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Consideration of reports of States parties to the Convention

List of issues in relation to the report submitted by Belgium under article 29, paragraph 1, of the Convention

Addendum

Replies by Belgium to the list of issues*

[Date received: 18 July 2014]

* The present document is being issued without formal editing.

Contents

** The annexes may be consulted at the offices of the secretariat.

Reply to paragraph 1 of the list of issues

Ratification of the Optional Protocol to the Convention against Torture or Other Cruel, Inhuman or Degrading Punishment or Treatment (issue 1)

1. The Belgian Government wishes to reiterate its intention to ratify the Optional Protocol to the Convention against Torture or Other Cruel, Inhuman or Degrading Punishment or Treatment (OPCAT) (a recommendation to this effect was accepted during consideration of Belgium's first periodic report in May 2011). Belgium signed the Optional Protocol on 24 October 2005. Ratification is, however, an extremely complex process, as large numbers of federal and federated entities are concerned, and each must set up a mechanism for independent oversight in its area of competence. Account should also be taken of existing structures, including the Centre for Equal Opportunities, the Standing Committee on the Supervision of Police Services ("Committee P"), the Central Prisons Supervisory Council, the Federal Mediator and the mediators of the federated entities, and, indeed, of their different mandates, structures and levels of independence. The existing structures do not as yet cover all the powers provided for by the Optional Protocol. Consideration therefore needs to be given to new structures, or additional mandates for the existing structures, which also meet the requirements of the Paris Principles on independent composition, financing and the exercise of mandates. It is therefore necessary to analyse in detail the existing structures that could be integrated into the framework for the Optional Protocol.

2. A working party under the supervision of the Federal Public Justice Service has examined the institutional and technical implications of ratifying the Optional Protocol, in consultation with the federated authorities. Several possible structures have been considered for establishing one or more mechanisms for the prevention of torture. Integrating the mandate for the Optional Protocol into a wider structure, such as a national commission for human rights, is one option, and is consistent with Belgium's intention of setting up such an institution. It has been decided to prioritize setting up a national human rights institution in Belgium which, if established, could include a national mechanism for the prevention of torture. The German–speaking Community has already assented to ratification of the Optional Protocol by a decree of 25 May 2009 (*Moniteur belge* of 3 August 2009). The Flemish Government also adopted a decree to that effect on 16 March 2012.

The establishment of a national human rights institution in accordance with the Paris Principles (issue 1)

3. In accordance with a Government's agreement of December 2011, it has been decided to create an inter–federal human rights organization in consultation with the communities and regions.

4. At the initiative of the Minister for Equal Opportunities and the Minister of Justice, a working group has been established, including representatives of the Prime Minister, the Deputy Prime Ministers, the regions and the communities, to produce a draft cooperation agreement for the creation of an inter–federal umbrella institution for human rights. A number of bilateral and working–group meetings have been held since September 2012.

5. The work of this group has been closely linked with the change in status of the former Centre for Equal Opportunities and Action to Combat Racism, given that the components of the prospective inter–federal umbrella institution for human rights should include the new Inter–federal Centre for Equal Opportunities and Action to Combat Racism and Discrimination, as well as the Federal Centre for the Analysis of Migratory Flows, the Protection of the Fundamental Rights of Foreign Nationals and Action against Human Trafficking, both of which have been operational since March 2014. Because the elections

of 15 May 2014 came very shortly after the creation of these two new Centres, the working group has not been in a position to complete work on a cooperation agreement for the creation of an inter–federal umbrella institution for human rights, and this issue will be taken up by the successor governments.

6. It is envisaged that the new inter–federal institution for human rights will include the two new centres mentioned above. It is further envisaged that it will give due prominence to other target groups, including children and persons with disabilities, by taking account of existing organizations at federal level, such as the Institute for Equality between Women and Men (which is also expected to be given inter–federal status by the successor governments), and at the level of the federated entities.

Reply to paragraphs 2, 3, 5, 7 and 19 of the list of issues

The bill for the full implementation of the Convention (issues 2, 3, 5, 7 and 19)

7. As indicated in the report of Belgium dated July 2013, the great majority of the provisions of the Convention are already implemented in Belgian law. A draft bill to complete its implementation was prepared during the last Parliament. It has been referred to the College of Public Prosecutors for an opinion in order to establish whether or not the application in practice of the provisions of the draft bill would conflict with the application of the existing provisions dealing with certain offences connected with enforced disappearance. If necessary, the draft bill will be amended once the opinion of the College has been received. It must then be submitted for approval to the new Council of Ministers formed following the elections of 25 May 2014, and then to the Council of State before being introduced into Parliament. Only then will the bill will be made public. Belgium undertakes to forward the bill to the Committee as soon as it is introduced and to keep the Committee informed of the parliamentary debate on the bill.

8. Civil society actors have had an indirect role in the preparation of the draft bill, as they have been consulted in connection with the present exercise regarding both the state of Belgian law in the light of the Convention and the need to supplement it. On that point, see paragraph 5 of the report of July 2013.

Reply to paragraph 4 of the list of issues

Definition of the crime of enforced disappearance as a crime against humanity (issue 4)

9. As crimes against humanity, enforced disappearances are covered under Belgian law by article 136 ter (9) of the Criminal Code. As the report of July 2013 indicates, article 136 ter of the Criminal Code constitutes the incorporation into Belgian criminal law of article 7 of the Statute of the International Criminal Court, ratified by Belgium on 28 June 2000. As the introductory paragraph of article 136 ter specifies that crimes against humanity are defined in Belgian law “in accordance with the Statute of the International Criminal Court”, reference should be had to the definition given in the Statute. According to Article 7(2) (i) of the Rome Statute:

> “Enforced disappearance of persons’ means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time”.

Reply to paragraph 5 of the list of issues

Superior responsibility (issue 5)

10. As indicated in the initial report, superior responsibility is already enshrined in Belgian law in regard to acts of enforced disappearance, whether the acts concerned constitute crimes under the ordinary law or crimes against humanity. Responsibility stems from separate provisions in each case as a result of the general taxonomy of the Criminal Code, which establishes modes of responsibility for all ordinary–law offences in Book I and for crimes against international law in Book II. This choice of drafting approach, made long before the Convention was ratified, does not, in substance, entail any difference of a detrimental nature as between superior responsibility in relation to enforced disappearances which do not constitute crimes against humanity and enforced disappearances which do constitute such crimes.

Reply to paragraph 6 of the list of issues

Mitigating and aggravating circumstances provided for under the law for offences related to an act of enforced disappearance not constituting a crime against humanity (issue 6)

11. The aggravating circumstances provided for in the Belgian Criminal Code in relation to offences related to an act of enforced disappearance not constituting a crime against humanity are the following:

For torture:

- The status of the perpetrator, the victim or both:
    - Torture by a public officer or official or law enforcement officer acting in the performance of their functions;
    - Torture of persons whose vulnerability on account either of age, pregnancy, illness or physical or mental disability or impairment or of precarious circumstances was apparent or was known to the perpetrator;
    - Torture of a minor;
    - Torture of minors or of persons who, by virtue of their physical or mental state, were not in a position to care for themselves, by their father, mother or other older relatives, or any other person having authority over or care of the minors or disabled persons, or any adult living occasionally or habitually with the victim.
- The consequences of the offence:
    - When the act has caused an apparently incurable disorder, a permanent physical or mental disability, the complete loss of an organ or the use of an organ, or a serious mutilation;
    - When the act has unintentionally caused death.

For inhuman treatment: As above.

For unlawful and arbitrary detention by public officials:

- The duration of the offence: more than 10 days and more than a month.

