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Forty-first session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 853rd MEETING

Held at the Palais Wilson, Geneva,
on Thursday, 13 November 2008, at 3 p.m.

Chairperson: Mr. GROSSMAN

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.853/Add.1.

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

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

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

1. At the invitation of the Chairperson, the members of the delegation of Belgium resumed their places at the Committee table.

2. Mr. VERBERT (Belgium), replying to a question raised by the Committee at an earlier meeting regarding the difference between the offence of torture and that of assault and battery, said that torture was a sui generis offence involving specific factual and mental elements. Article 417 bis of the Criminal Code referred to inhuman treatment that resulted in severe pain or very serious and cruel physical or mental suffering. The definition of assault and battery did not refer to the mental dimension of the offence. Moreover, the definition of torture referred to the act of punishing, intimidating or bringing pressure to bear on the person concerned or third parties with the aim of obtaining information or a confession.

3. Mr. BOURDOUX (Belgium), replying to a question about the number of cases in which public officials such as police officers or prison warders had been prosecuted for torture or ill-treatment, said that 40 cases out of a total of 302 had concerned public officials during the period from 2002 to 2007. Thirty-one persons had been convicted, of whom four had been public officials.

4. Mr. VERBERT (Belgium), replying to a question about the impact of the amendment to Belgium's Act concerning Punishment for Grave Breaches of International Humanitarian Law on the implementation of articles 5 and 6 of the Convention regarding the exercise of universal jurisdiction, said that the sole purpose of the amendment was to introduce a filter which authorized the Federal Prosecutor's Office to investigate all such cases with four exceptions: where a complaint was manifestly unfounded; where the facts set out in the complaint did not correspond to any offence defined in the Criminal Code; where proceedings could not be initiated (e.g. because of the statute of limitations); or where the facts of the case were such that any proceedings would be incompatible with the sound administration of justice and compliance with the country's international obligations. In general, the amendment had no adverse impact on Belgium's compliance with articles 5 and 6 of the Convention.

5. Ms. NIEDLISPACHER (Belgium), replying to a question about corporal punishment and, in particular, the lack of an explicit prohibition of corporal punishment in the family, said that the Council of Europe's Committee of Social Rights had concluded that although the Criminal Code prescribed severe penalties for assault in cases involving minors, the provisions prohibiting such assault were inadequate in legal terms. According to the same Committee, the wording of article 371 of the Civil Code concerning mutual respect from parents and children was too general and failed to delineate parents' obligations with respect to corporal punishment in clear and precise terms. The Minister of Justice had subsequently expressed the view that responsibility for introducing an explicit prohibition of corporal punishment in the family into civil legislation lay with the local authorities. The Minister had further noted that the inclusion of

such a prohibition in the section of the Civil Code on parental authority would imply that the prohibition was confined to families in the strict legal sense of the term and would ignore the current diversity of family circumstances in Belgium. With regard to the prohibition of corporal punishment in the Criminal Code, the Minister of Justice had sent a circular on 6 November 2008 to the country's various judicial authorities reminding them that corporal punishment of children could be held to constitute assault and battery and/or degrading treatment under articles 398-401 and 417 of the Criminal Code.

6. With regard to domestic violence, sexual abuse was dealt with in Title VII of the Criminal Code concerning Offences against the Family Order and Public Morals. Since 2001, the federal authorities had been taking vigorous action to prevent violence against women, including within the family. The first national plan of action against inter-partner violence had been drawn up in 2001; the second plan had covered the period 2004-2007, and the third, which was currently being drafted and would cover the period 2008-2012, would consolidate all existing strategies, particularly those relating to the prosecution of perpetrators and the provision of care and support for victims, such as emergency accommodation.

7. The measures taken to implement the second plan of action had included an awareness-raising programme. A booklet for victims and activists had been circulated by the Institute for the Equality of Men and Women. The French-speaking community had launched a number of initiatives, such as a study of violence in sexual relationships between young people and a related awareness-raising campaign, a campaign against sexist representations in the media, and a school textbook and training courses for teachers and the staff of medical centres specializing in social psychology. The Flemish-speaking community had created welfare centres and the Brussels region had mounted a campaign against inter-partner violence. The budget for aid to victims and prosecution of perpetrators had been increased. Data regarding domestic violence had been gathered by hospital emergency services. In March 2006, the College of Public Prosecutors had issued a circular defining domestic violence and child abuse with a view to establishing a uniform system of police and prosecutorial records. An official website on the subject was to be launched by the end of 2008.

