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International Convention for the Protection of All Persons from Enforced Disappearance

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Committee on Enforced Disappearances
Seventh session

Summary record of the 100th meeting
Held at the Palais des Nations, Geneva, on Monday, 15 September 2014, at 3 p.m.

Chairperson: Mr. Al-Obaidi (Vice-Chairperson)

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Mr. Al-Obaidi, Vice-Chairperson, took the Chair.

The meeting was called to order at 3 p.m.

Consideration of reports of States parties to the Convention

Initial report of Belgium (CED/C/BEL/1; CED/C/BEL/Q/1 and Add.1)

1. *At the invitation of the Chairperson, the delegation of Belgium took places at the Committee table.*

2. **Mr. de Crombrugghe** (Belgium), introducing the initial report of Belgium (CED/C/BEL/1), said that the State party was committed to an interactive dialogue with all treaty bodies and to follow-up on the ensuing recommendations. The ratification of the Convention by the State party was central to its fight against impunity and to its foreign policy. During preparation of the report to the Committee, a seminar had been organized at which best practices had been exchanged among representatives from various public bodies and other countries. The report had been prepared in close cooperation with public bodies and NGOs.

3. **Mr. Limbourg** (Belgium) said that, although it was rare that an act of enforced disappearance was committed in the State party, the Government recognized the importance of preventing the crime by ensuring that all institutions and public procedures were properly regulated in law. The Belgian authorities had therefore used the reporting exercise as an opportunity to reassess existing mechanisms for preventing and punishing the crime of enforced disappearance, as defined in the Convention. The authorities had reviewed, in the light of the Convention, all forms of deprivation of liberty provided for by law, including administrative and preventive detention, and also deportation, extradition and adoption procedures. Officials from the Federal Public Service for Justice, the national police, the Immigration Office and the Ministry of Defence, among others, and representatives of civil society and NGOs, had participated in discussions and in the evaluation of the current legal framework on enforced disappearance.

4. Under Belgian law, enforced disappearance constituting a crime against humanity as defined in international law was a criminal offence, with all that that implied in international law in terms of the competence of the courts, individual criminal responsibility, statutes of limitation and penalties. Offences related to an act of enforced disappearance that did not constitute a crime against humanity, whether committed by the State or an individual, were also crimes under Belgian law, and were addressed in accordance with the requirements of the Convention.

5. Additionally, in line with the Convention, Belgian legislation provided various guarantees to any person deprived of their liberty: places of detention were officially recognized and monitored, for example, detainees were clearly informed of the reason for their detention and of their rights, the authorities and persons of the detainee’s choosing were informed of the deprivation of liberty, and procedures were supervised by independent bodies. Basic and in-service human rights training was provided to officials responsible for the custody and treatment of persons deprived of liberty. Disciplinary measures could also be brought against any State official in breach of the procedures prescribed by law for the deprivation of liberty. A manifestly unlawful order from a superior did not justify enforced disappearance. Furthermore, the law enabled anyone to report abuse during a period of deprivation of liberty and obliged State officials to report any offence brought to their attention. The State party ensured support for victims of enforced disappearance and upheld the principle of non-refoulement. In addition, it prohibited the wrongful removal of children and had rigorous adoption procedures in place.

6. The Act of 21 December 2013 amending the Code of Criminal Procedure and the Act of 22 March 1999 on the identification procedure using DNA analysis in criminal proceedings were both very important pieces of legislation. The Act of 22 March 1999 was intended to facilitate investigations into cases of enforced disappearances and put an end to uncertainty for the families of victims. However, in order to bring Belgian legislation fully into line with the Convention, enforced disappearance that did not constitute a crime against humanity still needed to be defined as a separate offence. In that regard, a bill had been drawn up and submitted to the Belgian College of Prosecutors General. The bill had been held up by the recent elections and subsequent change of Government. The State party would keep the Committee informed of its progress.

7. **Mr. Decaux** welcomed the delegation's preparatory work, particularly the seminar that had been conducted in January 2013. The State party had met all deadlines, setting a good example to other countries. Its contribution to the development of international human rights law was significant, especially in the realms of military justice and the strengthening of judicial cooperation regarding extradition regimes. He enquired about progress with ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. When would the national preventive mechanism required under the Optional Protocol be established?