For violations of the freedom of individuals by individuals:

- The duration of the offence: more than 10 days and more than a month;
- The circumstances of the offence: if an arrest has been carried out on a false order of a public authority, or by a person in the uniform or under the name of one of its officers, or if the person arrested or detained has been threatened with death;
- The motive for the offence: when one of the motives for the crime or offence is hate, contempt or hostility based on a person's supposed race, colour, descent, national or ethnic origin, nationality, gender, sexual orientation, civil status, birth, age, economic circumstances, religious or philosophical convictions, current or future state of health, disability, language, political convictions, commitment to trade unionism, physical or genetic characteristics or social origin.

For the abduction and concealment of minors and other vulnerable persons:

- The consequences of the offence:
  - When the abduction or detention of the abducted minor or any other person, whose vulnerability because of age, pregnancy, illness or physical or mental disability or impairment was apparent or known to the perpetrator, has caused an apparently incurable disorder, a permanent physical or mental disability, the complete loss of the use of an organ or a serious mutilation;
  - When the abduction or detention has resulted in death.

12. In addition to the general mitigating circumstances provided for by the Act of 4 October 1867 (see annex 6 to the report of July 2013), the Criminal Code establishes the following specific mitigating circumstances for offences related to acts of enforced disappearance not constituting crimes against humanity:

For the abduction and concealment of minors and other vulnerable persons:

- Liberation: if, within five days of the abduction, the person abducting or concealing the abducted minor or vulnerable person has voluntarily returned them.

Reply to paragraph 7 of the list of issues

The continuous nature of an offence (issue 7)

13. In its case law, the Court of Cassation has repeatedly defined a continuing offence as:

> "a situation which continues as a result of the sustained will of the offender, an unlawful situation which is uninterrupted and is perpetuated by the perpetrator, or an unlawful situation which remains uninterrupted. It therefore exists during and as a result of its duration, of the fact that the situation giving rise to the offence persists, and as a result of the continual renewal of the offence which it constitutes. It continues until the unlawful situation is brought to an end."

(F. Kuty, *Principes généraux de droit pénal – Tome II, L'infraction pénale*, Brussels, Larcier, 2010, p. 197 et seq.). Note that a continuous offence can be one of commission or omission (F. Kuty, op. cit., p. 202).

14. Unlawful infringements of the freedom of individuals are classic examples of a continuing offence (F. Kuty, op. cit., p. 198; A. De Nauw, *Initiation au droit pénal spécial*, Waterloo, Kluwer, 2008, p. 21 for unlawful and arbitrary detention by public officials, pp. 321–322 for the abduction and concealment of minors and vulnerable persons, p. 343 for

detention by individuals). For more recent case law, see the judgment of the Court of Cassation of 5 April 2005 (proceedings, 2005, p. 770):

> "The acts of removing a child, of concealing it for more than five days or of holding it wrongfully outside the territory of the Kingdom are offences which continue for as long as the perpetrator removes, conceals or holds the child."

See also Antwerp, 28 March 2007, R.W., 2007–2008, p. 742.

Reply to paragraph 8 of the list of issues

Notifying a State party when a person of its nationality has been detained (issue 8)

15. There is a procedure for notifying a foreign national's State of origin of that person's detention in Belgium, on the basis of an arrest warrant issued by the Belgian authorities, in accordance with article 36 of the Vienna Convention on Consular Relations of 24 April 1963, ratified by Belgium on 9 September 1970, which is referred to in the written report (para. 100). In such circumstances, the person concerned has the right to the assistance of their consulate in accordance with the Convention. The State of which the detainee is a national is, consequently, informed, except where the detainee asks that this should not be done.

16. If a foreign national is arrested in Belgium on the basis of an arrest warrant issued by the State of which he or she is a national, the State concerned is informed in accordance with the rules governing extradition. To date, the International Criminal Cooperation Service has had no cases of enforced disappearance to deal with. The Central Authority for International Criminal Cooperation would nevertheless be competent in principle to deal with enforced disappearances which did not constitute crimes against humanity. Cases relating to acts of enforced disappearance constituting crimes against humanity would fall within the competence of the International Humanitarian Law Service of the Federal Department of Justice, as provided by the Royal Order of 17 September 2005 for the Creation of an International Humanitarian Law Service.[1] When the Central Authority or the Service, as mentioned above, processes a request for arrest and extradition, the requesting Party is informed of the arrest, in accordance with the rules governing extradition.[2]

[1] *Moniteur belge* of 31 March 2006.

[2] The general regime applicable to provisional arrest with a view to extradition is established by article 5 of the Extradition Act of 15 March 1874. It can be resorted to only in case of urgency, when there is an imminent risk of flight. The competent authorities of the requesting Party can request the provisional arrest of a wanted person. The request is usually made in the form of an Interpol "Red Notice" issued by the International Criminal Police Organization (INTERPOL). For some members of INTERPOL, a Red Notice is all that is needed to request a provisional arrest. The competent authorities of the requested Party will reach a decision on this request in accordance with legislation. The requesting party will be informed as soon as possible of the action taken on its request. Provisional arrest ceases if the requested party has not received the extradition request and supporting evidence before a deadline which is set after detention has commenced. Provisional arrest may not in any case continue for more than 40 days, unless the applicable extradition treaty provides for a longer time–limit. Release on bail is possible at any time if the person under provisional arrest makes an application for bail to the court sitting in chambers. The requested Party must, however, take all necessary measures to prevent the person whose arrest has been requested from fleeing.

Reply to paragraph 9 of the list of issues

Military jurisdiction (issue 9)

17. Following the abolition of military jurisdiction in peacetime from 1 January 2004 (art. 157 of the Constitution; Act of 10 April 2003), ordinary–law courts and ordinary criminal courts have had jurisdiction to try offences committed in peacetime by military personnel and members of the armed forces which fell, prior to 31 December 2003, within the jurisdiction of the military courts.[3] The same is true of offences committed outside the national territory, except that in such cases it is the federal prosecutor's office, and not the crown prosecutors' offices,[4] which is responsible for investigating and prosecuting offences.

18. There is provision for military courts (military tribunals and the military court) solely in time of war. In wartime, it would also be possible to set up military tribunals in the field, accompanying troops outside the national territory. Military courts in wartime would be "military" in name only. They are part, not of the armed forces, but of the judiciary. In these courts, only the bench is "mixed": the presiding judge is a career magistrate, while the co–judges are officers. The prosecutor's office (auditor–general and military auditor–general) is made up of career magistrates, and the investigating judge is also a career magistrate.

19. The military authorities do not initiate or carry out judicial investigations in either peacetime or of wartime.[5] Like every public authority, they have an obligation (under art. 29 of the Code of Criminal Procedure) to report to the judicial authorities (the prosecutor's office) major and minor crimes which come to their notice.

20. Nor do the military authorities have the power to prosecute or hand down judgment on criminal offences. They do, however, have jurisdiction over disciplinary matters (disciplinary proceedings and the imposition of disciplinary penalties on the basis of the Armed Forces (Disciplinary Regulations) Act of 14 January 1975), and can conduct the investigations required in that connection. The military authorities also have jurisdiction over organizational issues and are able to take measures in that area in relation to military personnel.

Reply to paragraph 10 of the list of issues

The protection of people participating in the investigation of an enforced disappearance (issue 10)

21. The provisions referred to in the report of July 2013 relating to the protection of witnesses, the content of which is summarized in annex 2 to the report, establish measures which are specifically designed with persons acting as witnesses in mind, that is to say

[3] Falling within the jurisdiction of military courts should not be confused with being subject to military criminal law under the Military Criminal Code and other relevant statutes pursuant to articles 14–14 quater of the Code.

[4] Until 31 March, 27 judicial areas: since, then, 12 judicial areas, 14 prosecutors' offices and 13 courts of first instance.

