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

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Committee against Torture

Fourth periodic report submitted by Belgium under article 19 of the Convention pursuant to the optional reporting procedure, due in 2017*, **, ***, ****

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* The third periodic report of Belgium (CAT/C/BEL/3) was considered by the Committee at its 1182nd and 1185th meetings, held on 5 and 6 November 2013 (see CAT/C/SR.1182 and 1185). Having considered the report, the Committee adopted concluding observations (CAT/C/BEL/CO/3).

** The present document is being issued without formal editing.

*** The endnotes appended to the present report are circulated in the language of submission only.

**** The annexes to the present report are on file with the secretariat and are available for consultation. They may also be accessed from the web page of the Committee.

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I. Introduction

1. This report is submitted under article 19 (1) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("the Convention"), which was ratified by Belgium on 25 June 1999.[1] It was prepared in accordance with the optional reporting procedure adopted by the Committee against Torture in October 2009, which was accepted by Belgium on 31 March 2011.

2. The report describes new policies and changes in legislation, regulations, jurisprudence and administrative practices that relate to the substantive articles of the Convention and that have been adopted since the third periodic report of Belgium in 2012 (CAT/C/BEL/3), its interim follow-up to the Committee's concluding observations (CAT/C/BEL/CO/3) in November 2014 (CAT/C/BEL/CO/3/Add.1), and its evaluation sent by letter in August 2016, and up to 1 January 2018. The new measures adopted since that date will be discussed during the oral introduction of the report. For general information on Belgium, please refer to the common core document.

3. For the purposes of preparing this report, a meeting was held on 21 June 2018 between representatives of the Belgian authorities (Foreign Affairs, Justice, Police, Home Affairs and National Defence) and civil society (Amnesty International, Defence for Children International – Belgium, and the Coalition for OPCAT). Representatives from the Federal Migration Centre (Myria), the Centre for Equal Opportunities and Action against Racism (Unia) and the Federal Ombudsman also took part in the meeting.

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

Articles 1 and 4

Paragraph 1 of the list of issues

4. The legal definition of torture contained in article 417 bis of the Belgian Criminal Code has not been amended. As far as this issue is concerned, Belgium maintains the position that was outlined in previous reports.[2]

5. The definition set forth in article 417 bis incorporates all the constituent elements of the offence of torture enumerated in the Convention. Belgian law provides for the punishment of acts of ill-treatment in all cases, irrespective of the identity – whether a public officer or a private individual – or motive of the perpetrator, the co-principal or the accomplice.

6. A more severe penalty is imposed when torture is committed by a public officer or official, an agent or officer of the police acting in the line of duty, since possessing one of these attributes constitutes an aggravating circumstance under Belgian law.[3]

7. In the case of acts of torture committed by a third person at the instigation of or with the consent or acquiescence of a public official, Belgian law allows for lodging proceedings against both the third person[4] and the public official under articles 66, 67 and 69 of the Criminal Code.

8. Despite the fact that, under Belgian law, discriminatory motivation is not a constituent element of the offence of torture or of inhuman or degrading treatment, such motivation may be taken into consideration by the judge, who can decide to impose a more severe sentence penalty within the penalty range prescribed by law. Moreover, discriminatory motivation is an aggravating factor in the punishment of offences related to ill-treatment, such as assault and battery,[5] failure to render assistance to a person in danger[6] and unlawful detention.[7] In addition, a general reflection process on the reform of the Criminal Code is currently under way. Against this background, consideration is being

given to the advisability of amending article 417 bis of the Criminal Code along the lines of the recommendations made by the United Nations treaty bodies.

9. The above-mentioned provisions must be considered in conjunction with one another. Together, they provide a level of protection that is higher than that required by the Convention. To amend article 417 bis of the Belgian Criminal Code along the lines indicated by the Committee would amount to taking a step backward, which would be regrettable.

Paragraph 2 of the list of issues

10. The rights contained in the Convention are invoked in national courts. Some excerpts of case law since July 2012 are set out below in order to provide the information requested:

- "Torture or inhuman treatment means any act by which acute pain or severe suffering, whether physical or mental, is intentionally inflicted." (Cass. 11 January 2017, P.16.1280.F; Cass. 10 October 2007, RG P.07.1362.F, Pas. 2007, No. 474)
- "Degrading treatment means any act which causes the person subjected to it serious humiliation or debasement in the eyes of others or in his or her own eyes." (Cass. 11 January 2017, P.16.1280.F; Cass. 10 December 2014, RG P.14.1275.F, Pas. 2014, No. 778)
- "The seriousness of the humiliation or debasement is assessed on the basis of the circumstances of the case, in particular the duration of the treatment, its physical or mental effects, and, in some cases, the sex, age and state of health of the victim; the court assesses the overall conduct of the person charged with the offence specified in article 417 quinquies of the Criminal Code." (Cass. 9 December 2015, P.15.0578.F)

11. Please also refer to the information included below in the reply to the issues raised in paragraph 3.

Paragraph 3 of the list of issues

12. Concerning the implementation of the provisions of article 4, please refer to the information contained in annex 1.

13. The first table presents an overview of convictions for ill-treatment between 2012 and 2015. The second table shows the criminal convictions of police officers for acts of ill-treatment for the period 2009–2014. The third shows the number of judicial investigations carried out by the Police Investigation Service concerning allegations of ill-treatment by police officers. Tables 4, 5 and 6 show the number of cases of torture or inhuman or degrading treatment processed by public prosecutors and the action taken.

Paragraph 4 of the list of issues

14. With regard to combating anti-Semitism, the Belgian State addresses this matter through its anti-discrimination and hate crime policy (including Holocaust denial). It is not currently possible to differentiate between budgetary allocations or any other form of measure taken to combat anti-Semitism and measures taken to combat other kinds of discrimination.

Paragraph 5 of the list of issues

15. With regard to data on hate crimes,[8] between 2012 and 2016, 4,536 cases were recorded in the public prosecution service database; of these, 3,558 were dismissed.[9] In 2013, the Belgian College of Prosecutors General issued a new circular on discrimination and hate crimes for prosecutors' offices and the police services (annex 2)[10] that contains new data coding instructions. The data in annex 3 under the heading "hate crimes" include all the offences covered by this circular for the period under review.

Article 2

Paragraph 6 of the list of issues

16. In its most recent federal Government Coalition Agreement of October 2014 and during its second universal periodic review, Belgium reiterated its intention to work actively to establish an independent national human rights institution in line with the Paris Principles (A/HRC/32/8/Add.1: replies, second universal periodic review, July 2016, para. 17). Under the previous term of legislature, a first step was completed by granting inter-federal status to the Centre for Equal Opportunities and Action to Combat Racism (Unia) and establishing the Belgian Federal Migration Centre (Myria), both of which have been in operation since March 2014 under their new format. In 2015, the Minister of Justice and the Secretary of State for Equality of Opportunity (jointly responsible for this project) held consultations with several inter-federal and federal bodies that are already performing some of the activities of a national human rights institution:[11] Unia, Myria, the Institute for Gender Equality (IEFH), the Poverty Prevention Service, the Commission for the Protection of Privacy, the Federal Mediators' Association, Committee P, Committee R, and the Central Prisons Supervisory Council. The idea is to coordinate the existing bodies and to incorporate the activities not yet being performed into a coherent whole. A briefing/consultation session with representatives of civil society organizations was held in June 2015. Given the complexity of the project, the goal is to complete the components critical to the establishment of the institution by the end of the current term of legislature (June 2019).

Paragraph 7 of the list of issues

17. Regarding the measures taken to ensure that the provisions of the Convention have been incorporated into Belgian law, several legislative instruments have been enacted, in addition to those mentioned in previous reports. The Belgian State's sixth reform transferred additional responsibilities from the federal Government to the federated entities and transferred responsibilities between the federated entities. In this context, the federated entities have affirmed their adherence to the Convention through their own legislative instruments. For example, the Walloon Region has adopted a decree approving the Convention,[12] a decree approving the Convention in matters for which responsibility has been transferred by the French Community to the Walloon Region,[13] and a decree approving the amendments to articles 17 (7) and 18 (5) of the Convention in matters for which responsibility has been transferred by the French Community to the Walloon Region.[14] A complete list of the legislative instruments adopted since July 2012 is contained in annex 4.

18. For information concerning the primacy of the provisions of international law with direct effect on provisions of national law, please refer to the common core document.

19. As regards making the content of the Convention widely available, further to the information already provided on the training of judicial, police and prison personnel, it should be noted that the Convention is part of the required curriculum for all university law students.

Paragraph 8 of the list of issues

20. Among the measures taken to ensure that all persons deprived of their liberty are afforded the fundamental guarantees to which they are entitled, the right to have access to a lawyer while being examined in the context of criminal proceedings[15] has been significantly expanded by the Act of 21 November 2016 ("Salduz II") on certain rights of persons required to submit to examination (in accordance with Directive 2013/48/EU).[16]

21. Its wording was drafted by a multidisciplinary working group[17] and was the subject of extensive consultations with practitioners in the field.[18] The findings of an *ex nunc* (in real time) scientific evaluation of the Act of 13 August 2011 (final report: February 2013) were taken into account. Moreover, the implementation of the new Act must be accompanied, once again, by an *ex nunc* scientific evaluation, in collaboration with practitioners in the field;[19] the final report is expected to be completed by the end of March

2018. The provisions on the right to medical assistance and the right to contact a third party concerning one's deprivation of liberty, which were already contained in the Act of 13 August 2011, remain unchanged.

22. Article 47 bis of the Code of Criminal Procedure now forms the basis of all hearings in criminal matters. The new law extends the right to have access to a lawyer during the hearing[20] to persons not deprived of their liberty who are suspected of having committed an offence punishable by a prison sentence. It also redefines the categories of persons subject to examination and the rights to which persons in each of those categories are entitled (see the table in annex 5). In November 2016, a new circular[21] was issued to police officials and public prosecution services as an accompaniment to ensure implementation of the new law; it contains among other things model summonses to cover all situations.

23. The law provides that the wording used to inform suspects of their rights must take into account the vulnerability and age of the person, which was something that had already been established in practice. Model letters of rights have been updated and exist in 60 languages.[22]

24. Suspects deprived of their liberty have the right to consult a lawyer without undue delay during the 48-hour time period following their deprivation of liberty and before their first hearing.[23] Access to a lawyer is proactively organized by the investigating official (this has been the case since 2011). Article 495 of the Judicial Code is the legal basis that the on-call service relies on for finding a lawyer to assist suspects who need one. To that end, a web-based application is available to professionals (lawyers, judges, prosecutors and police officers). The Act also provides for the assistance of a lawyer at each hearing held during the 48-hour period following the deprivation of liberty. Accused persons enjoy the same rights as suspects deprived of liberty if their hearing before the investigating judge is an initial hearing.

25. Only adults suspects may waive their right to be assisted by a lawyer during examination, which may, at that point, be audiovisually recorded. Juvenile suspects, whether or not they have been deprived of their liberty, may never waive their right to have access to a lawyer, which is proactively organized by the investigating official. The investigator, the public prosecutor or the investigating judge in charge of the case may, at any time, decide ex officio to make an audiovisual recording.[24] For the sake of clarity and transparency, the formulation of temporary exceptions to the right to have access to a lawyer was adapted to the terms of the aforementioned Directive.

26. From the moment they are served with an arrest warrant, suspects held in pretrial detention have the right to consult a lawyer at any time and the right to be assisted by their lawyer during consecutive hearings (assistance proactively organized by the State).

27. In addition, the Act now provides that the lawyer may be present during confrontations and police line-ups/identification parades.

28. The "Salduz II" Act also incorporates into national law, for persons who are the subject of a hearing, Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings and Directive 2012/29/EU on minimum standards on the rights, support and protection of victims of crime.[25] The procedure used for persons undergoing examination who do not speak or understand the language of the proceedings or who suffer from a hearing or speech disorder varies depending on their status as a subject in the hearing. If the assistance of an interpreter is provided, it must be noted in the court record. The Act provides that the costs of interpretation are to be borne by the State. It also provides that persons deprived of their liberty must be granted linguistic assistance, where necessary, to allow them to communicate basic information about the charges and engage in prior confidential consultation with their lawyer. Persons with hearing or speech disorders may also request to be assisted by the person most accustomed to communicating with them. Where necessary, accused persons may, at the State's expense, obtain a translation of their arrest warrant. The law requires the translation of only those passages that describe the charges being brought and that are necessary for effectively exercising the right of defence. Such translations must be completed within a reasonable time period and be useful in the context of the proceedings.

29. The police force has taken the necessary measures to apply this Act directly. The above-mentioned documents (letters of rights, new forms, etc.) are used in practice. All police officers concerned were immediately informed of these developments through publications, internal memorandums and briefings, some of which were in conjunction with the judicial authorities. Police officer training has also been adapted to reflect these changes. Some police academies are in the process of developing an e-learning module on "Salduz II". The observance of fundamental legal safeguards may also be verified by reviewing the custody record (see below, replies to the issues raised in paragraphs 9 and 12).[26]

30. The Act of 6 July 2016 amending the Judicial Code with regard to legal aid and the Act's implementing orders[27] entered into force on 1 September 2016. The aim of the amendment is to enhance the quality of services, make the system more equitable and improve the entire legal aid process for beneficiaries and providers. It was launched in close consultation with the bar associations and civil society. The system has been made more equitable, since those in need have genuine access and those with adequate resources are excluded. This has resulted in a better assessment of the means of livelihood – and no longer of the income – of applicants for legal aid. All resources are taken into account (income from work, immovable/movable property, savings). Certain individuals (such as prisoners, applicants for international protection, beneficiaries of the social integration income benefit or of social assistance, etc.) enjoy a rebuttable presumption of insufficient means. Minors enjoy an irrebuttable presumption of insufficient means. Means tests for the provision of entirely cost-free services are conducted without prejudice to international and/or national provisions that require the unconditional grant of completely cost-free legal aid or legal assistance.

31. A modest contribution is requested of persons who have recourse to the system for the appointment of counsel for each new proceeding.[28] Exemptions are provided in order to avoid impeding the access to justice of minors, mentally ill persons, internees, persons who must defend themselves in a criminal proceeding and have received entirely cost-free legal aid, applicants for international protection, stateless persons and persons who are involved in debt settlement procedures or have no means of livelihood. Legal aid offices exempt other beneficiaries of their services from this contribution when it can be demonstrated that paying it would severely hamper their access to justice.

32. The budget for legal aid will be gradually and sustainably increased in the coming years in order to meet objectives such as the protection of applicants for international protection and compliance with the additional "Salduz" rules (see above). The yearly general budget for second-line legal aid[29] has been increased by €20,403,552.80 and €918,000 for costs pertaining to the "Salduz" on-call service. The Act of 19 March 2017[30] established a budgetary fund for the provision of second-line legal aid, the proceeds of which are used to finance lawyers' fees and the costs associated with the organization of aid offices. The fund is fed by a flat-rate contribution of €20 – payable in both civil and criminal matters – but is not applicable to beneficiaries of legal aid and judicial assistance. The Act of 26 April 2017[31] established a similar fund with a contribution of €20 for cases brought before the Council of State and the Council of Alien Law Litigation.

33. The Judicial Code has been amended with regard to judicial assistance (reimbursement of the costs of the proceedings) in order to meet the requirements of the judgment of the European Court of Human Rights (ECHR) in *Anakomba Yula v. Belgium*, of 10 March 2009, which found that foreigners residing in the country without authorization were discriminated against in their access to the courts, except in proceedings specifically related to the Aliens Act.

Paragraph 9 of the list of issues

34. Concerning the establishment of a standardized, computerized and centralized official register in which arrests are immediately and scrupulously recorded, the Belgian State refers to the information provided by it in its interim follow-up (CAT/C/BEL/CO/3/Add.1). The draft royal decree on the implementation of article 33 bis of the Police Functions Act of 5 August 1992 is in the process of being finalized and

approved by relevant partners (see below the reply to the issues raised in para. 12 for more details).

Paragraph 10 of the list of issues

35. Persons deprived of their liberty, whether in a police station, prison, detention centre for foreigners in an irregular situation or public youth protection institution, are entitled to a standard of health care equivalent to that which is available in society at large. Medical staff providing care to persons deprived of their liberty act independently. Medical consultations are confidential; the individuals concerned therefore have the opportunity to report any ill-treatment to the doctor without apprehension. Patient records kept by the doctor are subject to medical confidentiality. It is for the doctor to decide what to do with the information available to him or her, in accordance with the legal and ethical rules of the profession. Where ill-treatment is suspected, the doctor may, with the agreement of the patient, inform the judicial authorities.

36. Within the penitentiary system, great care is taken to prevent, detect and punish acts of ill-treatment against detainees: as soon as criminal conduct against a detainee is detected or reported, the prosecutor's office must be informed.[32] A disciplinary file must also be opened by the prison administration. It should also be noted that detainees placed under an individual security regime are subject to heightened surveillance. Mental and psychological health issues require particular attention in this context. For this reason, a medical opinion must be sought when this measure is applied and a psychiatric report is necessary when it is renewed.[33] Such reports, which are drawn up at least every two months, describe the health status (in particular the mental health status) of detainees placed under an individual security regime. In addition, doctors and prison management are legally required to make regular visits to such detainees. These visits are recorded in an ad hoc register.

Paragraph 11 of the list of issues

37. Information on the monitoring and inspections carried out on a systematic basis to ensure compliance with obligations under the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment may be found in the replies to the issues raised in paragraphs 9, 12 (a) and 43.

