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Visit to Belgium

Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*, **

Summary

The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Fionnuala Ní Aoláin, conducted an official visit to Belgium from 24 to 31 May 2018 to assess counter-terrorism laws, policies and practices, measured against the country's international human rights obligations.

The Special Rapporteur commends the measured, intentional and deliberative approach shown by the Government in responding to the terrorist threat. She affirms that Belgium has much good practice to share, and its commitment to human rights is an essential dimension of its leadership in addressing terrorism.

Despite many positive observations, the Special Rapporteur notes several key human rights challenges and makes a number of recommendations, including, inter alia, on the need to set up an independent, adequately resourced, overarching expert oversight body to undertake review of the overall operation of counter-terrorism and national security powers, laws and policies; the importance of establishing an independent national human rights institution; the elimination of persistent barriers to the realization of victims' human rights; policies and programmes aimed at preventing violent extremism; practices of subjecting persons deprived of their liberty to individual security regimes or measures, placing them in "D-Rad:Ex" (deradicalization) wings or flagging them for showing signs of radicalization, as well as implementing specialized and individually tailored disengagement and reintegration programmes in prisons; oversight and human rights-compliant management of databases, citizenship stripping and national security expulsions; and the human rights-compliant management of returnees, including children.

* The summary of the report is being circulated in all official languages. The report itself, which is annexed to the summary, is being circulated in the language of submission and French only.

** The present report was submitted after the deadline in order to reflect the most recent developments.

Annex

Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism on her visit to Belgium

I. Introduction

1. The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Fionnuala Ní Aoláin, conducted an official visit to Belgium from 24 to 31 May 2018, at the invitation of the Government, to assess Belgian counter-terrorism laws, policies and practices, measured against the country's international human rights obligations.

2. The Special Rapporteur commends the transparency and the constructive and cooperative way in which the Government facilitated her visit, which allowed a frank and open dialogue. The Special Rapporteur is particularly grateful for the efforts made by the Ministry of Foreign and European Affairs in ensuring the smooth conduct of the visit and in coordinating follow-up to it.

3. The Special Rapporteur thanks all governmental institutions that she had the opportunity to meet and engage with. The Special Rapporteur held informative exchanges of views with the Minister of Foreign and European Affairs, the Directors for Human Rights and Democracy and for Counter-Terrorism at the Ministry of Foreign and European Affairs; the Minister of Security and Home Affairs; the Minister of Finance; the Minister of Justice; the Minister-President of the Government of Flanders; the Minister for Local Authorities of Wallonia; the General Administrator of Wallonie-Bruxelles International; the Minister-President of the Brussels-Capital Region; the Minister-President and the Minister for Assistance for Youth and Sports of the French-Speaking Community; the Federal Prosecutor; the Director of the Coordination Unit for Threat Assessment; the Vice-Chairs of the Parliamentary Commission of Enquiry into the attacks of 22 March 2016 and the President Emeritus of the Constitutional Court; the General Adviser for the Directorate General for Penitentiary Establishments; the chairs and a member of the indictment division of the Appeals Court of Brussels; the Federal Police; the Standing Intelligence Agencies Review Committee; the Standing Police Monitoring Committee; the Brussels Observatory for Prevention and Security; and the Flemish Departments of Education and Foreign Affairs and the Flemish Network of Islam Experts.

4. The Special Rapporteur participated in a seminar on the preventive approach to countering radicalization, extremism and terrorism in Belgium. She also visited Justice House Antwerp and the city of Liège where she met with the Youth Council and discussed the theatrical production *Nadia*.

5. The Special Rapporteur conducted visits to Hasselt and Leuze-en-Hainaut prisons, where she interviewed several persons convicted or accused of terrorism-related offences.

6. In addition to governmental officials, oversight bodies, members of the judiciary and the legal profession, the Special Rapporteur met with members of civil society broadly construed. She commends the vibrancy and engagement of civil society on human rights issues. The Special Rapporteur was particularly grateful to have the opportunity to meet with victims of terrorism through their two representative organizations, many of whose lives have been irrevocably affected by the experiences of injury, trauma and loss.

7. The Special Rapporteur shared her preliminary findings with the Government of Belgium at the end of her visit, on 31 May 2018.[1]

II. Legal and political context

A. International legal framework

8. Belgium is party to multiple core international human rights covenants, including the International Covenant on Civil and Political Rights and its two Optional Protocols; the International Covenant on Economic, Social and Cultural Rights and its Optional Protocol; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination against Women; the Convention on the Rights of the Child and its Optional Protocols; the Convention on the Rights of Persons with Disabilities; and the Convention for the Protection of All Persons from Enforced Disappearance. Belgium has accepted the individual complaint procedures set up under these instruments. Belgium has not signed the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and has signed but not yet ratified the Optional Protocol to the Convention against Torture.

9. As a member State of the Council of Europe and of the European Union, Belgium is bound by relevant regional instruments, including the European Convention on Human Rights and the Charter of Fundamental Rights of the European Union.

B. Domestic context

10. Belgium is a multicultural and multilingual society with strong rule of law traditions. Human rights protections are guaranteed in domestic law, including by prominently figuring in Title II of the Constitution.

11. Belgium is a federal State, with its legal and political affairs organized through sophisticated consociational structures which include federal, regional, community and municipal levels. Notably, the relationship between federal and federated entities is not one of subordination but is founded on equality. Law enforcement is essentially situated at the federal level, but all levels of government are engaged in the management of terrorism in various capacities. Judicial authorities have been substantively engaged in the processing, management and review of counter-terrorism laws and practices by the State. The courts are robust and independent. There is ongoing serious discussion concerning measures that affect human rights, which is the hallmark of a mature democracy. Various levels of government are conscious of and sensitive to the difficult questions arising in relation to ensuring adequate protection of rights in the context of security measures. The Special Rapporteur commends the Government for its commitment to upholding its human rights obligations in its national practices.