[5] The military authorities have the power to take measures of a precautionary kind, such as (under article 1(3) of the Preventive Detention Act of 20 July 1990) detaining any person caught in the act of committing a crime or lesser offence with a view to delivering them to the judicial authorities, or placing a member of the armed forces under supervision, pursuant to article 41 of the Act of 14 January 1975 referred to above, in the event of a serious breach of discipline, in order to conduct an investigation or maintain order, or when it is deemed that an offence has been committed, for the purpose of handing them over to the competent judicial authorities.

persons who make statements either during the pretrial phase (information–gathering and preliminary investigation) or during the trial itself. However, all persons who participate in the procedure are protected against acts of intimidation and violence by the general provisions of Belgian criminal law.

The Disappeared Persons Unit of the Federal Police (issue 10)

22. Not all cases of enforced disappearance are capable of triggering the involvement of the Disappeared Persons Unit of the Federal Police. The Unit becomes involved only in cases of "worrying" disappearances. Once what may be an enforced disappearance also appears "worrying", this will trigger the Unit's involvement in accordance with the normal procedures and regulations (under the ordinary law). See the Unit's mission and the conditions governing its intervention set out in the report of July 2013 (at paragraphs 124–125).

23. The fact that a disappearance may be "enforced" is not as such taken into account. Only the fact that it is "worrying" is taken into consideration.

24. The "worrying" nature of a disappearance is established on the basis of the following exhaustive set of six circumstances:

- The person is a minor under the age of 13;
- The person has a physical or mental disability;
- The person's state of health requires healthcare or medication;
- His or her situation places the person at risk of death (for example because the person is suicidal or because of the environment);
- The person could be the victim of an act by a third person (for example abduction, murder or rape);
- The absence is out of keeping with the person's usual behaviour.

25. In practice, in a great many cases, a potential situation of enforced disappearance is likely to exhibit the latter two features.

26. As mentioned in the report of July 2013 (para. 124), the role of the Disappeared Persons Unit is to find the missing person. Consequently, its work is not over until the person is actually found.

27. Once it has been established that a disappearance is worrying, the Unit becomes involved as quickly as possible. If the person is not found within a short time, there is no subsequent limit on how long the file can remain open. It actually remains open in the Unit for as long as the person remains missing, for life if necessary.

28. At all events, in relation to actual search operations, the Unit remains active in the case for as long as the circumstances require. Its work may thus be suspended temporarily, should circumstances so dictate. There is no general rule, and search operations could sometimes be interrupted after some days, some weeks, or even some months, if they fail to produce results, depending on the circumstances of the case. Decisions of this kind are taken by the competent judicial authorities (the judge in charge of the investigation) on the basis of a case–by–case assessment of the facts in the dossier and in consultation with partners involved. The Unit's role is solely one of support, and it has no power of decision over such matters. The search is resumed, where necessary, as soon as circumstances permit.

Reply to paragraph 11 of the list of issues

The impartiality of the investigation (issue 11)

29. There are procedural mechanisms in place making it possible to exclude from an investigation into an offence a body responsible for security or for maintaining order if one or more of its members are implicated in the case.

30. While, as far as the police forces are concerned, there is no specific procedural mechanism for instances of enforced disappearance, personnel suspected of involvement in such cases could be made subject to one or other of the following ordinary–law regulations and procedures in order to exclude them.

- By the judicial authorities: police authorities which suspected an officer of being implicated in an enforced disappearance which they were investigating would inform the Crown Prosecutor, and, as the authority responsible for directing judicial investigations, it would fall to the latter to decide to exclude the officer in question from the investigation;
- By the police services: the staff regulations in force allow various measures to be taken in relation to staff members who are, or may be implicated in an enforced disappearance. So long as the acts of which they are accused are unproven and cannot be attributed to them, disciplinary measures may be taken in their regard to guarantee or restore the proper functioning of the service (placing them on detached duty with a service other than their own for as long as it takes to clarify the facts, making them available to another service or reassigning them). The authority could also decide to assign them to different duties. In the most serious cases, where the facts are established and are attributable to the staff member, that person may be dismissed or removed from office on conclusion of disciplinary procedures.

31. See also the report of July 2013, paragraphs 127–30.

Reply to paragraph 12 of the list of issues

Extradition (issue 12)

Reasons for extradition

32. The older extradition agreements, which date from the late nineteenth and early twentieth centuries, contain exhaustive lists of extraditable offences. While more recent offences such as membership of a criminal organization, the smuggling and trafficking of human beings, money–laundering and corruption, as well as enforced disappearance, do not feature in such lists, extradition is still possible if the acts involved are reclassified as one or more of the existing “traditional” offences. The evaluation of dual criminality is a theoretical exercise. It is enough for acts to be punishable under Belgian law and meet a minimum level of criminality. The acts do not, however, need to be classified in the same way in the legislation of the two jurisdictions concerned.

33. An (obsolete) bilateral extradition treaty containing an exhaustive list of extraditable offences may be supplemented by applying the conventions of the United Nations combating transnational crimes, such as the Convention against Illegal Traffic in Narcotic Drugs and Psychotropic Substances (Vienna, 1988), the Convention against Transnational Organized Crime and its three Protocols (Palermo, 2000) and the Convention against Corruption (Vienna, 2003).

34. More recent bilateral extradition treaties and multilateral extradition treaties (particularly the European Convention on Extradition of 13 December 1957 of the Council of Europe) do not contain exhaustive lists of offences, with the result that none of the agreements concluded since the entry into force of the Convention refers to the crime of enforced disappearance in the strict sense required by article 13(3) of the Convention itself. However, there is no gap in the law because a minimum penalty threshold is applied in such cases rather than an exhaustive list: any offence punishable by a sentence of at least one year, or for which a sentence or detention of at least four months has been ordered, is in principle extraditable. Once the (new) offence is punishable by a maximum period of imprisonment of at least one year, it comes within the scope of extradition.

Exception for political offences

35. Article 6 of the Extradition Act of 1 October 1833 governs the exception in relation to political offences:

> "It shall be expressly stipulated in those treaties that the foreign national shall not be subject to prosecution or punishment for any political offence prior to extradition, nor for any act connected with such an offence, nor for any crimes or offences not provided for in the present act; failing which extradition and provisional arrest shall be prohibited.
>
> The taking or attempted taking of the life of the head of a foreign government or of the life of the members of his family shall not be deemed to be a political offence, if the act or attempted act is of murder, of assassination or of poisoning.
>
> *Nor shall an act constituting an offence as defined by an international instrument relating to terrorism or addressed by an international instrument relating to international humanitarian law be deemed to be a political offence, or an act connected with such an offence, where extradition is requested on the basis of that instrument and where the instrument is binding on Belgium and the requesting State and explicitly prohibits the refusal of extradition on the basis that the act is a political offence, without the possibility of reservation under the law of treaties. (Emphasis added.)*
>
> Notwithstanding paragraph 1 of the present article, the Government may, where reciprocal arrangements apply, deliver to the governments of countries allied with Belgium in a war against a common enemy any foreign national who, in those countries, has been indicted for or convicted of a crime or offence against the external security of the State, committed on the occasion of that war.
>
> It shall nevertheless be stipulated in extradition treaties concluded under the preceding paragraph that the extradited person shall not be liable for prosecution in the territory of the requesting State for a political act undertaken for the benefit of the requested State.
>
> The Government may also deliver to the governments of the countries mentioned in paragraph 3 of the present article, for trial or to serve their sentence, foreign nationals who have been indicted for or convicted of war crimes by the authorities of those countries."