Paragraph 12 (a) of the list of issues

38. In accordance with the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and Committee P, under Belgian law all instances of deprivation of liberty must be recorded in official registers.[34]

39. The keeping of registers by the police services is evidence that the rights guaranteed to persons deprived of liberty are effectively exercised (the right to be informed of the reasons for the deprivation of liberty in an appropriate language, the right to have access to a lawyer, the right to consult a lawyer from the very outset of detention, the right to a medical examination, the right to contact a relative, etc.). The exercise of each of these rights is noted in the register. The register also constitutes a record of the chronological sequence of the deprivation of liberty and contains all the information pertinent to the application of this measure. Such information includes mention of the apparent health and physical condition of a person deprived of liberty, both at the time of his or her deprivation of liberty and on release. This information allows a person who claims to have suffered ill-treatment to provide evidence thereof. An administrative police officer or a criminal investigation officer regularly checks that no information is missing from the register and that none of the rights of the person concerned have been adversely affected. As to the steps taken to ensure that police units use standardized registration practices, please refer to the information previously provided in the report to the Committee on Enforced Disappearances (CED/C/BEL/1, para. 164; CED/C/BEL/Q/1/Add.1, paras. 66 to 70 and CED/C/BEL/CO/1/Add.1, paras. 40 to 42). Such practices will be codified in a royal decree setting out the specific format and content of the registers, the conditions of their use and the modalities for storage of the information contained therein (see above, replies to the issues raised in para. 9).

40. Where prisons are concerned, prison regulations stipulate that a prison file must be established for each detainee, containing all official documents relating to the detainee. Medical data, however, are recorded separately in the personal medical record of the detainee, which is governed by the Act of 22 August 2002 on the rights of patients[35] and by prison regulations. It should be noted that these rules also apply to interned individuals.

41. For information on registers maintained in connection with the administrative detention of foreign nationals in an irregular situation and the placement of youth in public institutions for the protection of young persons, please refer to the information provided to the Committee on Enforced Disappearances (CED/C/BEL/1, paras. 187 and 203 to 205).

Paragraph 12 (b) of the list of issues

42. Respect for human rights is the guiding principle of the training of all police officers throughout their careers. In addition, the personnel of the police services remain subject, in the discharge of their duties, to Belgian and international legal norms and consequently to the human rights provisions incorporated therein.

43. In accordance with royal and ministerial decrees and circulars, all training courses are subject to a comprehensive accreditation dossier drafted on the basis of a prior analysis of needs on the ground. This determines, for example, the course programme (content, coherence with other courses, duration), the pedagogical approach and methodology, objectives, teaching personnel, target audience, resources, etc. The dossier is submitted for approval to the competent authorities and is used as the basis for evaluating the training process, which is subject to ongoing quality control and improvement.

44. More generally, training courses for police services staff are reviewed in the light of an annual training plan,[36] approved at the ministerial level, which provides guidelines on how courses are to be delivered and defines priority areas for the skills development of staff members. A report on all training activities is drawn up annually.

45. Examples of human rights training courses developed by the police in response to a change in needs and/or the legal and regulatory framework include the following:

- A course on the "Salduz" law (see above).
- A course for police officers responsible for dealing with acts of discrimination and hate crimes (see Circular COL 12/2013 above).
- A course entitled "The Holocaust, the police, and human rights", aimed at strengthening police officers' training on and awareness of issues relating to citizenship, democratic values, the defence of individual freedoms and human rights, exclusion, xenophobia, group influence and the importance of thinking for oneself.[37]

46. The police service continues to take action in this area to increase both the number and quality of its training courses for staff at all levels on fundamental rights, including in relation to non-discrimination, the prohibition of torture and respect for diversity.

47. Efforts to improve quality involve close collaboration with external partners such as Unia, which makes its expertise available to the police service and other institutions by delivering some of these courses, with a particular emphasis on real-life scenarios experienced by the police (focusing on conduct, perceptions and attitudes), particularly with regard to the specific situation of certain groups (children, women, victims of trafficking in persons, etc.). The aim is ensure that theory is linked to practice and that fundamental rights are addressed from a practical perspective, based on what actually happens on the ground.

48. Various steps have been taken to ensure that the above measures are effectively implemented, including through:

- The legal and regulatory framework applicable to the police services;[38] and
- The human resources management policy put in place within the police services.[39] Police officers' respect for human rights is subject to continuous assessment and any infringements are sanctioned through statutory staff assessment procedures or existing disciplinary and criminal procedures.

Paragraph 12 (c) of the list of issues

49. Concerning the independence of Committee P and its Investigation Service, the Belgian State refers the Committee to the detailed explanations provided in its follow-up to the concluding observations on the third periodic report of Belgium (CAT/C/BEL/CO/3/Add.1, paras. 39 to 70, section D entitled "The oversight and monitoring body of the Police Service: Committee P"), and to its reply to a similar recommendation made by the Working Group on the Universal Periodic Review, in which it is stated that "Belgium has an effective monitoring body, the Committee P, which is an independent committee under the authority of parliament, and this provides all necessary guarantees of the independence, effectiveness and objectivity of monitoring. The independence, neutrality and impartiality of investigations conducted by the Committee P investigating service, or of the members of that service, have never been called into question." (see Views on conclusions and/or recommendations, commitments and replies presented by the State under review, A/HRC/32/8/Add.1, p. 2).

Paragraph 13 of the list of issues

50. A draft agreement is being negotiated with the International Committee of the Red Cross (ICRC) so as to enable its representatives to visit detained persons who are suspected of terrorism or have been convicted on terrorism charges. The agreement provides that Belgium will forward data corresponding to the detainees to ICRC and allow ICRC representatives to meet with detainees in the facilities where they are being held, gather their comments and forward these to ICRC headquarters. This draft is accompanied by a draft annex on the protection of the detainees' personal data which specifies the purpose of and procedure for processing those data (General Data Protection Regulation of the European Union). The annex, which was drafted with informal input from the European Commission, has been submitted for comment to the Belgian Commission for the Protection of Privacy, prior to its being forwarded to the Minister of Justice.

Paragraph 14 of the list of issues

51. Regarding investigations into the alleged use of Belgian airports and aircraft by the United States of America Central Intelligence Agency for its extraordinary rendition programme, the Committee's attention is drawn to the information already provided during the second reporting cycle (see CAT/C/BEL/Q/2.Add.1, replies to the list of issues, of 21 October 2008; in particular the replies to question 29).

52. Standing Committee R conducted an investigation and submitted a report to the competent ministers and the Senate. A public version of the report was included in Committee R's 2006 annual report, which is available on its website in French, Dutch and English.[40]

53. It should be added that this investigation indirectly led to a legislative change. Recalling the recommendations of the Secretary General of the Council of Europe and the Secretary General of the European Parliament to the effect that all European countries should have specific national laws in place to regulate and monitor the activities of third countries' secret services on their national territories, to ensure better monitoring and supervision also of their activities, as well as to sanction illegal acts or activities, Committee R called for clear responsibility to be assigned by law to the intelligence and security services so as to enable the latter to monitor the activities of foreign services on Belgian territory.[41] This resulted in the adoption of the Act of 29 January 2016 (Official Gazette, 5 March 2016), which provided for an additional express power for the State Security Service and the General Intelligence and Security Service (Ministry of Defence), namely that of "gathering, analysing and processing intelligence related to the activities of foreign intelligence services on Belgian territory".[42]

Paragraph 15 of the list of issues

54. The Act of 15 December 1980 on the entry, temporary and permanent residence and removal of aliens (hereafter the Act of 15 December 1980) sets out the terms and conditions of family reunification: (1) with a third-country national with a residence permit of

unlimited duration;[43] (2) with a third-country national with a residence permit of limited duration;[44] and (3) with a citizen of the European Union or of Belgium.[45]

55. Belgium has not amended the Act of 15 December 1980 with a view to granting temporary residence to migrant women who are victims of domestic violence and are undocumented or awaiting residence permits on the basis of family reunification. However, depending on the person's specific situation, certain procedures provided for in the Act of 15 December 1980 may be applied: when a request for international protection is considered, the applicant's state of vulnerability, including the potential for domestic violence, is to be taken into consideration when this issue is raised by the applicant or emerges from the consideration of the asylum request, depending on the facts invoked. A residence permit may also be requested in exceptional circumstances[46] (CEDAW/C/BEL/CO/7/Add.1, para. 20).

56. A female spouse or partner admitted on the basis of family reunification may have her right of residence revoked during the first five years if there is no longer a true conjugal or family relationship (in the case of a third-country national) or shared residence (in the case of a European Union or Belgian national). However, a victim of acts such as domestic violence or certain acts punishable under the Criminal Code[47] may retain her right of residence. Furthermore, if the victim of domestic violence is the spouse or partner of a European Union or Belgian citizen, she must provide evidence of such violence and meet the following conditions: she must be in work or have sufficient resources not to be a burden on the social welfare system and she must have health insurance, or she must be a member of a family already constituted in the country of a person satisfying these two conditions.[48] It should be pointed out that the practice of the Immigration Office in this regard has been reconsidered. The Office takes into account the information provided by the victim asking to benefit from the protection clause and thus retain her right of residence, before deciding whether to terminate her residence permit.

57. A circular is being drafted on retention of right of residence obtained in the context of family reunification – this draft is part of the National Action Plan to Combat Gender-Based Violence (PAN 2015–2019, see below). The circular is designed to strengthen the rights of migrant women who are victims of conjugal violence by providing them with information on existing protection arrangements. It will ensure that the various services (police, shelters, etc.) are informed about the rights of migrant women and about the procedures and formalities to be followed.

58. Belgium currently has no statistics available relating specifically to acts of family violence perpetrated against men and women migrants.

Paragraph 16 of the list of issues

59. For many years, the Belgian Government has coordinated measures to combat trafficking in human beings through national action plans (for information on the implementation of the 2012–2014 National Plan of Action to Combat Human Trafficking, see annex 6; the corresponding action plan for 2015–2019[49] contains new commitments). Coordination of the plans is the responsibility of the Interdepartmental Coordination Unit, which has been restructured with a view to officially integrating reception centres (NGOs).[50]

60. A circular of 23 December 2016[51] updated directives on implementing multidisciplinary cooperation for victims of trafficking in human beings and/or certain aggravated forms of human trafficking (see CAT/C/BEL/3 and CCPR/C/BEL/Q/5/Add.1) in the light of legislative and administrative initiatives taken in recent years. The circular is designed to determine how potential victims are to be detected, assisted and supported, while specifying the criteria for them to qualify for protection status. The circular sets out the role of the various relevant multidisciplinary partners involved in the process.[52] The police and social inspection services, the Immigration Office, public prosecutors and staff at registered reception centres have received guidance on how to identify (potential) victims of trafficking and certain aggravated forms of trafficking and how to assist and support such victims. The circular also sets out the procedures to be followed for victims to obtain protection status. To that end, victims must sever all ties with the (potential) perpetrators,

accept support from a registered specialized reception centre and cooperate with the judicial authorities by making statements or lodging a complaint (except during the period of reflection, as described below). During the identification phase (during which the victim is formally recognized as such and granted temporary status by a judge), the emphasis is on the provision of information to victims and their referral to specialized reception centres for support (including residential support if necessary, medical, psychological and social assistance, administrative and legal assistance, and the services of an interpreter). Cooperation among all those involved is essential at each step of the procedure. The circular specifies the steps to be prioritized and addresses a certain number of special cases, including victims who are minors and victims of human trafficking working for diplomatic staff.

61. The human trafficking desk of the Immigration Office (which represents the Office in the Coordination Unit) pays constant attention to these issues and does not limit itself to a merely administrative role. If necessary, and/or at the request of the other services of the Immigration Office, the desk informs foreign nationals who are potential victims of trafficking about any relevant special procedure and provides them with practical information. As concerns awareness-raising and training, the desk provides training to police officers, members of the judicial service and staff members of the Office. Immigration officials gather information on human trafficking when they visit countries of origin and transit.

62. The three specialized reception centres for human trafficking victims (formally integrated into the previously mentioned Coordination Unit) are continuing their work. They offer victims administrative, legal and social services and provide them with medical and psychological care, and accommodation. The centres work towards reintegrating victims, particularly in terms of helping them find a job. They use the services that are available, for example, language learning or other training. Between 2010 and 2015, there were, on average, 150 new cases of victim assistance each year (see annex 7). In 2016, there were 133 new cases of victim assistance at the three reception centres. There appears to be a somewhat even distribution of victims of sexual exploitation and victims of economic exploitation (given that the latter is on the rise). With reference to minors, the Guardianship Act was expanded in 2014 and applies to Europeans who are unaccompanied foreign minors in vulnerable situations or potential victims of trafficking.[53]

63. Various prevention, public information and training initiatives have been carried out. A pamphlet has been distributed to all the country's hospitals (in particular, to the emergency and gynaecological services) containing information on the characteristics of victims and the traumas suffered by them. A pamphlet has been distributed to observation and orientation centres for applicants for international protection in order to provide applicants with information on working conditions in Belgium and who to contact in case of exploitation. The federated entities have begun to pay greater attention to the issue of sexual exploitation. In April 2017, a training programme organized for social workers/youth assistants in the French Community focused on the cases of sexually exploited minors, the exploitation of begging and the fact that some children are used to commit offences. Moreover, since 2017, the French Community has included a fact sheet on trafficking in human beings in its school violence manual. In January 2017, Flanders funded a Child Focus website for the "Stop Procurers of Teenagers" campaign, which is directed at persons – whether among the general public or professionals – who come into contact with teenagers. The goal is to enable them to take preventive action or to report known or suspected cases of exploitation. Discussions are held in conjunction with the training initiative. A monitoring group is conducting work in these various areas.

64. Training has been organized since 2012 for the staff of reception centres for applicants for international protection, particularly with a view to identifying minor victims, and training sessions are held at the Immigration Office. The Federal Public Service for Justice offers training to guardians of unaccompanied foreign minors in order to help them identify minors who are (potential) victims of human trafficking. Fact sheets are distributed. Training sessions are also organized for those carrying out social inspections, often in conjunction with the police. Consideration is being given to developing a new training programme on human trafficking as part of an overhaul of the social services.

65. Belgium considers that cooperation with the judicial authorities is necessary to protect trafficking victims and take effective action against perpetrators. However, the National Plan of Action 2015–2019 provided for victims to be issued with a new document during the period of reflection. Previously, victims 18 years of age and older were issued with an order to leave the country valid for 45 days.[54] However, practice has shown that granting a period of reflection in the form of an order to leave the country was not always perceived as a satisfactory arrangement by front-line actors and victims. Therefore, the law has been recently amended and the order to leave the country has been replaced with a temporary residence document.[55] The amendment gives effect to the recommendation of the Council of Europe Group of Experts on Action against Trafficking in Human Beings (GRETA) made in its report of 25 September 2013. During the 45-day period, the victim can recover, escape from the influence of the alleged traffickers and decide whether to cooperate with the competent authorities. In order to ensure the victim's safety, no reference to the procedure concerning human trafficking is contained in the new document. The specialized reception centre also informs victims of their rights. It is important to bear in mind that under the Belgian system human trafficking victims are not required to testify in order to benefit from the protection measures provided. A simple statement is sufficient. In addition, Belgium is one of the few States that grant permanent residence to victims of human trafficking, provided that the prosecution has included this offence in its indictment. It should also be pointed out that Belgium issues residence permits to vulnerable persons without requiring cooperation. Such persons can apply for a residence permit on humanitarian grounds, or their vulnerability can be taken into account, as appropriate, during the processing of an asylum application.

Paragraph 17 of the list of issues

66. Please refer to the statistics on human trafficking contained in annex 7.

Article 3

Paragraph 18 of the list of issues

67. In 2012,[56] the role of the Inspectorate General of the Federal and Local Police as an independent oversight body for the entire process of forced returns was confirmed, owing to the fact that: (1) it was already authorized to oversee them[57] and had considerable experience in the area, and it can perform partial or full inspections and target different phases of the process (pre-departure stage, flight preparation, a transit phase, and arrival and housing services for foreigners who are forcibly removed to their country of return); and (2) it is independent of the authorities issuing the expulsion decisions (Immigration Office) or executing them (police units – Air Police Service at Brussels Airport – LPA BRUNAT[58]). The Inspectorate General is directly answerable to the Minister for Home Affairs (day-to-day management) and the Minister for Justice (execution of judicial mandates). Its members are recruited from within local or federal police forces, but once transferred to the Inspectorate, they no longer belong to those forces and are sworn in by the Inspector General. Given the special nature of their duties, they retain their judicial and administrative powers. They have a general and permanent right of inspection. When an incident occurs, they can intervene directly to stop a crime and, if necessary, draw up an official report, which is something that a member of a non-governmental organization (NGO) cannot do (see below). Furthermore, no restrictions may be imposed on them. In particular, as regards access to sensitive areas of airports, including military airports, they encounter no problems with screening. Finally, they are required to observe professional privilege in order to ensure the confidentiality of the operations, especially prior to executing them.

68. From the organizational standpoint, the Inspectorate General of the Federal and Local Police reports to the Minister for Home Affairs. However, according to article 69 (7) of the Royal Decree of 20 July 2001, the Inspector General discharges his or her mandate in accordance with a letter of appointment issued by the Ministers for Home Affairs and Justice, thereby strengthening his or her independence. The members of the Inspectorate General do not wear a uniform (they wear plain clothes). The Inspectorate decides

independently, on the basis of its own risk analysis, when inspections are to be performed and, on the basis of its findings, draws up recommendations whose implementation it monitors. A chronological report that includes these recommendations is prepared for each inspection visit and is sent to the Minister for Home Affairs, the authority that issued the expulsion order and the police authorities concerned. Where appropriate, a report is forwarded to the judicial authorities. Each year, the Inspectorate General reports on its activities to the Minister for Home Affairs. A copy, with any comments, is subsequently sent to Parliament. External bodies are increasingly consulting the Inspectorate in order to benefit from its expertise in the area of forced returns. This demonstrates that the quality of its work and its strict adherence to such principles as integrity, impartiality and objectivity are being recognized. It also strengthens civil society's confidence in the Inspectorate General, which is a reflection of the Inspectorate's independence.