C. Terrorist threat against Belgium

12. The Special Rapporteur is acutely conscious of ongoing security challenges faced by Belgian authorities, particularly as a deadly attack involving an allegedly radicalized lone wolf perpetrator occurred in Liège during her visit.

13. In 2016, Belgian society as a whole was deeply affected by suicide bombings that took place at Brussels Airport in Zaventem and Maalbeek metro station in central Brussels. Thirty-two people were killed, and over 300 injured. While the terror threat was lowered to

[1] Available at www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23164&LangID=E.

level two in January 2018, Belgium remains intensely aware of, and sensitive to, the security of its population from terrorism. The Special Rapporteur is further mindful of the challenges related to the return of Belgian foreign fighters from conflict zones, including individuals who may have committed terrorist acts or other crimes under international law. Belgium also grapples with addressing the return of other citizens accompanying foreign fighters, including spouses and minors.

14. Counter-terrorism law and practice is primarily exercised through ordinary law. Commendably, in the aftermath of the horrific events of 22 March 2016 the Government, with serious deliberation on the exigencies of the situation, determined that no declaration of a state of emergency was necessary to address extant security challenges. Rather, the scope of existing law was engaged to its full potential and, where necessary, legislative augmentations followed through the mediated consideration of Parliament. These included extending the maximum duration of police detention of persons of interest from 24 to 48 hours and allowing home searches during night hours, changes that were within the scope of the State's human rights obligations. In this regard, Belgium provides a model of deliberate and composed response to terrorism, which is often directed at provoking an extreme response in order to undermine democracy. Belgium continues to review its legal capacities in respect of terrorism with an evidenced attention to its international human rights obligations. The Special Rapporteur commends this deliberative and human rights-focused approach to the exercise of emergency powers as an example of national best practice.

15. Terrorism prosecution efforts are coordinated at the national level through the Office of the Federal Prosecutor. The Office is highly professional and evidences a clear view of its prosecutorial strategy, including with respect to the possibility of pursuing substantive criminal charges against members of terrorist organizations for grave violations and abuses of human rights and serious violations of international humanitarian law committed overseas. The Special Rapporteur encourages this approach given the significant gap in accountability for systematic acts of torture, extrajudicial execution, rape and sexual violence perpetrated in Iraq and the Syrian Arab Republic and highlights its pertinence in the context of tackling the foreign fighters' phenomenon.

III. Key human rights challenges while countering terrorism

A. Scope of criminalization of terrorist offences

16. Terrorist offences are defined in Book II, Title Iter of the Belgian Penal Code (arts. 137–141ter). Title Iter has been subject to a series of amendments in past years, leading to the inclusion of new offences and amendments to the constitutive elements of existing ones.

1. Membership in and support to terrorist organizations

17. Article 140 criminalizes membership in and leadership of a terrorist organization, as defined in article 139 of the Penal Code, as well as support to such organizations, including by providing information or material or financial support. The scope of the provision was broadened in 2016[2] to encompass not only support that is known to contribute to terrorist offences but also cases where the perpetrator knew or should have known that their conduct "may contribute" to the commission of crimes by the group. Subsequent interpretation has stressed that the law does not require the conduct to contribute to the commission of any criminal act,[3] and advanced that such contribution may be "extremely modest" or "relatively remote" from the field of terrorist operations.[4] The provision has consequently been interpreted to encompass a broader category of conduct than participating in a

[2] L 2016-12-14/09. All Belgian legislation cited in the present report is available at www.ejustice.just.fgov.be.

[3] See Correctional Tribunal of Liège, decision of 19 July 2017, in *Revue de Jurisprudence de Liège, Mons et Bruxelles*, vol. 2017, No. 29, p. 1393.

[4] Francophone Correctional Tribunal of Brussels, decision of 25 November 2015.

criminal enterprise as defined in article 324ter of the Penal Code,[5] having been construed to encompass, among others, proselytism, even in a private setting,[6] or activities such as cooking.[7]

18. The Special Rapporteur warns of expansive interpretations of the provision and stresses that conduct criminalized as a terrorist offence must be restricted to activities with a genuine link to the operation of terrorist groups. She highlights that construing support to terrorist organizations in an over-broad manner may effectively result in criminalizing family and other personal relationships. She notes that the support related to ensuring that a person enjoys "minimum essential levels" of economic and social rights, including the rights to food, health and housing, should not be criminalized as support to terrorism. As States cannot lawfully restrict these rights below the minimum core,[8] this would run afoul of the State's obligations under international human rights law. The Special Rapporteur further asserts that assisting a person in exercising their right to return to their country of nationality (as guaranteed under article 3 of Protocol 4 to the European Convention on Human Rights) should not be equated to criminal support to terrorism.

2. Public incitement to the commission of a terrorist offence

19. Article 140bis criminalizes public dissemination of messages with the intention to incite the commission of a terrorist offence. The Constitutional Court struck down a 2016 legislative amendment[9] broadening the scope of the offence and held that the need to simplify the administration of evidence did not justify imposing sanctions provided under article 140bis without serious indication of a risk that a terrorist offence may be committed.[10]

20. The Special Rapporteur affirms the view of the Constitutional Court and stresses that, in order for the crime of incitement to not unduly interfere with human rights, criminalization should be restricted to conduct that creates an actual risk or imminent danger of harm. In the Special Rapporteur's view, a lower threshold may lead to the imposition of sanctions that are disproportionate to the severity of and social harm caused by the proscribed conduct and may also fall short of the level of precision required by the principle of legality.

21. The Special Rapporteur recommends that authorities be further guided by the standards spelled out in the Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (A/HRC/22/17/Add.4, annex, appendix).

3. Travelling with terrorist intent

22. Article 140sexies, introduced in 2015[11] with the aim to implement paragraph 6 of Security Council resolution 2178 (2014), criminalizes the act of leaving or entering the territory of Belgium with the intention of committing a terrorist offence. However, it goes further than what the resolution requires *stricto sensu* by also criminalizing the act of entering the country with terrorist intent.

