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Written replies by the Government of Belgium* to the list of issues (CAT/C/BEL/Q/2) to be taken up in connection with the consideration of the second periodic report of Belgium (CAT/C/BEL/2)

[9 September 2008]

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

ARTICLE 1

Question 1. Please provide information on planned or existing measures to ensure that all elements of the definition contained in article 1 of the Convention are included in the general definition contained in article 417 bis of the Belgian Criminal Code, as recommended by the Committee in paragraph 6 of its previous concluding observations (CAT/C/CR/30/6).

1. The definition contained in article 417 *bis* of the Belgian Penal Code covers all the acts addressed by the Convention and goes even further. It defines torture as "any intentional inhuman treatment which causes acute pain or very intense and severe physical or mental suffering". Inhuman treatment means "any treatment by which severe physical or mental suffering is intentionally inflicted on a person, including for the purpose of obtaining information or a confession, punishing the person, or bringing pressure to bear on or intimidating that person or a third party". Degrading treatment means "any treatment which causes the person subjected to it serious humiliation or debasement in the eyes of others or in his or her own eyes". All these acts are punishable by law. In distinction from the definition contained in article 1 of the Convention, it is not necessary for the treatment in question to be inflicted "at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity". Accordingly, the range of the acts condemned by the Belgian Penal Code is broader, for any act of torture or inhuman or degrading treatment which causes physical or mental suffering is liable to criminal prosecution, irrespective of whether the perpetrator is a public official.

2. Belgium has thus had recourse to the second paragraph of article 1 of the Convention, which states that the definition contained in paragraph 1 is without prejudice to any international instrument or national legislation containing provisions of wider application. In the light of the preparatory work on the act bringing Belgian law into line with the Convention (Chamber of Representatives, Document 50 1387), it is clear that the Legislature's intention was to include a wider definition of torture than the one contained in the Convention.

ARTICLE 2

Question 2. Please clarify whether the Royal Decree setting out the police code of ethics has been drafted. If so, please indicate when it comes into force and whether it explicitly prohibits torture.

3. The police code of ethics referred to in article 50 of the Police Services Status (Essential Elements) Act of 26 April 2002 was drafted and published as an annex to the Royal Decree of 10 May 2006.[1]

4. The language of this Code of Ethics of the Police Forces places it clearly in the domain of the culture of fundamental human rights. It includes various elements such as values, standards, objectives, expectations, conduct and symbols. The substantive content of the Code draws on various documents of international or national scope, including the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) and the Constitution of Belgium, which call for concrete application of the principles and standards forming the basis of police work in a democratic State.

[1] *Moniteur belge*, 30 May 2006.

5. Without question therefore the Code is consistent with the international human rights recommendations and instruments.

6. The European Code of Police Ethics (Recommendation (2001)10, adopted by the Committee of Ministers of the Council of Europe on 19 September 2001) reinforces this necessity even further where the Belgian police is concerned. This 66-article text sets out a code of police conduct for the States members of the Council of Europe. It thus equips them with a clear guideline for the drafting of a code tailored to the specific context of each country.

7. The drafting of the Belgian Code was based on qualitative analyses of complaints and of the recommendations issued both by the oversight and inspection bodies of the police services and by the competent disciplinary and supervisory authorities. Given its design and development, the Code is an excellent tool for continuing the integration of the various police cultures and for ensuring due compliance with the of the unique status of police personnel.

8. The Royal Decree establishing the Code of Ethics of the Police Forces was signed on 10 May 2006 and entered into force on 30 May 2006 (date of its publication in the *Moniteur belge*). The Code does not specifically incorporate a prohibition of torture. However, several of its articles refer directly or indirectly to this prohibition and even go further by stating the obligation of the police services to respect human rights and fundamental freedoms and the strict conditions governing the use of coercion and force (arts. 3, 46 and 49).

9. The following articles address expressly the question of inhuman or degrading treatment:

(a) Article 13 imposes on all members of the police services who directly witness acts of unlawful violence or inhuman or degrading treatment on the part of a colleague to do everything they possibly can to stop such acts and bring them to the attention of the competent authority;

(b) Article 51 addresses the question of the treatment of persons deprived of their liberty and provides that members of the police services “shall respect the dignity of all persons under their supervision and refrain from subjecting them to inhuman or degrading treatment or reprisals.” This article goes on to state that persons deprived of their liberty are also entitled to receive medical attention, to have access to personal hygiene facilities, and to be given food and drink. Police personnel are responsible for all persons subject to a measure of deprivation of liberty or detention and entrusted to their custody or placed under their supervision. They must take the necessary steps to prevent accidents, escapes or connivance with third parties and must ensure effective surveillance to that end.

10. It is thus stipulated that police personnel must come to the aid of persons under their supervision who clearly need medical attention. They must immediate give them or have them given first aid pending the provision of medical treatment by the services authorized to do so.

11. Article 62, on hearings and questioning, prohibits the use of violence, maltreatment or underhand ploys to obtain confessions or information. It stipulates that investigators shall inform the persons concerned of their rights, in accordance with the Code of Criminal Investigation. They must respect such persons’ right to remain silent and must not force them to incriminate themselves. Investigators are prohibited from using violence, maltreatment or underhand ploys to obtain confessions or information.

12. In addition, article 41 provides that police personnel shall exercise restraint in what they do and say and shall not resort to strong language, over-familiarity or improper gestures. They must

treat everyone with politeness, tact and courtesy, endeavour to keep themselves under control, and avoid any hostile, aggressive, provocative, contemptuous or humiliating conduct.

13. Moreover, article 49 states that in the performance of their duties police personnel shall use means of constraint only under the circumstances specified by law.

14. Lastly, article 52 provides that police personnel assigned to the duty of escorting and/or protecting persons under arrest or detention or persons deprived or their liberty shall ensure, throughout the operation, that the safety and dignity of such persons suffer no harm.

Question 3. In paragraph 26 of its report on its visit to Belgium in April 2005, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) expressed concern at the fact that minors, from the age of 14, were questioned by police officials - and even signed statements - without the assistance of a lawyer, guardian or trusted adult. Please indicate the measures taken to remedy this situation.

15. The mandatory presence of a lawyer or trusted adult remains rare. However, in some cases the law requires notification of the person responsible for the minor.

A. Presence of a lawyer or trusted adult during questioning

1. Questioning by a police official

16. The law does not stipulate the presence of a lawyer or trusted adult at this stage of proceedings, regardless of whether the minor in question has been deprived of his or her liberty.

17. However, the law does not prohibit the presence of a third party during questioning provided that any intervention by such party is mentioned in the record (art. 47 *bis* of the Code of Criminal Investigation). If the police official wishes to allow a lawyer to be present during questioning, he or she is well advised to so inform the requesting magistrate and obtain his instructions in this regard.

18. Nevertheless, it often happens that a relative is allowed to be present during questioning, but this practice does not stem from any legal requirement.

2. Questioning by a magistrate

(a) By an examining magistrate.

19. Article 15 of the Act of 13 June 2006 supplemented the second paragraph of article 49 of the Act of 8 April 1965 by providing that when appearing before an examining magistrate a minor is entitled to the assistance of a lawyer (but specifying that the magistrate has the option of interviewing the minor alone). This amendment marked a major innovation in Belgian law of criminal procedure. In principle, a suspect does not have the right to be assisted by a lawyer during such an appearance (except in the very special case of a review hearing concerning remand in custody).

(b) By a juvenile judge.

20. In this case the law does prescribe that a minor must be assisted by a lawyer (art. 54 *bis* of the Act of 8 April 1965).

21. The juvenile judge is required to notify the persons responsible for a minor when conducting an examination concerning a criminal offence (art. 51 of the Act of 8 April 1965). Such persons are invited to be present during the minor's appearances.

22. It should be pointed out that an appearance before a juvenile judge is not concerned with the charge against the minor but deals solely with the action to be taken with respect to the minor.

23. Thus this procedure does not affect the police questioning, which may be conducted without a lawyer or responsible third party being present.

B. Notification of a responsible adult

24. The first paragraph of the new article 48 *bis* incorporated in the Act of 8 April 1965 by the Act of 15 May 2006 reads:

> "When a minor is deprived of his or her liberty following arrest or is released against a promise to appear or the signature of an undertaking, the police official responsible for the deprivation of liberty must, as promptly as possible, communicate or cause to be communicated to the minor's father and mother, his or her guardian or the person having legal or de facto custody of the minor an oral or written notification of the arrest and the reasons for the arrest and of the place where the minor is being held. If the minor is married, the notification must be given to his or her spouse rather than to the persons mentioned above."

25. It is clear from this text that police officers are required to notify the person responsible for the minor only in the event of deprivation of the minor's liberty or when the minor is released against an undertaking. There is no question under this provision of notifying a responsible adult if the minor is being questioned without deprivation of liberty or of such an adult being present during the questioning.

26. Article 51 of the above-mentioned Act of 8 April 1965 requires the juvenile judge to notify the adults responsible for the minor as soon as he or she is seized of the case.

27. Lastly, in cases of administrative arrest the person responsible for the minor must be officially notified, pursuant to the last part of article 33 *quater* of the Police Functions Act.

C. Sound and video recordings of interviews

28. In paragraph 27 of its report the CPT expresses the view that the recording of interviews is an important safeguard against the risk of torture and inhuman or degrading treatment, in the same way as the presence of a lawyer or a third party responsible for the minor. The implementation of a pilot project on this question is currently being evaluated. Several police precincts proceed in this manner, chiefly on the basis of the general rules on recorded interviews (Code of Criminal Investigation, art. 112 *ter*). It is not the rule for a third party responsible for a minor who is a witness to or victim of an offence to be present at these interviews.

29. Generally speaking, police personnel respect and seek to ensure respect for human rights and fundamental freedoms.

30. In the performance of their duties the personnel of the administrative and criminal investigation police ensure respect for and contribute to the protection of the rights and freedoms of the person and to the democratic development of society.

31. When performing their duties they use means of constraint only under the circumstances specified by law.

32. Every action taken by police officers is well-balanced and proportional to the circumstances.

33. In addition to fulfilling their duty to work for the benefit of all, they give particular attention to the specific needs of society's vulnerable members.

34. The application of the principles described above and, in general terms, of all the other provisions of the code means that in every operation and action police personnel apply the Integrated Charter of Police Values, which states:

> "To respect and to cause to be respected the right, freedoms and dignity of every person, in particular by endeavouring to use lawful force which is always balanced and limited to what is strictly necessary."

ARTICLE 3

Question 4. Please provide detailed information on how the instructions regarding the use of force during the removal of aliens meet the requirements of the Convention. Please specify how their effective implementation is guaranteed.

A. Use of force

35. The national legislation (arts. 1, 37, 37 *bis*, and 38 of the Police Functions Act of 5 August 1992) provides that any police official may use force for a lawful purpose which cannot be achieved by other means. Every instance of the use of force must be preceded by a warning. The use of force must be:

(a) Lawful;

(b) Proportional to the purpose in question;

(c) The only possible means of achieving that purpose.

36. There are specific restrictions applicable to the removal of aliens (Ministry of the Interior directives of 19 July 2006). All measures of force are subject to:

(a) Consideration for the health and safety of the person to be removed, the escort personnel and the other persons present;

(b) Consideration for the safety of the flight;

(c) Minimum disruption of the environment.

37. With regard to the other restrictions it should be noted that:

(a) Force must be used gradually, depending on the conduct of the person to be removed;

(b) Means of force which block the breathing passages or otherwise impede breathing are prohibited;

(c) Anaesthetics may not be used to facilitate the removal operation;

(d) Restriction of the freedom of movement of the person to be removed in such a way as to prevent him taking evasive action in the event of an accident is prohibited;

(e) A quick-release seat belt is the only means of constraint allowed during take-off and landing (with the agreement of the flight captain or to ensure flight safety);

(f) It is recommended that the aircraft should ideally be boarded by means of steps at the rear of the aircraft.

38. The authorized technical devices include:

(a) Handcuffs (traditional or quick-release);

(b) Quick-release seat belts;

(c) Nylon straps;

(d) Velcro bindings for the feet and knees;

(e) Boxing helmets (not on scheduled flights, only on secure flights).

The use of weapons is not allowed on board aircraft.

B. Safeguards of the correct application of these directives

39. Internal and external controls apply to the execution of removal operations. The General Inspectorate of the Federal and Local Police (AIG) is responsible for oversight of the proper conduct of removal operations. This service is always represented on secure flights and it also monitors scheduled flights.

40. In addition, services such as the Standing Committee on the Supervision of the Police Services (Committee P) and the Committee for the Prevention of Torture (CPT) have permanent access, as do other services, to police stations and cells.

41. An executive-level officer (a policemen or senior member of personnel in the middle-to-upper ranks) is also present at the most critical stages of all removal operations carried out under escort (the handcuffing in the cell, transport to the aircraft and embarkation of the deportee and the embarkation of the other passengers until the doors are closed). He ensures that any use of force is consistent with the established procedures and directives. This officer is also responsible for contacts with the crew, which is told about any incidents or measures which may affect the safety of the flight.

42. An executive-level officer may also join the escort team for certain difficult operations (new destinations, etc.). Other specialists (doctors, psychologists, etc.) may also be on hand when the specific situation of the deportee so requires.

43. One or more members of the social squad and the psychological support squad (MPOT) may also be involved in the escort operation. Their task is to try to persuade deportees to leave without a struggle and to inform the other passengers about the operation if necessary.

44. Specific training is given to personnel assigned to removal operations.

45. Complaints by deportees and/or their lawyers are handled by external bodies: the prosecutor's office, Committee P, the General Inspectorate of the Federal and Local Police, etc.

46. Any member of the escort team may interrupt the operation if he considers that its continuation entails too great a risk for the safety of the deportee, the escort personnel or the other passengers.

47. Where the procedures for the removal of aliens are concerned, a bill designed to incorporate into law Directive 2003/110 of the Council of the European Union of 25 November 2003 on assistance in cases of transit for the purposes of removal by air was tabled in the Chamber on 3 September 2008 (parliamentary document No. 1422/01). The Government requested that it should be taken up urgently.