69. For the past three years, the number of members of the Inspectorate General who participate in inspections of forced returns has risen. As a result, the possibilities for carrying out inspections have increased. Based on the subsidies paid to the Asylum, Migration and Integration Fund (AMIF)[59] of the European Union, in addition to the temporary assignment of a permanent member of the Federal Police, the Inspectorate General must allocate a minimum of 952 staff hours to inspections of forced returns. The minimum number of inspections is set at the following levels: 60 inspections at the time of boarding, 8 inspections through to final destination and, in principle, inspections of all "special flights" carrying deported persons. Judging from the annual reports of the Inspectorate General, these agreements have been respected, except for the inspections through to final destination in 2015 and 2016. The failure to attain the required minimums is due to the increase in the number of such flights, which are given priority. This point was discussed with the manager of the Asylum, Migration and Integration Fund.

70. Figures for the Inspectorate General's inspection of deportation operations (2012–2016) are as follows:[60] 124 inspections at the time of boarding in 2012, 138 in 2013, 109 in 2014, 83 in 2015 and 61 in 2016; 12 inspections of regular flights through to destination in 2012, 13 in 2013, 14 in 2014, 4 in 2015 and 7 in 2016; 1 inspection of special flights at time of boarding only in 2012, 3 in 2013, 4 in 2014, 7 in 2015 and 21 in 2016; 9 inspections of special flights through to destination in 2012, 9 in 2013, 5 in 2014, 14 in 2015 and 8 in 2016.

71. Given the Inspectorate General's added capacity to monitor forced returns and its independence and autonomy in exercising its functions, the presence of NGOs does not appear to be necessary. With regard to the use of video recordings, the Belgian State still subscribes to the conclusions of the Vermeersch Commission II, as set forth in its final report of 31 January 2005, in which the Commission found such recordings to be ill-advised for several reasons, including technical and logistical ones. The Inspectorate General shares this view and considers that the use of video recordings would be onerous from the standpoint of both personnel and equipment, would undermine respect for the privacy of the other persons present, would capture only incomplete images of the persons recorded and would be difficult to implement.

72. On the subject of restricting the use of force during deportation operations, the recommendations of several bodies, including the Vermeersch Commissions and the Inspectorate General of the Federal and Local Police, are now taken into account. Emphasis is placed on an effective and humane approach: policies and specific measures are adopted concerning procedures for the selection and training of support staff, communication with the deportee and on-board personnel, and the use of restraints. Prior to the preparation and execution of deportation operations, a risk analysis is carried out under the supervision of police administrators (in addition to the oversight provided by the Inspectorate General). A fresh analysis is undertaken after completion of an operation, and procedures/training may be adapted as a result. A specific procedure[61] has been developed for reporting or dealing with incidents that may arise. In addition to external oversight (Committee P, Inspectorate General and the judicial authorities), there is also internal oversight, notably in the form of the disciplinary procedure.[62] For the past seven years, a regular annual report of complaints and/or incidents potentially linked to expulsion has been submitted by the Police to the Inspectorate General. Given that no major incident has occurred in the course of an

expulsion since 2008, it can be inferred that the training and briefings provided have been effective. It should be recalled that police officers are trained in the specific features of this assignment through an extensive practical module, including a real-life simulation, and are made more familiar with respect for human rights and for the vulnerability of foreigners subject to expulsion. As a result, they have developed genuine expertise in this area, enabling them to perform their duties in accordance with the Police Force Code of Ethics and with internal instructions. The establishment of the SEFOR service of the Immigration Office (public awareness, processing and return) has resulted in an increase in the number of voluntary returns. Failing these, forced returns are carried out.

Paragraph 19 of the list of issues

73. The concept of "safe third country", as referred to in article 38 of Directive 2013/32/EU, was transposed into Belgian law pursuant to the Act of 21 November 2017, during the reform of the aforementioned Act of 15 December 1980. The Act was published in the Official Gazette on 12 March 2018 and entered into force on 22 March 2018. However, this concept has never been applied in practice.

74. As mentioned in CAT/C/BEL/3 (p. 17, para. 55), the Immigration Office always applies the principle of non-refoulement in cases involving the removal of foreign nationals. The bodies that decide on applications for international protection, namely the Office of the Commissioner-General for Refugees and Stateless Persons (CGRA) and the Council for Alien Law Litigation, also take into account the principle of non-refoulement.

Paragraph 20 of the list of issues

75. The principle of non-refoulement is an absolute principle and one that is always taken into account by the Belgian authorities when considering a case involving removal or extradition.

76. Under article 74/17 of the aforementioned Act of 15 December 1980, the expulsion of foreigners residing without authorization may be temporarily postponed if the removal/expulsion decision exposes them to a breach of the principle of non-refoulement. If the Office of the Commissioner General for Refugees and Stateless Persons delivers an opinion[63] indicating that there is a risk of a serious violation of human rights under the articles pertaining to refugee status[64] or subsidiary protection,[65] expulsion can take place only pursuant to a reasoned and detailed decision by the minister or his representative indicating that the opinion is no longer valid. In addition, the Council for Alien Law Litigation oversees expulsion decisions. When, as a matter of extreme urgency, a foreigner makes an application[66] to the Council's president, the latter closely reviews all the evidence, especially evidence that might indicate the risk of a violation of human rights, including the prohibition of torture and inhuman or degrading treatment. In view of these requirements, diplomatic assurances are never used to expel a foreigner who is residing in Belgium without authorization.

77. Article 2 bis of the Act of 15 March 1874 on extradition provides that an extradition cannot be granted if there are serious risks that the person concerned would be subjected, in the requesting State, to a flagrant denial of justice, to torture or to inhuman or degrading treatment. In the event of doubt concerning the respect for human rights in the destination country, its authorities may be contacted, possibly leading to a request that they provide explanations and/or written pledges. To date, such assurances remain exceptional and are not intended to override the principle of non-refoulement but rather to obtain accurate and up-to-date information on the existence of a genuine risk in the requesting State. In some cases, they make it possible to know the specific rules of law that will be applied to an individual. Moreover, there is nothing to prevent follow-up monitoring – such as by a liaison judge or law officer in the requesting State who can monitor the situation of the extradited person. In addition, as part of recognition proceedings, respect for human rights is ensured through an automatic review by the pretrial chamber and the indictments chamber, possibly giving rise to a review on appeal. In addition, ministerial orders for extradition may be suspended or revoked by the Council of State (procedure in an extremely urgent case, with proceedings for annulment). Finally, if it is not possible to extradite an individual, the authorities may bring proceedings against him or her in keeping

with the principle of *aut dedere aut judicare* or, in the case of a prior conviction, they may enforce, in Belgium, any sentence handed down.

Paragraph 21 (a) of the list of issues

78. In January 2018, 1,893 applications for international protection were filed.

79. In 2017, 19,688 applications for international protection were filed. The five principal countries of origin were Syria, Afghanistan, Iraq, Guinea and Albania. A total of 20,568 applications (involving 26,623 persons) were decided. In 50.7 per cent of cases, the decisions were positive, (9,931 decisions involving 13,833 persons); in 38.7 per cent of those decisions refugee status was granted and in 12 per cent subsidiary protection status. The three principal countries concerned were Syria, Afghanistan and Iraq. In 9,862 cases, the decisions were negative (including exclusion from and cessation and withdrawal of status).

80. In 2016, 18,710 persons filed applications for international protection. The five principal countries of origin concerned were Afghanistan, Syria, Iraq, Guinea and Somalia. A total of 22,207 applications were decided (involving 27,678 persons). In 57.7 per cent of cases, the decision was positive (12,089 decisions involving 15,478 persons); in 45.8 per cent of those decisions refugee status was granted and in 11.9 per cent subsidiary protection status. The four principal countries concerned were Syria, Iraq, Somalia and Afghanistan. In 10,667 cases, the decisions were negative (including decisions relating to exclusion from and cessation and withdrawal of status).

81. In 2015, 35,476 applications for international protection were filed, mainly by nationals of Syria, Iraq and Afghanistan. Protection status was granted in 60.7 per cent of decisions rendered (8,122 decisions involving 10,783 people). In 50.5 per cent of cases, refugee status was granted and in 10.2 per cent subsidiary protection status was granted. A total of 29.1 per cent of applications (448 decisions) were refused (including decisions relating to exclusion from and cessation and withdrawal of status).

82. In 2014, 17,213 persons filed applications for international protection. The Office of the Commissioner General for Refugees and Stateless Persons granted protection status in 46.8 per cent of decisions (6,146 positive decisions out of a total of 13,132 decisions on the merits). The five principal countries of origin concerned were Afghanistan, Syria, Iraq, Guinea and Russia. In 6,986 cases, or 53.1 per cent, the decisions were negative (including exclusion from and cessation and withdrawal of status).

83. In 2013, 15,840 applications for international protection were filed. The Office of the Commissioner General for Refugees and Stateless Persons granted protection status in 22.8 per cent of decisions (343 positive decisions out of a total of 1,505 decisions on the merits). The five main countries of origin were Afghanistan, Guinea, the Democratic Republic of the Congo, Russia and Syria. In 1,035 cases, or 68.7 per cent, the decisions were negative (including revocations, cessations and withdrawals).

84. The Office of the Commissioner General for Refugees and Stateless Persons does not disaggregate data on the basis of religion.

85. Further details may be found in annexes 8 and 8 bis.

Paragraph 21 (b) of the list of issues

86. There are no disaggregated data on the number of asylum seekers whose requests were granted on grounds of torture.

Paragraph 21 (c), (d) and (e) of the list of issues

87. Data on refoulements and returns (voluntary and forced) may be found in annex 9.

Articles 5, 6, 7, 8 and 9

Paragraph 22 of the list of issues

88. Since 2012, Belgium has not had to reject a request for extradition by another State in respect of an individual suspected of having committed an offence of torture.

Paragraph 23 of the list of issues

89. No extradition treaties have been concluded between Belgium and other States since 2012.

Paragraph 24 of the list of issues

90. Since 2012, treaties on mutual judicial assistance in criminal matters concluded between Belgium and China,[67] Brazil,[68] and South Korea[69] have entered into force. They have not resulted in the transfer of evidence relating to proceedings regarding torture or ill-treatment.

Article 10

Paragraph 25 of the list of issues

91. With regard to training programmes on the Convention aimed at ensuring that Belgian State officials are familiar with the absolute prohibition of torture, please refer to the previous report (CAT/C/BEL/3, para. 13). A number of developments may be noted.

92. With regard to the training of police personnel, please refer to the reply above to the issues raised in paragraph 12 (b).

93. Further to the information provided in the previous report, the training course provided for prison personnel on the internal legal status of inmates deals explicitly with the prohibition of torture, with reference being made to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. All new prison staff attend this course. Other staff members may also take the course, which is particularly popular. In most other training programmes, the issue is dealt with more indirectly, from a human rights perspective.

94. As has been already mentioned, human rights courses form part of the basic course requirements for law students in all Belgian universities. Human rights issues are also a key feature of most training courses offered by the Judicial Training Institute. The courses offered to judicial officials have been supplemented by online training courses run in collaboration with the Council of Europe HELP programme.[70] These courses are available in the Judicial Training Institute's digital library.[71] Belgium is also serving as a pilot country for a distance learning course that covers the main provisions of the European Convention on Human Rights (including article 3 on the prohibition of torture) and jurisprudence on asylum and the protection of refugees.[72]

95. New rules relating to training courses on coercive measures have been drafted for security personnel of closed facilities and Bureau T (the Immigration Office department responsible for the transport of foreign nationals).[73] The general principle is that on joining the prison service, all new staff are required to attend a basic training course of at least three days' duration during which both theoretical and technical aspects of the use of restraints are covered. The course focuses on legal and regulatory aspects of the use of restraints and the techniques required, including preventive measures and conflict management. This is followed by an annual refresher course of at least three hours, during which the above points are reviewed and put into practice. These courses are delivered by an instructor from the Immigration Office as part of an aggression management training programme, consisting of three modules on preventing aggression, managing aggression and intercultural communication. Some staff members receive training on how to take account, where appropriate, of a person's state of vulnerability. Under internal procedures, specific instructions may be given to staff, if necessary.

Paragraph 26 of the list of issues

96. In Belgium, as a general rule, the prison administration is required to immediately report any act of ill-treatment committed by a staff member.[74] If criminally punishable behaviour is detected or reported, the public prosecutor's office is immediately notified for investigative and prosecutorial purposes. At the same time, a disciplinary case is opened by the prison authorities. The administration applies an absolute zero-tolerance policy.

97. Awareness-raising on the detection and reporting of ill-treatment forms part of the basic training received by security personnel of detention centres for foreign nationals in an irregular situation and police and prison personnel. All such staff are trained on the legal and regulatory aspects of the use of restraint and respect for fundamental rights. Refresher courses are also provided (see in particular CAT/C/BEL/CO/3/Add.1, paras. 32 to 38). Annex 10 provides some examples of training courses given to personnel who come into contact with applicants for international protection.

98. Regarding medical personnel who provide care to persons deprived of liberty, please refer to the information included above in the reply to the issues raised in paragraph 10.

Paragraph 27 of the list of issues

99. To date, Belgium has not developed any specific methodology for directly assessing the effectiveness of training programmes in reducing the number of cases of torture and ill-treatment and the results of those programmes. However, some training assessment activities indirectly meet this objective (see above, replies to the issues raised in paras. 25 and 26).

Paragraph 28 of the list of issues

100. Concerning the steps taken to include an absolute prohibition of torture in the Police Service Code of Ethics, the Belgian State refers the Committee to the information contained in its previous periodic report (CAT/C/BEL/3, reply to the issues raised in para. 17).

Article 11

Paragraph 29 (a) of the list of issues

101. In the last few years, Belgium has actively begun tackling the problem of prison overcrowding and improving conditions of detention. Various measures have been taken to reduce the prison population, increase prison capacity, replace dilapidated prisons and encourage the use of alternatives to detention. Following the 2008 and 2012 Master Plans, a Third Master Plan was adopted in November 2016 with a view to ensuring that detention is carried out in humane conditions.[75] It takes account of four key factors: the construction of new prisons, the expansion of existing prisons, prison refurbishment and the development of policies regarding alternatives to detention (for example, detainees nearing release may be transferred to low-security institutions and provided with support to help with their reintegration). As part of this effort, three new prisons (Beveren, Leuze-en-Hainaut and Marche-en-Famenne), each with 312 places, have been built, as have two forensic psychiatry centres (one in Ghent and one in Antwerp). All these institutions have the infrastructure required for optimal detention or confinement conditions. In addition, it should be noted that Belgium has also terminated the lease of the Tilburg prison in the Netherlands and has partially closed the Merksplas and Forest prisons for reasons of building security.

102. Several prison policy initiatives have also been taken. Through closer collaboration with the Immigration Office, there has been a significant increase in the number of expulsions of convicted foreigners residing without authorization in Belgium. Steps have been taken to facilitate the use of electronic monitoring for persons carrying out a short-term sentence, bringing the total number of convicted persons serving their sentence under electronic surveillance to 1,700. Specific measures have also been taken to reduce the number of internees held in prisons (see below, replies to the list of issues raised in para. 32).

103. Measures have been taken to promote alternatives to detention. As far as pretrial detention is concerned, in addition to conditional release or release on bail, the Act of 27 December 2012 allows judges and the investigating courts the possibility, at any time, to decide to enforce electronic monitoring.[76] Also worth noting is the Act of 23 March 2017 on mutual recognition between States of decisions concerning the use of control measures as an alternative to pretrial detention.[77] With regard to penalties, in addition to the penalty of community service,[78] two new autonomous penalties have been created: placement under electronic monitoring and probation as a separate penalty.[79] The Act of 2 February 2016 amended the Act of 29 June 1964 on deferral, suspension and probation, in order to bring it into line with the new penalties, by excluding the possibility of granting a suspended alternative sentence and relaxing the rule concerning the defendant's criminal record, which means that a sentence whose enforcement may be suspended on probation cannot be granted to a person who has already been sentenced to a prison term of more than 3 years (previously 12 months). By increasing the possibilities for trial judges to impose a penalty other than imprisonment, these new options pave the way for a reduction in the use of detention. Other initiatives are under way to reduce the use of pretrial detention (conditions for its application and length) and the granting of short prison terms. A new Sentence Enforcement Code, as well as a new Criminal Code with revised penalties and penalty categories, are currently under discussion.

104. The total prison population decreased from 11,854 inmates on 15 April 2014 to 10,310 on 21 February 2018. The aim is to reduce it to fewer than 10,000 prisoners, while at the same time further increasing prison capacity, in accordance with the new Master Plan (see annex 11, current projects). The prison overcrowding rate has declined from nearly 25 per cent in June 2013 to 12 per cent in March 2018.

Paragraph 29 (b) of the list of issues

105. The complete elimination of inter-prisoner violence is probably unrealistic, but an effort is made in prisons to limit this risk by taking practical steps, such as the allocation of cells on the basis of criteria aimed at ensuring improved relations between prisoners. Detention regimes that are more open have also been introduced in some prisons (for example, at Marche-en-Famennes), which may have an impact on the general atmosphere within those institutions. The prison authorities avoid, where possible, placing smokers and non-smokers together and seek to group together inmates of the same nationality/speaking the same language, members of the same family, etc.