23. The Special Rapporteur draws attention to the difficulties of prosecuting "travelling with terrorist intent" in a manner that is compliant with human rights standards, including the rights to freedom of movement, expression and association as well as the principle of legality, requiring a certain level of precision and foreseeability in legislation. She underlines the importance of prosecutions being conducted on the basis of conclusive

[5] Council of State, opinion of 24 January 2003.
[6] *Revue de Jurisprudence de Liège, Mons et Bruxelles*, pp. 1,393 and 1,396.
[7] Eurojust, *Terrorism Convictions Monitor*, Issue 23 (October 2015), p. 7.
[8] Committee on Economic, Social and Cultural Rights, general comment No. 3 (1990) on the nature of States parties' obligations.
[9] L 2016-08-03/15.
[10] Constitutional Court, Judgment No. 31/2018 of 15 March 2018.
[11] L 2015-07-20/08.

evidence of intent to commit terrorist offences.[12] She further warns that expansive interpretation of support to terrorism may lead to an overly broad construction of the offence of travelling with the intent to commit terrorist acts.

4. Consistency of counter-terrorism legislation with international humanitarian law

24. Article 141bis of the Penal Code excludes from the scope of application of general criminal law relating to terrorist offences "acts by armed forces in a situation of armed conflict as defined in and subject to international humanitarian law" and "acts by the armed forces of a State in the context of their official tasks, insofar as those tasks are subject to other provisions of international law". The Special Rapporteur strongly welcomes the exception set out in article 141bis and urges relevant authorities to ensure that it is duly reflected in relevant criminal prosecutions.

25. Having in mind the intersection between the scope of counter-terrorism legislation and international humanitarian law, the Special Rapporteur joins other stakeholders[13] in emphasizing the importance that State measures in response to terrorism be in line with obligations under international humanitarian law[14] and that such measures do not lead to undermining the multilaterally agreed protection of international humanitarian law, including by criminalizing acts that are either not prohibited or are protected under international humanitarian law.[15]

B. Preventing violent extremism and radicalization towards violence

26. Like many countries, Belgium faces challenges in addressing radicalization towards violence and has taken active steps to develop strategic policies in this regard. In line with the call of the Secretary-General, expressed in his Plan of Action to Prevent Violent Extremism (A/70/674), Belgium has adopted a wide and diverse range of measures to address this phenomenon. They include a federal plan on prevention of radicalization, commonly known as Plan R,[16] focusing on security-related aspects of prevention. Security-oriented structures created in connection with the plan include the National Task Force and local task forces as well as a number of thematic working groups. In addition, local integral security cells[17] set up by municipalities serve as platforms for cooperation and information exchange between local authorities and security actors as well as local prevention actors, with the aim to prevent the commission of terrorist offences by addressing persons exhibiting signs of radicalization.

27. Numerous other initiatives aimed at preventing radicalization towards violence are designed and implemented at regional, community and municipal levels. Regions and communities are active in fields including education and youth, psychosocial care, including in prisons, as well as post-detention monitoring of terrorist and other offenders.

28. The Special Rapporteur was impressed by the attention given by these authorities to the challenges of radicalization towards violence and polarization in the aftermath of terrorist violence. She notes that the diverse approach taken in Belgium involves both top-down and bottom-up strategies, shows innovation and originality in many respects and draws on multidisciplinary strengths and knowledge. Some policies showed exemplary approaches to engaging particularly affected communities on their own terms, drawing on participatory and empowering strategies at the local level. Authorities at all levels acknowledge that much work remains to be done and that more data and research need to be undertaken to better understand the forms, effects and challenges of radicalization

[12] See also Constitutional Court, Judgment No. 8/2018 of 18 January 2018.

[13] International Committee of the Red Cross, *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts* (Geneva, 2011).

[14] See, for example, Security Council resolutions 1624 (2005), 2178 (2014) and 2396 (2017).

[15] See also A/73/361, paras. 46–49.

[16] Available at http://besafe.jdbi.eu/sites/besafe.localhost/files/u3051/planr_en.pdf..

[17] L 2018-07-30/50. See www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&table_name=loi&cn=2018073050.

towards violence. The Special Rapporteur commends Belgium for its commitment to this work, the multiplicity of its efforts and the grass-roots-focused nature of many of its programmes.

29. Notwithstanding the many commendable aspects of Belgian preventive practices, the Special Rapporteur would like to share some observations, concerns and recommendations with regard to ensuring that prevention measures are undertaken in a human rights-compliant and non-discriminatory manner.

30. The complexity of dynamics between implementing entities, coupled with the high number and diverse nature of relevant policies and programmes, makes coordination and exchange among these entities a challenge. While discretion in designing and implementing such policies leaves considerable flexibility for responses closely tailored to local needs, it also results in fragmented action, lack of consistency in approaches and standards, and difficulties in pursuing long-term policies and benchmarks. As such, it may have a negative impact on the transfer of good practices and lessons learned and lead to diverging quality of programming across the different structures, affecting the quality of assistance available to persons in need.

31. The Special Rapporteur urges relevant authorities to continue working towards ensuring that policies and programmes are evidence-based, with scientifically sound and transparent theoretical underpinning. In this respect, she highlights the lack of internationally accepted definitions of notions such as "violent extremism" and "radicalization" (A/HRC/40/52) and underlines the importance of a clear distinction between radical thought and ideologies on one side and violent extremism or radicalization towards violence on the other. She expresses concern about reports, including by the Interfederal Centre for Equal Opportunities (UNIA), that persons have at times been flagged as radicalized for unclear, trivial or unrelated reasons, such as wearing a headscarf or because of reports of young men from their neighbourhood having left for the Syrian Arab Republic.[18] She strongly recommends that public officials receive continuous training aimed at ensuring that their work is carried out without resorting to stereotypes on racial, ethnic, national, religious and other protected grounds.