8. **Mr. Camara** thanked the delegation for its thorough replies to the list of issues (CED/C/BEL/Q/1/Add.1) and applauded the State party's alignment of its legislation with international human rights instruments. There were, however, gaps and challenges which needed to be addressed. It appeared at times that the structure of government in Belgium hampered the adoption of certain instruments, especially ones relating to enforced disappearance. Further details would be appreciated on the bill to amend the Criminal Code to criminalize enforced disappearance as a separate offence. Did the bill provide for a definition of enforced disappearance in conformity with the Convention and when would it enter into force? The penalties under current legislation did not seem to be proportionate to the extreme seriousness of enforced disappearance and he wondered whether that would be rectified in the bill. What provision was made in existing legislation, and in the bill, for mitigating and aggravating circumstances in cases of enforced disappearance? It was essential that Belgian legislation should provide for the criminal responsibility of superior officials with regard to enforced disappearance, in accordance with article 6 of the Convention. The continuous nature of the offence was currently a matter for determination by a judge, but should also be written into law. In addition, any statute of limitations needed to take into account the seriousness of the offence and its continuous nature.

9. Further details on administrative detention would be appreciated: how was it defined under the State party's legislation; who was competent to decide on the detention of an individual; and where were administrative detainees held? What differences were there between administrative detention for Belgian nationals, for foreign nationals in an irregular situation, and for asylum seekers? Lastly, were such detentions officially registered and were detainees entitled to assistance from lawyers and human rights organizations and to contact with their families?

10. **Mr. Garcé García y Santos** asked which institutions were responsible for inspecting places of detention in Belgium, what resources were assigned to those institutions and what mechanisms were in place to monitor conditions of administrative detention.

11. **Mr. López Ortega** asked what exactly constituted a state of war for the purposes of the exercise of military jurisdiction over alleged criminal offences committed by servicemen. Did it include the participation of the Belgian Armed Forces in multilateral military operations, such as those organized by the North Atlantic Treaty Organization (NATO) or the United Nations? In times of war, how were the military courts organized

and what guarantees were in place to ensure their independence and impartiality? Did they exercise jurisdiction over all criminal offences, including enforced disappearance, committed by members of the Belgian Armed Forces in the course of wartime military operations? Referring to paragraph 20 of the replies to the list of issues, he said that the fact that military courts conducted disciplinary proceedings seemed to suggest that they did, in fact, operate in peacetime, and he would appreciate the delegation's comments in that regard.

The meeting was suspended at 3.55 p.m. and resumed at 4.30 p.m.

12. **Ms. Baldovin** (Belgium) said that she could not offer any further information in response to Mr. Decaux's question concerning her country's intention to ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, other than what was contained in paragraphs 1 and 2 of the replies to the list of issues. The same applied to her country's intention to establish a national human rights institution, on which information had been provided in paragraphs 3–6 of the replies. The reason was that the Government elected in May 2014 had not yet had the opportunity to address those issues fully.

13. **Mr. Limbourg** (Belgium) said that the bill providing for the criminalization of enforced disappearance as a separate offence was in the preliminary stages of consideration and was currently awaiting an advisory opinion from the Belgian College of Prosecutors General, which was expected to be delivered in the near future. The bill would then be revised and submitted to the new Minister of Justice. Although it was still too early to describe the content of the bill or to estimate its date of adoption, he assured Committee members that the bill would be considered by the new Government as a matter of priority.

14. **Ms. Baldovin** (Belgium), said that the penalties for the offence of violation of personal freedom by individuals appeared to be disproportionately light because that offence did not include malicious acts but merely overzealousness on the part of the offender. An example might be a case in which the employees of a company held the director in his or her office following a move to order mass layoffs. Such acts did not involve denial or concealment, as would acts of enforced disappearance. Consequently, the prosecution of an act of enforced disappearance under Belgian ordinary law could not be based solely on the offence of violation of personal freedom by individuals but rather would typically be based on other criminal offences for which the punishment was more severe – offences such as torture, kidnapping or inhumane treatment.

15. Superior criminal responsibility in an act of enforced disappearance that constituted a crime against humanity was covered under book II of the Criminal Code, which dealt with international crimes. Superior criminal responsibility in an act of enforced disappearance constituting an ordinary offence, whether in respect of the offence as such under articles 155 and 156, or as a participant in the offence or aiding and abetting, under articles 66 and 67, were covered in book I of the Criminal Code. In that connection, Committee members might find it instructive to review Belgian case law, which provided greater clarification of the subject. Although the law as it currently stood did not provide for separate superior criminal responsibility, her delegation considered that it provided sufficient coverage.