8. Mr. BOURDOUX (Belgium) said that Belgian law contained no specific provision requiring minors to have the assistance of counsel during police custody. He noted, however, that police custody never lasted for more than 24 hours. In 2006, the legislation had been amended to ensure that minors were assisted by counsel whenever they appeared before a juvenile investigating judge. Furthermore, a police officer who arrested a juvenile was required to notify his or her parents or legal guardian without delay. All hearings were videotaped in order to guarantee due process.

9. Mr. VERBERT (Belgium) said that the legislation on extradition had been amended in 2007 to limit the scope of application of the principle of non-extradition for alleged political offences in order to reflect obligations under international treaties concerning terrorism. By contrast, the provision for refusal of extradition on grounds of non-discrimination had been broadened to cover cases in which a person ran the risk of being tortured in the requesting State. A more general restrictive clause based on article 6 of the European Convention on Human Rights had also been inserted. Where a person had dual nationality, he or she was treated as a Belgian citizen and extradition was ruled out.

10. Mr. SEMPOT (Belgium) said that there was no specific legal provision concerning detainees who were suspected of being involved in terrorism. The ordinary law determined the custody regime to be applied to such suspects and the 24-hour limit for the issue of an arrest warrant was applicable to them.

11. Ms. DE SOUTER (Belgium), responding to questions regarding the duration of pretrial detention and alternatives to custodial sentences as a way of alleviating prison overcrowding, said that the Act of 20 July 1999 concerning pretrial detention and criminal investigations had set limits on the duration of such detention. The Act of 31 May 2007 had amended the earlier Act in order to make the investigation and detention regime more efficient. It had provided for more frequent surveillance of long-term investigations. If an investigation lasted more than six months, it would automatically be subjected to scrutiny by the indictments division of the relevant court. The procedure could be completed in a single stage if neither party requested additional investigations. The period during which a prosecutor could object to a decision by the investigating judge to withdraw an arrest warrant had been reduced and in cases of conditional discharge the duration of the conditions imposed could not be extended by the investigating judge beyond the initial period of six months.

12. With regard to alternatives to custodial sentences, the number of conditional discharge orders had increased from 3,702 in 2005 to 4,092 in 2006 and 4,515 in 2007.

13. The defence of necessity had been abolished by an amendment to article 417 of the Code of Criminal Procedure.

14. Ms. NIEDLISPACHER (Belgium) said that Belgium had signed the Optional Protocol to the Convention on 24 October 2005 and the procedures for ratification were under way. The question of the establishment of a national preventive mechanism was complicated by the fact that Belgium already had a large number of human rights bodies. A coalition of NGOs had advocated the creation of a national human rights commission that would incorporate the existing institutions. In 2006, the Office of the United Nations High Commissioner for Human Rights (OHCHR) had been asked for its opinion on two options: either extension of the mandate of the Centre for Equality of Opportunity and the Fight against Racism, or the option advocated by the NGOs.

15. Mr. VERBERT (Belgium) said that in cases where Belgium exercised universal jurisdiction, the victim could obtain compensation from the guilty party. For example, a person who had been prosecuted in Belgium for involvement in the Rwandan genocide had been ordered to pay damages.

16. Ms. DE SOUTER (Belgium) said that article 28 of the Code of Criminal Procedure provided for discretionary prosecution. An aggrieved person could initiate criminal proceedings and in some cases could take direct action to have a suspect appear before an investigating judge. The Minister of Justice and the Prosecutor-General could jointly determine the priorities of the proceedings. If the proceedings were discontinued, the public prosecutor was required to state the reasons for the decision, which was provisional. In 1985, the Court of Cassation had ruled that the decision to discontinue proceedings was a purely de facto decision by the Office of the Public Prosecutor without any legal force. The Court had further ruled in 1985 that the existence of the principle of discretionary prosecution did not violate the right to a fair trial. In 2002, it had

ruled that it was not for the criminal court to assess the appropriateness of the exercise of the principle of discretionary prosecution, given the independence of the Office of the Public Prosecutor, and that the decision to discontinue proceedings would not affect the punishable character of the offence committed by the accused and would not entail termination of the criminal proceedings.