32. Finally, the Special Rapporteur emphasizes the need for a clear and human rights-compliant legal framework on the role of professional secrecy and other confidentiality obligations in the context of countering radicalization towards violence. She understands that there are gaps and inconsistencies between the different structures in this area and expresses her concerns that such shortcomings may result in undermining the relationship of trust between clients and social, educational and other services, thereby endangering the essential role these services play. Such outcomes may inflame social polarization rather than end it. She warns that while the instrumentalization of social and educational professionals in security policies may come with short-term upsides, it inevitably hurts the efficiency and sustainability of the non-security component of terrorism prevention policies and thus undermines long-term societal interests.

C. Detention and prison regimes

33. Persons charged with or convicted of terrorist offences are held in a variety of prisons, geographically distributed across the country. A number of these facilities (so-called "satellite prisons") employ staff trained in dealing with radicalized detainees. Furthermore, two detention facilities (Hasselt and Ittre) contain so-called D-Rad:Ex wings that house inmates considered radicalized and posing a security threat.

34. The Special Rapporteur visited Hasselt prison, including its D-Rad:Ex unit, as well as Leuze-en-Hainaut. Prison officials provided a thorough and transparent account of the prison regimes and measures applied to prisoners charged or convicted of terrorism. In terms of facilities in the prisons visited, both were adequate. However, the Special

[18] UNIA, *Mesures et climat : conséquences post-attentats* (2017).

Rapporteur is deeply concerned about a number of aspects related to measures applied to persons charged with or convicted of terrorism-related offences.

35. The Special Rapporteur understands that, by default, inmates are subject to an "open regime" allowing for contact with other inmates and participation in activities provided in the facility without particular restrictions. However, relevant authorities may deem necessary, on the basis of case-by-case assessments and subject to conditions set out in law,[19] to place inmates under a special regime (*régime de sécurité particulier individuel*)[20] or to subject them to special security measures (*mesures de sécurité particulières et individuelles*).[21] While security measures are formally in response to a temporary threat posed by the detainee, the security regime is applied to inmates deemed to pose a constant security threat. The threat in question must be concretely established and cannot be assumed on the basis of the nature of the offence the inmate was accused or convicted of.

36. The Special Rapporteur was informed that the guiding principle in respect of prisoners charged with or convicted of terrorism or suspected of radicalization was security. The Special Rapporteur observes that persons held in relation to terrorist offences seem to commonly be subject to security measures or regimes. She understands that the necessity of imposing the security regime is internally reviewed every two months and includes a hearing involving the detainee, their lawyer and the director of the prison, as well as a psychiatric evaluation. The regime can further be challenged before a civil court.

37. The Special Rapporteur notes that persons subject to security measures or regimes have limited movement within the prison and limited contact with other inmates and the outside world. Such measures frequently result in solitary confinement, in the case of persons' subject to a security regime potentially for extended periods of time. Furthermore, affected persons have no or limited access to activities available to inmates housed in the respective facility. Having in mind these restrictions and the risk of unnecessary or disproportionate interference with the rights of inmates, the Special Rapporteur stresses that the security measures or regime should only be imposed on the basis of rigorous individual assessment when and to the extent necessary in the interest of security and prison order.

38. The Special Rapporteur understands that persons believed to have been radicalized and therefore posing a security threat may also be placed in D-Rad:Ex wings. The restrictions linked to such placement are similar to those faced by persons on individual security regimes, including solitary confinement with up to 23 hours per day spent in the cell, lack of contact with other inmates and reduced contact with the outside. The procedure governing such placements, however, seems to be less well defined, also lacking a formal review process. It is further unclear whether it can be challenged in court. As far as the Special Rapporteur is aware, inmates have only been removed from D-Rad:Ex wings for health reasons, not pursuant to successful challenge.

39. Prison authorities continually assess signs of radicalization exhibited by inmates.[22] Those considered radicalized or at risk of radicalization (so-called "CelEx" detainees) will fall into one of the following categories: category A (convicted of or charged with terrorism); category B (so-called "assimilated persons" whose files indicate a connection with terrorism); category C (foreign terrorist fighters); and category D (detainees who evidence signs of radicalization). Three further categories are to be added to this classification system, including "home-grown terrorists" and "hate preachers". Detainees are not notified of their inclusion in these categories and the implications of such inclusion are unclear. It seems, however, that restrictions similar to special individual measures may be imposed on CelEx detainees as well. While CelEx detainees are subject to continuous evaluation by prison staff for signs of radicalization, no formal process is available to challenge such assessments.

[19] L 2005-01-12/39. See www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&table_name=loi&cn=2005011239.

[20] Ibid., arts. 116–118.

[21] Ibid., arts. 110–115.

[22] Direction générale des Établissements pénitentiaires (DG EPI), "Instructions spécifiques extrémisme" (n.d.).

40. Against the above, the Special Rapporteur voices concerns about the assessments of inmates for showing signs of radicalization or posing a security threat functioning as a basis for placement in high-security wings, assignment to a security regime or the application of particular measures. She recommends that such determination be undertaken on the basis of clearly established, scientifically sound criteria pursuant to a clear and transparent process, with particular emphasis on meaningful review. She notes her concern about the role of prison officers' evaluation in this process whose training is limited in both human rights and radicalization appraisal. The Special Rapporteur underscores that the identification of radicalization requires highly specialized professional skills across multiple disciplines. The Special Rapporteur is concerned about the particular risks of conflating genuine and protected religious practice with radicalization, particularly when core elements of assessment are not consistently carried out by qualified specialists. The mechanism for decision-making remains opaque, and the extent of the prisoner's capacity to meaningfully challenge such determinations seems exceptionally limited in practice.