48. This bill sets out the implementation modalities of measures of transit assistance for removal by air which are requested by member States wishing to remove a national of a third country and which are unable, for valid practical reasons, to use a direct flight to the country of destination. It provides inter alia for the possibility of the federal police, in accordance with domestic law, placing and holding nationals of third countries in secure facilities.

49. It must be stressed that the provisions of Directive 2003/110/EC are already applied in practice. The agreement concluded on 11 July 2006 between the Aliens Office and the Federal Airport Police develops further the transit procedure used in point 2.2.3, page 5.

Question 5. Please provide detailed information on the reform of the Council of State carried out in 2004-2005, indicating, in particular, what it involved and the progress made. Please also specify if this reform will give suspensive effect not only to emergency remedies applied for but also to appeals filed by any foreigner against whom an expulsion order is issued and who claims that he or she faces the risk of being subjected to torture in the country to which he or she is to be returned, as recommended by the Committee in paragraph 7 (d) of its previous concluding observations.

Act of 15 September 2006 reforming the Council of State and creating the Aliens Litigation Council

50. The Act of 15 September 2006 reforming the Council of State and creating the Aliens Litigation Council (CCE) (*Moniteur belge,* 6 October 2006) altered the organization of the various jurisdictions competent to rule on decisions taken under the asylum procedure or procedures for granting residence permits which may have the consequence of a removal operation. This reform was made necessary by the lengthy structural backlog in the administrative section of the Council of State; it was also designed to enable the Council of State to concentrate on its two principal functions: the issuance of opinions and adjudications.

51. The Council of State is no longer competent to rule on disputes concerning individual decisions taken under the aliens legislation. This function has been assigned to the CCE, which is a new jurisdiction. The Council of State now rules only on applications for administrative review.

52. The CCE has also assumed all the functions of the Standing Commission on Refugee Appeals. This reform is now in effect.

53. The CCE is an administrative jurisdiction competent to hear appeals against individual decisions taken under the law governing entry into Belgian territory, temporary and permanent residence and removal of aliens.

54. This procedure may be applied to aliens claiming a risk of torture in their country of origin.

55. The Act of 15 September 2006 amending the Act of 15 December 1980 on entry into Belgian territory, temporary and permanent residence and removal of aliens incorporates Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted. This 2006 Act also incorporates the mechanism of subsidiary protection in the Act of 15 December 1980.

56. Since 1 October 2006 every request for asylum has been examined from the standpoint both of refugee status and of subsidiary protection status.

57. Subsidiary protection status may be granted to aliens who do not qualify for refugee status and who cannot be granted permission to stay on medical grounds but with respect to whom there are serious grounds for believing that they would be subject to a real risk of “serious harm” (*atteintes graves*) if sent back to their country of origin (or, in the case of stateless persons, to the country of habitual residence). “Serious harm” means: a death sentence or execution; torture or inhuman or degrading treatment or punishment in the country of origin; or serious threats to the life or person of a civilian, owing to blind violence in an internal or international armed conflict, when there are clear indications of a real risk that the civilian will suffer serious harm on return to his or her country of origin. Furthermore, the alien does not have to be able or, when there is a real risk of serious harm, to be willing to take advantage of the protection of the country of origin (or, in the case of stateless persons, of the country of habitual residence). In certain specific situations, listed in article 55/4 of the Act of 15 December 1980, an alien may be denied the benefit of subsidiary protection.

58. An alien who has been accorded subsidiary protection status receives a residence permit valid for one year, which may be extended or renewed. Five years from the date of submission of their applications aliens possessing this status are granted permission to stay for an unlimited period.

59. A residence permit may be withdrawn at any time during the limited period of stay if subsidiary protection status ceases or is ruled out.

60. Subsidiary protection status accorded to aliens ceases when the circumstances which justified its award cease to obtain or have changed to such an extent that the protection is no longer needed. It is necessary to determine in this connection whether the change in the circumstances in question is permanent and sufficient to eliminate any real risk of serious harm.

61. Where procedure is concerned, asylum applications are considered by the General Commissariat for Refugees and Stateless Persons (CGRA), an independent administrative body, which decides to grant or refuse refugee or subsidiary protection status. Aliens have a period of 15 or 30 days[2] from the notification of the CGRA decision to lodge an appeal against the decision with the CCE.

62. During this period and during the consideration of the appeal, no measure for removal from Belgian territory or *refoulement* may be executed by force against the alien who entered the appeal (new article 39/70 of the Act of 15 December 1980).

63. An application for suspension with unlimited jurisdiction may be entered against a decision of the CGRA under article 39/2 of the Act of 15 December 1980.

64. The CCE may confirm or amend CGRA decisions or return the file to the CGRA, either because the contested decision is vitiated by a substantial irregularity which cannot be corrected by the CCE or because the decision lacks some essential elements preventing the CCE from concurring in the confirmation or amendment referred to in paragraph 1 unless additional examination proceedings are carried out.

65. Decisions to refuse to consider applications for refugee or subsidiary protection status (Art. 57/6, paras. 1 and 2, of the Act of 15 December 1980 (Applicants coming from a State member of the European Union)) are subject only to annulment appeal.

66. Suspension of execution may be ordered only if serious grounds for quashing the contested decision are cited and if the immediate execution of the decision may cause serious prejudice which it would be difficult to correct. Except in extremely urgent cases the request for suspension and the annulment appeal must be made in one and the same application.

67. Article 39/82, paragraph 4, of the Act of 15 December 1980 provides that when an alien is subject to a removal or *refoulement* order which is about to be executed and has not yet filed an application for suspension, he or she may request suspension of the effects of the decision in circumstances of extreme urgency within the 24 hours following its notification. Such emergency applications for suspension must be considered within 48 hours of their receipt by the CCE. If the president of the chamber or the judge hearing the application does not hand down a ruling within that time limit, he must notify the first president or the president. The first president or the president will then take the necessary steps to ensure that a ruling is made, at the latest, within 72 hours of the receipt of the application. If the CCE does not give its decision within that time limit or if suspension is not granted, the execution of the removal order by force becomes possible once more.

68. However, it must be stressed that on 27 May 2008 the Constitutional Court handed down a decision partially annulling the above-mentioned article 39/82, specifically the provision that an emergency application must be filed within 24 hours and the possibility of forcible execution if the CCE fails to issue a ruling. This decision of the Constitutional Court also revoked in its entirety article 39/83, which provided that “unless the alien concerned agrees, a removal or

[2] This period is 30 days when an appeal against a decision to reject an application for refugee or subsidiary protection status is entered by an alien who is a national of a State member of the European Communities or a national of a State party to a treaty on membership of the European Union which has not yet entered into force.

refoulement order imposed on the alien may be executed by force, at the earliest, 24 hours after the notification of the order." However, the Constitutional Court decided to allow the effects of article 39/82 (specifically the time limit of 24 hours for filing an emergency application) to remain in force until 30 June 2009.

69. It should be pointed out that in its decision of 27 May 2008 the Constitutional Court stated: "This rule, taken in its entirety, does not further impair compliance with the requirements which the European Court of Human Rights infers from article 13 of the European Convention on Human Rights with respect to cases in which it is plausible that a removal order may lead to a violation of a fundamental right guaranteed by the Convention" (B.66). The Court continued: "The foregoing argument does not however allow the conclusion that the Legislature could not fix short time limits for the filing of applications for suspension in circumstances of extreme urgency. Nevertheless, there is a requirement that such time limits should be reasonable, which a time limit of 24 hours is not."

70. Article 39/79 of the Act now provides that, unless the alien agrees, no removal order may be executed by force against the alien during the period fixed as the time limit for entering appeals against the decisions referred to in article 39/79, paragraph 2, of the Act or during the consideration of such appeals. Such orders made be made against aliens only on the grounds which produced the contested decision.

71. Annulment appeals against CCE decisions may be lodged, without suspensive effects, only with the Council of State.

Question 6. The Committee, in its previous concluding observations (CAT/C/CR/30/6, para. 7 (e)), had recommended setting a time limit for the detention of foreigners against whom an expulsion order is issued and monitoring asylum-seekers who have been released. Please indicate the concrete measures taken to implement this recommendation.

72. The maximum period of detention is fixed in article 7 of the Act of 15 December 1980: "An alien may be detained for this purpose for the time strictly necessary for the execution of the order up to a maximum of two months.

73. "The Minister or a person designated by him may however decide to extend the period of detention by two months when the necessary steps for the expulsion of the alien were initiated within seven working days of the start of the detention and are being pursued with all due diligence, and when there is still a possibility of actually accomplishing the alien's expulsion with a reasonable time.

74. "Following an extension of the period, the decision referred to in the preceding paragraph may be taken only by the Minister.

75. "The alien must be released after five months' detention.

76. "When the maintenance of public order or national security so requires, the detention of an alien may be extended, by one month on each occasion, after the expiry of the period referred to in the preceding paragraph, but the total duration of the detention may never thereby exceed eight months."

77. The time limit fixed by law begins to run again following the failure of an attempt to expel an alien caused by the alien's opposition. The European Court of Human Rights did not deem this

practice to be a violation of human rights – a decision confirmed by Belgium's Court of Cassation.

78. Furthermore, this provision of the law is consistent with the directive of the European Parliament and the Council of Europe of 18 June 2008 (specifically article 15) concerning the common rules and procedures applicable by member States to the repatriation of nationals of a third country illegally present in their territory.

79. When a detained asylum-seeker is released, the consideration of his or her asylum application is continued by the competent bodies. On the conclusion of the asylum procedure the alien will be granted either (a) refugee status or (b) subsidiary protection status or (c) the application will be rejected. In the event of rejection the alien, if present illegally, may be ordered to leave the country. If the alien fails to comply voluntarily with an enforceable removal order or refuses to accept assistance under a voluntary repatriation programme, a detention order may be issued for the purposes of accomplishing the alien's expulsion.

Question 7. Please specify whether the Aliens Office continues to hold foreigners who have obtained a release order from the Council Chamber in the transit zone of Brussels airport. Please provide data, disaggregated by age and sex, on the number of persons who were held in the transit zone in 2004, 2005, 2006 and 2007 and for how long. What measures does the State party plan to implement to prevent the detention of foreigners in the transit zone? Furthermore, please specify the time limit for the detention of foreigners who oppose their expulsion. Please clarify how the State party is able to guarantee that the regulations of the INAD centre are in conformity with the Convention.

(a) Please specify whether the Aliens Office continues to hold foreigners who have obtained a release order from the Council Chamber in the transit zone of Brussels airport and the legal grounds for such action

80. No persons have been held in the transit area since the issuance of the decision of European Court of Human Rights dated 24 January 2008 (*Riad and Idiah v. Belgium*).

(b) Please provide data, disaggregated by age and sex, on the number of persons who were held in the transit zone in 2004, 2005, 2006 and 2007 and for how long

Year	*Numbers*	*Duration*	*Sex*	*Age*
2004	22	1 day - 1 2 days - 2 3 days - 1 4 days - 3 6 days - 2 7 days - 1 13 days - 1 21 days - 1 25 days - 1 26 days - 1 33 days - 1 41 days - 1 44 days - 1 52 days - 1	Male - 10	18 years - 1 25 years - 1 29 years - 1 30 years - 2 31 years - 1 33 years - 1 34 years - 1 35 years - 1 36 years - 1

Year	*Numbers*	*Duration*	*Sex*	*Age*
		76 days - 1 87 days - 2 111 days - 1	Female 12	19 years - 1 24 years - 4 25 years - 1 26 years - 1 27 years - 1 28 years - 1 29 years - 1 32 years - 1 39 years - 1
2005	9	1 day - 2 2 days - 2 3 days - 1 5 days - 1 9 days - 2 12 days - 1	Male - 6	21 years - 1 26 years - 1 29 years - 1 40 years - 1 43 years - 1 48 years - 1
			Female - 3	18 years - 1 22 years - 2
2006	7	<1 day - 1 1 day - 4 2 days - 1 11 days - 1	Male 2	23 years - 1 31 years - 1
			Female - 5	21 years - 1 27 years - 1 28 years - 1 32 years - 1 33 years - 1
2007	7	<1 day - 1 1 day - 1 2 days - 3 5 days - 1 3 days - 1	Male - 2	26 years - 1 31 years - 1
			Female - 5	28 years - 1 29 years - 2 32 years - 1 37 years - 1

(c) What measures does the State party plan to implement to prevent the detention of foreigners in the transit zone? Furthermore, please specify the time limit for the detention of foreigners who oppose their expulsion

81. Cases of release in the transit zone remain very rare and relate to only a small number of persons. The statistics testify to the concern of the Aliens Office to keep such releases to a minimum: 23 persons in 2003; and seven persons held temporarily (two days) in the transit zone in 2007. Accordingly, there is no question of this being an administrative practice. It should also be mentioned that persons subject to a *refoulement* order may always return to their countries of origin.

82. In the decision in *Riad and Idiah v. Belgium* dated 24 January 2008 the European Court of Human Rights pointed out that every State has an inalienable right to control entry into its territory. For this purpose it may detain potential immigrants. It is also clear from this decision that detention in the transit zone remains a possibility irrespective of whether it is deemed to be a measure of deprivation of liberty, provided that it is backed by safeguards of respect for the fundamental rights guaranteed by the European Convention on Human Rights, in particular its articles 3 and 5.

83. It was decided in the light of this decision to abandon the practice of detention in the transit zone following the issue of a release order by the judicial authorities. However, the fact of being released does not constitute permission to enter the territory. Accordingly, an expulsion order may always executed, and a ministerial decision on restricted residence may, when necessary, be taken and notified to that end.

(d) Please clarify how the State party is able to guarantee that the regulations of the INAD centre are in conformity with the Convention.

84. It should be noted that only persons arriving without the necessary papers for entry into Belgium who do not make a request for asylum (Geneva Convention or subsidiary protection) are detained in the INAD centre. Furthermore, such aliens are held there only for the time strictly necessary for arranging their return to their countries of origin (they are held there, on average, for between a few hours and a day or two).

85. In practice, all the rights of inmates set out in the Royal Decree of 2 August 2002 establishing the operational procedures and rules applicable to places located in Belgian territory managed by the Aliens Office where an alien may be held, placed at the disposition of the Government or accommodated, pursuant to the provisions of article 74/8, paragraph 1, of the Act of 15 December 1980 concerning the entry into Belgian territory, temporary and permanent residence and removal of aliens apply equally to inmates of the INAD centre, except for the possibility of exercise walks in the open air. Where visiting arrangements are concerned, the airport security regulations prohibit visitors from entering the centre. In the case of visits by lawyers and other trusted persons, members of the airport police services go to the centre to escort the alien concerned to one of their offices, where the visit can take place.