17. Mr. BOURDOUX (Belgium) said that while the police code of ethics did not specifically prohibit torture, it was a very lengthy and detailed document. Police officers were required, for example, to respect the principle of equality before the law. As the law prohibited torture, the police were implicitly bound to refrain from committing acts of torture. There were three explicit references in the code to the prohibition of inhuman or degrading treatment, and a police officer who witnessed the commission of such abuse by a colleague was required to report the case to the authorities.

18. The Committee had suggested that the Standing Committee on the Supervision of the Police Services (P Committee) might not be fully independent because some of the investigators used by the P Committee were former or serving police officers. He pointed out that the two NGO shadow reports to the Committee against Torture referred 67 times to the P Committee's report. The structure and functioning of the five-member P Committee was largely based on that of the Audit Court or the Council of State. Two years previously it had brought serious charges against the Minister of the Interior and the Minister of Justice. The Chief of the Belgian police and the Inspector-General were about to be suspended on the strength of a P Committee report. The Committee had also criticized the judiciary for being too indulgent with the police services. The investigators who worked for the Committee were appointed for a five-year term, renewable twice.

19. With regard to the use of force by the police, especially during the repatriation of foreigners, considerable efforts had been made in recent years to train police officers in crisis management and in the use of measures of restraint. Specific directives and manuals had been issued in that regard.

20. The law on the registration of arrests had been amended in 2007 but had not yet entered into force. The requisite royal decree would probably be issued within the next few months and the P Committee was already monitoring the situation. The new provisions concerned stricter and more detailed recording of non-judicial arrests. Any external signs of injury at the time of arrest would be recorded in a medical certificate. With regard to judicial arrests, Belgium had already set up a commission to review the Code of Criminal Procedure, which would consider, inter alia, the effectiveness of existing measures for the registration of detainees. The recent change of government had interrupted the process but work was expected to resume within the next few months.

21. Mr. MINE (Belgium), replying to a question regarding offences against international humanitarian law committed by Belgian troops serving 10 years previously in Somalia, said that criminal proceedings had been instituted in several hundred cases, some of which had concerned violations of international humanitarian law. The Belgian legislation on universal jurisdiction had been implemented for the first time in that context. He would provide the Committee with more detailed information on the proceedings in due course.

22. Article 417 bis of the Criminal Code covered all acts referred to in the Convention against Torture; details were contained in the written replies. The figures in tables 1 to 4 of the written replies related to the period ending 17 July 2008. The "Other" heading in table 4 corresponded to all court decisions other than convictions, acquittal or deferment of sentence, including interlocutory judgements and rulings concerning compensation.

23. Mr. SEMPOT (Belgium), replying to a question on prison policy, said that the imprisonment rate in Belgium was in no way exceptional compared with other countries; overcrowding was mainly a capacity issue. In order to remedy the situation, the Government was promoting greater use of alternatives to imprisonment, including community service, combined with an increase in prison capacity. In addition to the regular annual budget for the operation of prisons, specific funds had been made available for the implementation of the "Master plan for 2008-2012" aimed at expanding and restoring prison capacities. Some 1,500 additional places would be created, inter alia by refurbishing currently uninhabitable cells.

24. Turning to a question on conditional release, he said that new legislation had entered into force on 1 February 2007; it stipulated, inter alia, that the court that had ordered execution of a sentence was also competent to grant conditional release. It was too early to assess the impact of those new provisions, but the draft law on the external legal status of detainees did not impose any specific restrictions on conditional release; rather, several restrictions imposed by the earlier legislation had been lifted.

25. Prison officers were responsible for identifying and preventing inter-prisoner violence. Although training did not address inter-prisoner violence as such, all programmes included topics such as violence management, communication and crisis management. Staff were obliged to report any sign of inter-prisoner violence to their superior officers. Given the increasingly multicultural nature of the prison population, issues relating to cultural diversity had also been included in the training programmes.