16. The Belgian legal system was a centralized system that set standard periods of limitation for the prosecution of each category of offence. It also stated when the period of limitations for criminal proceedings for those offences began to run, depending on whether the offence was instantaneous or continuous in nature, and specified criteria for the interruption or suspension of statutory limitations. With regard to offences that were continuous in nature, the period of limitation commenced as soon as the offence ceased; however, the instantaneous or continuous nature of a given offence was never expressly

referred to in legislation, but was left to the determination of the courts. The reasoning was, first, that its inclusion in the definition of the offence could invite to a dangerous *a contrario* interpretation in respect of other existing continuous offences not explicitly defined as such in the Criminal Code and, second, that, in any case, all violations of personal freedom were widely viewed in the literature as classic illustrations of continuous offences.

17. **Ms. Rochez** (Belgium) said that administrative arrest was an administrative coercive measure that could be applied by the police, but only if absolutely necessary to maintain public order, security and peace. It was regulated by a detailed legislative framework that defined the conditions for its use, the authorities empowered to apply it and the guarantees enjoyed by the persons to whom it was applied. The legally prescribed maximum duration of administrative arrest and any subsequent detention was 12 hours.

18. The guarantees provided to persons under administrative arrest included the requirement for the police officer making the arrest to notify the competent authorities and to record all aspects of the arrest in a custodial register, which would be used to monitor the legality of the detention. Where an individual was subject to both administrative and judicial arrest, they were given a statement of rights, which was available in 50 languages and dialects.

19. **Ms. Baldovin** (Belgium) said that places of detention could be inspected by various authorities authorized by law. The function of the Central Council for the Supervision of Prisons was to exercise independent oversight of all matters affecting the treatment of prisoners and respect for the relevant rules. It submitted opinions to the Minister of Justice, either upon request or at its own initiative, on the administration of the country's prisons and the execution of sentences and probation. It also coordinated the inspection process and prepared annual reports on the operation of prisons, the treatment of prisoners, compliance with prison rules and changes in prison populations.

20. In addition, the Minister of Justice established supervisory commissions, each of which was responsible for one or more prisons. Their mission was to conduct independent inspections of a prison, submit opinions and reports on issues directly or indirectly related to the welfare of prisoners and formulate any proposals that they considered appropriate. They also prepared annual reports and conducted mediation procedures between prison directors and prisoners when informal complaints were brought to their attention.

21. **Ms. van Lul** (Belgium) said that rejected asylum seekers were held in custody only when they had failed to comply with expulsion orders following rejection of their application for asylum, and in order to ensure that they did in fact comply. Explicit provisions to that effect were contained in Belgian law, namely, the Aliens Act of 15 December 1980.

22. In conjunction with the authorities in charge of reception facilities, the Government had developed a system to encourage the voluntary return of rejected asylum seekers. In general, such persons could not be held in closed centres unless other less coercive measures had failed following receipt of an expulsion order. The location of closed reception centres was published in the Official Gazette and, pursuant to a ministerial decree, alternative accommodation facilities were available for families of asylum seekers awaiting expulsion.

23. Closed facilities were regulated by a Royal Order published in the Official Gazette. There were also designated accommodation centres for families. The Government provided persons in closed facilities, families in accommodation centres and foreign nationals with information brochures setting out the rules of the establishment in which they had been placed. The information brochures were available in a range of languages. Detained foreign

nationals had access to consular, legal and medical assistance, enjoyed the right to privacy and family life and had contact with the outside world.

24. Under the Royal Order of 2 August 2002, members of the Chamber of Representatives and the Senate, the provincial governor, the burgomaster of the place where the facility was located, and representatives of the Office of the United Nations High Commissioner for Refugees (UNHCR), the Committee against Torture, the European Commission of Human Rights and other national bodies could visit closed facilities and make recommendations. In addition, 25 NGOs had been granted the right to visit closed facilities and other places of detention and so exercised indirect oversight. In general, visits conducted by third parties were permitted provided that they had a legitimate interest.

25. Persons held in closed facilities or in accommodation centres could file a complaint with the Complaints Commission if they believed their rights had been violated. Furthermore, each closed facility kept a register of detained foreign nationals, where the date of the detention decision, any visits made, any appeals filed, and the date of expulsion or release were recorded.

26. **Mr. Lange** (Belgium) said that Belgium had not been at war since the Second World War. Therefore, Belgian military personnel involved in international military operations came under the jurisdiction of the civil courts. The Act of 10 April 2003 regulated the discontinuance of military courts in peacetime and their resumption in times of war. In wartime, military courts were composed of both civil and military representatives who were appointed at random and replaced every three months to ensure impartiality. Military courts could not institute disciplinary proceedings or prescribe disciplinary sanctions when criminal proceedings were already ongoing. Military courts could not prescribe criminal sanctions.