86. The internal rules of the INAD centre applicable to inmates provide inter alia that all communications from their lawyers and embassies shall be passed on to the inmates concerned.

87. Information leaflets are handed to all persons held in a centre (the INAD centre and the closed facilities). These leaflets describe how the centre is operated, the rights and obligations of

inmates and the procedures which are to be followed. Copies are available in 14 languages. Pursuant to article 17 of the Royal Decree of 2 August 2002, an information booklet is also handed out to inmates.

88. A new centre was to be built in 2008 in order to improve the conditions under which aliens are held. When the construction work is completed, the facilities of the INAD centre will no longer be used for persons held for less than 24 hours. All the rights established in the Royal Decree will be equally applicable in the new centre to the target group of the present INAD centre.

Question 8. In paragraph 73 of its report, the State party indicates that a special Commission was instructed by the Belgian Government to draw up expulsion procedures for foreigners. Please provide the Committee with details of these procedures.

89. In January 2004 a second Vermeersch Commission reviewed the existing instructions concerning expulsion in order to ensure that expulsion operations are conducted in a humane manner.

90. The Commission submitted its final report to the Minister of the Interior on 31 January 2005 with recommendations addressed to the various agents involved in the expulsion policy: the Aliens Office, the Federal Police, the Government, the Public Federal Foreign Affairs Service, the Public Federal Justice Service, etc. Eighteen of the 34 recommendations on ways to make expulsion operations as humane as possible were addressed to the Aliens Office, 11 to the Federal Police, and five to other bodies (for example, to the Justice Service with regard to the supervision of minors and the accelerated procedure for handling complaints of violence, and to the Government with regard to the creation of a standing committee on expulsion policy).

91. Following the publication of this report the then Minister instructed his services to act on the recommendations, which were designed amongst other things to:

(a) Strengthen the legal protection of all the persons concerned;

(b) Prevent the use of violence by any of the persons concerned;

(c) Improve communication between the services involved in expulsion operations;

(d) Provide better protection for special categories of person;

(e) Integrate expulsion policy in the asylum and migration system;

(f) Ensure that the Commission’s recommendations are followed up.

92. Several steps have already been taken in response to these recommendations:

(a) Relating to aliens: intensified voluntary return campaigns; booklets on the asylum procedure; screening in the centres since September 2006 of a DVD describing the stages of a forcible expulsion operation; pre-identification of detainees since 1 September 2005 by the detainees identification unit of the Aliens Office; and arrangements to avoid lengthy stays in the transit zone;

(b) Relating to the personnel of closed facilities: training modules on persuasion techniques, violence management, aggression management, and cultural diversity;

(c) Relating to legislation: Act of 15 May 2006 containing a number of provisions on transport, including article 16 on the sanctions to be imposed on any person committing acts of violence on board an aircraft; and a circular on voluntary return signed by the Minister of the Interior and the Minister for Social Integration;

(d) Relating to collaboration and communication among the various services involved in expulsion operations: signature of a protocol between the Aliens Office and the National Federal Police in Brussels; collaboration among social workers in the closed facilities and the social and psychological support team of the Federal Airport Police; design of the escort sheet for all expulsions; and action to encourage re-admittance by the countries of origin.

93. The Federal Police has taken the following action:

(a) Adoption of several internal directives designed to improve the regulations on the performance of escort duties;

(b) Collaboration in the production of a film explaining the various stages of the expulsion procedure to deportees;

(c) Introduction of a procedure to optimize the recruitment and selection of escort personnel, in particular by instituting tests for the external services;

(d) Training of escort personnel: this remains a problem owing to the lack of capacity in the federal school;

(e) Regular meetings with the detention adviser and the occupational medicine doctor to improve the working conditions of police personnel;

(f) Regular coordination meetings to encourage communication among the services concerned (Federal Police, Aliens Office); and the INAD forum made up of representatives of Brussels Airlines, the Aliens Office and the Federal Police;

(g) Special attention to the most vulnerable groups: pregnant women, families with children, unaccompanied minors, etc.;

(h) Efforts by immigration officials to limit illegal immigration by providing training for local immigration services and airline personnel.

94. Recommendations on forced repatriation: to render the removal policy more transparent by spelling out the various stages of a forcible removal operation:

(a) Stage 1: persons who have not complied with an order to leave the country may be expelled immediately when intercepted or when being held in a closed facility pending repatriation;

(b) Stage 2: if a person being held agrees to leave without escort and thus voluntarily, the Commission proposes the award of a small “reward” (a maximum of 50 euros);

(c) Stage 3: persons who refuse to leave voluntarily are conducted under escort onto the first scheduled flight and transported to a suitable destination. If they offer no resistance, they are given a small reward on arrival;

(d) Stage 4: departure under constraint with an escort. This stage comes into play when stage 3 fails through fault of the deportee. A second attempt at stage 3 is always possible;

(e) Stage 5: departure on a secure flight. This is the last resort; no reward is granted.

95. In order to implement this recommendation the Vermeersch Commission proposed that a video film describing the various stages should be produced. The purpose of this video is to provide persons illegally present in Belgium with a clear picture of the options available to them if they agree to leave voluntarily and also of the measures of coercion to which they will be exposed if they refuse to comply with the order made against them. The film makes clear the advantages and disadvantages of the various options.

96. On this DVD a menu allows users to select and show only the part of interest to them (voluntary return, for example). The DVD runs for a total of 18 minutes and has been screened in the centres since September 2006.

97. Special arrangements are put in place when unaccompanied minors are to be removed, with emphasis on the importance of an escort to the country of origin or to a country where they will be welcomed by their families or by third parties. It is necessary to develop the possibility of such reception in countries of origin for unaccompanied minors who are turned back and to expand vocational training in this area. That is why an investigation should be made into the possibilities and limitations of such initiatives, which entail frank collaboration between the authority and non-governmental organizations. In practice, an unaccompanied minor alien will be removed only when return to his or her country of origin or a country where permission to stay has been granted is possible with guarantees that the minor will be welcomed and receive appropriate attention in the light of the minor's needs and degree of independence either by his or her parents or other responsible adults or by governmental or non-governmental agencies.

98. It should also be remembered that all decisions on the expulsion of aliens take account of the provisions of article 8 of the European Convention on Human Rights guaranteeing respect for private and family life and of the jurisprudence of the European Court of Human Rights. The actual existence of a family life and the pre-existence of the alleged family life are always verified. The family life must be characterized by a real and sufficiently close relationship. Kinship is not sufficient; there must also be de facto links.

Question 9. Please provide detailed information on any complaints of torture or cruel, inhuman or degrading treatment during the forcible deportation of foreign nationals received since 2003, the reason for these complaints, and their outcome in terms of prosecutions, sanctions and compensation for victims. Please indicate what appeal procedures are available to victims and whether the State party intends to modify the admissibility criteria with respect to the current time limit of five days from the alleged violation of rights for the written submission of a complaint. Furthermore, please indicate the reasons for the six complaints received in 2003 mentioned in paragraph 75 of the State party's report.

99. In recent years the Standing Committee on the Supervision of the Police Services (Committee P) has processed and analyzed a number of complaints and reports concerning the

modalities of *refoulement*, detainment in the transit zone, and repatriation of persons in an irregular situation in Belgian territory, in particular in the framework of an oversight survey which has been in place since 2003-2004.

100. Committee P has appended to this report (see in annex I) information on the complaints concerning repatriation which have been brought to its attention. This information comes from its data bank, which is fed from various sources.[3] Since the Committee's data bank is not exhaustive, it is important to be very cautious in the statistical use, on its own, of the information provided from the data bank.[4]

101. It may also be pointed out, for information, that Committee P devoted part of its annual report for 2006 to the problems of *refoulement* and repatriation (see annex II).

Question 10. Please indicate in which cases Belgium would seek diplomatic assurances from a third country to which an individual is to be extradited, returned or expelled. Please also provide examples of cases in which the authorities did not proceed with the extradition, refoulement or expulsion of an individual for fear that the person concerned would be tortured. On the basis of what information were any such decisions taken?

102. To date Belgium has not sought any diplomatic assurances in connection with cases of expulsion or *refoulement.*

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[3] The various sources available to Committee P to enable it to form a picture of the charges levelled against members of the police include, first of all, complaints and reports made directly to the Committee. Then there are the judicial inquiries entrusted by the judicial authorities to the Committee's Investigation Department. Next there is the information communicated to the Committee by the police and judicial authorities in compliance with the legal obligation contained in the Act of 18 July 1991 on oversight of the police and information services and the Coordination Agency for the Analysis of the Threat, namely:

(1) The automatic communication by the Procurator-General and the Auditor-General of copies of judgments and orders concerning offences committed by members of the police services, pursuant to article 14, paragraph 1, of the Act;

(2) Information communicated by the Crown Prosecutor, the Labour Auditor, the Federal Procurator or the Procurator-General for the Court of Appeal, as the case may be, to the effect that an investigation or examination proceedings have been instituted against a member of the police services, pursuant to article 14, paragraph 2, of the Act;

(3) The automatic transmission by the Commissioner-General of the Federal Police, the General Inspectorate of the Federal and Local Police and the commanding officers of local police forces of copies of complaints and reports received concerning the police services, together with a brief summary of the findings of the inquiries when they have been completed, pursuant to article 14 *bis*, paragraph 1, of the Act;

(4) The monthly information submitted by the disciplinary authorities concerning disciplinary action taken against members of the police services, pursuant to article 14 *bis*, paragraph 2, of the Act;

(5) The communication, within a 15-day time limit, of a report by any member of a police service concerning the commission of an offence by a member of a police service, pursuant to article 26 of the Act.

[4] For example, in the context of the upgrade of the repatriation oversight survey which took place in 2006, only eight of the 13 complaints registered in 2006 by the various services were entered in the Committee's database.

103. The risk that persons who suffer expulsion or *refoulement* will be tortured is specific to certain countries. The risk of torture (or the death penalty) is always taken into consideration in the processing of asylum applications by the General Commissariat for Refugees and Stateless Persons. If the risk is a real one, asylum may be granted. In some cases a representative of the Belgian Embassy will go to the airport to monitor an operation to make sure that the expelled alien is properly received.

104. Furthermore, when an application for asylum or residence is rejected, the Aliens Office may issue an order for the applicant to leave the country. In such cases, if the alien does not comply with an enforceable order to leave, the Aliens Office takes the necessary steps to effect the expulsion. However, before executing the order the Office has checks made through the Belgian Embassy when there are serious grounds for thinking that the alien will be at genuine risk of torture or inhuman or degrading treatment or the death penalty. If such a risk exists, the expulsion order is not executed.

105. The Aliens Office will enforce an expulsion order only if it will not impair the human rights set out in:

(a) The Convention relating to the Status of Refugees, as amended by the Protocol of 31 January 1967 and by the Convention relating to the Status of Stateless Persons;

(b) The treaties relating to extradition and transit;

(c) The European Convention for the Protection of Human Rights and Fundamental freedoms;

(d) The International Covenant on Civil and Political Rights;

(e) The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

(f) The European Convention for the Prevention of Torture and Inhuman or Degrading Punishment of 26 November 1987;

(g) European Community law, including the Schengen Agreement of 14 June 1985 on the gradual abolition of border checks at common borders and the Convention of 19 June 1990 implementing the Schengen Agreement;

(h) T he international conventions relating to asylum, including Council Regulation (EC) No. 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third country national;

(i) The international conventions and agreements relating to the re-admission of foreign nationals.

Question 11. Please provide data, disaggregated by age, sex and nationality, for 2004, 2005, 2006 and 2007 concerning:

(a) The number of asylum requests registered;

(b) The number of requests granted;

(c) The number of applicants whose requests were granted because they had been tortured or because they might be tortured if they were returned to their country of origin;

(d) The number of forcible deportations or expulsions (please indicate how many of them involved rejected asylum-seekers);

(e) The countries to which these persons were expelled and the methods used by the State party to ensure that the returned persons were not at risk of being subjected to torture in the destination country.

A. Number of asylum requests registered

Year	*Number of requests registered*
2004	15 357
2005	15 957
2006	11 587
2007	11 115

B. Number of requests granted

1. Award of refugee status by year, 2004-2007

Year	*Number of requests granted*
2004	2 374
2005	3 748
2006	2 394
2007	1 839

2. Award of subsidiary protection status by year, 2006-2007

Year	*Number of awards*
2006	16
2007	279

C. Number of applicants whose requests were granted because they had been tortured or because they might be tortured if they were returned to their country of origin

106. The General Commissariat for Refugees and Stateless Persons (CGRA) has no statistics on this point. In most cases the fear of torture is only one of the reasons cited by asylum-seekers. That is why the CGRA did not include this matter in its current database.

D. Number of forcible deportations or expulsions (please indicate how many of them involved rejected asylum-seekers)

107. Statistics on non-forcible repatriations and forcible expulsions are annexed to this report.

108. On this specific point the Aliens Office has figures only for the past four years, i.e. from 2004. Furthermore, these figures relate solely to the number of successful repatriations from a closed facility and/or a prison.

109. A glance at the "top 10" countries of destination in the period 2004-2007 shows that Romania was the commonest destination for repatriation (11%), followed by Morocco (10%) and Poland (7%). It should however be noted that, apart from the Polish nationals repatriated, Poland is also the destination for the expulsion of asylum-seekers from third countries under the Dublin Rules.

110. The other countries in the top 10 are Slovakia (6%), Albania (5%), Turkey (5%), Bulgaria (4%), Brazil (3%), Kosovo (2%) and the Democratic Republic of Congo (2%).

E. The countries to which these persons were expelled and the methods used by the State party to ensure that the returned persons were not at risk of being subjected to torture in the destination country.

111. Belgium has no statistics on this point.

Question 12. Please indicate what guarantees exist for foreigners who are not admitted into Belgian territory? In particular, how are such persons informed, in a language that they can understand, of the reasons for this measure, and of their right to be heard and to have the decision reviewed by an appropriate authority?