Paragraph 29 (c) of the list of issues

106. Persons in pretrial detention and persons serving prison sentences are subject to differing prison regimes and are kept in separate wings, or separate facilities altogether. This general rule may be waived at the express request of the person being held in pretrial detention.[80] Minors who have committed an act characterized as an offence are placed in a public youth protection institution, which are under the authority of the Communities. Referral orders may be issued, on an exceptional basis, for young people between the ages of 16 and 18 years.[81] They are placed in a public youth protection institution or in a detention centre in accordance with article 606 of the Code of Criminal Procedure. In the event they are sentenced to a principal or supplementary penalty of imprisonment, they serve their sentence in a correctional wing. There are three circumstances in which they may nevertheless be placed in an adult prison: (1) they are 18 years old or older, and there are not enough places at a public youth protection institution at the time of their placement or subsequent to it; (2) they are 18 years old or older and are causing serious problems or are endangering the safety of other young people or staff members; and (3) they are 23 years old or older.

Paragraph 29 (d) of the list of issues

107. The Coalition Agreement of October 2014 provides for the introduction of guaranteed service during prison strikes in order to safeguard the fundamental rights of inmates. In July 2017, a public statement on this issue was made by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or

Punishment. The Government plans to introduce a legislative initiative that is also aimed at increasing the level of qualified staff in prisons. There are plans to introduce legislative initiatives with a view to redesigning the staffing framework, which will allow for the proper execution of pretrial detention measures and prison sentences by ensuring a better match between the recruitment of staff members and the needs of the facility.

Paragraph 30 of the list of issues

108. Pursuant to article 108 of the Act of 12 January 2005 concerning the principles of the administration of prison establishments and the legal status of detainees, ("Principles Act", commonly known as the "Dupont Act"), body searches may be conducted to check whether a prisoner is in possession of any prohibited or dangerous substances or objects. Under the Act, prisoners may be required to remove their clothing in order for a visual search of their body and its orifices and cavities to be conducted.

109. Constitutional Court Order No. 143/2013 suspended article 108 (2) (1) of the Principles Act,[82] which provides for systematic body searches of all detainees upon admission to prison; prior to placement in a secure cell or confinement in a punishment cell; and following a visit by a family member in a room not fitted with a transparent wall separating visitors from detainees.

110. Consequently, body searches can no longer be conducted unless authorized by the director, in whose opinion there are indications that a pat-down search in that particular instance would be insufficient. Such body searches must be conducted in a closed space, not in the presence of other prisoners, and must be carried out by at least two members of the prison staff who are of the same sex as the prisoner. Clothing searches and body searches must not be conducted in a vexatious manner but rather must be carried out with respect for the dignity of the prisoner. In addition, prisoners may be subject to the search of their clothing whenever deemed necessary for the maintenance of order or security. The conditions under which searches can be conducted are reproduced in Joint Letter No.141 of 30 January 2017 (see annex 12).

Paragraph 31 of the list of issues

111. Efforts to bring about the full entry into force of the "Principles Act" continue to be made.[83] The prison oversight bodies (Central Supervisory Council/local commissions), which were previously under the supervision of the Federal Public Service for Justice, will be transferred to Parliament in order to strengthen their independence.[84] This is an essential step in the entry into force of articles of the law concerning the right of complaint. The aim is to strengthen the effectiveness of these bodies (which are composed of citizens). The process for handling complaints will be changed in order to make it more flexible. In the meantime, these bodies continue to exercise their original responsibilities.[85] In order to accomplish the transfer of responsibilities, legislative amendments and a royal decree are under discussion and are expected to be adopted in the near future. The provisions relating to the Central Supervisory Council and those relating to the supervisory commissions are being dealt with through the legislative process currently under way.

Paragraph 32 of the list of issues

112. Internees are individuals who have been tried for perpetrating or attempting to perpetrate an act defined as an offence but who are not held responsible for it because they have a mental disorder. They are not sentenced to a penalty but are instead subject to a protection measure whose purpose is to protect society and at the same time ensure that they are provided with the proper care for their condition so that they can be reintegrated into society. In some cases, internees may be kept in secure facilities when they are considered to pose a danger to themselves or others.

113. Internee case management is currently undergoing a major reform that is aimed at taking internees out of prisons under the federal authority's 2007 and 2009 multi-year detention plans, 2008, 2012 and 2016 Master Plans, and the Act of 5 May 2014 on the detention of persons that replaced the Social Protection Act.[86] The reform is based on the care trajectory concept (*trajet de soins*), whereby internees are placed in and transferred

from one case management system to another (non-custodial secure facilities, open facilities or facilities offering only day reception), depending on the status of their mental condition.[87]

114. The reform has resulted in the adoption of the following measures – some of which are ongoing:

- The creation of 876 places to facilitate access by internees to the conventional care sector (mental health). A further 240 places are planned under the 2016 Master Plan in order to facilitate access by internees to the conventional care sector (mental health). Of those 240 places, 132 have already been created.
- The establishment of forensic psychiatric centres: 446 places have been created and a further 500 are planned (over 250 places resulting from the reorganization of the "Les Marronniers" regional psychiatric centre).
- The creation of places in long-term forensic psychiatric care facilities: 120 places are planned through the establishment of a new long-term forensic psychiatric care centre (over 120 places resulting from the reorganization of the "Les Marronniers" regional psychiatric centre).
- Measures to assist the implementation of the care trajectory programme in order to facilitate access by internees to conventional and regular care.

115. The Act on internment provides for a number of major changes: (1) it redefines the criteria for internment, limiting the type of offences to attacks against, or threats to, the physical and mental integrity of third parties; (2) it facilitates the determination of the initial diagnosis; (3) it replaces the social protection commissions with permanent social protection boards that have exclusive authority to supervise internees' cases and are made up of a presiding judge, two assessors, one specializing in social reintegration and the other in clinical psychology; and (4) it specifies the types of institutions where internees may be placed .

116. Regarding the implementation of the Act, the social protection boards are operational, and two administrative orders on victims' rights and one on the specific components of the electronic monitoring/limited detention programme have been adopted.[88] Other executory decisions are being prepared, including a royal decree on a model forensic psychiatry expert's report (art. 5) and an administrative order to determine the non-medical costs of placement in an external facility (art. 84). The opening of an observatory (arts. 6 and 136 (1)) is planned for 2020. Lastly, a number of agreements on placement (art. 3 (5)) are to be concluded between the parties.

117. The federated entities with competence over mental health have also adopted policies that are in keeping with the above-mentioned care trajectory concept.

118. Several more years will be required to implement this ambitious reform. Nevertheless, it is already showing significant results: in 2013, there were 1,139 internees in prison facilities – including social protection units and the Paifve social protection institution intended specifically for internees who come under the Federal Public Service for Justice. By 21 February 2018, the figure had fallen to 561 internees, of whom 189 were in the Paifve social protection institution.

119. Prisoners not being held as internees are also entitled to mental health care. Such prisoners are seen within the first 24 hours of their admission by a general practitioner, who refers them to a psychiatrist if they have psychiatric problems or have been a patient in a psychiatric hospital. They are entitled at all times to consult the general practitioner and the nurses of the medical service. Whenever necessary, the general practitioner refers them to the psychiatrist. Prison staff may also call the medical service if they notice strange or inexplicable behaviour in a prisoner. Additionally, the psychosocial services and the Communities can provide support. In the Flemish prisons, for example, inmates with psychological or psychiatric problems can receive support at their own request.

120. The gradual reduction of internees in prisons has a positive effect on other inmates with psychiatric problems, since the allotted resources can gradually be redirected towards those inmates. Lastly, as part of the Master Plan III, the Paifves facility will become a

conventional detention centre, but will retain its staff. It will therefore have valuable experience in attending to prisoners who are not internees but who suffer from a mental disorder.

Paragraph 33 of the list of issues

121. With regard to applicants for international protection, reference is made to the previous report (CAT/C/BEL/3, p. 19, paras. 66–67). According to the Dublin procedure, such applicants may be detained for six weeks – the length of time (which is not extendable) needed to determine the State responsible for their application. If Belgium is not responsible for examining their application, applicants may be detained for the time strictly necessary to carry out the transfer, provided that the duration of detention does not exceed six weeks (not including the previous detention for determining the member State responsible).[89] This law was amended on 21 November 2017 so as to bring it into line with Regulation (EU) No. 604/2013. It should be noted that the conditions for detention set forth in this regulation were already being met in practice. Accordingly, before anyone can be held in detention, he or she must be considered to pose "a significant risk of absconding".[90]

122. With regard to applicants for international protection whose application Belgium is responsible for examining, article 8 (3) of Directive 2013/33/EU lists five grounds for detention: (a) in order to determine or verify the identity or nationality of the applicant; (b) in order to determine those elements on which the application for international protection is based and which could not be obtained in the absence of detention, in particular when there is a risk of absconding of the applicant; (c) in order to decide, in the context of a procedure, on the applicant's right to enter the territory; (d) when the applicant is detained subject to a return procedure under Directive 2008/115/EC, in order to prepare the return and/or carry out the removal process, and the member State concerned can substantiate on the basis of objective criteria, such as the fact that the applicant already had the opportunity to access the asylum procedure, that there are reasonable grounds to believe that the applicant is making the application for international protection merely in order to delay or frustrate the enforcement of the return decision; (e) when protection of national security or public order so requires.

123. Articles 74/5 (1) (2) and 74/6 (1 bis) of the Act of 15 December 1980 set out several grounds for detaining applicants for international protection during the processing of their application. Only those grounds for detention that are consistent with article 8 (3) of Directive 2013/33/EU are implemented in practice. The law will soon be amended to bring it into conformity with Directive 2013/33/EU.

124. With respect to conditions of detention, the Royal Decree of 8 May 2014 amending the Royal Decree of 2 August 2002 establishing the operational procedures and rules applicable to places located in Belgian territory run by the Immigration Office where an alien may be held, placed at the disposition of the Government or accommodated, pursuant to the provisions of article 74/8 (1) of the Act of 15 December 1980, introduced individual rooms to the existing group and custom arrangements so as to enable the special wing of the closed centre for illegal foreign nationals in Vottem to open.[91] In 2015, residential block III of the Merksplas Centre was completely renovated in order to gradually abolish its large-scale communal living arrangement. The new facility consists of four separate self-contained units, each with four rooms for four persons (instead of dormitories). The aim of this new concept is to give residents more privacy.

125. Two types of alternatives to detention have been established to prevent the detention of families with minor children, namely home supervision under contract with the authorities and accommodation in individual "return houses" (*maisons de retour*).[92] Since 2015, families that are unlawfully resident in Belgium who can sustain themselves may reside at home, subject to certain conditions and to sanctions in the event of non-compliance.[93]

126. Since 2009, families with minor children who are required to leave Belgium are no longer lodged in closed centres. Families unlawfully resident in Belgium who are subject to a removal decision and those refused entry at the border who have been notified that they

are subject to a detention decision are lodged in return houses and receive the assistance of a counsellor.[94] There are currently 28 such housing units distributed among five locations.

Paragraph 34 of the list of issues

127. The Belgian State's sixth reform transferred a large part of the authority for the protection of young people from the federal State (Justice) to the Communities. This transfer actually took place on 1 July 2014 (for details, see the common core document). The use of referral orders now lies within the authority of the Communities, but so long as the Communities do not enact legislation in this area, the federal law remains applicable (see above, replies to the issues raised in para. 29 (c)).[95]

128. A number of decisions were set forth in the Coalition Agreement of the Flemish Government 2014–2019. These will be reflected in a decree that is currently under discussion. In particular, a decision was made to develop a new youth law that prescribes measures allowing for the gravity of the offence and the minor's level of maturity, while at the same time respecting the principle of proportionality. This decree is based on multidimensional and individualized responses to offences that place special emphasis on reparation: it provides for complementarity and harmonization between youth assistance and offender case management through the adoption of flexible approaches and public-private partnerships, together with quality standards and appropriate procedural safeguards for youth offenders. It maintains the possibility of referral orders for offenders who are at least 16 years of age but makes the conditions for doing so more stringent.[96] Lastly, the De Grubbe youth institutes in Everberg and Tongeren (previously federal) are to be incorporated into the public youth protection institutions (Communities), while the population of the De Wijngaard closed centre in Tongeren (youth between the ages of 16 and 23 years who have been subject to a referral order) is also to be included in the Flemish bill.

129. The French Community Decree of 18 January 2018 containing the Code on Prevention and Youth Assistance and Protection provides that the youth court may relinquish jurisdiction (refer a minor to the criminal courts), but it makes the conditions for doing so more stringent in order to adhere more closely to the overall philosophy of youth protection by referring minors only in cases where such measures have been shown to be inadequate. The courts can therefore relinquish jurisdiction only if the minor has already been held for a prior offence under a closed regime in a public youth protection institution and is being prosecuted for a serious violent crime. Added to the offences covered by the above-mentioned Act of 8 April 1965 are serious violations of international humanitarian law and terrorist acts punishable by a term of imprisonment of at least 5 years. In addition, the irreversibility of referral orders has been revoked, given that the protective approach of the system is to assume that any offence committed by a young person, even if it has been subject to a referral order, deserves to be examined by a youth court in order to avoid, as far as possible, bringing to bear the force of the criminal law.

Paragraph 35 of the list of issues

130. Belgium refers to its official response to the visit of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment in 2013 to the Forest Prison, made on 31 March 2016,[97] and the response to the 2005 visit to the Andenne Prison, made in 2006.[98] With regard to prison policy recommendations of a structural nature, the Belgian State refers the Committee to its replies above to the issues raised in paragraph 29.

131. In addition, Belgium wishes to highlight the following points: the situation of Forest Prison today is completely different from what it was at the time that the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment was drafted. The prison has become a detention centre for convicted persons, the C and D wings have been closed and internees have been transferred to the Saint-Gilles Prison, and the capacity of the facility has been reduced to 180 places. As this capacity may not be exceeded, overcrowding is no longer possible at Forest Prison. In order to limit the negative effects of obsolete infrastructure, a specific "open-door" regime has been

established. This means that inmates have great freedom of movement within the prison and may leave their cell as they please during the day.

132. As regards the Andenne Prison, Belgium refers to the "Working Differently" project. The project is intended to allow prison facilities to continue functioning as normal in a context of budgetary savings and staff reductions. Specifically, all procedures relating to work, the prison regime, and working hours, etc. have been adjusted to align needs and capabilities.

Articles 12 and 13

Paragraph 36 (a) of the list of issues

133. In the case of Jonathan Jacob, on 25 June 2015, the Criminal Court of Antwerp convicted 9 of the 11 defendants: the psychiatrist and the director of the psychiatric centre each received a six-month suspended prison sentence for culpable non-intervention, the seven members of the response team each received a four-month suspended prison sentence and a fine of €275 for manslaughter. In February 2017, the Antwerp Appeal Court upheld the conviction of the two physicians and increased the penalties against the police officers: a nine-month suspended sentence and fine of €275 for the team chief and a six-month suspended sentence and fine of €275 for each of the other six police officers. The Court found that there could be no doubt that the team's intervention led to Jonathan Jacob's death. According to the Court, the police officers carried out their work blindly, without considering other options appropriate to the circumstances: all police officers must be able to assess for themselves whether or not violence is appropriate. By decision of the competent authorities, no disciplinary proceedings were initiated against the individuals concerned. As leave to appeal in cassation was not granted, the judgment is final at the national level.

134. Following the death of J. Jacob, Committee P issued a report on specialized intervention units in early 2014, in which it was recommended that "a ministerial circular should be drafted containing a clear reference framework for such 'specialized intervention units' defining all the tasks reserved for the directorate of special units and the conditions (delimitation of tasks, operating principles, selection standards, instruction and training, means and methods of deployment) under which local police forces may establish units". In response to the recommendation of Committee P, on 21 July 2014 the Minister of the Interior adopted ministerial circular GPI 81 on the general reference framework for special assistance units within local police forces. In 2016, Committee P issued a report on the follow-up given to the recommendations made in 2014 regarding specialized intervention units of the integrated police force. In addition, Committee P launched an investigation to identify the problems that occur in practice during police interventions involving persons with mental problems and/or other medical problems. During discussions held in this connection, a number of questions were raised regarding the relations between the police and persons with mental illnesses, an issue which Committee P considered worth further examination. Committee P finalized its report entitled "The police and persons with mental illnesses – position regarding some legal questions that have arisen in practice" in late 2016. All the aforementioned reports are available on Committee P's website.[99]

Paragraph 36 (b) of the list of issues

135. With regard to the measures taken to ensure the prompt, thorough and impartial investigation of complaints against law enforcement personnel, the prosecution of those responsible and the punishment of perpetrators, attention is drawn to the detailed explanations provided to the Committee in November 2014[100] regarding the oversight and monitoring body of the police service[101] and to the replies below to the issues raised in paragraph 37.

