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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 101st meeting
Held at the Palais des Nations, Geneva, on Tuesday, 16 September 2014, at 10 a.m.

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

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The meeting was called to order at 10 a.m.

Consideration of reports of States parties to the Convention (agenda item 6) (*continued*)

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

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

2. **Mr. Camara** asked exactly how a long person subject to an extradition order was given to lodge an administrative appeal with the Council of State. He wished to know when the draft royal decree establishing the content of registers of arrests would be adopted, whether any shortcomings had already been identified in the keeping of such registers, in violation, inter alia, of article 17, paragraph 3, of the Convention, and, if so, what action had been taken to address the situation. He noted that the right of a person under administrative or judicial arrest to notify a trusted third party could be deferred "for the period required to protect the interests of the investigation". He wished to know how long such a deferral of notification could last, how the "period required" was calculated and whether a decision to defer notification could be contested by persons deprived of their liberty.

3. **Mr. Decaux** said that he wished to know when the training and instructions given to armed forces personnel would begin to include the provisions of the Convention and whether the effectiveness of the training given to police officers and prison staff in preventing enforced disappearances had been evaluated. He noted that the State party had mentioned measures to care for, assist and support victims only in the French- and Dutch-speaking communities. He therefore wished to know what measures were planned for the German-speaking community. He also sought more detailed information on the human and financial resources available to victim services and on the training given to their staff. In its replies, the State party had indicated that all adopted persons were guaranteed access to information about their origins "to the extent permitted by law". He requested that the expression should be clarified, as it gave the impression that access to such information could be subject to conditions or restrictions. The delegation of Belgium should also clarify whether the measures applied also to foreign children. He wished to know when the State party intended to adopt and implement the draft royal decree on collecting, storing and providing access to information on the origins of adopted persons and whether the decree was in conformity with the provisions of article 25 of the Convention.

4. **Mr. Garcé García y Santos** requested information on the advice offered to persons deprived of their liberty and the legal status, mandate and resources of the Commission on the Prevention of Torture.

5. **Mr. Huhle** asked what the definition of "victim of enforced disappearance" was in Belgian law.

6. **Mr. López Ortega** asked how long it was permitted to restrict communication between detainees and their relatives, whether there were statistics on the frequency with which such restrictions were applied and whether restrictions could also be applied to communication between detainees and their lawyers. He also wished to know whether relatives of detainees transferred to another prison were informed of the move, whether detainees were notified when their correspondence and telephone calls were monitored, which authority was competent to rule on committals to psychiatric institutions and whether such decisions and extensions thereof were subject to periodic judicial review.

7. **Mr. Yakushiji** noted that the State party complied with article 3 of the European Convention on Human Rights regarding the prohibition of torture, not only when a decision

to expel a foreign national in an irregular situation was taken but also when it was implemented. He asked whether there was a legal obligation to double-check or whether it was done only if requested by a person subject to an expulsion order.

The meeting was suspended at 10.25 a.m. and resumed at 11 a.m.

8. **Ms. Baldovin** (Belgium) elaborated on the replies given the previous day. She said that laws assenting to the Optional Protocol to the Convention against Torture had been adopted by the Walloon Region and the Wallonia-Brussels Federation in 2010. As the crime of enforced disappearance involved a number of offences, it carried the penalty prescribed for the most serious of those offences under the Code of Criminal Procedure. Since 2003, the application of the principle of universal jurisdiction had been limited, with the author or victim of the crime needing to have some sort of connection to Belgium.

9. **Mr. Limbourg** (Belgium) said that persons subject to an extradition order had a maximum of 60 days in which to lodge an administrative appeal with the Council of State.