112. Where use of languages is concerned, a distinction must be made between the language in which a decision is framed and the language in which it is notified.

113. For the purposes of decision-taking the Aliens Office, like any other administrative body, applies the coordinated acts of 18 July 1966 on the use of languages in administrative matters. Accordingly, the Office drafts documents and decisions in the one of the three national languages used by the applicant in his or her dealings with the Office's services, regardless of the applicant's place of domicile.

114. However, if there has not been any prior contact between the Office and the alien, the choice of language is made by the Office. As a rule, this choice is made in the light of the alien's place of residence, but this practice is not always followed, for administrative reasons.

115. Decisions must be notified in one of the languages used by the notifying authority.

116. At the time of notification of a decision refusing entry into Belgium the decision itself and the available remedies are explained to the alien in question through an interpreter if the alien does not understand any of the three national languages.

117. A *refoulement* order is made against an alien who fails to satisfy the entry requirements, backed by a holding order if the *refoulement* order cannot be enforced immediately.

118. There are both administrative and judicial remedies available to aliens subject to expulsion orders.

A. Administrative remedies

119. Article 39/82, paragraph 4, of the Act of 15 December 1980 provides that, when an alien is subject to an expulsion or *refoulement* order which is about to be enforced and the alien has not yet filed an application for suspension, the alien may request the emergency suspension of the order within the 24 hours following notification of the decision. For more details on this subject the Committee is referred to the reply to question 5 (paras. 50-70 above).

120. An application for annulment may also lodged with the Aliens Litigation Council (CCE) on the ground of infringement of a substantive or mandatory procedure or on the ground of illegality or misuse of powers.

121. When the remedy is exercised by an alien who is in a place referred to in article 74/8 of the Act or who is being held at the Government's disposition, the accelerated procedure specified in article 39/77 of the Act is followed.

122. Article 39/79 of the Act now provides that, unless the alien agrees to it, an expulsion order may not be executed by forcible means during the period specified for the filing of appeals against the decisions referred to in article 39/79, paragraph 2, or during the consideration of such appeals.

B. Judicial remedies

123. Aliens held in a specific place pending their expulsion under article 74/5 or article 74/6 may appeal against the expulsion order to the Council Chamber. However, if the Minister has referred the case to the Chamber under article 74, the alien in question may not lodge the appeal mentioned in the preceding paragraphs against a decision to extend the period of detention or residential accommodation until the thirtieth day after the extension comes into effect.

124. After hearing the person concerned or his or her counsel and the Minister or his representative, the Chamber rules within five working days from the filing of the appeal. The Chamber establishes whether the measures of deprivation of liberty and expulsion are in conformity with the law but may not give an opinion on their appropriateness.

125. The Chamber's decisions are subject to appeal by the alien, the Crown Prosecutor and the Minister or his representative.

126. If the Chamber decides not to continue the detention, the alien is released, subject to any applications made to the Indictment Division. When an appeal is filed against a release order, the alien is held in detention and enforcement of the expulsion order is prohibited until the Indictment Division hands down its decision.

127. However, release has no effects on permission to stay: an alien who was illegally present in Belgium before being detained remains in an illegal situation.

128. Unlike the remedy of emergency suspension, the other remedies mentioned above do not have suspensive effects. This means that the Aliens Office may proceed to remove an alien who is illegally present.

129. An application for interim relief under article 584 of the Judicial Code may not be filed against administrative decisions taken pursuant to article 3, 7, 11 or 19 of Title I, Chapter II, of the Act of 15 December 1980.

130. In the case of orders for residential accommodation in a centre, the aliens in question are given, in accordance with article 17 of the Royal Decree of 2 August 2002, a booklet setting out the rights and obligations in connection with their stay in the centre and the possibilities of obtaining medical and psychological assistance and moral, philosophical and religious support.

131. Every inmate also receives an information booklet explaining the options for filing an appeal against an order of detention, holding at the Government's disposition or residential accommodation, the possibilities of entering a complaint about the circumstances under which the order is being enforced, obtaining assistance from an NGO, and applying for legal assistance. These two booklets are available in at least the three national languages and in English.

132. Article 17, paragraph 3, of the Royal Decree of 2 August 2002 provides that the director of the centre, his deputy or a member of his staff designated by him shall explain to the inmate the reasons for the order in question, the legal provisions and regulations to which he or she is subject, and the available remedies against the order. This is done in a language which the inmate understands. An interpreter is used when necessary.

133. Article 130 of the Royal Decree provides that inmates may lodge complaints about the application of the Royal Decree with the Complaints Commission.

Question 13. Please provide detailed information on cases where article 417* bis *to article 417* quinquies *have been directly applied since their inclusion in the Criminal Code.

134. Before considering the statistics which have been gathered, it will be useful to make the following observations in order to mark out the scope of the investigations:

(a) The figures contained in the following tables were taken from data banks fed from the records of the prisons sections of the Public Prosecutor's Office attached to the courts of first instance (TPI/REA system). The figures reproduced here correspond to the information contained in the data banks as of 10 July 2008;

(b) Cases of detention are entered in the computer system by 27 of Belgium's 28 "first degree" prosecution offices (27 local and one federal). Only the Eupen office does not record its cases in the computer system, owing to the lack of a German-language version;

(c) The figures given here relate only to offences committed by persons of the age of majority. Juvenile offences are handled by the juvenile sections of the prosecution offices, for which the statisticians have no data;

(d) The computer system provides for principal and secondary detentions to be entered. The cases listed in the tables relate to offences identified on the basis of the codes of principle and secondary detention. This may mean one of the following codes:

- 43F: Torture
- 43G: Inhuman treatment
- 43H: Degrading treatment

135. It should be noted that codes 43G and 43H were not in the system on 1 January 2002: the first 43G case was entered in February 2003 and the first 43H case in December 2002.

136. The present analysis offers four tables:

(a) Table 1 shows the numbers of cases entered, by principal and secondary category and year of entry;

(b) Table 2 presents the latest status of the cases as of 10 July 2008, by year of entry;

(c) Table 3 gives further details of the reasons for decisions not to prosecute (*classement sans* suite) in respect of cases entered in the period 2002-2007;

(d) Table 4 lists the decisions handed down against defendants involved in cases of torture or inhuman or degrading treatment in the period 2002-2007.

Table 1. Number of cases involving torture or inhuman or degrading treatment recorded by prosecution offices between 1 January 2002 and 31 December 2007, by year of entry and type of detention

	2002		***2003***		***2004***		***2005***		***2006***		***2007***		***Total***	
	No.	***%***	***No.***	***%***	***No.***	***%***	***No.***	***%***	***No.***	***%***	***No.***	***%***	***No.***	***%***
Torture	12	92.31	8	25.81	4	11.43	4	10.00	11	13.25	13	13.00	*52*	*17.22*
Inhuman treatment	.	.	17	54.84	26	74.29	26	65.00	46	55.42	57	57.00	*172*	*56.95*
Degrading treatment	1	7.69	6	19.35	5	14.29	10	25.00	26	31.33	30	30.00	*78*	*25.83*
Total	*13*	*100.00*	*31*	*100.00*	*35*	*100.00*	*40*	*100.00*	*83*	*100.00*	*100*	*100.00*	*302*	*100.00*

Source: Data bank of the College of Procurators-General and statisticians.

137. Table 1 shows the numbers of cases entered by prosecution offices between 1 January 2002 and 31 December 2007. The cases are listed by principal detention and secondary detention and by date of entry in the system. When several offences are entered in respect of the same case, only the principal detention is listed here. The unit of account is the criminal case.

Table 2. Status as of 10 July 2008 of cases of torture or inhuman or degrading treatment recorded by prosecution offices between 1 January 2002 and 31 December 2007

	2002		*2003*		*2004*		*2005*		*2006*		*2007*		*Total*	
	No.	***%***	***No.***	***%***	***No.***	***%***	***No.***	***%***	***No.***	***%***	***No.***	***%***	***No.***	***%***
Under investigation	.	.	1	3.23	1	2.86	1	2.50	5	6.02	11	11.00	*19*	*6.29*
Non-suit	9	69.23	17	54.84	23	65.71	26	65.00	48	57.83	44	44.00	*167*	*55.30*
Referred for action	2	15.38	6	19.35	3	8.57	3	7.50	10	12.05	10	10.00	*34*	*11.26*
Consolidation	.	.	4	12.90	5	14.29	3	7.50	12	14.46	21	21.00	*45*	*14.90*
Court intervention	.	.	.	.	.	.	1	2.50	.	.	1	1.00	*2*	*0.66*
Examination proceedings	.	.	.	.	.	.	.	.	.	.	6	6.00	*6*	*1.99*
Council Chamber	.	.	1	3.23	2	5.71	4	10.00	3	3.61	2	2.00	*12*	*3.97*
Summons and prosecution	2	15.38	2	6.45	1	2.86	2	5.00	5	6.02	5	5.00	*17*	*5.63*
Total	*13*	*100.00*	*31*	*100.00*	*35*	*100.00*	*40*	*100.00*	*83*	*100.00*	*100*	*100.00*	*302*	*100.00*

Source: Data bank of the College of Procurators-General and statisticians.

138. Table 2 shows the status of cases as of 10 July 2008 (date of the latest downloading of data from the REA/TPI data bank). The accounting unit is the criminal case, which may involve several defendants.

139. Cases fall into one of the following status categories:

(a) **Under investigation.** This category includes all the cases which were still under investigation on 10 July 2008;

(b) **Non-suit (*classement sans suite*).** This means a temporary suspension of proceedings, putting an end to the investigations. Such a decision is always provisional. As long as the public right of action is not extinguished, the case may be re-opened;

(c) **Referred for action.** This heading covers cases which, as of 10 July 2008, had been referred for action. Since they do not come back to the referring office, such cases retain this status as far as that office is concerned. They may thus be regarded as closed by that office. They may be re-opened under a different reference number by the office to which they are referred;

(d) **Consolidation.** This heading includes cases which, as of 10 July 2008, were consolidated with another case, known as the “mother case”. Consolidated cases are regarded as closed, for they retain this final status and subsequent decisions are taken in the mother case.

(e) **Court intervention.** This category includes cases in which court action has been proposed and which are awaiting a final decision, cases closed under the terms of such action and in respect of which the public right of action is extinguished, and cases in which the court action has failed but which have not since then acquired a new status;

(f) **Examinations proceedings.** This heading includes cases in which examination proceedings have been initiated but have not yet come before the Council Chamber for determination of procedure;

(g) **Council Chamber.** This heading covers cases between the stage of determination of procedure and the stage of eventual disposition by a correctional court. Cases in which proceedings have been waived retain this status;

(h) **Summons and prosecution.** This heading covers cases in which a summons has been issued and a ruling has been made subsequent to the summons. These are cases in which there has been a summons, a hearing before a correctional court, a ruling, a formal objection to the ruling, an appeal, etc.

Table 3. Grounds for non-suit decisions in cases of torture or inhuman or degrading treatment recorded by prosecution offices between 1 January 2002 and 31 December 2007

		2002		*2003*		*2004*		*2005*		*2006*		*2007*		*Total*	
		No.	***%***	***No.***	***%***	***No.***	***%***	***No.***	***%***	***No.***	***%***	***No.***	***%***	***No.***	***%***
Usefulness	1. Limited social repercussions	.	.	2	11.76	1	4.35	1	3.85	2	4.17	2	4.55	*8*	*4.79*
	2. Situation regularized	.	.	.	.	2	8.70	1	3.85	6	12.50	3	6.82	*12*	*7.19*
	3. Relationship offence	1	11.11	1	5.88	1	4.35	4	15.38	.	.	2	4.55	*9*	*5.39*
	4. Little harm done	1	11.11	.	.	.	.	.	.	.	.	.	.	*1*	*0.60*
	5. Lack of previous history	1	11.11	.	.	.	.	1	3.85	.	.	1	2.27	*3*	*1.80*
	6. Chance acts – specific circumstances	.	.	1	5.88	1	4.35	.	.	2	4.17	.	.	*4*	*2.40*
	7. Disproportionate consequences – social problems	.	.	.	.	2	8.70	.	.	4	8.33	2	4.55	*8*	*4.79*
	8. Conduct of victim	2	22.22	1	5.88	.	.	.	.	1	2.08	2	4.55	*6*	*3.59*
	9. Compensation of victim	.	.	.	.	.	.	.	.	1	2.08	.	.	*1*	*0.60*
	10. Insufficient investigation resources	.	.	.	.	.	.	.	.	.	.	2	4.55	*2*	*1.20*
	11. Other priorities	.	.	.	.	1	4.35	1	3.85	1	2.08	1	2.27	*4*	*2.40*
	Subtotal	*5*	*55.56*	*5*	*29.41*	*8*	*34.78*	*8*	*30.77*	*17*	*35.42*	*15*	*34.09*	*58*	*34.73*
Technical	12. No offence	1	11.11	6	35.29	5	21.74	8	30.77	9	18.75	15	34.09	*44*	*26.35*
	13. Insufficient charges	1	11.11	6	35.29	8	34.78	10	38.46	20	41.67	9	20.45	*54*	*32.34*
	14. Limitation	.	.	.	.	.	.	.	.	.	.	1	2.27	*1*	*0.60*
	15. Perpetrator unknown	2	22.22	.	.	2	8.70	.	.	2	4.17	3	6.82	*9*	*5.39*
	Subtotal	*4*	*44.44*	*12*	*70.59*	*15*	*65.22*	*18*	*69.23*	*31*	*64.58*	*28*	*63.64*	*108*	*64.67*
(28) Others	16. Praetorian probation	.	.	.	.	.	.	.	.	.	.	1	2.27	*1*	*0.60*
	Subtotal	.	.	.	.	.	.	.	.	.	.	*1*	*2.27*	*1*	*0.60*
Total		*9*	*100.00*	*17*	*100.00*	*23*	*100.00*	*26*	*100.00*	*48*	*100.00*	*44*	*100.00*	*167*	*100.00*

Source: Data bank of the College of Procurators-General and statisticians.

140. Non-suit (*classement sans suite*) means a temporary suspension of proceedings, putting an end to the investigations. As long as the public right of action is not extinguished, the case may be re-opened.

