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COMMITTEE AGAINST TORTURE

41st session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)*

OF THE 850th MEETING

Held at the Palais Wilson, Geneva,
on Wednesday 12 November 2008 at 10 AM

Chairperson: Mr. GROSSMAN

SUMMARY

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (continued)

Second periodic report of Belgium (*continued*)

* No summary record was prepared for the second part (closed) of the meeting.

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The meeting was called to order at 10 AM

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (Agenda item 5) (*continued*)

Second periodic report of Belgium (CAT/C/BEL/2, CAT/C/BEL/Q/2, CAT/C/BEL/Q/2/Add.1)

1. *At the invitation of the Chairperson, Mr. Mine, Mr. Brauwers, Mr. De Vulder, Mr. Clairbois, Mr. Dierckx, Mr. Bourdoux, Mr. Sempot, Mr. Verbert and Mrs. De Souter, Mrs Niedlispacher, Mrs Goossens and Mrs Kinoo (Belgium) took their places at the Committee table.*

2. Mr. MINE (Belgium) gave a brief presentation of the principal initiatives taken by Belgium over the last three years, stressing that many of them were in response to the concerns expressed by the Committee in its 2003 conclusions and recommendations. An innovative piece of legislation, entitled the "Law of principles concerning the administration of penitentiaries and the legal status of detainees" (the “Principles Act”) had been adopted to regulate the principal aspects of serving prison sentences, in particular prisoner living conditions and security requirements. At the same time, an independent body, the Central Council for Penitentiaries Surveillance, had been created to supervise prisons through commissions attached to each establishment.

3. Other measures had been taken to protect individuals more effectively against any form of mistreatment. For example, torture could no longer be justified on the grounds of necessity, and an alien with permanent links to the country could be expelled only under very restricted circumstances. Juveniles were assisted by a lawyer when appearing before the examining magistrate, and their parents were advised of their detention. A new status of subsidiary protection could be granted aliens exposed to serious threats to their safety in their country of origin, and it was prohibited to extradite a person who risked being denied justice or being submitted to torture in the requesting State. The detention facilities used by the police must satisfy minimum standards, and all instances of persons held in police custody on those premises must be chronologically detailed in a "record of deprivation of liberty". Finally, it was now possible to reopen any criminal procedure if the European Court of Human Rights found that the rights of the defendant had been disregarded, in particular with respect to cases of torture and mistreatment.

4. Despite this progress, however, some difficulties persisted. In particular, ratification of the Optional Protocol to the Convention against Torture, which Belgium had signed on 24 October 2005, had encountered technical and legal obstacles. All the authorities concerned had to agree on the structure, the composition, the mandate and the financing of the national mechanism for preventing torture as required by the Protocol. A working group consisting of representatives of federal and federated entities had been established to address this question. It was also planned to assign a central agency to oversee respect for all fundamental individual rights, recognizing that there were a great many institutions responsible for protecting the rights enshrined in a given international instrument (rights of the child, rights of persons with disabilities, etc.). The delegation put itself at the disposal of the Committee for any further information.

5. The CHAIRPERSON (Rapporteur for Belgium) noted that the definition of torture in article 417 bis of the penal code was broader than that in the first article of

the Convention, for it covered acts of torture even if they were not inflicted by a public official, but he wondered what provisions would allow prosecution of an official who had encouraged an act of torture and had consented to it, expressly or tacitly. He also wondered whether acts of torture were considered more serious when inflicted under the authority of the State. On this point, he said, it would be useful to have statistics on cases of torture, showing which were committed by officials and which by private individuals, as the table supplied in the written responses of the State party did not make this distinction. With respect to article 2 of the Convention, it would be useful to know why torture was not explicitly prohibited in the police ethics code. That code was not the only reference document, of course, and there were other means of letting police officers know that torture was illegal, but experience showed that the importance of this prohibition could not be over emphasized.

6. Legal assistance during police custody was an essential guarantee for protecting prisoners against torture. According to a 2003 report from Amnesty International, persons arrested in Belgium could not consult a lawyer within 24 hours, or see a physician, inform their family of their arrest, or be informed of their rights in a language that they understood. The Committee had highlighted these inadequacies in its 2003 conclusions and recommendations. The delegation was therefore invited to indicate which measures had been taken since that time to inscribe these guarantees in legislation. As to juveniles, it appeared that they were assisted by a lawyer only after they were charged. Explanations on this point would be welcome.

7. With respect to article 3, it would be useful to have further details on the number of asylum seekers who had obtained regularization of their status on medical grounds and on humanitarian grounds, as well as the criteria applied in this respect and the procedures for appealing and overseeing decisions, if such existed. Resort to force during removals was strictly regulated and subject to precise criteria, but it would be interesting to know whether those criteria could be challenged, and whether an alien who had been mistreated could complain to an independent mechanism. Before proceeding to removal, the authorities ensured that the person concerned was fit to travel, but it seemed that no certificate was issued following the medical examination, whereas several NGOs had insisted on the utility of such a document. Was the State party planning to remedy this gap?