Paragraph 37 of the list of issues

136. Statistics relating to ill-treatment by police officers (during detention, police interventions and/or arrest) are set out in three tables in the annex:[102] (1) complaints

regarding such acts, submitted directly to Committee P between 2005 and 2015; (2) the number of judicial inquiries conducted by the Police Investigation Service into such acts between 2005 and 2015;[103] (3) criminal convictions of police officers for such acts between 2009 and 2014[104] – some examples of which are provided in annex 14.[105]

137. As part of its analysis of the judgments and rulings sent to it under article 14 (1) of the Organic Act of 18 July 1991, Committee P engages each year in an in-depth review on a particular theme. In its 2012 report,[106] it focused on court decisions sent to it between 2009 and 2012 concerning police violence, which accounted for 91 out of 693 decisions. The decisions concerned 168 police officers (142 inspectors), of whom 45 were disciplined (nearly 27 per cent). It was concluded that there was sufficient evidence of police violence in 39 of the 91 cases. Of these, a deferred sentence was handed down in 23 cases, a totally suspended prison sentence in 5 cases, a partially suspended prison sentence in 6 cases, a six-month prison sentence (criminal record) in 1 case, a sentence of community service in 1 case and a guilty verdict (violation of reasonable time limit) in 3 cases.

138. The number of case files relating to allegations of police violence processed by the individual investigations department of the Inspectorate General of the Federal and Local Police are as follows: 127 in 2011, 95 in 2012, 89 in 2013, 87 in 2014, 92 in 2015 and 104 in 2016. These figures represent 13 per cent of the cases dealt with by the Inspectorate General and do not include the aforementioned cases, which were initiated or processed by Committee P or by the internal control services of the police districts and the Federal Police.

139. With regard to disciplinary sanctions (light,[107] heavy without[108] or with[109] expulsion from the police force) against police officers for ill-treatment of detainees (from the outset of deprivation of liberty prior to placement in a cell), attention is drawn to the Police Disciplinary Board table (1 July 2012 to 2016) contained in annex 13.

140. Finally, it is worth noting the decision of the Court of Cassation of 24 March 2015,[110] which rejected the appeal of a 26 June 2014 decision of the Brussels Appeal Court[111] on the following grounds:

- Pursuant to article 3 of the European Convention on Human Rights, if a person is a victim of violence while in custody or in detention, there is a strong factual presumption of responsibility on the part of the authorities – thus, in the absence of a plausible explanation, the offence is deemed to be established. According to the Court of Cassation, it does not follow that the judge must recognize the victims' statements as credible and reject those of the suspects; in fact, the Appeal Court indicated why it found the statements (defendants, plaintiff, other arrested persons and other witnesses, including neutral police officers) plausible or implausible, following a careful examination and confrontation of these individuals;
- The State's procedural obligation to conduct an effective official investigation, also pursuant to article 3 of the European Convention on Human Rights, is an obligation of means, not an obligation of result; the Appeal Court found the investigation to be exhaustive, given that all official measures needed to establish the facts had been carried out and that there were no further measures that could reasonably be imposed to identify the detectives who had transported the plaintiff to the hospital;
- The right to a fair trial, which is protected under article 6 (1) of the European Convention on Human Rights and article 14 (1) of the Covenant, does not require judges to respond in detail to each argument – it suffices for them to state the reasons for their decision so that the party claiming damages can understand it.

141. Criminal proceedings[112] and/or disciplinary proceedings[113] may be brought against prison staff suspected of having perpetrated acts of violence or ill-treatment against detainees. Criminal complaints (lodged by victims and, in some cases, filed by the Federal Public Service for Justice) relating to statutory civil servants have the effect of suspending any disciplinary procedures. Examples of disciplinary sanctions that have been handed down (since 2009) against prison staff for physical and psychological abuse of detainees are included in annex 13.

142. Regarding holding centres for migrants, the Royal Decree of 7 October 2014[114] provides that the proceedings before an independent complaints commission are to be supplemented by an internal complaints procedure before the director of the centre or his/her deputy (amendment to art. 129 of the Royal Decree).

143. From 2014 to 2016, the Permanent Secretariat of the Complaints Commission received a total of 75 complaints, many of which were of a practical or less serious nature (concerning transfers, disputes with staff, loss of personal property, use of mobile phones, room allocation, etc.). Such complaints are always considered in the light of the Royal Decree of 2 August 2002 and the Ministerial Order of 23 January 2009.[115]

144. Only three of the complaints examined on the merits by the Commission could be linked to excessive violence/ill-treatment.

- One complaint concerning placement in solitary confinement was considered to be partially substantiated, but following appropriate action by the centre's directorate, it was deemed irrelevant.
- One complaint concerning placement in a separate room for a morning transfer, so as not to disturb the sleep of others was considered to be partially substantiated, and the Royal Decree will be revised in favour of the residents.
- One complaint (use of restraints, temporary placement in solitary confinement) was found to be unsubstantiated. The use of restraints and law enforcement measures proved to be indispensable in this particular case. The facts of the case were not contrary to any provision of the Royal Decree.

145. Consequently, there are no complaints in which there are reasonable grounds to suspect that torture or inhuman or degrading treatment or punishment was perpetrated in the closed centre.

146. Statistics, disaggregated by year for the period 2014–2016 are contained in annex 13. The Permanent Secretariat of the Complaints Commission has no information on the age of complainants.

Paragraph 38 (a) of the list of issues

147. Belgium has no databanks that record the number of claims for compensation submitted by victims of ill-treatment or the amounts awarded to such victims, payable by those found culpable. Information can, however, be provided on the amounts awarded by the Commission for Financial Support for the Victims of Deliberate Acts of Violence and for Voluntary Rescuers in cases of ill-treatment since June 2013.[116] These amounts are set out in annex 15.

Paragraph 38 (b) of the list of issues

148. The Belgian system places a strong emphasis on victims. Information on victims' rights, the mechanisms established to ensure that victims are provided with care, support and assistance at all stages of the proceedings, the various possible forms of reparation and the role of the Commission for Financial Support for the Victims of Deliberate Acts of Violence and Voluntary Rescuers are to be found in the common core document (para. 132) and in reports submitted to the Committee on Enforced Disappearances (CED/C/BEL/1, paras. 274–280 and CED/C/BEL/Q/1/Add.1 paras. 86–108). Victims receive free and confidential support, regardless of whether or not they have filed a complaint. They are also provided with information on their rights and how to assert those rights. In addition, victims receive guidance in relation to their dealings with other social services or specialized assistance services.[117] Moreover, in criminal proceedings, victims enjoy various rights, such as access to the case file and the assistance of an interpreter and a lawyer. Victims are therefore provided with administrative, legal, emotional and psychological support. Furthermore, the establishment of a clear point of contact, together with the development of a comprehensive website, will help to ensure that victims benefit from an integrated approach.[118] This applies to victims of any offence, including ill-treatment.

149. All provisions contained in the aforementioned documents apply to victims of ill-treatment if the acts were committed on Belgian territory. Victims are treated equally, regardless of their nationality or that of the perpetrator of the acts. They may bring a civil claim for damages either before the Belgian criminal court hearing the proceedings or before a Belgian civil court (cf. common core document, para. 133 et seq.).

150. If the acts of ill-treatment were committed abroad, the Belgian judicial authorities can exercise their powers only within the limits set out in chapter II of the preliminary title of the Code of Criminal Procedure. When the jurisdiction of the Belgian criminal courts is established and exercised, victims may sue for damages in criminal proceedings (see common core document, para. 133 et seq.). There is no provision for financial assistance from the Commission for Financial Support for the Victims of Deliberate Acts of Violence and for Voluntary Rescuers when the act in question was committed outside of the national territory, except in the case of certain victims who have a special status, such as members of the operations division and the administrative and logistics division of the police force, referred to in article 116 of the Act of 7 December 1998 instituting an integrated, two-tier police force, or a Belgian national or a Belgian resident who is the victim of a terrorist attack. Apart from these specific cases, when the acts take place in other countries, the relevant competent authority of the State concerned is responsible for providing compensation comparable to financial assistance. Accordingly, victims are required to address a request to that authority. However, when the deliberate act of violence is committed on the territory of another European Union member State[119] and the complainant usually resides in Belgium, the victim may contact the Commission, who will assist him or her with the claim for compensation lodged with the competent authority of the State where the act took place.

Article 15

Paragraph 39 of the list of issues

151. The practice of torture is strictly forbidden in Belgian law. This prohibition derives not only from international instruments with direct effect in the domestic legal order (in particular article 3 of the European Convention on Human Rights and article 7 of the International Covenant on Civil and Political Rights), but also from articles 417 bis and 417 ter of the Criminal Code, which define the offence of torture. The last paragraph of article 417 ter provides that neither superior orders nor necessity can serve as justification for the offence of torture.

152. This gives rise to the absolute prohibition of the use of evidence obtained through torture or inhuman treatment. Both the academic literature[120] and case law[121] are unanimous in this regard. Indeed, evidence obtained in this manner fulfils two of the three criteria for the exclusion of unlawful evidence that are laid down in article 32 of the preliminary title of the Code of Criminal Procedure: the use of such evidence is manifestly contrary to the right to a fair trial, and the commission of such an irregularity automatically taints the reliability of the evidence.

153. Accordingly, in accordance with the case law of the European Court of Human Rights, there has never been any question in Belgian law of admitting evidence obtained by torture or ill-treatment. In the *El Haski* case (Application No. 649/08), which gave rise to the Court's judgment of 25 September 2012, the question was not whether the Belgian court could admit as evidence statements made under torture (it could not do so under any circumstances), but rather whether the statements taken into account by the court had been obtained in Morocco by means of treatment contrary to article 3 of the European Convention of Human Rights. The Court of Appeal had considered that not to be the case, but the European Court took a contrary view.[122]

154. Since the exclusion of evidence obtained through torture or ill-treatment is not called into question in Belgium, there are, to our knowledge, no examples of court decisions involving cases in which such evidence was admitted (in any case, any such decision would inevitably be criticized by the Court of Cassation).

Article 16

Paragraph 40 of the list of issues

155. In the exercise of their official duties, police officers may be required to use force, doing so in strict compliance with the terms contained in the relevant national and international normative frameworks. Their use of Taser/electro-muscular disruption devices must therefore be consistent with these basic principles. The legal and regulatory framework that authorizes police officers to employ force, including through the use of weapons (such as Tasers), has not been amended.[123] Belgium has taken the necessary steps to limit the purchase, carrying and use of Tasers. Only certain police units are legally authorized to use them. Moreover, the use of Tasers is subject to authorization by the Minister of the Interior, which is conditional on submission of a detailed and reasoned application and the possession of a specific licence obtained following special training in which police officers are taught to use this weapon and to provide assistance to victims. The cardiovascular risks associated with the repeated use of Tasers have been evaluated, and training in the use of Tasers, as well as in intervention techniques in the field, have been adapted to mitigate these risks in practice.

Paragraph 41 of the list of issues

156. Belgium takes a holistic approach to corporal punishment that encompasses prevention, penalization and family support and assistance. The Belgian State has, on numerous occasions, reiterated that several provisions under its civil and criminal law apply to corporal punishment: those defining the offences of bodily harm[124] and/or degrading treatment[125] with aggravating circumstances if committed against a minor by his or her parents or any other person having authority over him or her;[126] article 371 of the Civil Code;[127] and article 22 bis of the Constitution.[128]

157. Discussions to bring Belgian civil legislation into line with article 17 of the European Social Charter are now under way.[129] In fact, the prohibition of all forms of violence against children is consistent with developments in Belgian society and reflective of public opinion. The Committee of Ministers Resolution CM/ResChS(2015)12 of 17 June 2015[130] functions as a stimulus for the bill. Belgium shares the view of the Committee on the Rights of the Child that the use of violence as a child disciplinary measure is unacceptable in any circumstances. The goal would be to convey to parents and children that there are alternatives to the use of violence for disciplinary purposes. This prohibition is directed towards persons who hold parental authority, as well as legal guardians and other persons responsible for the care and upbringing of a child.

158. The Communities are empowered to prevent violence against children and to organize public awareness campaigns.[131] On 16 March 1998, the French Community adopted a decree on assistance to victims of child abuse. Its government then chose in July 1998 a general-category civil servant to coordinate activities related to this decree.[132] A new decree was adopted on 12 May 2004.[133] In July 2013, an intersectoral collaboration protocol, aimed at organizing the prevention of child abuse, was concluded. After the protocol was in force for a year and had been evaluated, an order was issued to improve its efficiency and to orient it more clearly towards implementing the decree. The order of 23 November 2016 has the following dual objective: to clearly delineate the sphere of action of efforts to coordinate prevention with a view to developing a cross-cutting programme; and to merge the programmes (the YAPAKA cross-cutting programme and those of each administration) into a coordinated triennial plan on the prevention of child abuse.[134] This plan has two target audiences: (1) the public at large and children, for whom the actions are intended to prevent child abuse, provide information about assistance and prevention services, and facilitate access to them; and (2) practitioners in the field (sports instructors, teachers, Birth and Childhood Office nurses, youth group leaders, etc.) for whom the initiatives are intended to provide information, raise awareness, provide training in identifying signs of risk, contextual factors and symptoms of abuse, and publicize the service network that is available to deal with confirmed or suspected situations of abuse. The aim of the YAPAKA website is to prevent child abuse by stimulating thought in an effort to help parents, educators and teachers avoid such abuse. The “Ecoute Enfants”

service, reachable by dialling the number 103, is a cost-free, anonymous helpline that is available every day from 10 a.m. to midnight for children and adolescents, and for adults dealing with young people in difficulty. At the other end of the line, a team of eight professionals – psychologists, social workers and crime experts – who are trained in hotline counselling are continually upgrading their skills in order to optimize the guidance they provide to young people (by means of meetings, workshops, conferences and presentation of the services, documentation and materials available, etc.).

159. With regard to prevention and victim assistance in the Flemish Community, the public can contact a help line (1712) (launched on 12 March 2012 at the initiative of the general welfare centres and the centres for abused children[135]) to request information, receive advice or be transferred (in cases of violence, abuse or harassment). The website at www.1712.be has a section for adults, one for children under the age of 13 years and one for those 13 years or older, with content and language adapted to the respective target audience (in keeping with the finding that the 1712 number was less well known among minors). A campaign has been launched to publicize the site. Posters have been distributed among children and young people in specific sectors, such as youth, culture, education and sport. This distribution is part of an ongoing process. Public awareness and information campaigns are carried out each year in order to make the 1712 number better known. Each campaign emphasizes a particular form of violence and/or targets a particular audience. The 2016 campaign was aimed at children and young people and included posters in schools and in the youth and sport development sectors. On 29 January 2016, a Flemish action plan for the promotion and protection of physical, psychological and sexual integrity of minors in the youth assistance, childcare, education, and sport and youth sectors was sent to the Flemish government; in it the ministers concerned undertake to prevent and eliminate violence against children. This plan has four components: (1) increasing and spreading knowledge; (2) supporting/raising awareness among the general public about protecting the physical/sexual/psychological integrity of minors; (3) identifying conduct that is appropriate and adapted to this issue, inappropriate conduct and child abuse in the sectors concerned; and (4) providing the necessary support/assistance to victims of such acts. The plan is being implemented gradually through the working group on integrity. In 2016 and 2017, emphasis was placed on scientific research, the development of a programme of action on knowledge and the sharing of expertise in peer-support initiatives. As part of this plan of action, work was also conducted with a view to setting up information points under the authority of the sporting and youth organizations.

160. The Decree of 19 May 2008 on youth assistance in the German-speaking Community provided for the establishment of a steering committee – including all relevant services – that is charged with planning in the areas of youth assistance and prevention. During biannual youth assistance forums, collaboration with other sectors, such as education and justice, is organized around the themes of children at risk or child victims. After the most recent forum in February 2017, a working group was established on the steps to take in responding to an emergency at school (cases of child abuse, etc.). The main objectives of the “Leuchtturm” (Lighthouse) working group, which was established in 2013, are prevention and increasing awareness among and educating professionals on the subject of sexual violence against minors. It publishes pamphlets for professionals in the health-care, social and psychological services and for teachers and schools, as well as a leaflet for youth workers and childminders. The working group also organizes training sessions for these various groups.

Paragraph 42 of the list of issues

161. Belgium is steadfastly pursuing its goal of eliminating gender-based violence, and many initiatives have been undertaken in response to successive national action plans.[136] On 10 December 2015, Belgium adopted a new National Action Plan on Combating All Forms of Gender-based Violence for the period 2015–2019.[137] Through this Plan, which relies on cooperation between the Regions, the Communities and the federal State, Belgium has undertaken to implement more than 235 measures based on six broad-ranging objectives: (1) to pursue an integrated policy on combating gender-based violence and to collect quantitative and qualitative data on all forms of violence; (2) to prevent violence; (3) to protect and support victims; (4) to investigate and prosecute, and to adopt protection

measures; (5) to take gender into account in asylum and migration policies; and (6) to take action against violence at the international level. Domestic and sexual violence were also included among the priorities of the National Security Plan 2016–2019 and the Framework Note on Comprehensive Security 2016–2019, which were presented on 7 June 2016 (see the common core document).

162. Measures to improve the legislative and regulatory framework, raise awareness among the general public and specific groups, and train professionals[138] have been introduced, some of which (detailed below) have been included in the National Action Plan.

163. Various measures aimed at combating sexual violence have already been taken:

- A feasibility study on the establishment of multidisciplinary care centres for sexual assault victims and the launch, on the basis of the study, of three pilot projects in November 2017;[139]
- A website – www.violencessexuelles.be – bringing together all relevant information for victims and those in their immediate circle was launched in March 2016;
- A free, professionally staffed, French-language helpline (0800/98.100) on sexual violence was set up in November 2016;
- The Flemish Community's 1712 helpline where callers can request advice, ask questions or seek referrals concerning sexual violence;
- The relaunch of an awareness-raising/training programme on sexual violence and intimate partner violence, for hospital staff;
- Workshops on sexual violence for police and judicial personnel in 2015 and 2016 (approximately 1,000 participants) and dissemination of a sex offences manual to all police districts;
- In the Walloon region, the issue of sexual violence is addressed at the "Desire for love" (*enVIE d'amour*) event, with its focus on the relationships, emotional and sexual life of persons whose autonomy and independence is impaired. The event is organized every two years and was first held in 2016. More than 9,000 people have access to the event.