26. Prisons were almost fully staffed; in 2008 alone, 954 new staff had been recruited. The introduction of basic services to offset staff shortages was currently being discussed for the entire civil service sector, including prisons. Although training for prison staff did not focus explicitly on the Convention, human rights issues, including the prohibition of the acts referred to in the Convention, were covered in all training programmes. In 2007, training had been extended from 6 to 13 weeks. While training remained mostly restricted to full-time civil servants, measures had been taken to extend the offer of training to contractual staff. The training focused on issues such as criminal law, criminal procedure, the code of ethics, security and communication.

27. The Committee had asked why the disciplinary procedure applied to detainees was regulated by an administrative circular rather than a royal decree. He explained that the entry into force of the Act concerning the principles of the administration of prison establishments and the legal status of detainees was contingent on the adoption of a "royal implementing decree". The administrative circular had been issued to facilitate the application of the provisions on disciplinary regimes, pending the entry into force of the Act as a whole. Publication of the decree was planned for 2009, at which point the administrative circular would become obsolete.

28. In order to enhance the fairness of the disciplinary procedure, the time limit for appearance before the disciplinary commission had been extended from 24 hours to 7 days, and to 48 hours for detainees subject to temporary security measures. The possibility of extending the latter to 72 hours was currently being explored.

29. Turning to a question about appeal procedures, he said that a distinction was made between administrative and judicial remedies. The detainee had the right to choose either. Disciplinary sanctions for inmates were imposed by the Council of State, regardless of their nationality. The Aliens Office had no competence in the matter.

30. In order to address overcrowding in psychiatric prison sectors, the psychiatric ward in Lantin prison had been reopened; a new ward for 60 persons had been built in Merksplas prison; and two psychiatric prison hospitals would be built in Ghent and Antwerp, which would hold 270 and 120 inmates respectively. In order to improve services for mentally-ill inmates, each psychiatric sector had been assigned a multidisciplinary care team composed of a psychiatrist, a psychologist, a social worker, an occupational therapist, a psychiatric nurse, a physiotherapist and a prison official. The judicial and health authorities were currently exploring the possibility of involving those units more directly in the management of inmates.

31. Assistance with the social reintegration of prisoners was provided by the communities. The Flemish-speaking authorities had adopted an assistance programme for former prisoners in 2000; implementation was scheduled to be completed by 2010. It provided for social assistance services for detainees and their families, including in the areas of social reintegration, health, education, employment, culture, sports and psychological assistance. The social assistance services were also open to refugees, asylum-seekers and torture victims.

32. The French-speaking community had adopted an action plan on social assistance to detainees; a working group had been set up for this purpose in 2006. In order to improve coordination of assistance programmes and policies for detainees, the French-speaking authorities had decided to hold an interministerial conference and establish a competent standing committee composed of representatives of relevant institutions and NGOs.

33. Ms. NIEDLISPACHER (Belgium), replying to questions about non-prison psychiatric services, said that placement in psychiatric institutions was generally voluntary and patients were free to leave at any time. Protection measures were only imposed if patients posed a serious risk to their own health and safety or the life and safety of others. Such measures were subject to a court order and could be appealed by the patient or his or her legal representative. The hearings took place in the presence of the patient, a lawyer of his or her choice, a psychiatrist and a legal representative. Placement in psychiatric care pursuant to a court order must not exceed 40 days. At the end of that period, the head of the institution could submit a substantiated request for the extension of the measure for a maximum period of two years.

34. Mr. DEVULDER (Belgium), replying to questions concerning migration policy, said that asylum could be granted on humanitarian grounds if the length of the asylum procedure exceeded three years in the case of families with school-age children, and four years for all others, or if the asylum-seekers' children had been born in Belgium. The Aliens Office was required to confirm that the prolongation of the procedure was not attributable to factors

relating to the applicant, such as the impossibility of establishing his or her identity or proceedings pending in another country. The Aliens Office had regularized 11,335 applicants in 2007 and 5,000 between January and September 2008.