8. The Committee wanted to know whether appeals filed by unsuccessful asylum seekers were always of suspensive effect, or were so only in cases of "extreme urgency". The fact that aliens ineligible for refugee status could be granted subsidiary protection was a welcome development. However, the sharp rise in the number of beneficiaries of this new status was a source of concern. Such protection, which was merely provisional, must not be allowed to replace the status of refugee, which was more secure. In its written responses, the State party had indicated that subsidiary protection was granted to aliens who risked death if returned to their country of origin. These grounds would justify the granting of refugee status. The State party should therefore be alert to this issue and ensure that subsidiary protection was not a substitute for the right of asylum. In its written responses to question 10 of the list of issues to be taken up (CAT/C/BEL/Q/2/Add.1), it indicated that when there were serious grounds to think that a foreigner ran a real risk of being tortured if returned, the Aliens Office would confirm the situation in the host country, through the Belgian embassy. The delegation was invited to cite cases

where an expulsion order had not been executed because there was a real risk of torture. In paragraphs 72 to 76 of its written responses, the State party had indicated that an alien under an expulsion order could not be detained for more than two months, but that this rule could be breached in certain cases. The Committee wanted to know how many persons had had their detention extended beyond two months, whether an alien could be held indefinitely for national security reasons, and how many aliens had been detained on those grounds. Would such a decision open the right to recourse to the courts, or to an independent and impartial administrative appeals body?

9. It would be important to know whether construction of the new alien detention centre had been completed, and how many persons were still held in the detention centre for INADs ("inadmissible passengers", i.e. persons who had been refused entry to the territory and who were to be *refoulé*). The Committee also wondered whether aliens held in the centre were informed of their right to submit a request for asylum. Were there special protection measures in place for the children of rejected asylum seekers? For example, was the State party taking all necessary measures to facilitate access by civil society organizations to these children? Details on the ways of referral to the Permanent Committee on Police Oversight (P Committee) would also be useful. Were aliens under an expulsion order informed of their right to complain to that body about instances of torture or cruel or inhuman treatment, and did the State party consider that the P Committee met the impartiality rule set forth in article 13 of the Convention? There were some grounds for doubt on this point, as at least half of the membership of that body consisted of police officials. It would also be useful to know how many appeals had been filed by detainees, whether those appeals had sparked an investigation, and whether disciplinary sanctions or prosecution had resulted. Finally, the Committee asked whether, in general, an expulsion order was notified sufficiently in advance so that interested persons could challenge it within the deadline established by law. In 2006, the General Inspector of the Federal Police reviewed only 24 cases involving expulsion orders, a miniscule number in comparison to the 11,219 expulsions planned over that time. The P Committee seemed content to exercise indirect control over expulsion procedures. Moreover, the parallel NGO report argued that it would be "particularly difficult to ensure effective external control, and that control over expulsion procedures would be simply impossible for NGOs." Under these conditions, was the State planning to increase the number of reviews of forcible expulsions and perhaps introduce systematic video recording?

10. With respect to application of article 4 of the Convention, the delegation was asked to provide further details for the heading "others" in table 4 (CAT/C/BEL/Q/2/Add.1, p. 27) on decisions handed down against defendants in cases of torture or inhuman or degrading treatment; explanations of the reasons why certain judgments were suspended would also be useful. With respect to application of article 5 of the Convention, the Committee noted that the 1993 law on serious violations of international humanitarian law had been amended by a law of 5 August 2003 and it wondered to what extent the changes introduced were compatible with articles 5 and 6 of the Convention. The Committee would also welcome any information on the actions of Belgian soldiers in Somalia. With respect to the extradition law, the Committee understood that torture could be classified as a political offence and that extradition could be refused for that reason. In this case,

the State party must remember its commitment to prosecute the alleged perpetrator of an act of torture.

11. The *Centre pour l'égalité des chances et la lutte contre le racisme* (Centre for equality of opportunity and against racism) had reported an increase in acts of discrimination based on religion, sexual orientation or ethnic origin; hate messages were also being disseminated via the Internet. It would be important to learn what measures the State party had taken to remedy this problem. Moreover, the Committee wanted to know the application status of the law of 25 April 2007 amending the rules on the keeping of prisoner records: were the police stations equipped with such registries and, if so, were they being used? Finally, the Committee was concerned by the fact that aliens deprived of their liberty did not have prompt access to a lawyer. Any person arrested, whether under an administrative decision or a court order, should be entitled to the assistance of a lawyer.