41. Interviews conducted by the Special Rapporteur confirmed that in the aftermath of 22 March 2016, significant numbers of prisoners linked to terrorism were kept in security regimes with no possibility of meaningful review of their status, and the Special Rapporteur is concerned that security measures were applied as a collective measure. She is also concerned that the final determination of regime and status within the prison is carried out through a process which may not be fully human rights compliant. The Special Rapporteur notes that the medical, social and psychosocial effects of prolonged isolation can be severe. While conscious of the risk involved in allowing unimpeded movement of prisoners, measures that segregate individuals in solitary confinement for prolonged periods of time may raise issues of cruel, inhuman or degrading treatment and Belgian practices in this regard are particularly concerning.

42. Furthermore, the Special Rapporteur underscores her particular concern that no systematic specialized and individually tailored disengagement programmes are being put in place in Belgian prisons. In this regard, it was made clear to the Special Rapporteur that the predominant focus with regard to radicalized inmates is on containing the threat, not on disengagement and reintegration. The Special Rapporteur is concerned at the lack of such programming given the importance of early and individually focused intervention in such contexts.

43. Given the evidenced expertise and experimentation on deradicalization taking place at federal, regional, community and municipal levels, the disjunction is evident. Prisoners convicted of these offences will be released and returned to Belgian society. It is in the long-term interest of those incarcerated and of society as a whole that tailor-made programmes are developed with regional, community and federal interface and consistently implemented in prisons.

44. Belgium has a comprehensive probation system operated through "Justice Houses", and the Special Rapporteur had the opportunity to visit Antwerp Justice House. She was impressed by the community-based approach to reintegration with an emphasis on individually tailored programmes, collaborative approaches, expert staff and integrated engagement with welfare services. She was also struck by the experience of Justice Houses in dealing with complex cases of vulnerable individuals being reintegrated into society. These programmes serve persons on conditional release or subject to electronic tagging who have been charged with terrorist offences. The Special Rapporteur understands that, to date, there has been limited engagement with persons in prisons serving sentences for terrorism offences, and in particular that persons under security regimes and measures are not serviced by disengagement processes. Regional and community governments indicated their interest in and support for such programming, but no systematic engagement with persons convicted of terrorism is evidenced. The Special Rapporteur strongly recommends that meaningful consideration be given to early and consistent engagement through the Justice House capacities for persons convicted of terrorism, including those regulated through security regimes and measures. There is much to be gained for both prisoners and society as a whole in addressing disengagement as early as possible within the prison system, using the evidenced expertise in the probation system.

45. Finally, the Special Rapporteur notes that Belgium has signed but not ratified the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. She joins other human rights mechanisms [23] in recommending that Belgium ratify the Optional Protocol without delay and set up an effective national preventive mechanism.

D. Victims of terrorism

46. On 22 March 2016, 32 persons were killed and over 300 were injured, direct victims of terrorism. Many others were deeply affected by the attacks, including first responders, family members of those killed and injured and persons caught up in but not physically injured by the attacks (secondary and indirect victims). The Federal Government has acknowledged the plight of victims in many ways, including through symbolic affirmation as well as legal and administrative reforms.

47. Despite these efforts, the Special Rapporteur finds that the rights and needs of victims still require significant legal and policy attention. Comprehensively addressing the rights of the victims of terrorism represents best practice not just because it assists victims and survivors to rebuild their lives; it can also help reduce polarization in society by building national solidarity.[24] It is essential that victims of terrorism be provided with legal status and protection of their human rights, including their rights to health, legal assistance, justice, truth, and adequate, effective and prompt compensation and other forms of reparation, commemoration and memorialization. Supporting victims of terrorism includes the provision of material, legal, social and psychological assistance. While drawing the Government's attention to the international standards of restitution, compensation, rehabilitation and satisfaction,[25] the Special Rapporteur voices her concern about ongoing gaps in the framework applicable to victims of terrorism in Belgium. She is deeply concerned about the day-to-day experiences of victims in health care, employment and administrative settings which raise the spectre of secondary violations, including direct and indirect discrimination.

48. In meetings with victims and survivors, the Special Rapporteur was deeply affected by their reports of a lack of responsiveness to medical, psychological and other needs by the Government in the aftermath of the attacks. Victims felt abandoned and struggled to locate medical and other support while experiencing overwhelming loss, pain and trauma. They faced fragmentation of service provision, discrimination in access to services and support, insufficient training and sensitivity of frontline administrators and service providers, failure of the privatized insurance sector to meet the complexity of victims' needs, as well as stigma and retraumatization in accessing health, employment and other services. These deficits have been acknowledged by the Government, but the Special Rapporteur finds that victims have continued to struggle to access essential entitlements, particularly in respect of health and psychosocial needs.

49. The Special Rapporteur notes that a set of laws relating to victims of terrorism have gone through Parliament. These laws aim to bring improvements in some areas relating to assistance and support to victims of terrorism, including by abrogating provisions discriminating between residents and non-residents in respect of victim status and entitlements and by extending compensation schemes to include citizens and residents of Belgium who have been victims of terrorist attacks abroad. Amendments aim at improving

[23] See CAT/C/BEL/CO/3 and A/HRC/32/8.

[24] United Nations, *Handbook of Good Practices to Support Victims' Associations in Africa and the Middle-East* (2018).

[25] As affirmed in the 1985 Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (General Assembly resolution 40/34); the 2005 Updated Set of principles for the protection and promotion of human rights through action to combat impunity (E/CN.4/2005/102/Add.1); the 2006 Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (General Assembly resolution 60/147); and the 2017 Council of Europe Revised Guidelines on the protection of victims of terrorist acts.

aid schemes available to victims, formally according the State the right of subrogation in favour of victims in relation to insurance companies and improving the procedure before the commission for financial aid to victims of intentional acts of violence by setting up a specialized department in charge of terrorism-related matters.

