, the data must have a direct link with the purpose of the file and be restricted to the requirements arising therefrom.

Reply to the list of issues prior to reporting, 36 – Ratification of the Optional Protocol[52]

174. The Belgian Government wishes to reiterate its intention to ratify the Optional Protocol (recommendation accepted during consideration of the first periodic report of Belgium in May 2011). Belgium signed it on 24 October 2005. Ratification entails enormous complexities, however, because the federal and federated entities are involved and each must set up a mechanism for independent oversight in its area of competence. Account must also be taken of the existing structures — such as the Centre for Equal

[52] CAT/C/BEL/CO/2, January 19, 2009, concluding observations, para. 27.

Opportunities, Committee P, the Central Prisons Supervisory Council or, for example, the Federal Mediator and mediators of the federated entities — and their various mandates, structures and levels of independence. These structures do not yet cover all the powers provided for by the Optional Protocol. We therefore have to devise new structures or additional mandates for the existing structures, which also have to comply with the Paris Principles regarding independent composition, funding and the exercise of the mandates. This requires a thorough analysis of the existing structures that might be integrated into the framework of the Optional Protocol. A working group under the direction of the Federal Department of Justice has examined the institutional and technical implications of ratifying the Optional Protocol, in consultation with the federated authorities. Several possible structures for one or more mechanisms to prevent torture have been studied. One possibility would be to integrate the Optional Protocol mandate into a larger structure, such as the National Human Rights Commission. This is just one possibility, but Belgium does intend to set up such an institution (see Question 2 above). Note, finally, that the German-Speaking Community notified its assent to the ratification of the Optional Protocol by its Decree of 25 May 2009 (Belgian Government Gazette, 3 August 2009). The Flemish Government also approved a decree to that effect on 16 March 2012.

Reply to the list of issues prior to reporting, 37 – Ratification of other conventions[53]

175. Belgium ratified the Convention on the Rights of Persons with Disabilities and its Optional Protocol on 2 July 2009. The first report of Belgian on the Convention was submitted in July 2011. It was drafted by the Federal Department of Social Security which is the mechanism for coordinating the focal points of the federated and federal entities for this Convention. Belgium ratified the International Convention for the Protection of All Persons against Enforced Disappearance on 2 June 2011, declaring that it recognized the Committee as well as the optional procedure for individual and inter-State communications. The Belgian Government will make its first report within the prescribed two-year deadline. Belgium attaches great importance to the rights of migrants, but cannot consider ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. Indeed, one of its features is to give equal rights to migrant workers in regular and irregular situations, in contrast to national and European regulations which make a clear distinction between these two categories of migrants. Finally, the Belgian Government soon intends to sign the Council of Europe Convention on preventing and combating violence against women and domestic violence (CAHVIO) of 11 May 2011.

IV. General information concerning the human rights situation in the State party, including any new measures or facts concerning the implementation of the Convention

Reply to the list of issues prior to reporting, 38 – Developments regarding the legal and institutional framework for the promotion and protection of human rights

176. The Belgian Government would refer the Committee in this respect to its common core document (annex 1).

[53] CAT/C/BEL/CO/2, January 19, 2009, concluding observations, para. 28.

Reply to the list of issues prior to reporting, 39 – New political, administrative or other measures for the promotion and protection of human rights

177. The Belgian Government would refer the Committee also in this respect to its common core document (annex 1).

Reply to the list of issues prior to reporting, 40 – More information on the implementation of the Convention against Torture

178. We would recall that under a ministerial order of 26 April 2007, the import and export of goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment was made subject to licence. It implements EU Regulation (EC) No. 1236/2005 of 27 June 2005.[54] It was amended by Commission Regulation (EU) No. 1352/2011 of 20 December 2011. A ministerial order is being drafted to bring the 2007 text into line with this new Regulation. Moreover, on 6 May 2012 the Flemish Parliament adopted a new decree replacing the Act of 5 August 1991 on arms, ammunition and equipment intended specifically for military or law enforcement use and the related technology.

179. On suspended pre-trial detention,[55] in its judgment of 13 January 2005 in *Capeau v. Belgium*, the European Court of Human Rights ruled that the requirement on an acquitted person to establish his innocence by adducing factual evidence or submitting legal argument to that effect was incompatible with the presumption of innocence. That judgment has been applied to subsequent applications, so that applicants are no longer required to prove their innocence to receive compensation. This change in case law ultimately led to the Act of 30 December 2009 amending article 28, paragraph 1, of the Act of 13 March 1973 on compensation for suspended pre-trial detention (Belgian Government Gazette, 15 January 2010).

180. Regarding internment[56] a number of measures have been taken to develop medium-security care for adult internees and sex offenders. Measures have yet to be adopted for inmates suffering from severe mental retardation and addiction. Finally, under contracts with the public health service, the supply of beds for intensive treatment of medium-risk inmates increased from 48 in 2007 to 225 in 2011, while 243 beds were added in psychiatric care homes and 133 places in sheltered-housing facilities for medium-risk inmates.

181. Concerning cases of direct application of articles 417 *bis* to *quinquies* of the Criminal Code,[57] the Belgian Government is annexing four tables for the period 2008-2011: the first concerns the number of cases registered, the second relates to their status, the third shows the reasons for dismissal and the final accounts for the number of cases in which a judgment was handed down between 2008 and 2011 (annex 53).

182. Finally, at international level, we would point out that, between 2008 and 2011, Belgium contributed 400,000 euros to the United Nations Voluntary Fund for Victims of Torture.

[54] CAT/C/BEL/Q/2/Add.1, 21 October 2008, question 34.
[55] CAT/C/BEL/2, 14 August 2007, second report of Belgium, paras. 464-467.
[56] CAT/C/BEL/Q/2/Add.1, 21 October 2008, question 24.
[57] CAT/C/BEL/Q/2/Add.1, 21 October 2008, question 13.