141. The prosecution offices use a detailed classification of the grounds for non-suit decisions which was formally introduced and standardized at the national level following the Franchimont reform. Three main categories of grounds may be seen in table 3: usefulness, technical, and others. The accounting unit is the criminal case, which may involve one or more defendants.

Table 4. Decisions handed down against defendants in cases of torture or inhuman or degrading treatment recorded by prosecution offices between 1 January 2002 and 31 December 2007, by date of entry of the case in the office and by type of decision handed down

	2002		*2003*		*2004*		*2005*		*2006*		*2007*		*Total*	
	No.	***%***	***No.***	***%***	***No.***	***%***	***No.***	***%***	***No.***	***%***	***No.***	***%***	***No.***	***%***
Conviction	1	50.00	3	100.00	.	.	2	100.00	5	45.45	.	.	*11*	*35.48*
Acquittal	.	.	.	.	1	50.00	.	.	.	.	.	.	*1*	*3.23*
Deferment of sentence	1	50.00	.	.	.	.	.	.	1	9.09	.	.	*2*	*6.45*
Others	.	.	.	.	1	50.00	.	.	5	45.45	11	100.00	*17*	*54.84*
Total	*2*	*100.00*	*3*	*100.00*	*2*	*100.00*	*2*	*100.00*	*11*	*100.00*	*11*	*100.00*	*31*	*100.00*

Source: Data bank of the College of Procurators-General and statisticians.

142. Table 4 shows the decisions handed down in cases of torture or inhuman or degrading treatment recorded by the prosecution offices between 1 January 2002 and 31 December 2007, by date of entry. The accounting unit is a defendant involved in a case in which a decision has been handed down. The same defendant charged in several cases will therefore be counted several times.

143. Eight of the 11 cases related to acts of torture and the remaining three to degrading treatment. The instances of acquittal related to acts of degrading treatment. The sentence was deferred in two cases of torture.

144. Some examples of the application of article 417 *bis-quinquies* since its inclusion in the Penal Code will be found in annex III.

Question 14. Please indicate the precise role of airlines in the removal process. Please also specify whether law enforcement officials accompany the persons being expelled during the flight. If so, please specify under what conditions they are accompanied and which body is responsible.

A. Role of the airline

145. The role of the airline depends on the status of the person subject to expulsion. This person is regarded as an inadmissible passenger (INAD)[5] or as a deportee (DEPO)[6] (deportee). These are

[5] INAD: a person to whom entry into Belgian territory has been refused and who is being returned to the country of origin or to any other country which will admit him or her.

the codes of the International Air Transport Association (IATA) applied to persons subject to expulsion.

1. DEPO

146. The airline's role here is limited to the transport of the DEPO, whether or not accompanied by an escort, which, when necessary, is made up of police officers. The airline is notified of the specific status of such a passenger and may refuse to check him or her in for the flight or, if the passenger offers resistance, to allow him or her to board the aircraft. When necessary, the flight is booked and paid for by the Aliens Office.

2. INAD

147. The airline is responsible for ensuring that passengers in this category take the flight back to the country of origin. The role of the Federal Police is limited to delivering the INAD to the aircraft. The airline takes charge of the INAD at that point and must if necessary provide additional personnel to ensure the safety of the flight.

148. Under an official agreement between Brussels Airlines and the Federal Police, the Federal Police is responsible for escorting INADs carried by Brussels Airlines (accompanied INADs). The airline is required to reimburse the costs of such escort operations. The operations are carried out in accordance with the principles governing the use of force described earlier.

B. Removal under escort

149. In 2007 nine per cent of repatriations were carried out under Federal Police escort. In the cases of *refoulement* the carrier organized escorts for 1.1 per cent of the planned operations. A Federal Police escort was provided in 1.6 per cent of the cases.

150. Removal under escort is effected in accordance with the principles governing the use of force described earlier.

151. The responsible agencies are the Federal Police, the Aliens Office, and the airline in cases of *refoulement* of INADs. Their responsibilities are spelled out in formal agreements between the Federal Police and the Aliens Office and between the Federal Police and Brussels Airlines with regard to the *refoulement* of its INADs.

Question 15. Please indicate what measures are taken to ensure that the medical examination prior to an enforced departure is carried out properly. Please also provide information on the presence of representatives of non-governmental organizations or independent physicians during enforced removals by air.

152. Persons removed by force from one of the closed facilities run by the Aliens Office always undergo a medical examination prior to departure. If the person concerned is healthy enough to be removed, the facility's medical service issues a "fit-to-fly" certificate. This certificate is a mandatory condition for a person to be removed from Belgium by air.

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[6] DEPO: a general designation for a person who is present in Belgian territory illegally and who is being repatriated to the country of origin or sent to any other country which will admit him or her.

153. As a rule, an independent physician or a representative of an NGO is not present during a removal operation. An independent physician attends only in the case of special flights or when the alien's condition at the time of removal so requires.

A. Special flights

154. The following are the criteria for opting for a special flight:

(a) The destination poses a problem for commercial civil aviation

- Because there are no direct flights;
- Because the country or countries of transit refuse to allow an escort to pass through their territory;
- Because there are insufficient seats available on the aircraft; or
- Because the flight captain refuses to allow any escort operation or repatriation;

(b) The removal operation cannot be carried out by means of a scheduled flight owing to the aggressive or obstinate behaviour of the deportee. This generally means that several attempts to effect removal under escort will have failed.

B. Joint flights

155. The following requirements govern the organization of joint flights:

1. At the European level

156. On 29 April 2004 the Council adopted a decision on the organization of joint flights for the removal from two or more member States of nationals of third countries subject to expulsion orders in the territory of those States. This decision bears the reference number 2004/573/EC and sets out in an annex common guidelines on security provisions for joint removals by air.

157. This decision, based on article 63, paragraph 3 (b), of the Treaty Establishing the European Community, rests on the principle of cooperation among member States and the need to highlight a number of concrete actions relating to a common policy on clandestine immigration. The global plan to combat clandestine immigration and trafficking in human beings in the European Union, adopted on 28 February 2002, states that re-admission and repatriation policy is an integral and essential element of the fight against clandestine immigration.

2. At the Benelux level

158. While attending the meeting of the Council of Europe in Dublin on 22 and 23 January 2004 the interior ministers of the Benelux countries accepted the idea of pooling their experience of organizing secure flights for the repatriation of illegal immigrants and drafting a protocol on the practical modalities to be applied jointly by the three States. This protocol was signed on 6 July 2004 in Rotterdam.

ARTICLE 7

Question 16. Please indicate if Belgium has ever used the Convention as a legal ground for extraditing persons accused of committing acts of torture. Please cite cases in which extradition was refused under article 3. Please also inform the Committee on the progress made on the bill amending domestic legislation on extradition, cited in paragraph 87 of the State party's report. Please clarify whether the provisions of the Convention are included in the aforementioned bill.

A. Individual cases

159. No request for extradition under the Convention in connection with serious violations of international humanitarian law has so far been addressed to Belgium

160. In 2005 Belgium requested the extradition of Mr. Hissène Habré by the Senegalese authorities in connection with serious violations of international humanitarian law, including acts of torture. This request was rejected, and the Senegalese authorities stated their intention to prosecute Mr. Habré.

B. Domestic legislation

161. The Act of 15 May 2007 amending the Extradition Act of 1 October 1833 and the Extradition Act of 15 March 1874, which was published on 3 July 2007, reduced or restricted the scope of article 6 of the 1833 Act. A terrorist act or a violation of international humanitarian law (genocide, etc.) may no longer be deemed a political offence justifying the refusal of extradition.

162. The purpose of the 2007 Act is to amend Belgium's extradition legislation in two respects: first to eliminate, in certain limited cases, the possibility of refusal of extradition on the ground of the political nature of the offence; then, and specifically in order to provide a framework for the first amendment, to strengthen the protection of fundamental rights in this extradition regime.

163. The Act does not amend the extradition regime in its entirety but it does include urgently needed changes to bring Belgium into line with certain international obligations and in particular to provide the basis for the withdrawal of the reservations entered at the time of Belgium's ratification of the International Convention for the Suppression of the Financing of Terrorism and the International Convention for the Prevention of Terrorist Explosive Bombs.

164. The purpose of the first amendment is to add a specific derogation from the prohibition of extradition in connection with political offences. In extremely limited and particularly serious cases, when the extradition request cites the commission of a terrorist act or a violation of international humanitarian law, the political provision may no longer be invoked as a ground for refusing such a request.

165. At the time of enactment of that first amendment it seemed appropriate to strengthen the protection of fundamental rights in all extradition procedures. The law was amended to bring it into line with the jurisprudence of the European Court of Human Rights. It is now expressly stipulated that extradition should be refused when there are serious grounds for considering that a flagrant denial of justice may have been committed or that the person concerned is at risk of being subjected to torture or inhuman or degrading treatment.

ARTICLE 10

Question 17. Please specify whether the provisions of the Convention are an integral part of the training of the personnel responsible for supervising detainees, including minors and committed psychiatric patients, and the personnel responsible for the removal of aliens, as recommended by the Committee in paragraph 7 (m) of its previous concluding observations. Is information included in the training on the possible sanctions and penalties provided for in Belgian law for infringements of the provisions of the Convention?

A. Training of personnel responsible for supervising detainees

166. As noted in paragraphs 525 to 529 of Belgium's second periodic report (CAT/C/BEL/2), the training of personnel responsible for supervising detainees, including minors (solely in the De Grubbe closed federal facility for juvenile offenders from the Everberg centre, the open institutions for the protection of young people being a responsibility of the French and Flemish communities), and psychiatric patients (solely in the psychiatric annexes of prisons and the Paifve social protection institution, the Tournai social protection institution being a responsibility of the Walloon Region) does include human rights education, a theme running through all the training programmes. But there is no specific training module on the Convention.

B. Training of personnel responsible for the removal of aliens

167. Many of the aspects of the Convention are currently addressed in specific training modules (for example, mandatory training in aggression management, in which the use of force, in particular, is studied from the human rights standpoint).

168. In addition, every closed facility has rules of procedure (which must be understood and complied with by all members of the staff) whose provisions are derived from the Royal Decree of 2 August 2002 establishing the regime and the operational rules for facilities in Belgian territory managed by the Aliens Office where aliens may be detained, held at the Government's disposition or accommodated, pursuant to the provisions of article 74/8, paragraph 1, of the Act of 15 December 1980 on the entry into Belgium, temporary and permanent residence and removal of aliens. The articles of this Royal Decree address both the obligations and the rights of inmates and incorporate the provisions of the Convention.

169. It should be pointed out that a specific code of conduct was drafted for the personnel of closed facilities. This code lists the standards and values which all staff members of closed facilities, irrespective of their rank, must constantly keep in mind when performing their duties. It has three specific components: desirable and undesirable conduct (example-setting, clarity, openness, involvement, tolerance, integrity, etc.); unacceptable conduct (sexual harassment, discrimination, aggressiveness, etc.); and other unprofessional conduct (conduct indicating that the system is being run dishonestly and with poor team spirit in a manner laying it open to criticism). It goes without saying that staff members must also be familiar with and respect these provisions. The introductory course for new personnel makes a point of ensuring that they familiarize themselves with the Royal Decree,

170. The Aliens Office is planning to introduce additional personnel training in the closed facilities over the coming years.. This training will cover the texts mentioned above which affect the daily contacts between the staff and inmates of the facilities.

171. Where the police services are concerned, these questions are not addressed in specific training modules, but police personnel are made aware of them in the various modules of their basic and further training (code of ethics; respect for rights and freedoms by the administrative police; human rights; and combating racism and xenophobia [in collaboration with the Equal Opportunities Centre]).

Question 18. Please indicate whether there are specific programmes to train medical personnel assigned to identify and document cases of torture and assist in the rehabilitation of victims.

172. There is not at present a specific programme to train medical personnel assigned to identify cases of torture, but there are accreditation courses for assessment of bodily harm, which are run for the medical service of the Federal Police and for the social assistance services offering their support free of charge and without discrimination in the communities and regions.

173. The victims of offences of all kinds who turn to these social assistance services or persons who are referred to them by the police or the personnel of the prosecution offices or the courts receive individual attention, including social assistance (information, help with applications) and psychological assistance focused on the direct and indirect of effects of what happened to them and on coping with the distress caused by their traumatic experience.

174. The Public Federal Health Service (SPF Health) has also circulated to senior officials of the emergency services and the paediatric units of hospitals a standard decision procedure entitled “Approach in suspected cases of child abuse” and a summary instruction on child abuse. The dissemination of these practical tools will help professionals to care for child victims of abuse. These documents, together with the handbook on domestic violence can be accessed on the SPF Health website: *www.health.fgov.be.*

175. In the case of aliens arriving in Belgium, if a medical problem is detected during their interview, their reception centre is notified in order that they may receive the necessary care and treatment. If the alien is a minor, his or her guardian is responsible for ensuring that the necessary treatment is provided.

176. If the alien is being held in a closed facility, the facility’s physician provides the necessary treatment. If that is not sufficient, the physician contacts a specialist or a medical unit in which the necessary treatment can be furnished.

177. When an alien is intercepted by a police service, an administrative report is drawn up (see annex IV); under the heading “Specific information” this report includes information about the person’s state of health, with a view to referral to a hospital or some other appropriate institution, when necessary.

ARTICLES 11 AND 16

Question 19. In paragraph 19 of its concluding observations, the Human Rights Committee expressed concern at the persistent prison overcrowding in Belgium. Please indicate what measures the State party has taken since 2004 to respond to this concern and, in particular, to make more use of alternative sanctions. Please clarify whether the State party envisages setting a ceiling on the number of detainees per prison.

178. Belgium's penal policy is always open to alternatives to imprisonment. However, the following questions must be raised with regard to the drafting of the measures in question:

(a) How to respond to what seem to be the people's expectations in terms of security;

(b) How to punish without extending the scope of penal sanctions and to ensure that imprisonment is reserved for the situations which demand it;

(c) How to ensure the enforcement of the sentences handed down by the courts (since failure to do so discredits criminal justice, gives rise to injustices, and creates a risk of imposition of heavier sentences);

(d) How to ensure the humane and useful enforcement of these sentences.