36. With the Act of 15 May 2007 amending the Extradition Acts of 1 October 1833 and 15 March 1874, the scope of the concept of political offences, and hence of the exception in relation to extradition, has been significantly restricted. In principle, terrorist offences and offences defined in an international instrument addressing international humanitarian law are excluded from the definition of political offences.

37. As a result of the general nature of this exclusion, new offences and future offences defined in such instruments will also fall outside the scope of the exception concerning extradition for political offences.

38. The general exception in relation to human rights, which appears in article 2 bis of the Extradition Act of 15 March 1874, set out in detail in the reply to issue 13 below, provides additional or alternative protection.

Immunity

39. A refusal to extradite could be based on the immunity conferred, in accordance with international law, on certain categories of officials or persons or both, which the Belgian authorities would have to respect.

40. On this point, see article (1) bis of the Introductory Chapter of the Code of Criminal Procedure, which provides that

> "*§1. In accordance with international law,* proceedings may not be brought against Heads of State, Heads of Government and ministers of foreign affairs, while in office, and other persons with immunity recognized by international law; and persons who enjoy full or partial immunity on the basis of a treaty binding on Belgium.
>
> *§ 2. In accordance with international law,* no coercive act pertaining to prosecution may be imposed, during their stay, on any persons officially invited to stay in the territory of the Kingdom by the Belgian authorities or by an international organization based in Belgium with which Belgium has concluded a headquarters agreement." (Emphasis added.)

41. It follows that the categories of persons who may have immunity are dependent on the current state of the relevant international law.

Reply to paragraph 13 of the list of issues

Non–refoulement (issue 13)

Expulsion of foreign nationals in an irregular situation

42. In a decision to expel, account is taken of all factors relevant to article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms. A person who is at risk of abuse or disappearance will not be expelled. It is essential that the person, their legal counsel or objective sources provide information allowing the risk to be substantiated.

43. In accordance with the Act of 15 December 1980 on the entry, temporary and permanent residence and removal of aliens, a person may also invoke such risks when making an international protection application (asylum application, art. 49/3) or an application for subsidiary protection (art. 49/4) or for a residence permit for medical reasons (art. 9 ter).

44. Under article 74/17, paragraph 1, of the Act,

> "Expulsion may be temporarily postponed if the decision to remove or expel lays the third–country national open to a breach of the principle of non–refoulement".

45. Article 74/17, paragraph 2, provides that:

> "Expulsion may be temporarily postponed in the light of the circumstances of each case. Account shall be taken of:

- (1) the physical and mental state of the third–country national;
- (2) reasons of a technical nature, such as a lack of the means of transportation or the failure of expulsion owing to the absence of identification."

46. In addition, under article 74/13 of the act, at the point when a decision to expel is taken, the minister or his representative must take account of the best interests of the child, and of the family life and the state of health of the third–country national concerned.

47. In its judgment in *Kastrati* of 20 September 2006, the Court of Arbitration, which has since become the Constitutional Court, found as follows:

> "When after the application for regularization has been rejected, it becomes apparent that, for medical reasons, it is absolutely impossible for the foreign national to comply with an order to leave the country, he may not be removed."

Article 3 of the European Convention on Human Rights is thus applied, not only at the point when the decision to expel is taken, but also at the point at which it is implemented.

48. Up to the present time, Belgium has not relied on diplomatic assurances. If one day they had to be used, they could not, in any event, be applied generally, since they have always to be tailored to the specific circumstances of the individual case.

49. The attitude of the person's country of origin or legal residence is taken into account in deciding whether or not to proceed to expulsion. A person who is deemed to be at risk is not expelled.

50. Refoulements are carried out in accordance with the Chicago Convention on International Civil Aviation. When an application for asylum is made at the border, it is the Office of the Commissioner General for Refugees and Stateless Persons that takes decisions concerning the principle of non–refoulement.

51. The fact that the country must be a safe country is naturally taken into account. In relation to safe countries, article 57/6/1 of the Act of 15 December 1980 provides as follows.

> "The Commissioner General for Refugees and Stateless Persons shall have the power not to consider an application for refugee status within the meaning of article 48/3 or for subsidiary protection within the meaning of article 48/4 made by an applicant who is a national of a safe country or a person who previously resided habitually in that country, unless it is clear from the applicant's evidence that there exists in relation to him a well–founded fear that he will be persecuted within the meaning of the International Convention Relating to the Status of Refugees, signed at Geneva on 28 July 1951, as defined in article 48/3, or good reason to believe that he is at genuine risk of suffering serious harm, as defined in article 48/4.
>
> A country shall be considered a safe country of origin when, on the basis of the legal situation, of the application of the law within a democratic framework and of the general political circumstances, it can be demonstrated that in that country, in a general and sustainable manner, there is neither recourse to persecution within the meaning of the International Convention Relating to the Status of Refugees, signed at Geneva on 28 July 1951, nor good reason to believe that the applicant for asylum is at genuine risk of suffering serious harm, as defined in article 48/4. In assessing this, account shall be taken, among other matters, of the extent to which protection is offered against persecution and ill–treatment on the basis of the following.
>
> (a) The provisions of laws and regulations in force in the country and the manner in which they are applied;

(b) The manner in which the rights and freedoms contained in the European Convention on Human Rights, the International Covenant on Civil and Political Rights and the Convention against Torture are respected, and in particular those rights for which no derogation may be authorized in accordance with article 15, § 2, of the European Convention;

(c) Observance of the principle of non–refoulement;

(d) The fact that the country has a system of effective sanctions against violations of those rights and freedoms;

(e) The assessment of a safe country of origin must be based on a range of sources of information, including in particular information from other member States of the European Union, from the Office of the United Nations High Commissioner for Human Rights and from other relevant international organizations;

(f) On a joint proposal by the Minister and the Minister of Foreign Affairs, and after the Minister has obtained the advice of the Commissioner General for Refugees and Stateless Persons, the King shall determine, at least once a year, by decree discussed in the Council of Ministers, the list of safe countries of origin. This list shall be communicated to the European Commission."

52. A decision under article 57/6/1 of the abovementioned Act of 15 December 1980 must set out the reasons, mentioning the specific circumstances on which the assessment is based. In addition to the advice of the Commissioner General, all relevant facts and circumstances must be taken into account.

53. The following countries were designated as safe countries in 2012, 2013 and 2014: Albania, Bosnia and Herzegovina, India, Kosovo, the former Yugoslav Republic of Macedonia, Montenegro and Serbia (Royal Decrees of 26 May 2012, 7 May 2013 and 24 April 2014 on the implementation of article 57/6/1, paragraph 4, of the Act of 15 December 1980 on the Entry, Temporary and Permanent Residence and Removal of Aliens).

54. In addition, those countries considered safe by the Office of the United Nations High Commissioner for Refugees are also deemed to be safe by the Belgian State.

55. An applicant for asylum who is a national of a safe country will always be given the opportunity to furnish substantive reasons demonstrating that, in particular circumstances, and as an exception to the general situation prevailing there, his or her country of origin cannot be considered safe. In no circumstances will the mere fact that an applicant for asylum is a national of a safe country automatically result in the application not being considered. Only when, after individual consideration, it is established that the applicant has not provided evidence, or sufficient evidence, to show that he or she is genuinely persecuted in his or her country of origin, or runs a genuine risk of serious harm, will the application be ruled out of consideration. Any possible risk of serious harm will be assessed before a decision to remove is implemented.

56. In the light of all the above, there are, for example, currently no expulsions to Syria.

57. In setting out these developments, Belgium wishes to flag up the existence of a "special needs" programme that makes it possible to assist individuals who are removed. They can be followed up through monitoring in their countries of origin. At their request, or at the request of their lawyer or an organization such as the International Organization for Migration (IOM), ad–hoc monitoring arrangements can be put in place through the IOM or a non–governmental organization or by a representative of the embassy of Belgium or of another member State of the European Union. Requests of this kind are rare, however. Under the "special needs" programme, a person who is to be returned can also request to be

accompanied by immigration staff or other officials as far as their country of origin or the country in which they are authorized to reside.