12. Mrs. BELMIR (Co-rapporteur for Belgium) regretted that the Convention was not mentioned as part of the training offered to police officers and to personnel responsible for working with inmates and removing aliens. Most training courses were not multidisciplinary and were fairly superficial. She was also disappointed that some personnel took up their functions without any training. The Committee took note of the draft resolution presented by the Chamber of Representatives in October 2004 calling for initial and ongoing training for prison staff, and asked to be informed whether that proposal had been implemented and whether the State party was planning other measures in this respect. It also regretted that training programmes for medical personnel contained no instruction dealing with torture. The Committee wondered what measures the State party was planning to take to remedy this problem, and it asked the delegation to indicate whether measures were envisioned to deal with the shortage of nursing staff in the country.

13. During examination of the previous report (CAT/C/52/Add.2), the State party had been asked about the persistence of prison overcrowding. Since that time it had adopted legislative measures demonstrating its intention to reduce the number of persons held in prison and to use alternative measures to imprisonment, such as suspended sentences and probation, conditional release, community service and electronic surveillance. The State party had also created a sentence enforcement tribunal and a Directorate General for Legal Centres (*Maisons de justice*), which allowed judicial monitoring and surveillance of offenders in order to prevent recidivism. Belgium had indicated in its responses that the progressive application of these measures had improved the situation in the prisons, and it had supplied data to illustrate this point. Mrs. Belmir, seeking to focus the debate on the actual situation in the prisons, recalled the parallel report presented by NGOs, which claimed that the prisons were overcrowded primarily as a result of longer average prison sentences, the increase in long sentences handed down by the courts, the difficulty in obtaining conditional release, and longer periods of preventive detention.

14. With respect to the administrative circular regulating the disciplinary procedure applied to detainees (question 20 in the list of issues to be taken up), the delegation indicated, in paragraph 183 of its responses (CAT/C/BEL/Q/2/Add.1) that the disciplinary regime for detainees would be reformed upon entry into force of the Principles Act of 12 January 2005, that the above-mentioned administrative

circular had already authorized use of the procedures specified in that Act pending its entry into force, and that a ministerial circular concerning application of the rules on decision-making, offences and disciplinary punishments was being drafted. As Belgium had also stated that entry into force of the pertinent section of that Act would require a royal decree, Mrs. Belmir asked how it was possible to apply a law when not all its provisions were yet in force, and to adopt regulations governing those provisions.

15. In paragraph 185 of its responses, Belgium indicated that detainees could apply to the Council of State, which had the power to annul or suspend any irregular administrative act, but it was also reported that Belgium had undertaken a reform of the Council of State and had created a new jurisdiction, the Aliens Litigation Council. Mrs. Belmir wondered if in certain cases there might be a conflict of jurisdiction between these two bodies and asked how the question would be settled in that event. Moreover, paragraph 186 of that document indicated that, in urgent cases, detainees could also apply for interim relief to the president of a court of first instance in the event of infringement of one of their personal rights. Noting that, in principle, administrative jurisdictions provided for the recourse of referral, Mrs. Belmir was surprised that there should be a provision allowing detainees to apply to the ordinary courts, and she wondered whether the Belgian administrative justice system was peculiar in this respect.

16. According to several NGOs, because the Principles Act of 12 January 2005 was not yet in force, the administrative circular regulating the disciplinary procedure for detainees was unfortunately not yet applicable. That circular provided that detainees could request the presence of their lawyer, but the NGOs reported that lawyers were complaining that they were being called in at unrealistic hours, and often at the last moment. As a result, the lawyers would be unaware of the issue until it was too late, and detainees who had requested the presence of their counsel would have to appear alone. The NGOs maintained that this problem was due to the excessively short interval (24 hours) allowed between the time the decision to prosecute the detainee was taken and the hearing itself. Mrs. Belmir asked the delegation to provide further clarification on this point.

17. In its report the State party said that there had been no significant increase between 2004 and 2007 in the funding allocated to improve detention facilities and conditions. The delegation was asked to provide further information on this point. With respect to the question as to whether measures had been taken to prevent serious incidents such as occurred in 2003 at the Andenne prison, where two detainees died during a prison staff strike, and whether basic services had been introduced in prisons to offset staff shortages during strikes, the NGOs claimed in their reports that there had been no real change in the wake of these events. Mrs. Belmir urged the State party to take draconian measures to avoid the recurrence of such a drama. With reference to section VI of the Principles Act creating a legal framework for the placement of detainees under a special, individual security regime, and the question as to whether there was an independent and impartial mechanism for overseeing these measures, the State party had indicated that, in addition to the internal oversight applied within each prison, independent control of prisons was exercised by parliamentarians, burgomasters, the Federal Mediator, examining magistrates, supervisory commissions, and the Equal Opportunities Centre, as well as the CPT and several NGOs. In addition, the delegation had just indicated that Belgium had signed the Optional Protocol to the Convention and that

the ratification procedure was underway, but that some problems had been encountered in creating a national mechanism to prevent torture. Mrs. Belmir wanted to know whether, assuming ratification of the Optional Protocol and creation of the national mechanism, the current mechanisms, and in particular the supervisory commissions, would remain in existence.