179. The penal system already has many measures designed to reduce the number of sentences of imprisonment; a summary of these measures now follows:

(a) **The Act of 29 June 1964 concerning suspension of sentences, stay of execution and probation**: probation is ordered in the light of the act committed and the character and circumstances of the perpetrator. When suspension of the sentence or stay of execution is ordered for the entire length of a sentence of imprisonment or work punishment (*peine de travail*), the specific conditions imposed may include an obligation to take a course of training;

(b) In 1994 an **article 216 *ter* was incorporated in the Code of Criminal Investigation** authorizing the Crown Prosecutor to use, with regard to certain offences, a penal mediation procedure involving compensation of the victim. Pursuant to this article the Crown Prosecutor may also invite the perpetrator to undergo medical treatment, therapy or training or to perform community service. This procedure may have the effect of extinguishing the public action;

(c) By the Act of 17 April 2002[7] the Legislature introduced the sentence of **work punishment** as an independent sentence with regard to ordinary and minor offences. The Act has two purpose: to provide a more suitable response to crime and to counteract prison overcrowding. The use of this option has tended to increase since it was introduced;

(d) The Pre-Trial Detention Act of 20 July 1990 offers the possibility of **conditional release**. The conditions imposed may include counselling or treatment. In the context of pre-trial

[7] Act of 17 April 2002 establishing the sentence of work punishment as an independent sentence with regard to ordinary and minor offences; *Moniteur belge*, 7 May 2002.

detention the examining magistrate may also require the prior payment in full of a surety, the amount of which is set by the magistrate.[8]

180. The modalities of enforcement of sentences of imprisonment (described in detail in the comments on developments in domestic law) include means of reducing the actual duration of sentences.

181. The figures set out in the following table show the functions of the legal centres (*maisons de justice*) with regard to the measures for reducing recourse to imprisonment. These centres play a very important role in the preparation and monitoring of measures imposed as alternatives to sentences of imprisonment or to limit their duration; the judicial and/or administrative authorities are also provided with the information needed for decision-making purposes (by means of brief investigation reports and social surveys); perpetrators may also be monitored or kept under surveillance at the request of the judicial and/or administrative authorities.

Guidance function[9]	***2001***	***2002***	***2003***	***2004***	***2005***	***2006***	***2007***
Alternative to pre-trial detention	2 194	2 855	3 156	3 460	3 702	4 092	4 515
Probation	3 074	3 157	3 303	3 642	4 585	3 899	5 490
Community service/training	4 373	5 356	3 353	1 283	825	1 318	-[10]
Independent work punishment	-	556	4 597	7 405	9 096	9 615	9 568
Modalities of execution (conditional release, release on bail, limited detention from 2007)	1 751	1 724	1 544	1 520	1 019	804	1 189
Electronic surveillance							1 450
Trial release	427	462	561	523	592	538	527
Penal mediation	6 217	6 110	6 107	6 221	6 331	6 403	6 629
Social survey reports	**2001**	**2002**	**2003**	**2004**	**2005**	**2006**	**2007**
Alternative to preventive detention	258	248	178	198	147	187	139
Probation	2 286	2 218	2 453	1 933	3 056	2 792	2 982
Community service/training	2 367	1 843	817	531	131	137	10/

[8] The Act of 31 May 2005 amending the Act of 13 March 1973 concerning bail in cases of suspended pre-trial detention, the Pre-Trial Detention Act of 20 July 1990, and certain provisions of the Code of Criminal Investigation amended the pre-trial prevention procedure in order to render it more effective and coherent. For a more detailed discussion of this Act, see the comments under Article 9.

[9] The table does not include current cases.

[10] Following changes in the SIPAR coding system at the beginning of 2007, the figures for community service and training are incorporated in the functions in question.

Guidance function[9]	***2001***	***2002***	***2003***	***2004***	***2005***	***2006***	***2007***
Independent work punishment	-	123	366	604	696	643	928
Modalities of execution	3 560	3 327	3 310	3 128	3 013	3 064	3 567
Trial release	340	400	344	332	373	376	364
Brief investigation reports	***2001***	***2002***	***2003***	***2004***	***2005***	***2006***	***2007***
Alternative to pre-trial detention							175
Probation	109	122	329	466	257	313	287
Community service/training	381	461	322	87	64	45	10/
Independent work punishment	-	110	1 065	1 447	1 774	1 650	1 405

182. The following are the main changes since 2004:

1. Practical development of sentences and alternatives to imprisonment

(a) Work punishment. The use of this option, which was incorporated in Belgium's Penal Code by the Act of 17 April 2002 establishing work punishment as an independent sentence for ordinary and minor offences, has increased significantly, from 7,405 cases in 2004 to 9,568 in 2007. In 2007 Belgium had 3,651 reception centres of the public service or non-profit type (communes, non-profit organizations, regions, communities, public federal services, foundations). These centres offer 4,862 jobs (electricians, carpenters, librarians, etc.);

(b) Electronic surveillance. This modality of enforcing sentences of deprivation of liberty was incorporated in Belgian law by articles 2, 8, 22, 23, 29, 33, 35, 42, 43, 44, 46, 49, 58, 59, 62, 68, 95/18, 95/19 and 95/20 of the Act of 17 May 2006 concerning the external legal status of persons sentenced to deprivation of liberty and the rights accorded to victims in the context of the modalities of enforcing sentences. Article 22 states: "Electronic surveillance is a modality of enforcing sentences of deprivation of liberty under which the convict serves the whole of part of the sentence of deprivation of liberty outside the prison in accordance with a specific enforcement plan, compliance with which is monitored by, inter alia, electronic means." The use of this option increased from 278 cases in 2004 to 612 in 2007.

2. Creation of the Sentence Enforcement Court (TAP). This Court was created by the Act of 17 May 2006:

(a) This Act revoked the Act of 18 March 1998 establishing the conditional release/parole boards. An executive body (the former conditional release/parole board) was thus replaced by a judicial body (the TAP);

(b) It was the Act of 17 May 2006 concerning the external legal status of persons sentenced to deprivation of liberty and the rights accorded to victims in the context of the modalities of enforcing sentences which defined, in its Title V, the modalities of enforcing sentences which may be ordered by visiting magistrates and the Sentence Enforcement Court;

(c) However, where the above-mentioned modalities of enforcement are concerned, the only articles of the Act currently applied are those relating to sentences of deprivation of liberty of at least three years (i.e. one or more sentences the enforceable parts of which total more than three years). These sentences are a matter for the Sentence Enforcement Court; the following sentences of under three years are dealt with by a visiting magistrate:

- Limited detention;
- Electronic surveillance;
- Conditional release;
- Release on bail with a view to removal from the territory or remission.

3. Creation of the Directorate-General for Legal Centres (*maisons de justice*) on 1 January 2007.

Mission: This new Directorate-General has the following functions:

(a) To carry out the judicial monitoring and the surveillance of offenders at the request of the judicial and/or administrative authorities, with a view to preventing recidivism;

(b) To provide care, information, assistance and counselling for victims;

(c) To provide information and counselling for persons involved in a dispute or in judicial proceedings;

(d) To furnish to the judicial and/or administrative authorities the information needed for decision-taking;

(e) To support a coherent policy for conflict management and sanctions;

(f) To support the application of the ethical and methodological principles in the execution of such policy.

Vision: The Directorate-General endeavours:

(a) To make an active contribution to the dispensation of humane and accessible justice, in which the prime consideration is to hold offenders to account;

(b) In this context, to promote the establishment of a broad stratum of social support for alternative solutions with respect to conflict management and sanctions;

(c) Drawing on its extensive experience and expertise, to act as a leading adviser to the Minister and the various agents working in the areas falling within its competence;

(d) To pursue a policy of voluntary partnerships with all the other parties involved;

(e) To perform as an innovative, transparent and results-oriented organization, drawing on the professionalism, honesty and high level of expertise of its personnel;

(f) To seek to develop for the performance of its duties a clear code of ethics and scientifically sound methods in order to strike a balance between the interests of individuals and society at large consistent with the fundamental human rights.

Question 20. In its second periodic report, the State party mentions an administrative circular regulating the disciplinary procedure applied to detainees. What sanctions can be applied if it is transgressed? Does the State party plan to publish this circular as a Royal Decree? What remedies do detainees have to appeal against disciplinary measures taken against them? How does the State party ensure that such punishments are determined in a fair and impartial manner?

183. The disciplinary procedure applied to detainees will be changed on the entry into force of the Principles Act of 12 January 2005, which addresses this point. Ministerial circular 1777 of 2 May 2005 (as amended by ministerial circular No. 1782 of 15 March 2006) concerning the disciplinary procedure applicable to detainees already authorizes the use of the procedures specified in this Act pending its entry into force. A ministerial circular concerning the application of the rules on decision-making, offences and disciplinary punishments is being drafted.

184. The entry into force of this part of the Act will require a royal decree.

185. Where disciplinary matters are concerned, detainees may apply to the Council of State, which has the power to annul or suspend any irregular administrative act, in particular on the grounds of "infringement of the substantive or mandatory procedures", "violation of the general legal principle of respect for the rights of the defence", or "illegality or misuse of powers".

186. If a matter is urgent, a detainee may also apply for interim relief to the president of a court of first instance in the event of infringement of one of the detainee's personal rights, on the ground that the situation requires urgent action, or to a court of law in the case of an application on the merits.

187. These available remedies are mentioned specifically in the information documents handed out to detainees.

188. The provisions of the Principles Act establishing a right of complaint to an independent body (the supervisory commissions) have not yet entered into force.

189. The Act also introduces independent oversight of prisons, by members of parliament, burgomasters, the services of the Federal Mediator, examining magistrates, the supervisory commissions (as part of their general functions) and the Equal Opportunities Centre. Non-governmental organizations such as International Prison Watch and the International League of Human Rights have offices in Belgium.

Question 21. Was there a significant increase in the allocation of funds for the improvement of infrastructure and detention facilities between 2004 and 2007?

190. There was no significant increase in the allocation of funds for the improvement of detention facilities between 2004 and 2007.

191. However, in his Masterplan 2008-2012 the Minister of Justice has made provision to increase the prison capacity by about 1,500 places. The plan is to:

(a) Increase the number of cells by 266 under a renovation programme to re-establish lost capacity;

(b) Increase the capacity of the existing facilities by 396 cells;

(c) Build new facilities, including the ones already under way at Gand (270 places for detainees), Anvers (120 places) and Dendermonde (444 places) and those awaiting planning action (three new prisons: one in Flanders, one in the Walloon Region and one in Brussels, each having 300 places).

Question 22. Have measures been taken to prevent a recurrence of the serious incidents in 2003 at the Andenne Prison, where two detainees died during a strike by prison staff from 17 to 22 September 2003? Please indicate whether basic services have been introduced in prisons to offset staff shortages in the event of strikes by prison wardens, as recommended in the report of the European Committee for the Prevention of Torture (CPT) following its visit to Belgium in 2005.

192. An agreement prohibiting strikes without prior notification was concluded with representative trade-union organizations. This agreement has been signed by only one of these organizations. The principle in question is however usually respected. The purpose of this notification requirement is to allow time for arrangements to be made to ensure that the minimum rights of detainees are respected (for example, with the assistance of the police services, etc.).

193. In addition, the recruitment of prison staff has been stepped up and the quality of their training improved. The training programme lasts three months and includes training in conflict management and a specific explanation of the Principles Act. The manning table of the external services is currently 98.6 per cent filled. It was strengthened in order to improve security and working conditions, to cope with the increased capacity, and to comply with the Act of 12 January 2005 concerning the administration of prisons and the legal status of detainees.

Question 23. According to the State party's report, part VI of the basic legislation creating a legal framework for the placement of detainees under a special, individual security regime came into force on 15 January 2007. Please indicate if these measures are independently and impartially monitored either by a judicial body or by bodies outside the prison system, including non-governmental organizations.

A. Judicial oversight (right of complaint)

194. All detainees may apply for interim relief to the president of a court of first instance in the event of infringement of one of their subjective rights provided that the situation requires urgent action, or to a court of law in the case of an application on the merits.

195. The Council of State has declared itself incompetent to rule on measures taken to ensure the proper functioning of a prison which would justify impairment of the subjective rights of detainees, but it still exercises marginal control by establishing whether the measure in question is not in fact a disguised disciplinary punishment and that there has not been an obvious error of assessment.

B. Independent external oversight

196. The Royal Decree of 4 April 2003 amending the Royal Decree of 21 May 1965 containing the general prison regulations created both the Central Prisons Supervisory Council and a local supervisory commission in every prison. A Royal Decree of 29 September 2005 amended the earlier decree by increasing still further the independence, transparency and professionalism of these bodies. One of the functions of the Central Council is to exercise independent oversight of all matters affecting the treatment of detainees and respect for the relevant rules. The local supervisory commissions are responsible for one or more prisons and are required to monitor all matters affecting the treatment of detainees and respect for the relevant rules in the prison or prisons in question.

197. The Act also makes provision for the independent oversight of prisons by members of parliament, burgomasters, the services of the Federal Mediator, examining magistrates, the supervisory commissions (as part of their general functions) and the Equal Opportunities Centre. Attention should also be drawn to the oversight work of the European Committee for the Prevention of Torture and such non-governmental organizations as International Prison Watch and the International League of Human Rights.

Question 24. How does the State party plan to follow up the recommendations of the working group on the provision of psychiatric care for inmates, referred to in paragraph 309 of its report? What concrete measures does the State party envisage implementing in order to solve the problem of overcrowding in these units and the lack of therapeutic care available to inmates, deplored by the CPT in its last report and by the Committee in paragraph 5 (k) of its previous concluding observations. Please specify how long, on average, inmates have to wait before receiving care.