164. Regarding the practice of female genital mutilation, despite its criminalization[140] and the assignment of a separate code to it in the databank of the Belgian College of Prosecutors General, very few cases have been registered: 20 from 2009 to 2016. To date, no case has resulted in a conviction. It is important to emphasize that combating female genital mutilation is a long-term project involving various departments at every stage – awareness-raising, prevention, care, prosecution, etc. The fact that proceedings have been initiated in several cases since 2012 suggests that the concerted efforts and awareness-raising activities are having an effect. The aforementioned article 409, which penalizes anyone practising, facilitating or abetting any form of female genital mutilation, with or without the consent of the victim, was amended in 2014, and now also penalizes anyone promoting or advertising the practice.

165. The Act of 2 June 2013 increased the penalties for forced marriage[141] and fictitious marriage,[142] and defined forced legal cohabitation[143] and fictitious legal cohabitation[144] as criminal offences. When delivering a criminal conviction, the judge may annul a marriage or legal cohabitation.[145] The registration officer is granted a time allotment for checking the validity of the documents submitted. The registrar may refuse to perform a marriage if, when considered jointly, the circumstances[146] are such that they amount to a fictitious or forced marriage. Such marriages can also be annulled after the fact, as can forced or fictitious legal cohabitation.

166. On the subject of honour-related violence, in January 2014, the Belgian College of Prosecutors General set up a multidisciplinary working group to prepare a circular and a training programme. The circular, which entered into force on 1 July 2017,[147] addresses honour-related violence, including forced marriage and female genital mutilation. It sets out guidelines for police officers and prosecutors, and facilitates the adoption of a joint police and judicial approach (appointment of focal points, development of a joint, approach plan,

improved recording of cases, training courses for professionals, cooperation efforts, etc.). A one-day seminar held in May 2017[148] was used to inform the various stakeholders (judicial personnel, police officers, support staff) about the circular with a view to its implementation and dissemination.

167. Belgium reiterated its position at its second universal periodic review[149] that it would be unwise to enact a separate law to criminalize all acts of violence against women, given that there are numerous existing statutes that already define the various forms of possible violence as offences (see annex 16). Thus, a separate law would necessarily be limited, whereas several definitions of offences fitting the conduct in question and accompanied by aggravating circumstances appear to be more effective in bringing more closely targeted prosecutions.[150]

168. In July 2016, a practical online tool for assessing the risk of intimate partner violence was introduced by the federal Government.[151] Awareness-raising activities have been carried out: including campaigns, such as "React before you act!" (*Réagissez avant d'agir*) run by the Institute for Gender Equality; the "No Violence" and "Marie's Journal" campaigns aimed at young people between the ages of 15 and 25[152] and run by the French Community, the Walloon Region and the French Community Commission of the Brussels-Capital Region; the "SOS Violence" campaign run by the Brussels-Capital Region[153] and various campaigns organized in the provinces, such as "*Als liefde pijn doet* ...".[154] These campaigns have helped to publicize the various helplines.[155] In June 2016, a pamphlet on the rights of migrant victims of domestic violence was disseminated, primarily through the prosecuting authorities, the police force and the assistance/integration services. A study on the prevalence of violence against women in Brussels was launched in late 2015. Another study, whose objective was to develop a code for reporting intimate partner violence or suspicions of such violence, was carried out for professionals, who were provided with tools, such as the prevention kit for female genital mutilation.[156] The first Family Justice Centre was established in mid-2016 in Antwerp. (Its charter was signed by all the competent services and authorities.) In 2016 and 2017, the federal Government supported several new projects that take a "chain" approach in complex cases of domestic violence. Largely as a result of these subsidies, there are now five Family Justice Centres in Belgium. Seven other cities have also introduced the chain approach. In Flanders, coordination is organized between the social welfare, law enforcement and justice sectors for cases of domestic violence and child abuse that involve complex and multiple-risk situations. Wherever necessary, this coordination is carried out in a Family Justice Centre.

169. Various initiatives put forward by the non-profit and governmental sectors (INTACT, GAMS-Belgium – Concerted Strategies against Female Genital Mutilation, Vlaams Forum Kindermishandeling) were supported by the authorities at all levels of government. A guide to good practices, intended to strengthen prevention and the protection of girls and women who have been or are at risk of becoming victims of excision, was prepared for professionals. A photo exhibit entitled "32 ways to say no to excision" and consisting of 32 portraits of courageous men and women in Europe and Africa was shown in numerous public spaces. A European online knowledge platform on female genital mutilation, which was funded by the European Union, was launched in February 2017. A study on the interests of the child in the context of protective and punitive procedures related to female genital mutilation was funded by the French Community, the Walloon Region and the French Community Commission, and was disseminated throughout the country (French-speaking part).[157] A guide for professionals on the subject of forced marriages was published in order to offer them advice in the area of victim response. A number of public awareness activities were carried out, including the "Men Speak Out" campaign,[158] which was designed to involve men in combating female genital mutilation, and the organization of awareness-raising and training sessions in caring for excised women in hospitals (2015 and 2016). Finally, the operation of the two centres offering coordinated and multidisciplinary medical/psychosocial supportive treatment for the after-effects of female genital mutilation was extended to February 2019.

III. Other issues

Paragraph 43 of the list of issues

170. Ratification of the Optional Protocol to the Convention against Torture has been approved by all the federated entities concerned (Walloon Region, French Community, Flemish Community, German-speaking Community and Common Community Commission of the Brussels-Capital Region). Its ratification involves the establishment of a national mechanism for the prevention of torture.

171. The bill for the adoption of a federal act of assent is currently being prepared by the Government. It has been approved by the Council of Ministers and is due to be submitted to the House for discussion and adoption.

172. A national mechanism for the prevention of torture must extend to all places of deprivation of liberty, including both institutions under federal jurisdiction, such as prisons, and those under the jurisdiction of the federated entities, such as closed institutions for the protection of young persons.

173. Under the Act of 25 December 2016 amending the legal status of detained persons and prison monitoring, and containing various provisions in the area of justice, responsibility for the Central Council for the Supervision of Prisons and supervisory commissions was transferred from the Federal Public Service for Justice to the House of Representatives. Under the Act, the Central Council is tasked with carrying out independent monitoring of prisons, the treatment of detained persons and respect for prison regulations (see above, replies to the issues raised in para. 31).[159]

174. Other institutions responsible for monitoring deprivation of liberty, such as the Federal Mediators' Association and the Belgian Federal Migration Centre (Myria), may also play a role in the future establishment of a national preventive mechanism. The constituent elements of the mechanism have yet to be determined, but work is ongoing in that regard, in consultation with civil society.

Paragraph 44 of the list of issues

175. Belgium ratified the International Convention for the Protection of All Persons from Enforced Disappearance in 2011, the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights and the Optional Protocol to the Convention on the Rights of the Child on a communications procedure in 2014, the International Labour Organization (ILO) Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159) and the ILO Domestic Workers Convention, 2011 (No. 189) in 2015 and the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence in 2016. In 2016, Belgium accepted the amendment to article 8 of the International Convention on the Elimination of All Forms of Racial Discrimination; the amendment to article 20 (1) of the Convention on the Elimination of All Forms of Discrimination against Women; and the amendments to articles 17 (7) and 18 (5) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Belgium is currently doing everything possible to ratify as rapidly as possible the following instruments: the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (see above, replies to the issues raised in para. 43) and the ILO Protocol of 2014 to the Forced Labour Convention.

176. Belgium attaches great importance to respect for migrants' rights 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.

Paragraph 45 of the list of issues

177. Counter-terrorism and its impact on human rights were described in detail in the report submitted to the Committee in July 2012 (CAT/C/BEL/3 paras.160–173). Only

subsequent developments are included here. The Act of 18 February 2013[160] supplements the Terrorist Offences Act of 19 December 2003, with the inclusion of articles 140 bis to quinquies in the Criminal Code (see annex 17). It is important to recall that, with very few exceptions, terrorist offences remain subject to ordinary criminal procedural law (arrest, detention, interrogation, due process, sentencing and appeal) and that the law provides human rights safeguards in order to prevent abuse.[161] Respect for human rights is also guaranteed by the balance of powers that exists between the legislative, executive and judicial branches, as illustrated, for example, by the fact that, in March 2018,[162] the Constitutional Court repealed article 2 (3) of the Act of 3 August 2016 containing various provisions relating to counter-terrorism.

178. Belgium continues to fight radicalism and terrorism with firmness and determination in accordance with its international human rights commitments. Further to this effort, it recently adopted various preventive and repressive measures (based on a comprehensive approach that considers the prevention of radicalization to be no less important than related, more visible, security issues), which are described in detail in annex 18. In 2005, Belgium became one of the first countries to launch an action plan against radicalism, which it revised in 2015. Its comprehensive and integrated approach focuses on collaboration between representatives of stakeholders (justice, integrated police force, customs, military intelligence, crisis centres, etc.); improving information exchanges and combining administrative and judicial approaches.[163]

179. Respect for fundamental rights is not a given; it remains a daily challenge in a changing society, a challenge that requires maintaining a constant balance of proportionality between the means employed and the objective of social order. This balance is at the heart of our discussions when carrying out legislative amendments intended to combat terrorism. These amendments are described below.

180. The expansion of the list of offences that entail the use of special investigation methods does not affect the conditions for challenging them or their monitoring, which were described in the above-mentioned report to the Committee.

181. Enlarging the possibilities for the use of deprivation of nationality in respect of all terrorist offences[164] and eliminating the maximum period of 10 years between the acquisition of nationality and the date of the commission of the offence[165] do not restrict any of the existing safeguards. Loss of nationality may be ordered only by a criminal court judge in cases in which a non-suspended prison sentence of at least 5 years is handed down. This order may be challenged through the common remedies at law. This measure is not applicable if it renders the person stateless.

182. With regard to the temporary withdrawal of an identity card[166] or the denial or withdrawal of passports where a person poses a risk to public order and security,[167] the purpose of the procedure used is to temporarily deny or invalidate the identity card of radicalized Belgians (25 days, extendable to 3 months or to 6 months in exceptional circumstances) and to replace it with a permit allowing such persons free movement only within Belgium. Such a decision of withdrawal, invalidation or denial can be taken only on the basis of a reasoned opinion in writing from the Coordination Agency for Threat Analysis. This procedure entails an obligation by the Federal Public Service for Foreign Affairs also to withdraw the individual’s passport and travel documents.

183. One of the main objectives of measures aimed at improving information exchanges is to better combine the administrative and judicial approaches in order to recognize terrorism as both a terrorist offence and a security risk. This challenge is addressed most notably in the Foreign Terrorist Fighters circular of 21 August 2015,[168] the Act of 27 April 2016,[169] which created the legal basis for shared databanks and the Royal Decree of 21 July 2016.[170] Provision has been made for the Supervisory Body for Police Information Management and the Belgian Standing Intelligence Agencies Review Committee to oversee the use of the personal information and data contained in these databanks. Moreover, under article 13 of the Act of 8 December 1992 on the protection of privacy in the processing of personal data, any individual concerned by an input in a shared databank may contact the Commission for the Protection of Privacy in order to exercise his or her rights to information, access and correction. Lastly, thanks to the adoption of the Act of 5 February

2016,[171] the Belgian Financial Intelligence Processing Unit now communicates more closely with the Coordination Agency for Threat Analysis, the State Security Service and the General Intelligence and Security Service. In fact, the Act provides for the establishment of a permanent channel of communication with a view to combating terrorism, terrorism financing and potentially related money-laundering activities.

184. The Action Plan against Radicalization of March 2015[172] is intended to combat radicalization in prisons through two main objectives: preventing the radicalization of detained persons and developing a special type of supervision. To that end, various measures have been taken: the establishment of two sections at Hasselt and Ittre to manage radicalized detainees who pose a major risk of radicalizing other prisoners, the organization of training courses for prison staff, the routine involvement of representatives of religious communities and the strengthening of cooperation with the local level and the federated entities.

185. The Act of 25 December 2016 on special investigative methods and methods of investigation related to the Internet and electronic communications is aimed, inter alia, at adapting the Code of Criminal Procedure to technological developments.[173] The Act of 30 March 2017 amending the Organic Act on the intelligence and security services pursues the same aim with regard to the collection of intelligence data.[174]

186. The Act of 3 August 2016[175] relaxes the criteria for the use of pretrial detention in terrorism cases in that it prescribes the same requirements for the majority of terrorist offences punishable by more than 5 years of prison as for offences punishable by more than 15 years: the requirements (serious grounds for fearing that the accused, if released, might commit further offences, evade justice, attempt to dispose of evidence or collude with third parties) need not be met for the issuance of an arrest warrant.

187. The purpose of the circular of 18 July 2016 against hate preachers[176] is to facilitate the expulsion or ban from Belgian territory of hate preachers, in particular by providing for coordination between the various federal public services (Home Affairs, Foreign Affairs, etc.). The Coordination Agency for Threat Analysis centralizes the collected information, and it is only on the basis of its validation and reasoned arguments that the relevant services are authorized to take such measures.

188. For night-time police raids in cases relating to terrorism, the aforementioned Act of 27 April 2016 provides for the amendment of article 2 of the Act of 7 June 1969 on the time period during which house raids or searches are proscribed. As a result, the prohibition to carry out an arrest in a place not open to the public before 5 a.m. or after 9 p.m. does not apply in the case of a terrorist offence or in certain circumstances when there are serious reasons to believe that firearms, explosives, or nuclear, biological or chemical weapons, or noxious or hazardous substances that may put human lives at risk in the event of a leak, will be discovered.

189. With regard to training on how to deal with terrorism, the Judicial Training Institute participated in an international project co-financed by the European Commission; as part of that project, a seminar entitled "Prosecution for Acts of Terrorism: from legal framework to jurisdictional practice" was held in Belgium in November 2014. The seminar, which was aimed at European judges, focused on criminal procedure, the trial stage and such issues as the jurisdiction and limits of terrorism trials, data collection, administrative cooperation, the assessment of evidence and respect for human rights.[177]

190. Statistics on persons convicted under anti-terrorist legislation can be found in annex 19.

191. At the international level, in the *El Haski* case,[178] the European Court of Human Rights found that Belgium had violated the right to a fair trial[179] owing to the use of evidence where there was a "real risk" that it had been obtained by torture, inhuman or degrading treatment. The case concerned the applicant's arrest and conviction for participating in the activities of a terrorist group, based, inter alia, on statements used in evidence against him which were obtained in Morocco. The Belgian courts had found that the applicant had provided no "concrete proof" capable of shedding "reasonable doubt"

concerning the above-mentioned type of treatment to which the persons heard in Morocco had reportedly been subjected.

192. The ruling was circulated within the federal prosecutor's office by internal memorandum and within the public prosecutor's office by memorandums from the Belgian College of Prosecutors General, which were posted on the intranet of the public prosecutor's office with the following instructions: if statements taken abroad (from accused persons or third parties, in cases involving terrorism-related and other criminal offences) are likely to be challenged by the defence on grounds of a violation of article 3 of the European Convention on Human Rights, the competent Belgian prosecutor and a member of the Belgian police services must attend the hearings abroad in person. Regarding the non-use of tainted evidence, please see above the replies to the issues raised in paragraph 39.