50. Notwithstanding these planned improvements concerns remain, among others in relation to the high level of complexity of the system, including the unrelentingly cumbersome insurance payment scheme that requires constant negotiation and processes of ongoing evaluation for victims (falling particularly harshly on victims of lesser economic means and those with long-term injuries). Furthermore, a series of other persistent barriers to the realization of victims' human rights exist, including the lack of explicit recognition for post-traumatic stress disorder as a direct medical consequence of the terrorist attacks and its reported exclusion from insurance compensation; lack of sufficiently specialized medical and psychosocial expertise readily and equally available to all victims; the lack of consistency in provision for health and psychosocial needs; the provision of one-stop information without one-stop services; and insensitive communications with and a lack of consistent respect for victims in administrative processes by professionals and assessors.

51. The Special Rapporteur welcomes the Government's commitment to implement the recommendations of the Parliamentary Commission of Inquiry into the attacks of 22 March 2016[26] and emphasizes the need to make victims of terrorism an absolute priority in addressing the consequences of terrorist attacks. This includes but is not limited to regulation of insurance entities with consideration given to a national guarantee fund administered by the Government to address the short-, medium- and long-term financial needs of victims. Other priority legal measures may include differences in inheritance rights between regions, parity of legal aid regimes for victims of terrorism across regions and enabling the standing of victims' associations as civil parties in criminal proceedings. Working with all established victims' representative organizations will advance this priority. Victims of terrorism bear the deepest hurts and the greatest burdens of terrorist attacks, and the Special Rapporteur encourages the greatest efforts to be made on their behalf. The Special Rapporteur is convinced of the broad goodwill of all political parties to make meaningful reform in this area a priority.

E. Collection, retention, processing and sharing of personal and sensitive data

52. Data collection, retention, processing and sharing have become an essential tool for many States in the fight against terrorism, Belgium among them. While affirming the importance and value of information gathering and analysis in the prevention, investigation and prosecution of terrorism, the Special Rapporteur has voiced her concerns regarding the control and management of data and related oversight in a human rights-compliant manner.[27] In particular, the Special Rapporteur underscores the importance of privacy, due process and remedial rights for persons' subject to such measures. She further highlights that privacy facilitates the exercise of a wide range of human rights and that consequently, privacy violations may have an intersectional adverse impact not only on civil and political but also economic, social and cultural rights.

53. Belgium has created a threat analysis fusion centre, the Coordination Unit for Threat Analysis, which plays a central role in collating and analysing data from various public authorities, including intelligence entities, and administers several databases to enable information-sharing between relevant security and other actors. Access to these databases is expanding, with proposals for additional government departments at federal and other levels of governance to gain access.

[26] See www.lachambre.be/FLWB/PDF/54/1752/54K1752007.pdf .

[27] See https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=24238.

54. The dynamic database, the Foreign Terrorist Fighters database, was set up by Royal Decree of 21 July 2016[28] with the aim to contribute to the analysis, evaluation and monitoring of persons connected to jihadism. Its initial focus was on persons categorized as "foreign terrorist fighters" but has subsequently been broadened to include so-called "homegrown terrorist fighters" and "hate preachers". These inclusions were only provided with a legal basis in 2018, following the recommendation of the Standing Intelligence Agencies Review Committee.

1. Joint Terrorist Fighters database

55. The database includes personal information on individuals residing or having resided in Belgium who, with the aim of joining terrorist groups or providing them "active or passive support": (a) are in a "jihadist conflict zone"; (b) have left Belgium with the aim to travel to such zones; (c) have returned or are in the process of returning to Belgium from such zones; (d) were prevented from travelling to these zones; or (e) who, there are serious indications to believe, intend to travel to jihadist conflict zones.[29] (also known as foreign terrorist fighters). "Homegrown terrorist fighters" are defined as persons concerning whom there are serious indications of their intention to use violence for terrorist purposes, as well as persons who intentionally provide support to such persons or to persons registered as foreign terrorist fighters.[30] Personal data of individuals who "could fulfil" the criteria set out above can also be collected and retained for a maximum of six months.[31]

56. The definition provided in the Royal Decree encompasses broader categories than are reflected in relevant provisions of the Penal Code. Concerningly, it also covers persons who provide logistical, financial and other support to activities that may fall short of conduct criminalized under domestic law. While inclusion in the database is not a criminal law measure, it nonetheless comes with potentially far-reaching negative consequences on the affected individuals' human rights, including restrictions on liberty that may engage article 5 of the European Convention on Human Rights. The Special Rapporteur's concerns are compounded by the limited options that exist to have a person and their data removed from the database.[32] This is particularly pertinent as, with respect to certain categories (in particular persons who have travelled or attempted to travel to "jihadist conflict zones"), retention in the database does not seem to require that the respective person continue to pose a security risk. Having data shared with and processed by other entities may raise additional human rights concerns. The potential adverse implications for persons who have been registered in the database as minors are especially troubling.

2. Hate Preachers database[33]

57. Hate preachers are defined as persons having a link with Belgium who (a) pursue the purpose of undermining the principles of democracy or human rights, the proper functioning of democratic institutions or other foundations of the rule of law; (b) justify the use of violence; and (c) propagate these views with the aim of exerting a radicalizing influence.[34]

58. The Special Rapporteur notes that the right to freedom of expression extends "not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb…. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no

[28] AR 2016-07-21/38 as amended by AR 2018-04-23/16.
[29] Ibid., art. 6, para.1 (1).
[30] Ibid., art. 6, para. 1 (1/1).
[31] Ibid., art. 13.
[32] The Data Protection Authority can, under certain circumstances, ask for correction/removal (in conformity with article 13 of the data protection law). Entries are reviewed ex officio at least every three years.
[33] AR 2018-04-23/15.
[34] Ibid., art. 6, para.1 (1).

'democratic society.'"[35] She urges authorities to make sure that measures addressing advocacy of hate are compliant with articles 19 (3) and 20 of the International Covenant on Civil and Political Rights and recommends that authorities be guided by the Rabat Plan of Action in this respect.