35. Asylum-seekers were entitled to appeal the decisions of the Commissioner-General for Refugees and Stateless Persons; the appeal had suspensive effect on expulsion measures for the duration of its consideration by the Aliens Litigation Council. Aliens notified of an expulsion order whose enforcement was imminent and who had not yet lodged a suspensive appeal could file emergency remedies with suspensive effect within 24 hours of receipt of the notification. The Aliens Litigation Council was required to consider the request within 24 hours.

36. The main task of the Individual Complaints Board was to look into complaints from asylum-seekers about the conditions of detention. The lawfulness of the detention itself could only be reviewed by a court of law. Since 2004, the Board had received some 200 complaints. In 2007, it had admitted 25 complaints; 16 of which had been resolved through mediation, 5 had been found baseless, and 3 had given rise to recommendations. In 2008, the Board had admitted 7 complaints; 5 had been resolved through mediation, one had been ill-founded, and another partially founded.

37. Mr. BOURDOUX (Belgium), replying to NGO allegations of inadequate monitoring of expulsion procedures, explained that the system for monitoring such procedures comprised internal controls, checks carried out on request by the General Police Inspectorate and random checks by the P Committee. Over the past six years, the P Committee had investigated 80 per cent of complaints relating to the use of restraints or excessive use of force during expulsion. The seemingly small number of checks conducted must be put into perspective; some of the 24 repatriation operations monitored had involved between 200 and 300 persons.

38. Although some interventions by the P Committee were videotaped, modern technology was rarely used to monitor police conduct during expulsion proceedings. The practice of videotaping had been more common in the past, as in the case of Semira Adamu, but had now become the exception to the rule.

39. Replying to queries about the balance between the implementation of the Convention relating to the Status of Refugees and complementary protection provisions, said that asylum applications were first considered under the above-mentioned Convention; if rejected, the application was re-examined on the basis of complementary protection provisions. In 2007, 6,685 persons had been granted asylum pursuant to that Convention, and 103 persons under complementary protection provisions. The figures for the first half of 2008 were 1,628 and 280 respectively.

40. Turning to questions on follow-up of the case of Semira Adamu, he informed the Committee that a multidisciplinary commission had been set up to review the system of expulsion procedures. The commission had issued a series of recommendations, on the basis of which training programmes for deportation escorts had been developed. A team composed of a psychologist and a social worker were present during the expulsion if the situation was likely to become fraught. Legislation had been amended to prohibit various actions: use of instruments of

restraint that might obstruct the airway; use of anaesthetics; restriction of movement to the extent where the person would be unable to save himself in the event of an accident; and use of weapons. The police used a quick-release restraint device and received special training.

41. Mr. DEVULDER (Belgium) said that article 7 of the Aliens Act stipulated that illegal aliens could be detained for a maximum of two months pending their deportation. However, so long as expulsion proceedings had been initiated within seven days of the alien's detention, the Minister of Justice could order detention to be extended by another two months. Aliens who might pose a risk to public order or national security could be detained for a maximum of eight months, although that provision had never been invoked in practice.

42. The construction of the new INAD centre (see paragraph 320 of report) would commence in February 2009. It would replace existing facilities, which had a capacity of 30 places and had received over 1,000 persons for an average period of two days in 2007.

43. In response to a question concerning implementation of the Dublin Convention, he said that not all asylum-seekers were placed in detention. Repatriation arrangements were not always straightforward and some countries insisted on a specific protocol to be followed. In such cases, the alien was placed in detention while awaiting deportation.

44. As of 1 October 2008, minor asylum-seekers were no longer placed in closed centres. Instead, families with minor children were placed in private homes and assigned a social worker who prepared them for their return.

45. Ms. NIEDLISPACHER (Belgium) said that a guardianship service had been set up in 2004 to assist unaccompanied foreign minors requesting asylum and foreign minors without proper documentation or valid residence permits. Since 2007, all unaccompanied minors had been placed in special centres operated by the Federal Agency for the Reception of Asylum-Seekers for a maximum of one month. During that time, the minor's identity was established and he or she was assigned a guardian, who cooperated with a lawyer in securing housing, education, health care and psychological support for the child. Long-term solutions such as family reunification, repatriation or granting of a Belgian residence permit took account of the best interests of the child. Child victims of trafficking were automatically granted residence.
A special ad hoc unit within the Ministry of Justice looked after undocumented European minors belonging to particularly vulnerable groups.