193. The United Nations Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism visited Belgium from 24 to 31 May 2018.

Notes

[1] Loi du 9 juin 1999, entrée en vigueur le 7 novembre 1999.
[2] CAT/C/BEL/3, § 4.
[3] CAT/C/BEL/3, § 4.
[4] Soulignons que les articles 417*ter* et *quater* du Code pénal indiquent que l'ordre d'un supérieur ou d'une autorité ne peut justifier les infractions de torture et de traitement inhumain.
[5] Art. 405*quater* du Code pénal.
[6] Article 422*quater* du Code pénal.
[7] Article 438*bis* du Code pénal.
[8] On vise ici les infractions aux législations luttant contre le racisme et la xénophobie, contre les discriminations (y inclus les discriminations entre les femmes et les hommes) ainsi que les infractions reprises directement dans le code pénal (articles 377*bis*, 405*quater*, 422*quater*, 438*bis*, 442*ter*, 444, 453*bis*, 514*bis*, 525*bis*, 532*bis*, 534quater), listés dans la Col 13/2013 mentionnée ci-dessous.
[9] Le classement sans suite est une renonciation provisoire aux poursuites, mettant fin à l'information pour des motifs techniques ou d'opportunité des poursuites. Tant que l'action publique n'est pas éteinte, l'affaire peut être réouverte.
[10] Circulaire commune Col 13/2013 du Ministre de la justice, du Ministre de l'intérieur, et du collège des procureurs généraux près les cours d'appel relative à la politique de recherche et de poursuite en matière de discriminations et de délits de haine (en ce compris les discriminations fondées sur le sexe). http://www.om-mp.be/?q=fr/node/354.
[11] Voyez à ce sujet en annexe : *le Core Common Document* de la Belgique.
[12] Décret du 13 mars 2014 portant assentiment, pour ce qui concerne les matières dont l'exercice a été transféré par la Communauté française à la Région wallonne, à la Convention contre la torture et autres peines ou traitements cruels, inhumains ou dégradants, adoptée par l'assemblée générale de l'ONU le 10 décembre 1984, ainsi que son Protocole facultatif adopté par l'assemblée générale de l'ONU le 18 décembre 2002 (*M.B.*28.03.2014).
[13] Décret du 13 mars 2014 portant assentiment, pour ce qui concerne les matières dont l'exercice a été transféré par la Communauté française à la Région wallonne, à la Convention contre la torture et autres peines ou traitements cruels, inhumains ou dégradants, adoptée par l'assemblée générale de l'ONU le 10 décembre 1984, ainsi que son Protocole facultatif adopté par l'assemblée générale de l'ONU le 18 décembre 2002, (*M. B.* 27.03.2014).
[14] Décret du 13 mars 2014 portant assentiment, pour ce qui concerne les matières dont l'exercice a été transféré par la Communauté française à la Région wallonne, à l'amendement à l'article 8, § 7, de la Convention internationale du 7 mars 1966 sur l'élimination de toutes les formes de discrimination raciale, à l'amendement à l'article 20, § 1er, de la Convention du 18 décembre 1979 sur l'élimination de toutes les formes de discrimination à l'égard des femmes, et aux amendements à l'article 17, § 7, et à l'article 18, § 5, de la Convention du 10 décembre 1984 contre la torture et autres peines ou traitements cruels, inhumains ou dégradants (*M. B.* 27.03.2014).
[15] Ces mesures sont réglées par la loi du 13 août 2011 dont un exposé est détaillé dans CAT/C/BEL/3.
[16] Cette loi est entrée en vigueur le 27 novembre 2016. Elle permet à la Belgique de se mettre en conformité avec la Directive 2013/48/UE Au sujet de cette loi voir : http://www.ejustice.just.fgov.be/loi/loi.htm. Voir également le nouvel article 12 de la Constitution (revue par la loi du 24 octobre 2017, *M.B.*29.11.2017) « Hors le cas de flagrant délit, nul ne peut être

arrêté qu'en vertu d'une ordonnance motivée du juge qui doit être signifiée au plus tard dans les quarante-huit heures de la privation de liberté et ne peut emporter qu'une mise en détention préventive. » ; Loi du 31 octobre 2017 modifiant la loi du 20 juillet 1990 relative à la détention préventive, la loi du 7 juin 1969 fixant le temps pendant lequel il ne peut être procédé à des perquisitions, visites domiciliaires ou arrestations, la loi du 5 août 1992 sur la fonction de police et la loi du 19 décembre 2003 relative au mandat d'arrêt européen (*M.B.* 29.11.2017) ; Arrêté royal remplaçant les annexes de l'arrêté royal du 23 novembre 2016 portant exécution de l'article 47*bis* §5 du code d'instruction criminelle (*M.B.* 29.11.2017).

[17] Services des Polices fédérale et locale, magistrature et juges d'instruction, Cabinet du Ministre de la Justice et membres du SPF Justice.

[18] Collège des Procureurs généraux, les Ordres des Barreaux des avocats et le SPF Finances.

[19] Collège des Procureurs généraux, Conseil des procureurs du Roi, les services des Police fédérale et locale ainsi que les Ordres des Barreaux des avocats.

[20] Le droit d'accès à un avocat comprend tant la concertation confidentielle avec ce dernier préalablement à une audition que l'assistance lors de chaque audition.

[21] Col 8/2011 révisée.

[22] https://justice.belgium.be/fr/themes_et_dossiers/documents/telecharger_des_documents/declaration_de_droits/vos_droits_si_vous.

[23] Voir note en bas de page n° 16 – révision de l'article 12 de la constitution.

[24] Qui bénéficie désormais d'une base juridique solide dans l'article 112*ter* du Code d'instruction criminelle.

[25] Les autres dispositions de ces Directives sont transposées par la loi du 28 octobre 2016.

[26] Registre dont la tenue est imposée par l'article 33*bis* de la loi du 05 août 1992 sur la fonction de Police – utilisé dans tous les lieux de privation de liberté.

[27] Arrêté royal du 3 août 2016 modifiant l'arrêté royal du 18 décembre 2003 déterminant les conditions de la gratuité totale ou partielle de l'aide juridique de deuxième ligne et de l'assistance judiciaire et Arrêté royal du 21 juillet 2016 modifiant l'arrêté royal du 20 décembre 1999 quant aux modalités d'exécution de l'indemnisation accordée aux avocats dans le cadre de l'aide juridique de deuxième ligne et quant au subside pour les frais liés à l'organisation des bureaux d'aide juridique.

[28] Afin d'encourager le recours aux types alternatifs de résolution des conflits, de responsabiliser le bénéficiaire et l'avocat désigné en vue d'éviter des procédures inutiles.

[29] La loi distingue deux formes d'aide juridique : d'une part le conseil gratuit (aide juridique de première ligne) : il s'agit d'une brève consultation durant laquelle le justiciable reçoit des informations pratiques et juridiques et un premier avis juridique ; et d'autre part, la désignation d'un avocat (aide juridique de deuxième ligne) : permet d'obtenir sous certaines conditions l'assistance entièrement ou partiellement gratuite d'un avocat (anciennement appelé *pro deo*).

[30] Loi instituant un fonds budgétaire relatif à l'aide juridique de deuxième ligne entrée en vigueur le 1er mai 2017.

[31] Loi réglant l'institution d'un fonds budgétaire relatif à l'aide juridique de deuxième ligne en ce qui concerne le Conseil d'Etat et le Conseil du contentieux des étrangers.

[32] Art 29 du Code d'instruction criminelle (voir note en bas de page 74).

[33] Article 118, §7 de la loi de principes concernant l'administration pénitentiaire ainsi que le statut juridique des détenus du 12 janvier 2005 (*M.B.* 01.02. 2005).

[34] Art. 33*bis* de la loi du 5 août 1992 sur la fonction de police (*M.B.* 22.12.1992) ; art. 607 à 610 du Code d'Instruction criminelle.

[35] Loi relative aux droits du patient (*M.B.* 26.09.2002).

[36] Conformément au prescrit de l'Arrêté royal du 06 avril 2008 relatif aux standards de qualité, aux normes pédagogiques et d'encadrement des écoles de police et au collège des directeurs des écoles de police (*M.B.* 25.04.2008).

[37] http://rapportannuel.policefederale.be/a/Dossin_2017_Fr_def.pdf.

[38] Notamment les dispositions légales relatives aux principes généraux du statut des membres des services de police, les dispositions légales réglant les compétences des agents et fonctionnaires de police ainsi que les modalités de leurs interventions, ou encore le Code de déontologie des services de police, textes qui érigent le respect des droits de l'homme en fondement et comportent des mentions relatives aux violences illégitimes et aux traitements inhumains.

[39] Notamment au niveau de ses formations, des informations ciblées, des entretiens individualisés.

[40] http://www.comiteri.be/images/pdf/franstalig/Rapport%20d%27activites%202006.pdf?phpMyAdmin=97d9ae9d92818b6f252c014a4a05bdfb.

[41] *Doc. parl*., Chambre, 2014-2015, n° 54-0553/001, p. 4.

[42] Nouveaux articles 7, 3/1° et 11, § 1er, 5°, de la loi organique du 30 novembre 1998 des services de renseignement et de sécurité (*M.B.* 18.12.1998).

[43] Article 10 *bis* de la loi du 15/12/1980.

[44] Article 10 *bis* de la loi du 15/12/1980.

[45] Articles 40*bis* et 40*ter* de la loi du 15/12/1980.

[46] Article 9*bis* de la loi du 15/12/1980.
[47] Les articles 11 et 42*quater* de la loi du 15/12/1980 visent expressément l'article 375 du Code pénal (viol) et les articles 398 à 400 du Code pénal (lésions corporelles volontaires) et 402, 403 et 405 du Code pénal (administrer volontairement des substances qui peuvent donner la mort).
[48] Article 11§2, alinéa 4 et article 42*quater* § 4, 4° de la loi du 15/12/1980.
[49] http://www.dsb-spc.be/doc/pdf/ACTIEPLAN_MH_2015_2019-FRpr%2013072015.pdf.
[50] Arrêté royal du 21 juillet 2014 modifiant l'arrêté royal du 16 mai 2004 relatif à la lutte contre le trafic et la traite des êtres humains ; https://www.unia.be/files/Z_ARCHIEF/kb_mb_01092014_0.pdf; cette composition s'est également étendue à la cellule de traitement des informations financières (CETIF°), aux gouvernements régionaux et communautaires et au Collège des procureurs généraux.
[51] http://www.ejustice.just.fgov.be/mopdf/2017/03/10_1.pdf, p. 35.368-35.379.
[52] Articles 61/2 à 61/5 de la loi du 15/12/1980 et articles 110*bis* et 110*ter* de son arrêté d'exécution.
[53] Loi du 12 mai 2014 modifiant le titre XIII, chapitre VI, de la loi-programme (I) du 24 décembre 2002 relative à la tutelle des mineurs étrangers non accompagnés (MENA).
[54] Les victimes mineures non accompagnées reçoivent, immédiatement, une attestation d'immatriculation.
[55] Loi du 30 mars 2017 - modifiant l'article 61/2 de la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers afin de remplacer l'ordre de quitter le territoire par un document de séjour temporaire dans le cadre de la procédure traite des êtres humains et Arrêté royal du 30 mars 2017 modifiant l'article 110*bis* et remplaçant l'annexe 15 de l'arrêté royal du 8 octobre 1981 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers
[56] Loi du 19 janvier 2012 transposant l'article 8§6 de la Directive UE 2008/115 du 16 décembre 2008 obligeant les Etats à mettre en place un système efficace des retours forcés. Jusqu'en 2012, le Comité P contrôlait aussi les éloignements forcés mais de manière limitée puisqu'en 2004, le Ministre de l'Intérieur a, spécifiquement, confié cette mission à l'AIG.
[57] Article 9 1° de l'Arrêté royal du 20 juillet 2001 relatif au fonctionnement et au personnel de l'inspection générale de la police fédérale et de la police locale dans le cadre du contrôle du retour forcé.
[58] Police de l'aéroport de Bruxelles national.
[59] Fonds européen Asile/Migration/Intégration.
[60] Par le passé : en 2007, 36 contrôles ; en 2008, 18 contrôles ; en 2009, 19 contrôles ; en 2010, 12 contrôles et ; en 2011, 54 contrôles. À noter également 1 contrôle à bord d'un bateau en 2012, en 2014 et en 2015.
[61] Directives des autorités judiciaires et policières sur les procédures d'éloignements avec référence au Code de déontologie de la Police.
[62] De 2010 à 2016, le Conseil de discipline de la Police n'a enregistré aucune sanction pour recours inadéquat ou abusif de la force lors d'opérations d'éloignement.
[63] Art. 57/6, alinéa 1er, 9° à 14° de la loi du 15/12/1980.
[64] Art 48/3 loi du 15/12/1980.
[65] Art 48/4 loi du 15/12/1980.
[66] Art 39/82 loi du 15/12/1980, en cas d'éloignement imminent.
[67] Loi portant assentiment à la Convention entre le Royaume de Belgique et la République populaire de Chine sur l'entraide judiciaire en matière pénale, faite à Bruxelles le 31 mars 2014 (*M.B.*26.04.2016) ; http://www.ejustice.just.fgov.be/mopdf/2016/04/26_1.pdf#Page7.
[68] Loi portant assentiment à la Convention entre le Royaume de Belgique et la République fédérative du Brésil sur l'entraide judiciaire en matière pénale, faite à Brasilia le 7 mai 2009 (*M.B.* 02.05.2017) ; http://www.etaamb.be/fr/loi-du-05-mai-2014_n2014015236.html.
[69] Loi portant assentiment à la Convention d'entraide judiciaire en matière pénale entre le Royaume de Belgique et la République de Corée, faite à Bruxelles le 17 janvier 2017 (*M.B.* 02.10.2012) ; http://www.etaamb.be/fr/loi-du-10-juillet-2012_n2012015139.html.
[70] *Human Rights Education for legal professions.*
[71] http://www.igo-ifj.be/fr/content/e-learning; http://help.elearning.ext.coe.int/.
[72] http://igo-ifj.be/fr/news/784.
[73] Arrêté royal du 24 juin 2013 déterminant les règles relatives à la formation dispensée dans le cadre du recours à la contrainte, prise en exécution de l'article 74/8, § 6, alinéa 3, de la loi du 15 décembre 1980.
[74] Art 29 du code d'instruction criminelle : « Toute autorité constituée, tout fonctionnaire ou officier public, ainsi que, pour ce qui concerne le secteur des prestations familiales, toute institution coopérante au sens de la loi du 11 avril 1995 visant à instituer la charte de l'assuré social qui, dans l'exercice de ses fonctions, acquerra la connaissance d'un crime ou d'un délit, sera tenu d'en donner avis sur-le-champ au procureur du Roi près le tribunal dans le ressort duquel ce crime ou délit aura été commis ou dans lequel l'inculpé pourrait être trouvé, et du transmettre à ce magistrat tous les renseignements, procès-verbaux et actes qui y sont relatifs. »

[75] https://www.koengeens.be/news/2016/05/13/masterplan-prisons-et-internement-reduction-de-la-surpopulation-dans-les-prisons-et-accue.

[76] Loi du 27 décembre 2012 portant des dispositions diverse en matière de justice et arrêté royal d'exécution du 26 décembre 2013 portant exécution du Titre II de la loi du 27 décembre 2012 portant des dispositions diverses en matière de justice (*M.B.* 31.12.2013).

[77] Transposition de la décision-cadre 2009/829/JAI du Conseil du 23 octobre 2009 concernant l'application entre les Etats membres de l'Union européenne, du principe de reconnaissance mutuelle aux décisions relatives à de smesures de contrôle en tant qu'alternative à la détention provisoire.

[78] Loi du 17 avril 2002 instaurant la peine de travail comme peine autonome en matière correctionnelle et de police (*M.B*. 07.05.2002).

[79] Loi du 07 février 2014 instaurant la surveillance électronique comme peine autonome (*M.B*.07.02.2014) http://www.etaamb.be/fr/loi-du-07-fevrier-2014_n2014009072.html. Loi du 10 avril 2014 insérant la probation comme peine autonome dans le Code pénal, et modifiant le code d'instruction criminelle , et la loi du 29 juin 1964 concernant la suspension, le sursis et la probation (*M.B.*19.06.2014), http://www.etaamb.be/fr/loi-du-10-avril-2014_n2014009234.html.

[80] Voir aussi réserve exprimée par la Belgique à l'article 10§2 a) du Pacte international relatif aux droits civils et politiques et article 11 de la loi « Dupont ».

[81] Voir aussi *infra* : question §22.

[82] « Suspend l'article 108§2 al. 1er, de la loi de principes du 12 janvier 2005 concernant l'administration pénitentiaire ainsi que le statut juridique des détenus, tel qu'il a été remplacé par l'article 5 de la loi du 1er juillet 2013 modifiant la loi de principes du 12 janvier 2005 concernant l'administration pénitentiaire ainsi que le statut juridique des détenus. »

[83] Les dispositions suivantes sont actuellement en vigueur : dispositions générales (art. 1-2) ; principes de base (art. 4 à 6, 8 à 13) ; règlement d'ordre intérieur (art. 16) ; accueil (art. 19) ; conditions de vie matérielles (art. 41, §1er, 42 et 44 à 47) ; contacts avec le monde extérieur (art. 53 à 70) ; services religieux et pratiques philosophiques (art. 71 à 74, §4) ; formations et loisirs (art. 76 à 80) ; aide sociale (art. 103) ; aide juridique/assistance judiciaire (art. 104) ; le prélèvement sur les sommes dues par l'administration pénitentiaire (art. 104/1) ; ordre, sécurité et usage de la force (art. 105 à 118 – sauf art. 118§10, 119 à 121) ; régime disciplinaire (art. 122 à 146, 167, §4) ; disposition temporaire pour les internés (art. 167, §1).

[84] Loi du 25 décembre 2016 modifiant le statut juridique des détenus et la surveillance des prisons et portant des dispositions diverses en matière de justice (*M.B.* 30.12.2016) entrée en vigueur le 09 janvier 2017.

[85] Arrêté royal du 21 mai 1965 portant règlement général des établissements pénitentiaires (*M.B* 25.05.1965).

[86] Loi du 5 mai 2014 relative à l'internement des personnes, comme modifiée par la loi du 4 mai 2016 (*M.B.* 09.07.2014) entrée en vigueur le 1er octobre 2016 ; http://www.etaamb.be/fr/loi-du-05-mai-2014_n2014009316.html.

[87] Il importe d'observer que la question de l'internement fait aussi l'objet d'une attention particulière de la CEDH. L'arrêt-pilote *W.D. c. Belgique* du 06/09/2016 suspend l'examen de requêtes introduites par des internés faisant grief de ne pas bénéficier d'une prise en charge médicale adéquate et fixant un délai de deux ans à la Belgique pour mettre en œuvre les réformes nécessaires.

[88] Arrêté royal du 26 septembre 2016 exécutant l'article 3, 9° de la loi sur les règles selon lesquelles les victimes peuvent demander à être informées, entendues et formuler des conditions dans leur intérêt ainsi que arrêté ministériel du 27 septembre 2016 fixant le modèle de la déclaration de la victime visé à l'article 1er, 3° de l'arrêté royal précité. Arrêté royal du 28 septembre 2017 portant exécution de l'article 41 §1er al2 de la loi du 5 mai 2014 relative à l'internement, en vue de déterminer le contenu concret au programme de détention limitée et de surveillance électronique (*M.B*. 04.10.2017).

[89] Article 51/5 de la loi du 15 décembre 1980.

[90] Article 28 du Règlement (UE) n° 604/2013.

[91] Articles 83/1 – 83/3 de l'arrêté royal du 2 août 2002.