198. The following steps have been taken in order to correct this problem:

(a) **Expansion of the capacity of the Paifve social protection institution**: The renovation work on D wing, which began in March 2008 and was to be completed 10 months later, will provide the institution with an additional 41 places. Also scheduled are the renovation of B wing (another 41 extra places), a development plan and then a renovation programme;

(b) **Re-opening of the Lantin psychiatric annex** in September 2006 in order to reduce the pressure on the other psychiatric annexes, (especially the one at Namur);

(c) **Construction of two social protection institutions in Flanders**: one at Gand with a capacity of 270 and one at Anvers with a capacity of 120 for inmates exhibiting high-risk priorities. They should be operational by 2012 at the latest;

(d) In order to improve matters for the other inmates, a start was also made in 2007 on the **development of a network of psychiatric and medical care and legal assistance**. SPF Health drew up contracts for 2007 by judicial area in connection with the sentence-enforcement courts, with a view to referring as many inmates as possible to the regular care services and, when feasible, returning them to their homes. Treatment in this care network (*zorgcircuits*) is planned to last two years on average. Treatment projects were initiated on 1 April 2007, more particularly for inmates presenting a moderate security risk, in the context of the establishment of the care network and the system of mental health (SSM). These projects are designed to improve the collaboration between actors in the field of mental health and external actors, including for

example the personnel of the justice and employment services. An effort is being made by means of this collaboration to ensure that inmates presenting a moderate security risk will be better prepared, following treatment in a psychiatric hospital, for reintegration in society or referral to a more suitable form of care. These projects are being monitored by a scientific team from the Federal Centre for Health Care Knowledge. The findings are expected by the end of 2011. As a result of these contracts, the supply of beds for medium-risk inmates requiring intensive treatment was increased from 48 to 156, 78 beds were added in the psychiatric care homes (MSP) and 70 places in the sheltered-housing facilities (IHP) for medium-risk inmates. The capacity was increased further in 2008, by 45 MSP places and IHP 40 places. A further increase in capacity is planned for 2009. The creation of multidisciplinary teams in the psychiatric annexes is designed to provide the best possible standard of care, in the context of the development of a system of comprehensive legal assistance for inmates (ministerial circular No. 1800 of 7 June 2007 concerning care teams in the psychiatric units of prisons and social protection units and institutions: objectives, composition, operation). These teams are made up of a psychiatrist, a psychologist, a social worker, an occupational therapist, a psychiatric nurse, a physiotherapist, and a teacher. They are assisted by prison personnel, who are selected in consultation with the prison management and the team's psychiatrist and receive specific training;

(e) An **act reforming the approach to detention**, in the light inter alia of the work of a commission of experts (known as the Delva Commission) was promulgated on 21 April 2007. However, this act, which provides further safeguards for detainees, has not yet entered into force.

Question 25. Please provide information on any emergency or anti-terrorist laws that might restrict a detainee's rights, in particular the right to a prompt hearing by a judge, the right to contact family members and to inform them of the situation, and the right to have access to a lawyer and a physician from the moment of arrest.

199. The legislation contains no specific provisions which might restrict the safeguards applicable to detainees.

ARTICLES 12 AND 13

Question 26. Please explain to what extent the crown procurator's discretion to decide whether to investigate a complaint and to prosecute, as provided for in article 28 quater of the Code of Criminal Investigation, is compatible with the provisions of articles 6, 7 and 12 of the Convention.

200. Article 28 *quater* of the Code of Criminal Investigation states:

> "In the light of the penal policy directives determined pursuant to article 143 *ter* of the Judicial Code, the Crown Prosecutor shall decide on the usefulness of prosecutions. He shall indicate the reasons for his decisions not to proceed with a case. He shall exercise the public right of action in accordance with the modalities prescribed by law. The Crown Prosecutor's duty and right to investigate subsist after the initiation of a public action. However, this duty and right cease in respect of cases referred to an examining magistrate when such an investigation would wittingly encroach on the examining magistrate's prerogatives, without prejudice to the submission provided for in article 28 *septies*, paragraph 1, and when the examining magistrate seized of the case does not decide himself to carry out the entire investigation."

201. As a general rule, the Crown Prosecutor may proceed to prosecute offences of his own accord: he need not wait for a complaint to be filed, by the victim for example, before exercising the public right of action. Decisions to prosecute are taken only after consideration of the legality and usefulness of prosecution. This practice of determining the "usefulness of prosecution" was formally recognized in the Act of 12 March 1998 (which incorporated a new article 28 *quarter*, para. 1, in the Code of Criminal Investigation).[11]

202. However, the Crown Procurator's powers of decision are subject to three restrictions:

(a) The Procurator-General and the Minister of Justice may enjoin him to prosecute;

(b) The injured person may institute a public action of his or her own accord:

- The injured person may bring criminal indemnification proceedings (art. 63 of the Code of Criminal Investigation). The examining magistrate may not take decisions on the usefulness of prosecution; he or she is therefore obliged to examine the case;

- The injured person may summon the accused directly (art. 64);

(c) The Act of 4 March 1997[12] empowers the Minister of Justice to determine in conjunction with the procurators-general the priorities of prosecution proceedings (art. 143 *ter* of the Judicial Code).

203. Article 28 *quarter* of the Code of Criminal Investigation provides that the Crown Prosecutor shall exercise his powers in accordance with the general penal policy directives referred to in article 143 *ter* of the Judicial Code.[13] These directives are in fact binding on all members of the Crown Prosecutor's Department.

204. However, decisions as to whether to prosecute should take account of other factors in addition to those deriving from the penal policy directives: there is always the possibility, when assessing individual cases, of departing from these directives for reasons justified by the specific details of the case.

205. The Act now imposes on the Crown Prosecutor the obligation of stating the reasons for a decision not to prosecute (art. 28 *quater*, para. 1, of the Code of Criminal Investigation). This means a statement of the formal grounds for the decision, but it is not mandatory in all cases to state the concrete reasons which motivated the decision. This statement is designed to facilitate oversight of the Crown Prosecutor's quasi-jurisdictional power to determine the usefulness of instituting a prosecution and to verify, amongst other things, compliance with the general penal policy directives issued in this matter. A decision not to prosecute may be dictated by technical legal reasons (for

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[11] Act of 12 March 1998 concerning the improvement of penal procedure at the stages of investigation and examination proceedings. *Moniteur belge*, 2 April 1998.

[12] Act of 4 March 1997 establishing the College of Procurators-General and the post of National Magistrate. *Moniteur belge*, 30 April 1997.

[13] The principle is established in Belgium's Constitution: article 151, paragraph 1, states: "Judges are independent in the exercise of their jurisdictional powers. The Crown Prosecutor is independent with regard to the conduct of individual investigations and prosecutions, without prejudice to the right of the competent minister to order proceedings to be instituted and to issue binding penal policy directives, including directives relating to investigation and prosecution policy."

example when no offence has been or committed or the suspect has died) or by reasons of usefulness (for example, when the suspect has fled). Such a decision is always provisional as long as the right of public action is not extinguished; the case may thus be re-opened: for example, when new evidence comes to light, by decision of a superior official and/or by an enjoinder of the Minister of Justice, or when criminal indemnification proceedings are brought. Accordingly, as long as the right of public action is not extinguished, the Crown Procurator may reverse his decision not to prosecute. Furthermore, by bringing criminal indemnification proceedings before an examining magistrate or by summoning the accused directly a civil party causes proceedings to be instituted and short-circuits the Crown Procurator's decision not to prosecute.

206. In short, it may be asserted, in the light of the available safeguards, that the crime of torture will be prosecuted and punished in Belgium. The Crown Prosecutor decides on the usefulness of instituting a prosecution, but he is subject to the penal policy directives and to oversight by his superiors. He must moreover justify his decisions. A decision not to prosecute is not a final decision; the Crown Prosecutor may reverse it at any time until the right of public action is extinguished. Furthermore, injured persons have several possibilities of action: they may institute criminal indemnification proceedings (examining magistrates may not rule on the usefulness of prosecutions) or summon the accused directly.

Question 27. In paragraph 7 (c) of its previous concluding observations, the Committee against Torture recommended that the State party should conduct immediate inquiries into any allegations of the excessive use of force by law enforcement officials. What progress has been made in implementing this recommendation? In that regard, please indicate whether there were any charges, convictions or decisions aimed at offering redress or compensation to victims of acts of torture and/or other cruel, inhuman or degrading treatment or punishment. Please indicate what appeal procedures are available to victims and whether the State party intends to modify admissibility criteria as requested in question 9 above.

207. Committee P offers in annex VI a number of observations concerning allegations of police violence brought to its attention between 2003 and 2007. These observations relate, on the one hand, to investigations of allegations of police violence and, on the other hand, to the sanctions imposed on police personnel in respect of acts of violence.

208. It should be stressed that Committee P and its Investigation Department always carry out inquiries in response to a complaint or report as promptly as possible. The judicial inquiries are conducted by the Investigation Department under the instructions either of the Crown Prosecutor or an examining magistrate, in accordance with the Code of Criminal Investigation and the directives issued by the examining magistrates. The duration and thoroughness of these judicial inquiries depend directly on the magistrates' directives and diligence.

Question 28. Please provide information on the effective implementation of the Act of 25 April 2007 amending the Police Functions Act of 5 August 1992 regarding deprivation of liberty registers. Please specify whether these registers are currently available to police stations and whether they are properly filled in.

209. The Miscellaneous Provisions (IV) Act of 25 April 2007[14] amends the Police Functions Act with respect to certain rights accorded to persons deprived of their liberty and to the basic safeguards against ill-treatment.

[14] *Moniteur belge*, 8 May 2007.

210. Some of these provisions also apply to judicial deprivation of liberty, although their application does not require action by a judicial authority.

211. For example, the following article 33 *bis* has been inserted in the Police Functions Act:

> "All instances of deprivation of liberty shall be entered in the deprivation of liberty register. This register constitutes a record of the chronological sequence of the deprivation of liberty from its outset to its conclusion or until such time as the person concerned is transferred to the competent authorities or services. The content and format of the deprivation of liberty register and the arrangements for the storage of the information shall be determined by the Crown."

212. This register must be used to record all instances of deprivation of liberty. The keeping of the register was one of the recommendations of the European Committee for the Prevention of Torture (CPT) which, following several visits to Belgium, mentioned the need to set down in writing some of the elements of the procedure and to maintain a separate detention file; it was also one of the recommendations of the Standing Committee on the Supervision of the Police Services.

213. The register must record the chronological sequence of the deprivation of liberty and contain all the information pertinent to the application of this measure. Amongst other things it must state the identity of the person concerned, the names of the officers responsible for enforcing the deprivation of liberty, the time and reason for the deprivation of liberty, a list of the items confiscated, the names of the persons carrying out the search, the formal confirmation of the deprivation of liberty by an administrative police officer and, when necessary, by a criminal investigation officer and/or the competent judicial authority, certain details of the circumstances of the deprivation of liberty (such as, for example, ventilation, the times of interviews for questioning, any incidents or visible injuries), any contacts with the administrative or judicial authorities or the oversight bodies, transfer to a different location (time, destination, names of persons carrying out the transfer), and the signatures of the persons concerned.

214. The register must also contain information as to whether the guaranteed rights were exercised, in particular the right to notify a third person, and the reason for any refusal, whether the person concerned was notified of these rights and the manner in which this was done, and whether the right to receive medical attention, food and drink and the right of access to adequate hygiene facilities were accorded to the person concerned.

215. The specific format and content of the register, the conditions of its use and the modalities for storage of the information will be determined by the Crown. Meanwhile, every police unit has an obligation to satisfy the requirements of the Act but will do so in its own way.

216. A royal decree determining the content and format of the deprivation of liberty register and the arrangements for storage of the information contained therein is currently being drafted. The police forces, which were already required to keep such a register before the passage of the Act of 25 April 2007 (under the old article 33 of the Police Functions Act), already enter every instance of deprivation of liberty in a register. Pending the entry into force of the royal decree, they remain free as to the format of this register. The amendments introduced by the Act of 25 April 2007 are communicated and explained to police personnel (in particular police officers) by means of training and literature; they are informed in this way of the purpose of the register and of the minimum details which must therefore be entered in it.

Question 29. Please provide detailed information on any investigation or inquiry carried out into the use of Belgian airports and airspace by aircraft used for the programme of extraordinary rendition or the transportation of detainees within the framework of the European Parliament resolution on the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners (2006/2200(INI)).

217. On 5 December 2005 the Standing Committee for Oversight of the Intelligence and Security Services was requested by the Senate Oversight Committee to check whether Belgian airports had been used for flights chartered by the United States secret service (the CIA) to transport detainees suspected of links with Islamic terrorism and whether the Belgian intelligence services were kept informed of such actions.

218. In a document entitled "Report on the possibility that Belgium's airport infrastructure has been used by flights chartered by the CIA to transport detainees suspected of links with Islamic terrorism", submitted on 20 June 2006, the Senate Oversight Committee concluded that it had no knowledge of persons arrested in Belgian territory. However, it is possible that several aircraft carrying prisoners may have landed in Belgium: the investigation conducted by Committee P was not conclusive on this point where civil aircraft were concerned. However, the Senate Oversight Committee took the view that there was virtually no possibility, in the light of information in its possession, that persons had been imprisoned in Belgium pending transfer. It emerged moreover from a systematic examination of all the flights recorded at military airports that there was not the slightest trace of any suspicious flight or aircraft.

219. The Traffic Department states that it has no evidence of a suspicious civil flight or aircraft.

Question 30. Please provide information on the follow-up to the collective complaint submitted to the Brussels Public Prosecutor's Office and the Standing Committee on the Supervision of the Police Services by persons who were removed from a church in Anderlecht in June 2006 and allegedly insulted, beaten and humiliated during their transfer to the Vottem detention centre.

220. Committee P considers that it will be useful to provide a brief account of the facts.

221. On 4 July 2006 the burgomaster of Anderlecht ordered the removal of undocumented persons who were occupying a church in Anderlecht. These persons were removed from the church during the morning and taken to the Anderlecht police station, where they were interviewed by and gave statements to the competent officials of the Aliens Office. The transfers to the Vottem detention centre began at 1 p.m. in accordance with the decisions of the Aliens Office. It was also at 1 p.m. that increasing numbers of people began to gather outside the police station. At about 5 p.m. some of these people tried to prevent vehicles transporting the undocumented persons to the Vottem centre from leaving. Disturbances took place and damage was caused, in particular to vehicles in the vicinity of the police station. Several persons clung to the bus; others formed a human chain in front of the bus in order to prevent it from moving; still others lay down in the path of the bus. These various individuals were removed and pushed back to make it possible for the bus to leave. Incidents occurred on board the bus when it was on the ring road, causing the bus to stop at the Jette fire station.