27. **Mr. Camara**, noting that the State party defined enforced disappearance as a crime against humanity in accordance with the Rome Statute of the International Criminal Court, asked whether the State party had envisaged incorporating the definition contained in article 5 of the Convention into its criminal legislation. He also wished to know whether the measures in place to protect witnesses in an investigation of an enforced disappearance were also applicable to the complainant, the relatives of the disappeared person, their defence counsel and anyone else involved; whether police officers suspected of involvement in an enforced disappearance were automatically suspended and removed from the investigation until their innocence was proved; and whether the extradition agreements concluded between Belgium and other States made specific reference to enforced disappearance.

28. **Mr. Decaux**, referring to paragraph 8 of the replies to the list of issues, asked how the State party planned to ensure that civil society representatives were directly involved in the subsequent stages of preparing the bill intended to ensure the full implementation of the Convention.

29. **Mr. Yakushiji** requested the delegation to elaborate on the information provided in paragraph 133 of the State party's report regarding the applicability of the double criminality principle in cases of enforced disappearance. He asked whether the State party had amended its domestic legislation to reflect the principles of criminal immunity and universal jurisdiction invoked in the judgement handed down by the International Court of Justice in the case concerning the arrest warrant of 11 April 2000 (*Democratic Republic of the Congo v. Belgium*).

30. **Mr. Garcé García y Santos**, noting that the institutions responsible for inspecting places of detention came under the authority of the Executive, asked whether there was any truly independent institution that performed that task.

31. **Ms. Baldovin** (Belgium) said that the Government of Belgium considered article 5 of the Convention to be declaratory of international law and the definition of enforced disappearance as a crime against humanity to have originated in customary international law and to have been codified in article 7 of the Statute of Rome. Therefore, the Government of Belgium currently had no plans to incorporate the definition contained in article 5 of the Convention into its criminal legislation.

32. **Mr. Limbourg** (Belgium) said that the measures in place to protect witnesses in an investigation of an enforced disappearance also applied to the defendant, the civil party and their counsel. In certain cases, such measures also applied to the immediate family of the civil party. The extradition agreements concluded between Belgium and other States did not specify the offences that could lead to extradition but it was understood that enforced disappearance was covered by those agreements.

33. The Government of Belgium preferred not to involve civil society representatives in the process of preparing the bill on implementation of the Convention before it had been finalized at the administrative level, as the text of the bill could be subject to substantive changes. It made more sense to consult civil society representatives once the final text of the bill had been submitted to Parliament.

34. **Ms. Rochez** (Belgium) said that a police officer suspected of involvement in an enforced disappearance was considered to be innocent until proven guilty. The police code of conduct provided that any police officer who was personally involved in a case should withdraw from the investigation. Any police officer who suspected that a colleague was involved in an enforced disappearance was obliged to inform the competent judicial authorities, who would decide whether to remove the officer under suspicion from the investigation.

35. The police authorities could institute disciplinary proceedings to determine whether an officer suspected of an offence was in fact guilty and prescribe disciplinary sanctions if appropriate. However, in general, the police authorities favoured measures that would cause minimal disruption to the service, such as transferring the officer to another department. The police authorities could also order the temporary suspension of an officer suspected of being personally involved in a case, in order to preserve the impartiality of the investigation. However, temporary suspension was not automatic.

36. **Ms. Baldovin** (Belgium) said that, following the judgment handed down by the International Court of Justice on the case concerning the arrest warrant of 11 April 2000 (*Democratic Republic of the Congo v. Belgium*), an article had been inserted into chapter 1 of the preliminary title of the Code of Criminal Procedure providing that, in accordance with international law, proceedings could not be brought against heads of State, Heads of Government or foreign ministers while in office, other persons with immunity recognized by international law, and persons who enjoyed full or partial immunity on the basis of a treaty binding on Belgium; and that, in accordance with international law, no restraining measure related to the institution of public proceedings could 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 had concluded a headquarters agreement. The category of "other persons with immunity recognized by international law" had been included to avoid having to update the list of persons against whom proceedings could not be brought each time there was a change in a given area of international law.

37. The national Committee for the Prevention of Torture operated in full independence from the Executive and currently had access to all places of detention in Belgium.

The meeting rose at 5.45 p.m.