[92] Article 74/9 de la loi du 15 décembre 1980.

[93] Arrêté royal du 17 septembre 2014 déterminant le contenu de la convention et les sanctions pouvant être prises en exécution de l'article 74/9, § 3, de la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers.

[94] Arrêté royal du 14 mai 2009 fixant le régime et les règles de fonctionnement applicables aux lieux d'hébergement au sens de l'article 74/8, § 1er, de la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers.

[95] Article 57*bis* de la loi du 8 avril 1965 sur la protection de la jeunesse, la prise en charge des mineurs ayant commis un fait qualifié infraction et la réparation du dommage causé par ce fait (loi réformée en 2006) – chambres spéciales de la jeunesse, composées de magitrats formés à cet effet, pour se prononcer sur les dessaisissements.

[96] Voyez la note de politique Welzijn, Volksgezondheid en Gezin 2014-2019 reprenant l'objectif d'un décret du nouveau droit pour les jeunes (notamment droit à l'assistance et droit aux garanties

procédurales) et la note de conception du Gouvernement Flamand du 20 mars 2015 intitulée « *Contouren en plan van aanpak voor een Vlaams beleid inzake een gedifferentieerde aanpak van jeugddelinquentie* ».

97 CPT/inf (2016)14, « Réponse du gourvernement de la Belgique au rapport du Comité européen pour la prévention de la torture et des peines ou traitements inhumains ou dégardants (CPT) relatif à sa visite effectuée en Belgique du 24 au 4 octobre 2013 », strasbourg, le 31 mars 2016, https://rm.coe.int/1680693ead.

98 CPT/Inf (2006) 40, « Réponse du Gouvernement de la Belgique au rapport du Comité européen pour la prévention de la torture er des peines ou traitements inhumains ou dégradants (CPT) relatif à sa visite en Belgique du 18 au 27 avril 2005 », Strasbourg, 21 novembre 2006, https://rm.coe.int/1680693e4d.

99 www.comitep.be

100 CAT/C/BEL/CO/3/Add.1, point D, §§39 à 70 : Introduction, I) Indépendance du contrôle (1) un organe de contrôle externe, 2) les garanties d'indépendance des membres du collège, 3) la manière de rendre compte, 4) les garanties d'indépendance des membres du service d'enquêtes P), II) Efficacité du contrôle (1) différents moyens d'investigation, une exigence de qualité par un niveau de recrutement élevé, une formation permanente pointue et des procédures de travail modernes.

101 CAT/C/BEL/CO/3/Add.1, point D, « Mécanisme de contrôle et de supervision de la police : le Comité P », §§39 à 70.

102 Annexe 13.

103 Directive du Ministre de la Justice du 22 septembre 2011 (notamment répartition tâches entre le service d'enquêtes P, l'Inspection générale de la Police fédérale et la Police locale (AIG) et les autres services de police) : les enquêtes sur une violation des articles 2 et 3 de la CEDH sont, en principe, attribuées au service d'enquêtes P.

104 À rappeler qu'il existe une circonstance aggravante de l'usage de violences sans motif légitime dans l'exercice ou à l'occasion de l'exercice de ses fonctions (articles 257 et 266 du Code pénal). À titre exemplatif, on compte en 2014 les condamnations suivantes : 7 suspensions du prononcé ; 3 peines de travail ; 13 peines de prison avec sursis partiel et 3 peines fermes de prison – dont deux pour meurtre/homicide.

105 À rappeler que ces données ne sont pas exhaustives ; tous les jugements et arrêts n'étant pas systématiquement transmis au Comité P malgré l'obligation légale des Procureurs et Auditeurs généraux.

106 www.comitep.be/2012/2012FR.pdf, pages 105 à 135.

107 Avertissements, blâmes

108 Retenues sur salaires, suspensions, rétrogradations dans l'échelle salariale pour 2 ans.

109 Démissions d'office, révocations.

110 Cass. (2ème chambre), 24 mars 2015, P.14.1298.N/1 (http://jure.juridat.just.fgov.be).

111 Non-lieu envers 10 policiers – poursuivis pour violences contre 3 personnes lors de leur arrestation et transfert au commissariat de police et à l'hôpital.

112 Art 29 Code d'instruction criminelle (voir note en bas de page 74).

113 Arrêté royal du 2 octobre 1937 portant le statut des agents de l'Etat.

114 L'arrêté royal du 7 octobre 2014 modifiant l'arrêté royal du 2 août 2002 fixant le régime et les règles de fonctionnement applicables aux lieux situés sur le territoire belge, gérés par l'Office des étrangers, où un étranger est détenu, mis à la disposition du Gouvernement ou maintenu, en application des dispositions citées dans l'article 74/8, §1er, de la loi du 15 décembre 1980.

115 Arrêté ministériel du 23 janvier 2009 établissant la procédure et les règles de fonctionnement de la Commission et du secrétariat permanent, visé à l'article 130 de l' arrêté royal du 2 août 2002 fixant le régime et les règles de fonctionnement applicables aux lieux situés sur le territoire belge, gérés par l'Office des étrangers, où un étranger est détenu, mis à la disposition du gouvernement ou maintenu, en application des dispositions citées à l'article 74/8, § 1er, de la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers (*M.B.*27.01.09).

116 Il faut rappeler ici que cette commission intervient lorsque l'auteur est insolvable ou inconnu sans autre distinction quant à sa qualité (article 31*bis*, §1, 5° de la loi du 1er août 1985).

117 Voir par exemple pour les compétences exercées par la communauté germanophone le décret du 26 septembre 2016 relatif à l'aide aux victimes et à l'aide spécialisée aux victimes (*M.B.* 19.10.2016) et le protocole d'accord du 5 juin 2009 entre l'Etat et la Communauté germanophone en matière d'assistance aux victimes, (*M.B.* 15.07.2009).

118 https://www.slachtofferzorg.be/ et http://www.victimes.cfwb.be/.

119 DIRECTIVE 2004/80/CE du Conseil du 29 avril 2004 relative à l'indemnisation des victimes de la criminalité.

120 M. Franchimont, A. Jacobs et A. Masset, *Manuel de procédure pénale*, 4e éd., Bruxelles, Larcier, 2012, p. 1149 ; R. Declercq, *Beginselen van strafrechtspleging*, Malines, Kluwer, 2014, p. 882 ; R. Vertstraeten, Handboek strafvordering, Anvers, Maklu, 2012, p. 985 ; M.-A. Beernaert, H.-D. Bosly et D. Vandermeersch et, *Droit de la procédure pénale*, Bruxelles, La Charte, 2014, p. 1171.

[121] Cass., 11 décembre 2013, RG P.13.1150.F, P.13.1151.F, P.13.1152.F et P.13.1153.F, *Pas*., 2013, n° 676, avec concl. M.P. Un arrêt du 1er avril 2014 de la Cour de cassation souligne qu'avant d'admettre une déclaration d'un coprévenu, il y a lieu de vérifier qu'il n'est pas porté atteinte à la fiabilité de la déclaration du coprévenu et que son usage violerait les droits de défense du prévenu dès lors que la déclaration du coprévenu aurait été obtenue à l'aide d'une pression, contrainte ou torture prohibée (Cass. 1er avril 2014, RG P.12.1334.N, *Pas*. 2014, n° 252).

[122] Voy. les conclusions du ministère public avant Cass., 11 décembre 2013, RG P.13.1150.F, P.13.1151.F, P.13.1152.F et P.13.1153.F, *Pas*., 2013, n° 676.

[123] Il s'agit principalement de : l'arrêté royal du 3 juin 2007 sur l'armement de la Police intégrée, structurée à deux niveaux et des membres des Services d'enquêtes des Comités P et R et du personnel de l'AIG ; l'article 416 du Code pénal sur la légitime défense ; l'article 417*bis* du Code pénal sur la torture et les traitements inhumains et dégradants ; les articles 1er de la loi sur la fonction de Police sur le respect des droits et libertés des citoyens et 37 sur l'usage de la contrainte ; la Circulaire GPI 62 du 14 février 2008 sur l'armement de la Police intégrée, structurée à deux niveaux et ; la Circulaire GPI 48 du 17 mars 2006 relative à la formation et à l'entraînement en maîtrise de la violence des membres du personnel du cadre opérationnel des services de police.

[124] Art. 398 et ss. Code pénal.

[125] Art. 417*bis* et ss. du Code pénal.

[126] Pour rappel, en octobre 2008, une circulaire – reprenant la définition des châtiments corporels du Comité des droits de l'enfant et venant appuyer la jurisprudence belge – a été adoptée afin de rappeler aux Parquets que « *les châtiments corporels administrés aux enfants sont susceptibles selon les circonstances de constituer des coups et blessures et/ou des traitements dégradants incriminés* ».

[127] « *L'enfant et ses pères et mères se doivent à tout âge mutuellement respect* ».

[128] Droit de l'enfant au respect de son intégrité physique et mentale.

[129] « Article 17 – Droit des enfants et des adolescents a une protection sociale, juridique et économique : En vue d'assurer aux enfants et aux adolescents l'exercice effectif du droit de grandir dans un milieu favorable à l'épanouissement de leur personnalité et au développement de leurs aptitudes physiques et mentales, les Parties s'engagent a prendre, soit directement, soit en coopération avec les organisations publiques ou privées, toutes les mesures nécessaires et appropriées tendant : 1. *a*. à assurer aux enfants et aux adolescents, compte tenu des droits et des devoirs des parents, les soins, l'assistance, l'éducation et la formation dont ils ont besoin, notamment en prévoyant la création ou le maintien d'institutions ou de services adéquats et suffisants à cette fin ;*b*. à protéger les enfants et les adolescents contre la négligence, la violence ou l'exploitation ; *c*. à assurer une protection et une aide spéciale de l'Etat vis-a-vis de l'enfant ou de l'adolescent temporairement ou définitivement privé de son soutien familial (…) ».

[130] https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805c31f8.

[131] CAT/C//BEL/3 : §§155-156.

[132] Ses activités devant couvrir au moins : la coordination des actions menées ; la centralisation de l'information et sa mise à disposition ; la préparation et le suivi des opérations d'information des publics concernés (enfants et personnel) ; la prévision des programmes de formation éventuels ; les relations avec les diverses administrations et services publics et en particulier avec l'ONE (Office national de l'enfance).

[133] http://www.yapaka.be/sites/yapaka.be/files/page/2004_decret_maltaitance.pdf.

[134] http://www.yapaka.be/sites/yapaka.be/files/page/plan_2017_def.pdf.

[135] Subside total : 6.089.942,07 Euros (augmenté depuis 2010 de 1.591.306,24 Euros). À noter le développement d'une nouvelle règlementation pour la reconnaissance ainsi que le subventionnement de ces Centres, y compris d'organisations partenaires, ainsi qu'une affirmation du rôle de ces Centres en matière de sensibilisation.

[136] CEDAW/C/BEL/7 – §§62 à 90, §§124 à 132 et §§315 à 326, A/HRC/WG.6/24/BEL/1, §§46 à 48, CEDAW/C/BEL/Q/7/Add.1, pp. 10 à 15.

[137] http://igvm-iefh.belgium.be/fr/publications/plan_daction_national_de_lutte_contre_toutes_les_formes_de_violence_basee_sur_le_genre. Voir aussi CEDAW/C/BEL/CO/7/Add.1, §§4-5.

[138] A/HRC/WG.6/24/BEL/1, §§49 à 52.

[139] https://www.violencessexuelles.be/centres-prise-charge-violences-sexuelles.

[140] Art. 409 du Code pénal inséré en 2001.

[141] Art. 391*sexies* du Code pénal : incriminés depuis 2007).

[142] Art. 79*bis* de la loi « étrangers » du 15/12/1980.

[143] Art. 391*septies* du Code pénal.

[144] Art. 79*ter* loi précitée.

[145] Art. 391*octies* Code pénal.

[146] Circulaire du 6 septembre 2013.

[147] Circulaire COL6/2017 commune du Ministre de la justice et du Collège des procureurs généraux relative à la politique de recherché et de poursuite en matière de violences liées à l'honneur,

mutilations génitales féminines et mariages et cohabitations légales forces, 27 avril 2017, http://www.om-mp.be/?q=fr/node/57.

148 http://www.om-mp.be/?q=fr/slidesnews/journee-etude-violences-liees-honneur.

149 A/HRC/32/8/Add.1 précité : réponses, juillet 2016, §27.

150 Ainsi, notamment, l'article 375 du Code pénal punit le viol entre époux et partenaires – et une circonstance aggravante existe quant aux violences commises entre eux (article 410 du Code pénal). La Belgique connaît des circonstances aggravantes pour des infractions commises en raison d'un motif discriminatoire – dont le genre.

151 www.risicotaxatie.be.

152 www.aimesansviolence.be.

153 http://signalelaviolence.brussels/.

154 « *Quand l'amour fait mal* ».

155 Lignes téléphoniques « 0800/30.030 » du coté francophone et « 1712 » du coté néerlandophone.

156 http://www.strategiesconcertees-mgf.be/scmgf-15/.

157 http://www.intact-association.org/images/analyses/INTACT_L_interet_de_l_enfant.pdf.

158 http://menspeakout.eu.

159 Chapitre 22 de la loi précitée modifiant la loi de principes du 12 janvier 2005 concernant l'administration pénitentiaire ainsi que le statut juridique des détenus.

160 Loi du 18 février 2013, modifiant le titre II, titre Iter du Code pénal (*M.B.*04.03.2013).

161 Article 139 Code pénal : « … *Une organisation dont l'objet réel est exclusivement d'ordre politique, syndical, philantropique, philosophique ou religieux ou qui poursuit exclusivement tout autre but légitime ne peut, en tant que telle, être considérée comme un groupe terroriste …* » (article inséré en 2003). Article 141*ter* Code pénal : « *Aucune disposition du présent titre ne peut être interprétée comme visant à réduire ou entraver (…) des droits ou libertés fondamentales tels que le droit de grève, la liberté de réunion et d'association, y compris le droit de fonder avec d'autres des syndicats et de s'y affilier pour la défense de ses intérêts, et le droit de manifester qui s'y rattache, la liberté d'expression, en particulier la liberté de la presse et la liberté d'expression dans d'autres médias, et tels que consacrés notamment par les articles 8 à 11 de la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales* » (article inséré en 2003 – tel que modifié en 2013 et 2014).

162 C.const., 15 mars 2018, n° 31/2018; http://www.const-court.be/.

163 Le radicalisme, l'extrémisme et le terrorisme figurent parmi les phénomènes prioritaires de la Note cadre de sécurité intégrale 2015-2018 et du Plan national de sécurité 2015-2018 (textes élaborés avec les entités fédérées – définissant l'approche générale de ces trois phénomènes) cf. document de base.

164 Art. 23/2 du Code de nationalité.

165 Également loi du 20 juillet 2015 *op.cit*.

166 Loi du 10 août 2015 modifiant la loi du 19 juillet 1991 relative aux registres de la population, aux cartes d'identité, aux cartes d'étranger et aux documents de séjour et modifiant la loi du 8 août 1983 organisant un Registre national des personnes physiques (*M.B.* 31.08.2015 – Entrée en vigueur : 05.01.2016).

167 Adoption de l'article 62 du Code consulaire et circulaire ministérielle du 29 avril 2016 concernant l'application des règles relatives au refus de délivrance et au retrait de documents de voyage, telles que prévues dans le code consulaire.

168 Circulaire du Ministre de la sécurité et l'Intérieur et du Ministre de la justice relative à l'approche des Foreign Terrorist Fighters » qui remplace la circulaire du 25 septembre 2014.

169 Loi du 27 avril 2016 relative à des mesures complémentaires en matière de lutte contre le terrorisme (*M.B.*09.05.2016).

170 Arrêté royal du 21 juillet 2016 relatif à la banque de données commune Foreign Terrorist Fighters et portant exécution de certaines dispositions de la section 1er*bis* « de la gestion des informations » du chapitre IV de la loi sur la fonction de police (*M.B.*22.09.2016).

171 Loi du 5 février 2016 modifiant le droit pénal et la procédure pénale et portant des dispositions diverses en matière de justice (*M.B.* 19.02.2016).

172 https://www.besafe.be/fr/base-de-connaissance/plan-daction-radicalisme.

173 Loi du 25 décembre 2016 portant des modifications diverses au Code d'instruction criminelle et au Code pénal, en vue d'améliorer les méthodes particulières de recherche et certaines mesures d'enquête concernant Internet, les communications électroniques et les télécommunications et créant une banque de données des empreintes vocales (*M.B.* 17.01.2017).

174 Loi du 30 mars 2017 modifiant la loi du 30 novembre 1998 organique des services de renseignement et de sécurité et l'article 259*bis* du Code pénal *(M.B., 28.04.2017).*

175 Loi du 3 août 2016 portant disposition diverse en matière de lutte contre le terrorisme (*M.B.* 11.08.2016) et circulaire du 29 avril 2016 *op.cit*.

176 Circulaire du ministre de la Sécurité et de l'Intérieur, du ministre des Affaires étrangères, du ministre de la Justice, du ministre de la Défense et du secrétaire d'État à l'Asile et à la Migration concernant l'échange d'informations et le suivi des prédicateurs de haine, entrée en vigueur le 1er août 2016.

[177] Voir en annexe 20, le programme de la formation en question.
[178] El Haski c. Belgique, Requête n° 649/08, arrêt CEDH du 25 septembre 2012, définitif le 18 mars 2013 ; http://www.gdr-elsj.eu/wp-content/uploads/2012/09/AFFAIRE-EL-HASKI-c.-BELGIQUE1.pdf.
[179] Art. 6 CEDH.