222. In a postal communication dated 10 July 2006 (received on 13 July) the organization Coordination and Initiatives for Refugees and Aliens (CIRE) filed a complaint with Committee P on behalf of 25 undocumented persons concerning acts of violence committed against them

during their transfer from the Anderlecht police station to the Vottem detention centre. The complaint stated that the persons concerned were forcibly removed from the bus in which they were being transferred. They were handcuffed and subjected to verbal abuse. Some of them were flattened to the ground under the feet of police officers. Others had their heads forced against the ground. The police were allegedly trying to intimidate and humiliate them and inflicted blows on them. On arrival at Vottem these persons were placed in solitary confinement. Medical certificates attached to the complaint testify to signs of beatings. On receipt of the CIRE communication, Committee P immediately initiated an internal oversight investigation, which it entrusted to its Investigation Department.

223. In a parallel move, on 11 July 2006 the lawyers of the undocumented persons initiated criminal indemnification proceedings before the Brussels examining magistrate. The conduct of the judicial inquiries was entrusted to the Investigation Department of Committee P, under supervision of the examining magistrate. Committee P suspended its own internal investigation for the duration of the judicial inquiries, which were still continuing at the time of drafting the present reply. However, the internal oversight file remains open, and the case will be re-assessed on conclusion of the judicial inquiries.

ARTICLE 14

Question 31. Please indicate whether Belgium makes physical, psychological and social rehabilitation services available to victims of torture or cruel, inhuman or degrading treatment.

224. Victims of acts of torture or cruel, inhuman or degrading treatment are referred to the multidisciplinary teams providing physical, psychological and social rehabilitation services.

225. All victims may obtain a welcome and attention from the support services for victims of the police and from the victim support services provided by judiciary personnel attached to the prosecution offices and the courts, as well as psychological, social and medical attention from the social support services for victims of offences of all types operated by the Communities and Regions.

226. However, there are three specific projects registered with the mental health services of the Walloon Region which take under their wing, amongst others, victims of torture who have been exiled to Belgian territory. These services are available in Liège, Namur and Charleroi; they have a broader field of intervention when needed.

227. Where assistance to detainees is concerned, the prisons equipped with psychiatric units have support teams made up of psychologists, psychiatrists, social workers, nurses, occupational therapists, physiotherapists and teachers which provide care for victims of cruel, inhuman or degrading treatment. One recent example: the treatment of a child detainee who had served as a soldier in his country.

Question 32. Please indicate whether, under the Financial Support Board for the Victims of Deliberate Acts of Violence (Composition and Operation) Act of 22 April 2003, foreigners in an irregular situation can receive funds intended, inter alia, for their rehabilitation.

228. This Board does not furnish assistance to persons in an irregular situation at the time of an act of violence; this is consistent with article 31 *bis*, paragraph 2, of the Act of 1 August 1985, which reads in part "… [if] at the time when the act of violence is committed the victim is of Belgian nationality or has the right to enter and to reside temporarily or permanently in the

Kingdom or is subsequently granted a residence permit of unspecified duration by the Aliens Office in the context of an inquiry into the treatment of human beings."

ARTICLE 15

Question 33. Please clarify whether the Criminal Code explicitly provides that no statement proved to have been made as a result of torture may be invoked as evidence in proceedings. Please provide detailed information on the measures taken in response to the Committee's recommendation (CAT/C/CR/30/6, para. 7 (n)).

229. By virtue of the direct effect of articles 3 and 14 of the International Covenant on Civil and Political Rights and article 6 of the European Convention on Human Rights, Belgian legislation does not contain an express prohibition of the use of evidence obtained by means of torture.

230. However, the jurisprudence has gradually developed rules on the exclusion of evidence obtained by irregular means, citing either the European Convention on Human Rights or Belgian law or the general principles of law. Any evidence is admissible in criminal cases, provided that it has been brought to light and produced in certain forms and in accordance with certain rules.[15] Accordingly, a Belgian judge will never admit evidence obtained by torture, not only because this would violate a general principle of law but also because it would violate Belgian law. In such cases, Belgian judges are always obliged to declare such evidence inadmissible.

231. Furthermore, the Code of Ethics of the Police Services established by the Royal Decree of 10 May 2006 (published in the *Moniteur belge* on 30 May 2006) states:

(a) *Article 46*: "In all situations, and more especially in situations in which encroach on the freedoms and rights guaranteed by the Convention is necessary, the officers in charge of the operation shall first ascertain that the orders which they give and the action which they propose should be taken have a justification in the legislation or regulations and that the methods of intervention are indeed proportional to the goal in question;"

(b) "They shall not order or commit arbitrary acts which may encroach on those rights and freedoms, such as, for example, illegal or arbitrary arrest or detention or illegal entry into a private home;"

(c) *Article 51*: "Members of the personnel are responsible for all persons subject to a measure of deprivation of liberty or detention and entrusted to their custody or placed under their supervision. They shall take the necessary steps to prevent accidents, escapes or connivance with third parties and shall ensure effective surveillance to that end. They shall respect the dignity of all persons under their supervision and refrain from subjecting them to inhuman or degrading treatment or to reprisals."

232. These provisions do not state expressly that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, but they are designed to prevent the production of evidence in this way.

[15] The rule of the freedom to adduce evidence is not stated expressly in law, except in article 343 of the Code of Criminal Investigation, which relates only to the Court of Assize.

OTHER

Question 34. Please indicate whether Belgium has legislation aimed at preventing and prohibiting the production, export and use of equipment specifically designed to inflict torture or other cruel, inhuman or degrading treatment. If so, please give details of its content and implementation. If not, please indicate whether the adoption of such legislation is being considered.

233. The Weapons Act of 8 June 2006 declares a prohibition on, inter alia, blinding laser weapons, electroshock weapons, asphyxiating weapons, etc. The status of prohibited weapon means that the manufacture, import, use and mere holding of such weapons are prohibited.

234. This prohibition does not always apply to the authorities (the army and the law-enforcement services) which may carry service weapons (usually traditional firearms), including such weapons as tear-gas sprays. The use of these service weapons is strictly regulated in the orders on law enforcement.

235. Under a ministerial order of 26 April 2007 (see annex VI) the import and export of goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment was made subject to licence. This licence is issued by the Public Federal Service for the Economy. The order gives effect to Council Regulation (EC) No. 1236/2005 of 27 June 2005 concerning trade in certain goods which could be used for capital punishment, torture of other cruel, inhuman or degrading treatment or punishment.

236. The Regions (Walloon, Flanders and Brussels) are competent to issue export licences for the dual-purpose weapons and goods which do not appear in the annexes to the ministerial order mentioned above**.** In fact, the Special Act of 12 August 2003 placed on a regional footing the import, export and carriage in transit of weapons, ammunition and materials intended specifically for a military or law-enforcement use and the associated technology, together with dual-purpose products and technology, without prejudice to the federal jurisdiction over the import and export of items for army or police use and subject to compliance with the criteria set out in the European Union Code of Conduct on Arms Exports.

237. Since no new regional regulations have been enacted, these matters remain governed by the Act of 5 August 1991 concerning the import, export and carriage in transit of weapons, ammunition and materials intended specifically for a military or law-enforcement use and the associated technology and the prevention of trafficking in such weapons, ammunition and materials. Article 4 of this Act provides that all applications for export or transit licences referred to in the present title shall be rejected when it appears inter alia that:

(a) The export or carriage in transit would seriously jeopardize Belgium’s exterior interests or the international objectives pursued by Belgium;

(b) The issuance of a licence is incompatible with Belgium’s international obligations (including its obligations under the Convention);

(c) There is sufficient evidence with regard to a country of destination that the export or carriage in transit would contribute to a flagrant violation of human rights or that there is a manifest risk that the goods to be exported would be used for purposes of internal repression, or when it is established that child soldiers have been recruited into the regular army. Particular caution and vigilance will have to be exercised, in each case and in the light of the nature of the

equipment in question, with respect to issuance of licences for exports to countries in which serious violations of human rights have been established by the competent international bodies, such as the Committee against Torture.

238. On 17 July 2007 a cooperation agreement was concluded between the Federal State, the Flemish Region, the Walloon Region and the Brussels-Capital Region concerning the import, export and carriage in transit of weapons, ammunition and materials intended specifically for a military or law-enforcement use and the associated technology, together with dual-purpose products and technology. This agreement provides that a federal focal point shall transmit to the regional focal points, once a week or at the specific request of a regional focal point, the most recent version of the country analyses produced by the Public Federal Foreign Affairs Service. In consultation with this Service the Regions have drawn up a list of the countries for which the federal focal point will transmit to the regional focal points every six months a description of the human rights situation, together with a list of the countries concerning which information is being exchanged more frequently.

239. In the Flemish Region, the Flemish Institute for Peace and Prevention of Violence was established under the Flemish Parliament (Decree of 7 May 2004). This Institute is an independent body dealing with issues of peace in the broadest sense of the word. These issues include war studies, social protection, arms control, international arms trafficking, the economics of peace, peaceful approaches to conflict resolution, and the international community. The annual information circular of the Minister responsible for the issuance of licences for the import, export and carriage in transit of weapons, ammunition and materials intended specifically for a military or law-enforcement use and the associated technology contains a list of the situations requiring an opinion from the Institute. Following the issuance of the Institute's opinions this circular is discussed in a parliamentary debate resulting in the adoption of a resolution addressed to the Flanders Government.

Question 35. In the light of the relevant resolutions of the United Nations Security Council, please provide information on the legislative, administrative and other measures that the State party has taken in response to the threat of terrorist acts. Please describe any effects such measures may have had on human rights safeguards in law and practice.

240. Where the criminalization of terrorist acts and the financing of terrorism are concerned, the purpose of the Terrorist Offences Act of 19 December 2003 (*Moniteur belge*, 29 December 2003) was to incorporate the Framework Decision of the European Union dated 13 June 2002 on combating terrorism and to bring Belgian legislation into line with the International Convention for the Suppression of the Financing of Terrorism.

241. In view of the risks of misuse which might arise as a result of the incorporation of these international instruments in an anti-terrorism act, Belgium's Legislature took a number of precautions to prevent any deviation in the application of this legislation. For example, in order to ensure the application of article 137 of the Penal Code, which reproduces the definition of terrorist offence contained in the European Union's Framework Decision, the Legislature inserted two other articles in the Penal Code. Article 139 provides that "organizations whose true purpose is exclusively of a political, trade union, philanthropic, philosophical or religious nature or which pursue exclusively some other lawful objective may not as such be deemed terrorist groups." Article 141 *ter* provides that "none of the provisions of the Penal Code relating to terrorist offences may be construed as designed to reduce or obstruct such fundamental rights and freedoms as the right to strike, the freedoms of assembly and association and the freedom of

speech, including the right to unite with other persons to found trade unions and to join such trade unions for the protection of their interests, and the associated right of demonstration."

242. The Legislature retained these articles in the Act despite the fact that the Council of State expressed the view that the texts "amounted to a truism which has no place in the Penal Code"; the Legislature stated that "in this matter it is better to be redundantly explicit than dangerously silent and ambiguous" (*Doc. Parl. Chambre, 2003-2004*, DOC 51-0258/004, pp. 10-11).

243. An action to annul the Act was brought before the Constitutional Court of Belgium (the former Court of Arbitration) by human rights associations, which cited inter alia the violation of the principle of the legality of offences and punishments. This action was dismissed by the Court (Decision No. 125/2005 of the Court of Arbitration dated 13 July 2005); this showed that the Legislature had in fact complied with this principle when inserting articles 137 *et seq.* in the Penal Code.

244. The Court stated in paragraph B.6.2 of its decision:

> "The principle of legality in penal matters proceeds from the idea that the penal law must be formulated in terms which ensure that everyone will know, when deciding to adopt a course of conduct, whether that conduct is punishable. It requires the Legislature to indicate, in terms which are sufficiently precise and clear and provide legal certainty, which acts are to be punished, in order that, on the one hand, a person adopting a course of action may first make a due assessment of what the penal consequences of that action will be, and, on the other hand, to ensure that excessive power of assessment is not left to the judge. However, the principle of legality in penal matters does not prevent the law from assigning a power of assessment to the judge. Account must be taken of the general nature of laws and the diversity and variability of situations, as well as of the matters to which the laws apply and developments in the conduct which they prosecute and punish."

245. To illustrate its argument the Court then cited in paragraph B.6.3 numerous legal precedents of the European Court of Human Rights.

246. As to the application of the resolutions of the Security Council imposing a freeze on the assets of persons and entities which commit or attempt to commit terrorist acts, a royal decree designed to improve the existing system and fill its gaps was adopted on 28 December 2006 (published in the *Moniteur belge* of 17 January 2007 (see annex VII)). Article 1 of this royal decree contains definitions of the terms "funds", "freezing of funds", "economic resources", "freezing of economic resources" and "terrorist offences". Article 5 sets out a procedure for periodic review of the lists of persons whose assets have been frozen. This review is conducted at regular intervals, and at least once every six months, by the Ministerial Committee on Intelligence and Security, which ensures that a person's continued listing is justified. It must be emphasized that requests for review may also be made by persons whose assets have been frozen and that a ruling on such a request must be made within 30 days of its submission. Article 6 sets out a procedure for unfreezing assets or releasing certain frozen assets when they are:

(a) Needed to meet basic expenditure (for example on food, accommodation or the repayment of mortgages, medicines, medical costs, taxes, insurance premiums, etc.);

(b) Intended exclusively for the payment of reasonable professional fees or payment for legal services;

(c) Intended exclusively for the payment of charges or costs relating to the custody or current management of frozen funds or economic resources;

(d) Needed to meet extraordinary expenses.

Question 36. Does Belgium envisage ratifying the Optional Protocol to the Convention against Torture? If so, has it established or designated a national mechanism to conduct periodic visits to places of detention in order to prevent torture or other cruel, inhuman or degrading treatment?

247. Belgium signed the Optional Protocol to the Convention on 24 October 2005. The preparatory work for its ratification has since begun. A working group made up of representatives of the federal and federated entities concerned was established under the preceding Legislature. This working group has examined the technical and legal aspects of the obligation of all contracting parties to establish a national mechanism to prevent torture. Before the Optional Protocol can be ratified, all the authorities concerned will have to come to an agreement on the structure, composition, terms of reference and financing of this national mechanism.

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