58. There has also been a more specific project for reintegration following forced return to Afghanistan, Pakistan, Morocco and the Russian Federation.

Extradition

59. Extradition can take place only under a ministerial extradition order. Only the Government can decide on a request for extradition from another State. The final decision is preceded by a judicial extradition procedure which, unless the person consents to be extradited (a "simplified extradition decision"), always requires an opinion from the Indictment Division. The opinion is secret and by definition non–binding, but follows inter partes proceedings.

60. Where extradition is requested for the purposes of prosecution, on the basis of an arrest warrant or equivalent, there must be an enforcement order prior to the procedure whereby the opinion is sought. If an appeal is lodged, the proceedings before the Indictment Division are also inter partes.

61. An appeal for administrative review of an extradition order can be made to the Council of State. Suspension or annulment of the order may be sought or granted. Proceedings may take the form of either of an application for interim relief or of ordinary proceedings.

62. In relation to guarantees of non–refoulement, reference should be had to the general exception concerning the protection of human rights under article 2 bis of the Extradition Act of 15 March 1874, also amended by the Act of 15 May 2007 cited above:

> "Extradition cannot be granted if there are good reasons to believe that the request has been made for the purpose of prosecuting or punishing a person on grounds of race, religion, nationality or political opinion, or that the situation of the person is likely to be aggravated on one or other of those reasons.
>
> Extradition cannot, furthermore, be granted if there is a genuine risk that the person, if extradited, would be subjected in the requesting State to a flagrant denial of justice, to acts of torture or to inhuman or degrading treatment.
>
> Where the offence for which extradition is requested is punishable by death in the requesting State, the Government shall grant extradition only if the requesting State provides formal assurances that the death penalty will not be carried out."

63. The protection provided under article 2 bis stands alone from the exception for political offences discussed in the reply to issue 12. It addresses substantial risks of a breach of article 3 of the European Convention on Human Rights (ECHR), substantial risks of a flagrant breach of article 6 ECHR or, generally associated with risks falling within the sphere of articles 3 or 6, substantial risks that the person, if extradited, would be prosecuted in a discriminatory manner or subject to the imposition of penalties (art. 14 ECHR).

64. Persons who are the subject of requests for extradition are increasingly citing a (substantial) risk of a breach of article 8 ECHR (the right for respect for family life). However, the European Court of Rights applies a very high evidential requirement before agreeing to consider extradition as a disproportionate breach of the right to respect for family life.

65. In accordance with the case law of the European Court of Human Rights, adequate diplomatic assurances can eliminate a substantial and demonstrable risk of a breach of fundamental human rights, including of article 3 ECHR. In the past, such assurances have been requested, obtained and accepted, including by the Council of State and the European

Court of Human Rights. The extradition cases in question mainly related to terrorist offences.

Reply to paragraph 14 of the list of issues

Register of persons deprived of liberty (issue 14)

66. The Royal Decree determining the content of registers of persons deprived of liberty is currently in draft form and draws largely on international conventions, Belgian statute law and current practice, so that it should meet the requirements of article 17(3) of the Convention.

67. The draft has yet to be considered by the relevant authorities, but, following the dissolution of the legislative chambers prior to the federal elections of 25 May 2014, it will be addressed in the next Parliament. In those circumstances, the text cannot be disclosed to the Committee at this stage. The Belgian authorities undertake to forward it to the Committee as soon as it is made public.

68. However, (see para. 164 of the report of July 2013), even without a formal royal decree, the relevant legal obligations are already being observed and, in practice, all police services already keep a register of persons deprived of liberty. A standard model register, the contents of which meet international standards, is already available to the various services concerned.

69. No complaint about a failure to register a person's deprivation of liberty or any other relevant information in the registers of persons deprived of liberty has been made to the Directorate for Individual Investigations of the General Inspectorate of the Federal and Local Police.

70. The Audit and Inspection Service inspects the registers of persons deprived of liberty when monitoring places of detention and, should it come across an omission, can call on the services concerned to remedy this.

Reply to paragraph 15 of the list of issues

Notification of a deprivation of liberty to third parties and external contacts (issue 15)

71. The right of a person under administrative or judicial detention to notify a trusted individual (established in art. 33 of the Police Functions Act and art. 2 bis of the Pretrial Detention Act) applies immediately deprivation of liberty begins. Similarly, an individual can keep in touch with external contacts, in accordance with the procedures laid down by law, immediately he or she is placed in detention.

72. Arrests must always be notified to the competent authorities as soon as possible.

73. It is, however, permissible to delay notifying the trusted individual of the arrest in the following circumstances:

- When an administrative police officer has good reason to believe that informing a third person could pose a threat to public order and safety, he may decide not to comply with the request, and must record the reasons for his decision in the register of persons deprived of liberty. If, however, the person arrested is a minor, the person responsible for his or her supervision is automatically informed (art. 33 quater, paras. 2 and 3, of the Police Functions Act);
- In the case of an administrative arrest, if there is good reason to fear that, were this information communicated, an attempt to dispose of evidence might be made, that

there could be collusion between the person arrested and third parties, or that the latter might evade justice, the crown prosecutor or investigating magistrate in charge of the case may, on the basis of a reasoned decision, postpone the communication for as long as necessary in the interests of the investigation (art. 2 bis, para. 3. 2 of the Pretrial Detention Act).

74. Belgian law permits restricting the external contacts of persons deprived of liberty in the following cases:

- Where the needs of the preliminary investigation so require, the judge has the power to make an order prohibiting communication with persons other than the detainee's lawyer. For that purpose, the judge issues an order setting out the reasons, a copy of which is recorded in the prison register. The prohibition may not last more than three days from the date of the initial hearing. It cannot be renewed (art. 20, para. 2, of the Pretrial Detention Act);
- If there is good reason to fear that the accused person might attempt to dispose of evidence or to collude with third parties, the investigating judge has the power to order that person to be kept apart from others and, derogating from the above, may:
    - Prohibit visits by individuals from outside the prison who are personally cited in the order;
    - Prohibit correspondence from or to persons individually cited in the order;
    - Prohibit telephone contact with persons cited individually in the order (art. 20, para. 3, of the Pretrial Detention Act).

75. If an arrest warrant is put into effect in the form of detention under electronic surveillance, the investigating judge can:

- Prohibit visits to the accused by persons individually cited in the arrest warrant;
- Prohibit all correspondence with persons or bodies individually cited in the arrest warrant;
- Prohibit all electronic or telephone communication with persons or bodies cited in the arrest warrant (art. 20, para. 3 bis, of the Pretrial Detention Act).

76. The investigating judge takes the decision in the form an order setting out the reasons, a copy of which must be recorded in a register kept at the prison for such purposes, and the accused person is notified of the decision by the director of the penal establishment. The decision applies for the period strictly necessary determined by the investigating judge, and ceases to apply, at the latest, when the judge passes the case to the crown prosecutor (art. 20, para. 4, of the Pretrial Detention Act).

77. A decision of the investigating judge restricting visits, correspondence and telephone communications does not affect the rights of the accused person regarding contact with his or her lawyer. A decision of the investigating judge restricting visits, correspondence and telephone communications does not affect the rights of the accused person regarding correspondence with persons with whom he or she may communicate without surveillance under article 57 of the Act on Principles governing the Administration of Prison Establishments and the Legal Status of Detainees (the Act on Principles) (art. 20, para. 5, of the Pretrial Detention Act).