3. Oversight of data collection, retention, processing and sharing

59. A number of entities, including the Standing Intelligence Agencies Review Committee, the Standing Police Monitoring Committee and the Data Protection Authority, exercise oversight of aspects of data gathering, processing, sharing and retention, including in the counter-terrorism context. While their work is important in ensuring the legality, legitimacy and effectiveness of such measures, the Special Rapporteur is concerned that meaningful oversight does not extend to all aspects of data use that may contravene human rights law. She therefore encourages the Government to ensure independent, effective and comprehensive oversight of powers related to data gathering, processing, sharing and retention in the counter-terrorism context and ensure that relevant entities are adequately resourced. The Special Rapporteur particularly recommends independent judicial representation in the composition of these bodies. She emphasizes the importance of independent oversight covering all stages of data collection and processing, given the implications of the rights limitations concerned,[36] and sustained transparency through the publication of annual reports.

60. The Special Rapporteur urges Belgian authorities to ensure compliance with regional legal obligations in respect of data processing and oversight, and to fully implement regional judicial decisions concerning the need to protect electronic communications in a way that does not compromise the "essence" of the fundamental right to respect for private life and through measures that are "strictly necessary" for their intended purpose.[37] She reminds Belgium that mandatory retention of metadata for an extended period of time and national legislation which provides for "general and indiscriminate retention of all traffic and location data of all subscribers and registered users relating to all means of electronic communication" are contrary to European Union law[38] and also raise issues with respect to Belgium's obligations under international human rights law.[39] The Special Rapporteur affirms that, while progress has been made, further improvements are required to ensure that adequate procedural safeguards and oversight of interception of communications and surveillance are in place. In particular, prior authorization – best ensured with a judicial element – and ongoing independent oversight should be the norm, and the right to an effective remedy must be meaningfully incorporated in the context of secret surveillance measures.

4. Cross-border intelligence sharing

61. The Special Rapporteur expresses particular concerns regarding cross-border intelligence-sharing arrangements and practices. The mandate of the Special Rapporteur has already warned against such practices falling short of international human rights norms and standards, in particular through the lack of a human rights-compliant legal basis and effective oversight.[40] She emphasizes that these practices must have a domestic legal basis that is sufficiently foreseeable and accessible and that provides for adequate safeguards

[35] European Court of Human Rights, *Handyside v. The United Kingdom* (application No. 5493/72), Judgment of 7 December 1976, para. 49.

[36] See also A/HRC/37/52.

[37] European Court of Justice, joined cases *Digital Rights Ireland Ltd. v. Minister for Communications, Marine and Natural Resources and others (*C-293/12) and *Kärntner Landesregierung and others* (C-594/12), Judgment of 8 April 2014.

[38] European Court of Justice, joined cases *Tele2 Sverige AB v. Post-och telestyrelsen* (C-203/15) and *Secretary of State for the Home Department v. Tom Watson and others* (C-698/15), Judgment of 21 December 2016.

[39] Council of Europe Commissioner for Human Rights, *The Rule of Law on the Internet and in the Wider Digital World*, Issue paper (2014), p. 22.

[40] See A/69/397 and A/ HRC/13/37.

against abuse. She further recommends that intelligence sharing be subject to full and meaningful oversight by the Standing Intelligence Agencies Review Committee.

5. Data collection and processing in the context of preventing radicalization and violent extremism

62. The Special Rapporteur also highlights a particular concern relating to data collection and processing at the regional, community and municipal levels in the context of engagement with radicalization towards violence. Here she questions the legal basis for gathering, retention and sharing of data, and expresses concern regarding the potential inclusion of such data in intelligence databases without sufficient protective measures and oversight being applied in a consistent manner, across different governance levels and contexts. In this respect, she notes the lack of precision in article 4 (3) of the law establishing local integral security cells. She stresses the need for access for individuals, including minors and their legal guardians, to information held about them and the ability to challenge the accuracy of data.

F. Deprivation of citizenship and revocation of residence rights

1. Deprivation of citizenship

63. The Code of Belgian Nationality provides for the possibility to strip a person of nationality in the following cases: (a) for acting in breach of their obligations as Belgian citizens (art. 23); and (b) for having been sentenced to at least five years of imprisonment for certain serious crimes, including terrorism-related offences (art. 23 (1) and (2)). Only persons with more than one nationality can be subject to this measure. This is consistent with article 8 (1) of the Convention on the Reduction of Statelessness, to which Belgium is a party. Loss of citizenship is not automatic and requires prior judicial authorization.[41]

64. The Special Rapporteur notes that respecting the safeguards around the prohibition of arbitrary deprivation of nationality is imperative as loss of nationality may have serious human rights consequences. Under international law, States may deprive individuals of nationality when they have conducted themselves in a manner "seriously prejudicial to the vital interests of the State",[42] provided the measure complies with requisite safeguards, including the opportunity to effectively challenge decisions before an independent body, ideally of judicial nature.[43] Decisions must respect the absolute prohibition on non-refoulement[44] and take due consideration of the impact on human rights, including the right to private and family life.

65. Deprivation of nationality is often followed by measures such as expulsion, extradition or denial of entry and may be seen as a precondition for these. The Constitutional Court stated that there was no direct link between the deprivation of Belgian nationality and extradition, and therefore deprivation of nationality did not interfere with the right to private and family life.[45] While the interference with this right would indeed be a direct consequence of follow-up measures resulting in removal from the territory of the country, the Special Rapporteur warns that such distinction may be artificial, as it is in fact the stripping of nationality that enables authorities to take measures they could not lawfully take against citizens, such as expulsion.

66. The Special Rapporteur echoes concerns about the potential discriminatory effects of such measures that may lead to the de facto establishment of a two-tier citizenship system. As the provisions in the Code of Belgian Nationality only apply to naturalized citizens holding more than one citizenship, the effects of these measures may disproportionately affect certain communities whose members commonly acquire

[41] L 1984-06-28/35.
[42] Convention on the Reduction of Statelessness, art. 8 (3) (a) (ii).
[43] A/HRC/25/28, paras. 31–34; and A/69/10, chap. IV.E.2, art. 8.
[44] See also A/62/263, paras. 50–51.
[45] Constitutional Court, Judgment No. 16/2018 of 15 February 2018.

citizenship through naturalization and are statistically more likely to hold a second nationality.