46. The CHAIRPERSON, speaking as Country Rapporteur, asked whether the definition of torture contained in the Criminal Code covered other acts not referred to in the Convention. He enquired what the rationale was for not allowing arrested minors the opportunity to contact a lawyer in the first 24 hours following their arrest. He requested additional information on the status of the pilot project on extradition, particularly when it would be assessed and subsequently extended. He welcomed the provision in the Criminal Code expressly prohibiting the invocation of a state of necessity to justify the violation of the right not to be subjected to torture. After mentioning examples of provisions in other States' laws for extraterritorial redress for torture victims, he asked for an explanation of Belgium's position on that issue. The delegation should explain why the word "torture" did not appear as such in the police code of ethics.

47. Given that the function of the P Committee was to oversee the Belgian police system, it would appear to lessen the institutional independence of that body if police investigators made up the majority of its members. He wished to know in what circumstances the Belgian Government ensured that a diplomat should accompany foreigners expelled from Belgium to their country of origin. He asked whether persons who were granted subsidiary protection in Belgium were authorized to obtain employment and whether they enjoyed access to social security and health-care benefits.

48. Ms. BELMIR, Alternate Country Rapporteur, requested additional information on the system of legal guardianship that had been established for unaccompanied foreign minors. She asked whether it was administrative or judicial in nature. She wished to know whether, in prescribing protective measures, consideration was given to the religion of the unaccompanied foreign minor. Likewise, she wondered whether the Euthanasia Act made any provision for the fact that the religious convictions of the person concerned might not be consistent with such a practice.

49. She was concerned that although police training appeared, in theory, to be adequate, it did not seem to have enough impact on police conduct, as evidenced by reports that law enforcement officials often behaved badly towards undocumented foreigners taken into custody. Good human rights training, particularly in the provisions of the Convention, could go a long way towards improving that situation. She had received information from the Committee on the Rights of the Child that there had been cases in Belgium in which minors had been tried as adults. The delegation should comment.

50. Ms. SVEAASS said that the requirement to wait 40 days before being able to contest involuntary committal to a psychiatric hospital seemed inordinately long. She asked whether the most recent report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment had criticized the practice of involuntary hospitalization in Belgium. In many countries in Europe, there seemed to be an increasing trend towards such committals and towards isolating patients within psychiatric hospitals.

51. Ms. KLEOPAS said it was regrettable that Belgium had no intention of specifically criminalizing either domestic violence or corporal punishment. It was the general view of the Committee that those two forms of violence should be criminalized because they stemmed from deeply-rooted cultural beliefs present in all societies. She would welcome all efforts by the Government to inform the public of the obligation not to inflict corporal punishment on children and not to engage in domestic violence.

52. Mr. MINE (Belgium) said it was out of concern for the rights of detainees that the amount of time they were held in police custody was kept to a strict minimum. In the case of Belgium, as in most countries, that period was 24 hours. It was actually a very short period in which to require law enforcement officials to assemble a complete file on a detainee in order to present it to the judge. During that sensitive period of the investigation, there was no formal intervention on the part of counsel, but law enforcement officials were legally bound to contact the minor's family and to ensure that a doctor was present at the police station.

53. Mr. VERBERT (Belgium) said that, in cases in which Belgium granted extradition, the handover of the person concerned was usually effected by the police. There had been only one or

two cases in which Belgium had requested and obtained specific guarantees for such persons through diplomatic channels. In those rare instances, a diplomat had travelled to the requesting country in order to ensure compliance with guarantees, such as appropriate prison conditions.

54. Mr. MINE (Belgium) said the extradition of persons who feared that they would not be given fair treatment on return to their country of origin had been granted only on condition that a diplomat could visit the requesting country to ensure compliance with procedural safeguards. Although new penalties had been laid down in legislation to combat terrorism, care had been taken to ensure that such penalties did not impair the rights of suspected terrorists.

55. With regard to extraterritorial redress for torture, he said that certainly Belgium could exercise jurisdiction for acts of torture that had been committed abroad. If a case so warranted, Belgian courts could order another State to pay damages for acts of terrorism; however, it could do so only if the case had been brought before its courts legally and if they were legally competent to exercise jurisdiction in the case. It should be noted that Belgium had considerably expanded its extraterritorial jurisdiction in such cases.