10. **Ms. Rochez** (Belgium) said that Belgian law did not expressly provide for a maximum period for which the right of persons under administrative arrest to notify a trusted third party could be deferred. Nevertheless, the maximum length of administrative detention by the police was 12 hours. Deferral of notification was determined by a police officer when there were strong grounds to believe that notifying a third party would entail a risk to public order and security. Entering all the information pertaining to an arrest into the register of arrests ensured that complaints could be submitted to the police or to independent monitoring bodies such as the Police Complaints Authority. There had long been a legal obligation, which was observed, to keep a uniform register in all police detention facilities. No deadline had been set for adopting the draft royal decree establishing the content of registers of arrests, as the national political and institutional landscape had not changed since Belgium had submitted its replies to the list of issues drawn up by the Committee. The text would be examined by the competent bodies as soon as the new Government had been formed.

11. **Ms. Baldovin** (Belgium) said that, in the case of judicial arrests, the crown prosecutor or the judge handling the case could decide to defer notification of the detainee's trusted person for the period required to protect the interests of the investigation. The suspension had to be justified and, although there was no legally defined maximum length, it was restricted in practice by the maximum length of judicial detention prior to the issuance of an arrest warrant, which was 24 hours unless exceptionally extended. Judges could make orders restricting detainees' contact with the outside world. The grounds for such orders were systematically set out and an order contained a detailed list of the persons to whom the restrictions applied. They were recorded in the prison registers, which were accessible to all supervisory bodies in places of detention. Restrictions could not be placed on communication with consular authorities or a detainee's lawyer. During administrative detention, restrictions imposed on communication could not exceed 24 hours. During pretrial detention, restrictions could not exceed three days from the time of the first hearing. The person in question or their relatives could submit a request to the examining court for restrictive measures to be lifted. Third parties could file a claim for damages if they suspected an offence related to the deprivation of liberty. A large number of people were entitled to consult the case file, including defendants, persons against whom criminal proceedings had been brought in the course of preliminary investigations, suspects, persons incurring civil liability, claimants for criminal indemnification and persons who had lodged an injured-party statement. She added that detainee transfers were also recorded in the prison registers. Detainees' families were not informed of transfers automatically, with the decision on whether to do so being left to the detainees themselves. A notice displaying prison rules was put up in every prison and detainees were informed that they were under surveillance. Correspondence was screened, mainly in order to detect illicit objects or

substances, but prisoners' post was read only in exceptional circumstances strictly defined by law. All decisions made by prison authorities with regard to the confiscation of objects or substances contained in correspondence were noted in the registers and communicated to detainees.

12. **Mr. Limbourg** (Belgium) said that the statement of rights had been translated into 54 languages and made available to all police stations in electronic form.

13. **Mr. Lange** (Belgium) said that training in international humanitarian and human rights law was provided every year to advisers on the law of armed conflict, who were military officers and lawyers assigned to the Ministry of Defence. The next training programme on enforced disappearance would take place in 2015. The course offered by the *École normale militaire* (Military Academy) was evaluated annually and the knowledge of military legal experts also underwent constant assessment.

14. **Ms. Rochez** (Belgium), referring to paragraphs 81 and 82 of the replies to the list of issues, said that no training dealing specifically with enforced disappearance was given to police forces. Nevertheless, human rights training provided participants with the tools to prevent enforced disappearance. Various methods were used to carry out systematic assessments of training needs, the training process and the effectiveness of the teaching. The General Inspectorate of Federal and Local Police and Committee P were also responsible for monitoring the overall functioning of the police services, including training activities.

15. **Mr. Limbourg** (Belgium) said that information on assistance for victims in the German-speaking community would be passed on to the Committee at a later date.

16. **Mr. Monceau** (Belgium) said that, in Wallonia and the French-speaking community, there were 16 victim support services, or one service for each judicial district in Wallonia. The services were private but had been approved by a committee composed of government officials and experts. They had to be able to give victims advice on dealing with the judicial authorities and all other potential actors, facilitate victims' access to medical and psychiatric care and raise public awareness of victims' specific needs and rights. Support services had to fulfil at least three functions: coordination, psychological support and social assistance. Youth support services had to include an educational project in order to be approved. Figures regarding the budget and staff for the services would be supplied at a later date.