18. Finally, on the question of the internment of offenders suffering mental illness, the State party had taken a number of measures to improve the situation, in particular by constructing two social protection institutions in Flanders to house inmates presenting high security risks. The NGOs, for their part, had presented a number of criticisms, claiming in particular that inmates in the psychiatric wards of prisons had to wait 8 to 15 months before being transferred to a social protection institutions, that these psychiatric wards were overcrowded, that inmates were not receiving proper care there, and that the staff in those institutions often had no training and yet were expected to provide nursing care: the situation had already been condemned by the Belgian courts as well as by the CPT and the European Court of Human Rights. The situation was also discouraging in the social protection institutions, where inmates suffering various incompatible pathologies were housed together in large common rooms, and where staff lacked training. Mrs. Belmir asked the delegation whether these NGO statements were correct and invited it to provide clarifications on this point, and to indicate the means for addressing the shortcomings identified.

19. While noting carefully the State party's response to question 25 of the list of points to be taken up, Mrs. Belmir wanted more details on the provisions incorporated into domestic law following the events of 11 September 2001, in the context of combating terrorism. Referring to the response to question 26, the Co-rapporteur asked the delegation to cite legal cases in which article 28 *quater* of the Code of Criminal Investigation had been invoked and to indicate whether the provisions of that article were compatible with the right to due process. Finally, recognizing that the State party had taken the desired measures to establish the universal competence of its courts, and recalling that, as a general rule, a State did not extradite its own nationals, she wondered how the Belgian authorities would react if another State were to seek extradition of a suspected torturer who had Belgian nationality but also the nationality of that other State.

20. Mr. GALLEGOS CHIRIBOGA remarked that the Directive of the European Parliament and the Council of Europe on common standards and procedures in member states for returning illegally staying third-country nationals (better known as the "*Retour*" Directive) was a cause of concern to the Committee, as it took an inhumane and even regressive view of the phenomenon of immigration. He asked the delegation to provide further information on Belgium's policy with respect to migrants and to indicate to what extent that policy was compatible with the provisions of article 3 of the Convention and whether it took account of the thrust of General Observation 2 of the Committee concerning application of article 2 of the Convention by states parties.

21. Mrs. GAER wondered whether the number of cases of inter-prisoner violence might be related to the fact that half of the persons held in detention centres were aliens, compounded by the problem of prison overcrowding. She also asked whether the State party had taken measures to prevent and suppress sexual violence in detention centres. She invited the delegation to indicate whether there was a

violence surveillance mechanism in place, how victims could file complaints, whether investigations had been opened and if so what the outcome had been, and whether State agents had been prosecuted and convicted in cases of this kind.

22. Recalling the provisions of article 14 of the Convention, Mrs. Gaer asked whether torture victims had the right to sue for damages through the civil courts, even if those violations were inflicted abroad by agents of another State.

23. Mr. GAYE, noting that the State party had made considerable efforts to address the problem of prison overcrowding, called the delegation's attention to measures taken by other states that had proven effective in reducing the number of persons in detention. Those measures included provisions whereby, beyond a certain time limit, a suspect held in provisional detention must be released, and provisions allowing a suspect to apply promptly to a judge other than the examining judge in order to seek a ruling as to whether his provisional detention was justified and, if not, to have that judge order his release.

24. Mrs. SVEAASS asked whether the State party could arrange to have prisoners with mental problems transferred promptly to a social protection institution. Noting that Belgium had signed the Convention on the Rights of Persons with Disabilities but had not ratified it, she asked the delegation for an overview of the guarantees provided in legislation to protect the mentally handicapped and persons with psychiatric problems (whether or not in detention) against treatment involving automatic constraint and hospitalization. Finally, on the understanding that all illegal aliens facing expulsion were placed in detention centres, Mrs. Smith wondered whether these measures were effectively applied in all cases without exception.

25. Mrs. KLEOPAS asked the delegation to indicate whether Belgium had legislation prohibiting corporal punishment and making family violence, including marital rape, a criminal offence. She also invited the delegation to provide information on the number and nature of cases of family violence reported in Belgian, and the type of penalties imposed on the perpetrators, and whether the victims were entitled to support measures.

36. The CHAIRPERSON invited the delegation to respond to Committee members' questions at a later session.

27. *The Belgian delegation withdrew.*

The first part (public) of the session ended at 11:45.