56. Mr. BOURDOUX (Belgium), referring to the absence of the word “torture” from the police code of ethics, said that, the Council of State had requested that the draft code, which would be issued by royal decree, should not repeat anything that had already been clearly specified in the law. Such decrees could only clarify the law within the limits of what had already been established. Thus, with regard to torture and inhuman or degrading treatment, the code of ethics specified appropriate conduct in police inquiries and in relation to deprivation of liberty, but unlike other codes of ethics, it did not refer to the rule against torture itself.

57. With regard to the independence of the P Committee, there had never been any complaints about particular incidents. The status of investigators who were not members of the P Committee had been modified in 2003 and 2006 in order to ensure their independence from their original services and to enhance the power of that Committee. At the national level, when expert committees had met, those investigators had sometimes been required to carry out police investigation work. He explained that in a justice system such as that of Belgium, only police officers or judges could carry out investigations; such work could not be entrusted to a lawyer or a private investigator, as it could in the system of English-speaking countries. The duties of those investigators, who were either former police officers or seconded police officers, were related exclusively to judicial investigation.

58. Mr. DEVULDER (Belgium) said that persons who had been granted subsidiary protection status were given a temporary residence permit for five years and had full access to social security, health care and welfare. They could obtain a work permit and had access to the same social services as all other residents of Belgium.

59. Ms. NIEDLISPACHER (Belgium), referring to the legal guardianship of minors, said that persons acting as guardians were usually volunteers. Acting as a legal guardian for an unaccompanied foreign youth required a certain account of time and much compassion. The guardian, with the assistance of a lawyer, dealt with the legal aspect of guardianship, while the guardian alone oversaw the administrative aspect. Guardians ensured, for example, that minors had lodging and that they enrolled in school. At school, minors could choose to follow a course

in religion or, after school, attend a church or other religious institution. Every effort was made to ensure that minors felt as comfortable as possible from both the material and psychological standpoints.

60. Euthanasia was a very difficult, sensitive and personal decision. In the case of persons who suffered terribly from incurable conditions, the medical authorities checked on multiple occasions to make sure that such persons had reflected sufficiently and were freely deciding to end their lives by artificial means. Their religious convictions were necessarily taken into account and the patient was the only person authorized to request euthanasia. After having the opportunity to consult with family members, doctors and many others, patients were always asked whether or not they wished to change their mind.

61. Mr. BOURDOUX (Belgium) said that there was an equal opportunity and anti-discrimination centre in Belgium, which, together with the P Committee, monitored xenophobic behaviour within the police force. Although, admittedly, there were regular complaints of racist, discriminatory or xenophobic conduct by the police, it should also be recognized that there were very few complaints that had led to either a court decision or disciplinary sanction. In the past, such types of conduct by the police had been grouped together and reported under a single category, but in the past year legislation had been amended in order to require that all such complaints should be recorded separately. Nevertheless, there was currently not enough reliable information to determine how many of those complaints had resulted in disciplinary or criminal sanctions.

62. Mr. MINE (Belgium) said that he had taken note of Ms. Belmir's comments about minors who were judged as adults, but was unaware of any instances.

63. Ms. NIEDLISPACHER (Belgium) said that persons who had voluntarily admitted themselves to a psychiatric clinic could leave whenever they wanted. Persons who represented a danger to themselves or to others could be released and placed under observation only at a family member's request addressed to the competent judge. That was not the same thing as holding a patient against his or her will without cause. Such requests must be well-founded, and the procedure followed by the magistrate was admittedly somewhat adversarial in that it involved gathering information from the patient, the patient's lawyer, the psychiatrist and expert witnesses if necessary. On the other hand, the system provided as many safeguards as possible. Patients were released if it was determined that they could be better treated at home with their family and if circumstances so permitted. The 40-day period was perhaps long, but it was considered necessary in order to allow psychiatric experts time to present their findings.

64. The CHAIRPERSON thanked the delegation for its contribution to what had been a fruitful dialogue. The delegation should submit its replies to any remaining questions in writing.

The public part of the meeting rose at 5.15 p.m.