17. **Mr. Dierckx** (Belgium) said that the Flemish community would send written replies to the questions asked by Mr. Decaux.

18. **Ms. Baldovin** (Belgium) said that, pursuant to the principle of privacy, adopted persons had to follow a specific procedure to obtain information on their origins. Access to such information was, however, unrestricted in the case of both national and international adoptions. The draft royal decree on collecting, storing and providing access to information on the origins of adopted persons was intended primarily to harmonize the various practices. Consideration of the bill had been suspended until a new Government had taken office.

19. **Ms. Van Lul** (Belgium) said that Belgian legislation had recently been harmonized with the case law of the European Court of Human Rights, partly in response to the findings of violations by Belgium in the case of *M.S. v. Belgium*. Under the Act of 15 December 1980 on the entry, temporary and permanent residence and removal of aliens, as amended, there was a presumption of serious damage that would be difficult to repair in cases where there were strong grounds for believing that a fundamental right had been violated, particularly a non-derogable right under article 15 of the Convention. The Aliens Litigation Council had altered its jurisprudence to take account of the judgement in the case of *M.S. v. Belgium* even before the law had been amended. Judges hearing a case had to consider all

the evidence at their disposal and assess the grounds for believing that the implementation of a contested decision would violate a complainant's rights under article 3 of the Convention at the time of consideration of appeals, rather than only when such decisions were implemented, as had formerly been the case.

20. **Mr. Camara** asked, on the subject of detention, whether the inspection authorities had already identified shortcomings in the keeping of registers and, if so, what measures had been taken in response. Noting that one detainee's medical information had not been recorded in the register, he said he doubted whether such practice was in line with article 18, paragraph 3 (f), of the Convention.

21. **Ms. Baldovin** (Belgium) replied that no shortcomings had been identified during the inspection of the registers, which were checked regularly, but that if any shortcomings did arise, the competent authorities would be notified. With regard to medical information, the aim of the current practice was to preserve detainees' privacy, but objective information, such as the fact that a detainee had been seen by a doctor or that a person bore signs of beating when they entered their prison cell, was recorded in the register.

22. **Mr. Decaux** asked, with reference to the law on victims of deliberate acts of violence (the Fiscal and Other Measures Act of 1 August 1985), pursuant to which acts of violence had to have been committed in Belgium in order for its provisions to apply, whether offences committed abroad that had consequences in Belgium (an illegal adoption, for instance) or offences committed abroad against Belgian nationals could fall within the competence of the Financial Support Board for the Victims of Deliberate Acts of Violence. He also asked whether, in the event that the perpetrator of an intentional act of violence was unable to pay the compensation ordered by a judge, there were plans for the Government to provide the compensation instead.

23. **Mr. Limbourg** (Belgium) replied that, under the law on victims of deliberate acts of violence, there was indeed a requirement for the acts in question to have been committed in Belgium. However, the delegation would seek clarification on the matter and keep the Committee informed. Victims of acts of violence could request support from the compensation fund if the perpetrators of the acts were unable to pay.

24. **Mr. Decaux** said that the methodology and spirit of the dialogue with Belgium had been exemplary. With regard to the definition of enforced disappearance, he said that adding the element of intent would be problematic, as article 2 of the Convention gave a very clear definition of enforced disappearance. Crimes against humanity should also be very precisely defined in the State party's Criminal Code.

25. **Mr. Crombrugghe** (Belgium) thanked the Committee for its thorough scrutiny of the Belgian system and said that the delegation would await the Committee's final recommendations with interest. Belgium had restructured its judiciary extensively over the past 20 years but remained open to improving it further by drawing, inter alia, on the Committee's work. Since the Committee's concerns appeared to match those of the Belgian authorities, he was sure that the new Belgian Government would take due note of them.

26. **The Chairperson** thanked the Belgian delegation for its cooperation and said that the Committee had concluded its consideration of the initial report of Belgium.

The meeting rose at 12.20 p.m.