- Before they are handed over, letters sent to the detainee can be monitored by the director of the penal establishment or a member of staff designated by him. In the interests of maintaining order and security, the purpose of the monitoring is to detect substances or objects which do not belong with the correspondence. Letters may not be read in the context of the monitoring process, unless there is specific and personal

information that this is necessary in the interests of order or security. Where appropriate, letters may be read without detainees being present. When absolutely necessary in order to maintain order and security, the director of the penal establishment has the right to withhold from detainees the letters themselves or the substances and objects included in the correspondence. If the director of the penal establishment decides to withhold the letters themselves or the substances and objects included in the correspondence, the detainee must be informed in writing of that decision and of the reasons for it (art. 55 of the Act on Principles). Letters sent by detainees are not subject to prior monitoring by the director or a designated member of staff, unless there is specific and personal information that a check is necessary in the interests of order or security. For monitoring purposes and, if necessary, in order to read it, the letter may, where appropriate, be opened without the detainee being present. Where appropriate and absolutely necessary for the maintenance of order or security, the director has the right not to send letters which are passed to him for dispatch. The detainee must then be informed in writing of the reasons for this decision. The letter must be returned to the detainee, unless there are reasons for keeping it at the disposal of the judicial authorities (art. 56 of the Act on Principles). Certain kinds of correspondence must never be subject to monitoring of the kind described above. These are listed in article 57 of the Act on Principles and consist of correspondence between detainees and their lawyers, and between detainees and consular and diplomatic officials;

- The director of the prison establishment must not prohibit visits by parents and relatives by marriage in the direct line, guardian, spouse, legal or de facto cohabitee, brothers, sisters, uncles and aunts other than on a provisional basis, where there is specific and personal information that such visits could pose a serious threat to the maintenance of order and security, and when adjustments to visiting arrangements would not be sufficient to eliminate the threat. Other visitors are admitted with the prior approval of the director. Authorization to visit cannot be refused unless the person concerned is unable to prove any legitimate interest or there is specific and personal information that the visit could pose a threat to the maintenance of order or security (art. 59 of the Act on Principles);

- The director can deprive a detainee wholly or partially of the right to make telephone calls where there is specific and personal information that telephone communications could pose a threat to the maintenance of order or security. The director's decision must set out the reasons and be notified in writing to the detainee (art. 64 of the Act on Principles). This restriction can never be applied to telephone conversations between detainees and their lawyers unless endorsed by the President of the Bar Association of the judicial area in which the prison is located.

Supervision and inspection of places of deprivation of liberty (issue 15)

78. The authorities responsible for the supervision or inspection of places of deprivation of liberty are provided with information about each type of deprivation of liberty permitted by Belgian law, as set out in paragraphs 169, 175, 176, 193–194 and 209–211 of the report of July 2013.

Reply to paragraph 16 of the list of issues

Training (issue 16)

Defence

79. Issues arising from the International Convention for the Protection of All Persons from Enforced Disappearance will be specifically addressed in the training and guidelines mentioned in paragraph 264 of the report of July 2013.

80. The training and guidelines provided on the procedure relating to deprivation of liberty in place within the Ministry of Defence already fulfil a preventive function, as the procedure is designed to make clear the general legal framework for deprivation of liberty put into effect by members of the Belgian armed forces, setting out the general guarantees for the protection of persons deprived of liberty.[6] Moreover, in the field, the procedures setting the conditions for detention, release, transfer and contacts to be made with diplomatic and local authorities are set out in Belgian standing orders. Where appropriate, practical guidelines are drafted both at international operational command level (North Atlantic Treaty Organization, European Union, etc.), and at the Belgian chief of staff level, in accordance with Belgian standing orders.

Police

81. The principles set out in article 23 of the Convention are already the subject of specific training which is provided throughout the career of members of the police force, although this training does not address the subject of enforced disappearance as such. In addition to what is set out in the report of July 2013 (paras. 260–263), training is provided and makes it possible:

- To prevent police personnel from being involved in disappearances (including enforced disappearances), particularly in relation to persons in their custody and/or deprived of liberty;
- To stress the importance of preventing and investigating the disappearance or breach of the rights of persons in police custody and/or deprived of liberty;
- To ensure that, in the event of a disappearance (whether or not enforced), the need for urgent action is recognized;
- To inform police officers that any manifestly illegal order (including any order requiring, authorizing or encouraging an enforced disappearance) must be refused and that refusal will not give rise to any sanction.

82. This basic and continuing training, along with other awareness–raising measures, is addressed to all police forces and all ranks and grades, and covers the following issues, among others:

- Deprivation of liberty (arrest and detention): knowledge of the legal and regulatory framework (conditions, restrictions and procedures, including the registers and documentary records to be kept, and skills and attitudes essential for a police officer;

[6] Deprivation of liberty in the context of combating maritime piracy is governed by a procedure for the deprivation of liberty of suspected pirates which also operates within the Ministry of Defence. The goal of the procedure is both to define the general legal framework for combating maritime piracy and to provide practical guidelines to be applied by Belgian naval commanders during actions against suspected pirates.

- The protection of persons in the process of questioning and/or arrest: the legal and regulatory framework (fundamental rights to be respected);
- The fundamental rights and freedoms of the citizen: the international, European and national legal framework;
- The code of police ethics: abusive and arbitrary acts and their consequences, including in relation to deprivation of liberty.

83. Please see also paragraphs 9, 29, 60–64, 156 and 163 of the report of July 2013.

Prison staff

84. Continuing basic training for prison staff includes a component on the applicable international law. For further details, please see the third periodic report of the Belgian Government to the Committee against Torture (CAT/C/BEL3, para. 71).

85. For further information on the training provided to the judicial authorities and the security staff of closed facilities, as well as specific training on the removal of foreign nationals, please see the third periodic report of the Belgian Government to the Committee against Torture (CAT/C/BEL3, paras. 53, 72 and 75).

Reply to paragraphs 17 and 18 of the list of issues

Victims (issues 17 and 18).

Definition and rights

86. Any natural or legal person who has suffered harm as a result of an offence has the rights referred to in paragraphs 274–280 of the report of July 2013.

87. Bringing a civil action is subject to general conditions of admissibility, namely: the capacity to bring legal proceedings and locus standi (which is not relevant in the case of enforced disappearances), as well as an interest in bringing proceedings. Having an interest requires that the harm alleged must result directly from the breach of the criminal law; it must be personal and legitimate and still subsisting; it may take either material or moral form. It follows that, in principle, proceedings are not admissible if they allege harm only against the general interest or are founded solely on a moral interest in bringing proceedings for the prosecution of offences. Belgian law, however, makes a number of exceptions by allowing certain associations and groups to bring a civil action for the protection of the aim which they pursue or of the individual interest of their members (M. Franchimont, A. Jacobs and A. Masset, *Manuel de procédure pénale*, 4th edition, Brussels, Larcier, 2012, pp. 184 et seq.).

Care, support and assistance for victims

88. We should first explain how victim support operates, as a responsibility, within Belgium’s federal structure, as it is shared between the federal State and the federated entities. Based on that distribution of responsibility, a distinction should be drawn between the following:

- “Victim support” is the generic term used in Belgium, including assistance and services in the broad sense provided for victims by the various actors at the different levels of responsibility;
- “Initial response” victim support is provided by the police services and is a federal responsibility;

- "Care of victims" means the care provided for victims in criminal proceedings to safeguard the rights of victims during proceedings. Until 1 July 2014, this was a federal responsibility;[7]
- "Victim assistance" means psychological, social and therapeutic assistance which differs from other forms of intervention because of the content, intensity and frequency of contacts with the victim. Assistance of this kind falls within the responsibility of the federated entities, which are able to organize counselling services on an autonomous basis. These services are free and confidential and are offered to the relatives of victims as well as to victims themselves.

89. Coordination of responsibilities between different levels of authority is governed by the three memoranda of understanding on victim support, which were agreed, on 5 June 2009, between the federal State on the one hand, and the French Community and the Walloon Region, the German–speaking Community, and, for the Brussels–Capital Region, the Flemish Community, the French Community, the French Community Commission and the Common Community Commission. A "referral policy" has also been put in place, requiring services in the justice system to steer persons in need of assistance or treatment to the services that can provide them, without interfering in their responsibilities.

At federal level (see footnote 6)

90. In 1998, by inserting article 3 bis into Introductory Chapter of the Code of Criminal Procedure, the legislature imposed a general duty on all those involved in the criminal justice system to treat victims with respect:

> "Victims of crime and their relatives must be treated properly and conscientiously, in particular by providing them with all necessary information and, where appropriate, putting them in contact with the specialist services, especially the legal assistants. Victims must be provided with practical advice on how to sue for damages in criminal proceedings and on how to declare themselves injured parties."

91. Article 46 of the Police Functions Act requires all police personnel to put persons who request help into contact with specialist services, and to provide support to victims of crime, including getting them the information they need:

> "The police services shall put persons who request help or support into contact with the specialist services. They shall provide support to victims of crime, including by providing them with the necessary information."

92. This obligation incumbent on all police officers is specified in circular "GPI 58" of the Ministry of the Interior of 4 May 2007 on arrangements for victim support in the integrated police force, structured at two levels, providing instructions and detailed advice

[7] The Victim Care Service of the Justice Centres had responsibility for this. However, the Justice Centres are among the federal responsibilities which were transferred to the federated entities in connection with the Sixth Reform of the State on 1 July 2014. As of 1 July 2014, therefore, the Justice Centres are the responsibility of the federated entities. A transitional period, beginning on 1 July 2014 and lasting six months, has been provided in order to guarantee the continuity of the functions performed by the Justice Centres. The staff and budget for the Centres will be transferred on 1 January 2015. A great deal of preparatory work was done before the transfer, involving fruitful cooperation between the institutions concerned, and resulted in a cooperation agreement between the federal State, the Flemish Community, the French Community and the German–speaking Community on the work of the Justice Centres (Federal Act of Assent of 12 May 2014). An interministerial conference on the issue will be set up making it possible to maintain effective contact between the judiciary, the Federal Public Justice Service and the large number of partners involved, on the basis of regular and structured consultation.

on care of victims, practical support, information, the drafting of statements and the guidance of victims. Victim support services exist in parallel in the federal and local police, and are involved in awareness–raising and in–service training of personnel in relation to victim support by the police service, as well as in providing this specialist police support to victims, without prejudice to the statutory obligations incumbent on every individual staff member in terms of victim support.

93. Circular GPI 58 places particular stress on care of victims, practical support, information, the drafting of statements and the referral of victims, stressing, in every case, the specific approaches required in dealing with certain categories of victim or the victims of certain types of offence.

- In relation to care, reference is made to listening skills, including active listening and an understanding and patient attitude (for example, ensuring that the victim is not passed from one person to another, avoiding minimizing the offences and explaining why certain questions have to be asked). Police personnel dealing with the care of victims are asked to pay particular attention to ensuring that, as far as possible, all victims are cared for in a place which is separate, shielded from general view and provides privacy and discretion;
- In relation to practical support, the police officer's first priority must be to ensure that immediate medical care is provided where needed (by the emergency medical service or a physician). Staff attention is drawn to the fact that practical support is essential in moments of crisis and often consists of simple things (contacting a relative or securing transport, for instance). This support is not just of immediate interest to the victim, but also has psychological significance. The victim must be given the opportunity to telephone and alert family or relatives. If necessary, the police officer must make the call. The police officer must also verify whether the victim has a home, and, if necessary, put them in touch with a refuge or reception centre;
- In relation to information and referral, victims must be given the information they need to enable them to keep track of progress with their case.

94. The tasks of providing care, help and information in the context of criminal proceedings, which is part of victim support, have been entrusted to the Victim Care Services put in place in courts and prosecutors' offices in 1993 and integrated with the Justice Centre services in 1999. Their tasks are defined in joint circular no. 16/2012 of 12 November 2012 of the Ministry of Justice and the College of Public Prosecutors attached to the appeal courts on the care of victims in courts and public prosecutors' offices.

95. In practical terms, the Victim Care Services are responsible for providing victims and their relatives with specific information on their cases at all stages in the legal process (from the time that charges are pressed and until the sentence is enforced). Specific means, among other things: explaining procedures for the service of judicial process; communicating the results of the investigation; forwarding questions from the victim to the court and the resulting feedback to the victim; putting decisions into context and explaining the judicial processes. In carrying out these duties, legal assistants are able to act as the interface between victim and judge. Specific information is always passed on to the victim with the judge's consent.

96. The Victim Care Services can also give victims support and assistance throughout the judicial process. Support can, in particular, be provided before, during and after the reconstruction of the crime; when introducing a suit for damages before the investigating magistrate; when consulting the case file; in regard to the return of evidence following a conviction; and in the context of hearings before the courts and tribunals. It is important to stress that this support is not systematized and depends on factors including the requests

that the victim makes, the resources available among those close to the victim and any action that may be taken by another victim support service.

97. In addition, the Victim Care Service is able to provide information about the various ways in which sentences can be enforced and about the rights of victims in that connection; it is able to receive specific information on behalf of victims, to offer help and support at the time of the hearing by the sentence enforcement court and to follow up the decisions of the decision–taking bodies.

98. The Victim Care Service also fulfils a valuable guidance function. When victims encounter a problem or question which is outside the remit of the Victim Care Services, the latter are responsible for steering them to a service or authority with an appropriate remit. That happens, for instance, when a victim wants legal advice or social and psychological assistance.

99. Finally, the Victim Care Services can contribute at a more structural level by flagging up the difficulties that victims encounter in their dealings with the judicial system and alerting those working in the justice system to the specific needs and rights of victims.

100. The structural measures provided for in victim support policy which receive constant attention and promote both "top–down" and "bottom–up" information flows include the following:

- An expert network on "victim support policy" in the College of Prosecutors General. The work of this multidisciplinary network includes the drafting of circulars, drawing on input from all the various disciplines concerned. The circulars are binding on members of the public prosecution service. A recent example is a circular dealing with the respectful treatment of the deceased in circumstances where the judicial authorities are involved, including when the death is announced, the last respects to be paid to the deceased and the cleansing of the scene;
- The designation of judges responsible for liaison with the Victim Care Service in each judicial area;
- Area committees bringing together all those operationally involved in each judicial area.

101. Circulars dealing specifically with victim support and which have been prepared on a multidisciplinary basis with input from all those operationally involved include the following:

- Ministerial directive of 20 February 2002 on searching for disappeared persons;
- Joint circular no. 16/2012 of 12 November 2012 of the Ministry of Justice and the College of Public Prosecutors attached to the appeal courts on the care of victims in courts and public prosecutors' offices;
- Joint circular no. COL 17/2012 of 12 November 2012 of the Ministries of Justice and the Interior and the College of Public Prosecutors on the respectful treatment of the deceased in circumstances where the judicial authorities are involved, including when the death is announced, the last respects to be paid to the deceased and the cleansing of the scene.

102. In relation to victim assistance, which falls within the remit of the federated authorities, provision is organized as follows:

The Flemish Community

103. In Flanders and Brussels there are 11 social assistance centres (*Centra voor Algemeen Welzijnswerk*), which are accredited and subsidized and whose functions include

providing victim assistance (see the Decree of 8 May 2009 and its implementing order of 21 June 2013 on the assistance to be provided by the social assistance sector, including victim assistance). Individuals may call on them even if they have not filed a complaint with the police. The assistance provided to victims and their relatives is free and without obligation. The support offered by the centres is not solely psychological but also includes practical assistance and information. The centres provide guidance for victims on insurance and compensation matters, as well as on police matters and the judicial system. They can also help victims with procedures before the Commission for Financial Assistance of the Victims of Intentional Acts of Violence (see below) or when they are heard by the sentence enforcement court.

The French Community

104. There are 16 victim assistance services, which both provide social and psychological assistance to victims and their relatives and carry out a number of corporate functions. They provide, in the short, medium or long term, social and psychological assistance which is appropriate to the consequences of the experience that the victim has undergone, and help them deal with administrative, social and judicial issues. The centres are able to provide services to victims merely if they request it, even when no complaint has been filed with the police. In other cases, victims are referred by the police or another organization. The assistance provided to victims and their relatives is free and without obligation, and is given to any victim who requests or accepts it. Counselling is provided at the premises of the victim assistance service in a place that guarantees discretion, and can, if necessary, be provided at the victim's home or in hospital. The victim assistance services can support victims in proceedings before the Commission for Financial Assistance of the Victims of Intentional Acts of Violence (see below) or where they are heard by the sentence enforcement court. They can also accompany victims to consult a doctor, to the police, the prosecutor's office and the courts.

Forms of reparation

105. Restitution is provided for by articles 28 sexies and 61 quater of the Code of Criminal Investigation, the contents of which are summarized at annex 1.

106. The aim of victim support and assistance measures is to enable victims to readjust and obtain satisfaction. The support provided to victims by the services described above is designed to enable victims to move on and get on with their lives.

107. In addition, the Belgian system for fixing penalties (the most appropriate punishment) and enforcing them (involving, for example, a plan for social reintegration, with the procedures for enforcing the punishment and an assessment of the disadvantages which might include the fact that the convicted person poses a clear physical risk to others and the risk that he or she may harass victims), is designed to encourage the convicted individual to take the steps necessary for his or her reintegration into society, in order also to reduce the risk of reoffending.

Commission for Financial Assistance of the Victims of Intentional Acts of Violence and Voluntary Rescuers

108. The remit, operation and procedures of the Commission for Financial Assistance of the Victims of Intentional Acts of Violence and Voluntary Rescuers and the financing of the Special Fund for Financial Assistance of the Victims of Intentional Acts of Violence are established by the Act of 1 August 1985 on Fiscal and Other Measures, the relevant extract from which is at annex 2. The same information is conveyed in a more accessible form in the leaflet at annex 3.

Reply to paragraph 19 of the list of issues

Origins of adopted children (issue 19)

109. Before commenting on the provisions for storing and accessing information on the origins of adopted children, it should be noted that Belgian law does not permit the giving of birth in secret. Except in the (very rare) cases of "foundlings", the birth certificate of a baby born in Belgium automatically records the name of the mother (and of the father if he has been recognized). A child adopted under the national adoption procedures is thus able to access his or her mother's name by asking the registry of births and deaths for a copy of the birth certificate.

At federal level

110. In accordance with article 386–6 of the Belgian Civil Code, the competent authorities must ensure that they keep the information that they hold on the origins of an adopted person, including the information on the identity of the father and mother, along with information, needed to monitor the adoptee's heath status, on the medical history of the adoptee and his or her family, with a view to the adoption taking place and subsequently to enabling the adoptee, should he or she so wish, to find out about his or her origins. Each authority must ensure that the adopted persons or their representatives have access to this information, along with appropriate advice, to the extent permitted under Belgian law.

111. Under the Act of 8 December 1992 on privacy protection in the processing of personal data, adopted persons are always able to apply to the adoption service through which they were adopted to gain access to their data.

112. In accordance with article 368–6 of the Civil Code referred to above, a Royal Decree is currently being prepared on collecting, storing and accessing information relating to origin. The decree will seek to regulate, among other things, practical procedures for collecting, storing and accessing information on the origins of adopted persons for all of the authorities concerned (more specifically, the types of data to be kept and how this should be done, procedures for accessing the information, the type of data that may be accessed and by whom, and the question, where relevant, of guidance for the adopted person). Given that each authority involved in adoption is responsible for regulating access to the data that it holds, the royal decree will have to make it possible to align practices by setting out in detail the procedures at federal level and, for further information, referring on to the decrees of the various communities.

The French Community

113. Article 49 of the Decree of 31 March 2004 on adoption, as amended by the Decree of 5 December 2013, provides that the Community Central Authority for Adoption and the accredited adoption agencies are to retain the information they hold on the origins of adopted children, including information pertaining to the identity of the mother and father, as well as information concerning the medical history of the adopted person and his or her family.

114. Articles 48 and 50 of the Decree of 8 May 2014 on adoption (implementing decree) provide that the information in question is to be retained for a minimum of 50 years (in accordance with the requirements of the European Convention on the Adoption of Children). The decree also determines the material in the dossier which may be consulted, namely only information on origins.

115. Article 49/2 of the Decree of 31 March 2004 provides that the Community Central Authorities for Adoption and the accredited adoption agencies are to allow the dossiers they hold to be consulted by any adopted person or by that person's representative, insofar as

permitted under articles 368–6 and 368–7 of the Civil Code. The Community Central Authorities are to retain, as a minimum, all information that the central federal authority might hold. It can therefore be said that access to a person's origin is guaranteed in the French Community.

116. Article 50 of the decree requires the Community Central Authorities to recover the archives of any approved adoption agency which loses accreditation. It also requires any person, whether physical or legal, that holds a dossier relating to the adoption of a third person, to pass it to the Community Central Authorities, making it possible, among other things, to assist persons adopted before the entry into force of the 2004 decree to in researching their origins through a person other than the approved agencies, for example a hospital, obstetrician or association.

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117. In Flanders, provisions differ according to whether the procedure for adoption is national or international.

118. In the case of national adoptions, article 3, paragraph 1.6, of the Decree of 3 May 1989 on the accreditation of adoption services contains a provision authorizing the Flemish Government to draw up a regulation determining the procedures for drafting, storing, protecting, making accessible and monitoring waiting lists and dossiers. The adoption services give adopted persons access to data concerning them contained in their dossiers, in accordance with the Act of 8 December 1992 on privacy protection in the processing of personal data. Access is provided to them by the adoption service coordinator.

119. In the case of international adoption, article 25 of the Decree of 20 January 2012 regulating the international adoption of children includes of a provision on the right of consultation, clarified in the Decree of the Flemish Government of 22 March 2013 on the right to consultation and mediation in cases of international adoption. Adopted persons can exercise the right of consultation with the Flemish Government official responsible for adoption from the age of 12. Minors may consult their dossiers only if accompanied. The rules on the right of consultation clearly set out the data to which the right of consultation applies, namely:

- The ethnic origin of the adoptee;
- Data on the identity of the adoptee's biological parents;
- Medical data relating to the adoptee and his or her parents;
- The situation of the adoptee and of his or her biological parents at the time when the adoptee was given up for adoption;
- The reasons for giving up the adoptee for adoption;
- Official documents relating to the adoptee both from the country of origin and from Belgium regarding the adoption procedure;
- Follow–up reports on the adopted child to the extent that they concern the adoptee (art. 69 of the abovementioned decree).

120. Article 27 of the decree contains a criminal–law provision relating to the retention of adoption dossiers:

> "Any person in possession of a dossier on the adoption of a third person, and who has not forwarded that dossier to the Flemish Centre for Adoption, is liable to prosecution."

It should thus be possible for all adoption dossiers to be stored in one place, thereby allowing the right of consultation to be exercised.