2. Expulsion for reasons of national security

67. In 2017, Belgium amended the Immigration Act[46] with the aim of tightening rules governing the entry and expulsion of non-nationals to protect public order and national security. Pursuant to the new framework, residence rights of aliens, including nationals of States members of the European Union, can be terminated for "serious" or "compelling" reasons of public order or national security.

68. The law does not contain definitions of "national security" or "public order", nor does it specify how "serious" or "compelling" reasons are to be assessed in this context. The Special Rapporteur notes that the law may fall short of the principle of legality which requires that laws be "sufficiently accessible and foreseeable" as to their effects[47] and define the scope of legal discretion conferred on implementing authorities to prevent arbitrary implementation.[48]

69. She urges authorities to ensure that decisions taken pursuant to the Immigration Act are based on the "personal conduct of the individual" that represents "a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society", in line with article 27 (2) of European Union Directive 2004/38/EC.

70. The Special Rapporteur notes with concern that appeals against decisions taken for "compelling reasons of national security" do not automatically suspend execution under the new law.[49] To obtain a stay of execution, the "extremely urgent procedure" needs to be initiated, a procedure that the European Court of Human Rights did not consider a "remedy offering the guarantees of effectiveness required in the event of expulsion of a foreign national".[50] This shortcoming may lead to violations of human rights, including non-derogable rights, as well as to undermining protection against non-refoulment. Concerns are compounded by the lack of meaningful independent or judicial control as the Council for Alien Law Litigation (the appeals board) has no jurisdiction to assess the proportionality of decisions terminating residence rights.

G. Oversight of counter-terrorism measures

71. Belgium has long been encouraged to establish a national human rights institution that is compliant with the principals relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles).[51] In the context of the fight against terrorism, the Special Rapporteur underscores the necessity and value of such a body. The overall effects of counter-terrorism measures and the expansion of deradicalization policies to multiple spheres and all levels of governance require a new balance of oversight and supervision to be struck, a task to which a national human rights institution can contribute. This step would further underscore the country's commitment to best practice in human rights implementation.

72. Belgium has a number of specialized oversight bodies whose mandates are directly relevant to counter-terrorism, including the Standing Intelligence Agencies Review Committee (Comité R, known as Comité I in Flemish), the Standing Police Monitoring Committee (Comité P) (both under parliamentary control) and the Data Protection Authority. General oversight bodies, with jurisdiction over specific aspects of the

[46] L 2017-02-24/21.

[47] European Court of Human Rights, *Sunday Times v. United Kingdom (No. 1)* (application No. 6538/74), Judgment of 26 April 1979, para. 49; and Human Rights Committee, general comment No. 34 (2011) on the freedoms of opinion and expression, para. 25.

[48] European Court of Human Rights, *Malone v. United Kingdom* (application No. 8691/79), Judgment of 2 August 1984, para. 68.

[49] L 1980-12-15/30, art. 39/79.

[50] *V.M. and others v. Belgium* (application No. 60125/11, Judgment of 7 July 2015, para. 207.

[51] See CCPR/C/BEL/CO/5; CAT/C/BEL/CO/3; and A/HRC/32/8.

functioning of security services, include the Supervisory Body for Police Information Management and the Administrative Commission for monitoring intelligence collection methods used by the intelligence and security services.

73. While all perform useful and necessary functions, the Special Rapporteur recommends that a fully independent, adequately resourced overarching expert oversight body be created to undertake independent review of the overall operation of counter-terrorism and national security powers, laws and policies. Such oversight should also be tasked to ensure that laws and policies, including any amendments thereto, are compatible with international human rights and refugee law binding upon the State, as well as, when applicable, international humanitarian law. A consistent and broad evaluation of counter-terrorism policy, in order to identify possible loopholes and inconsistencies and in relation to compliance with human rights and non-discrimination standards, would strengthen safeguards, remedies and overall oversight.

74. The Special Rapporteur further joins other human rights mechanisms[52] in expressing concerns about the independence of the Standing Police Monitoring Committee and its Investigative Service in the light of the inclusion of former police officers as investigators, a shortcoming that risks undercutting the Committee's ability to impartially deal with complaints. She recommends that independent police oversight be strengthened and that human rights compliance, based on consistent human rights and equality training for such bodies, be prioritized.

75. Finally, the Special Rapporteur affirms the value of parliamentary oversight. The Parliamentary Commission of Inquiry into the attacks of 22 March 2016 undertook commendable and important work in addressing the immediate aftermath of the events. The Special Rapporteur encourages consideration of a federal standing parliamentary committee with the established responsibilities (and commensurate powers) to provide sustained oversight of counter-terrorism and deradicalization laws and policies, providing advice, oversight and engagement by the legislative branch on these matters.

76. The Special Rapporteur highlights a number of substantive areas where oversight and review by the above-mentioned bodies may be necessary: assessing and monitoring effects of new counter-terrorism powers in ordinary law, including over the long term; human rights oversight of the deployment of military personnel in public spaces to protect critical infrastructure and soft targets; citizenship-stripping or revocation of residence rights related to national security; oversight of suspensions of employee security passes from high-security or sensitive sites; increased concerns about unlawful profiling where counter-terrorism laws and policies may stigmatize persons of the Muslim faith; and stop-and-search practices by the police in counter-terrorism contexts that create concerns about racial or ethnic profiling. The Special Rapporteur in particular notes her concerns relating to the lack of systematic data collection on potential discriminatory policies and behaviour based on racial, ethnic, religious and other stereotypes by security services, including in the context of identity checks by the police, leading to difficulties to meaningfully assess, monitor and respond to the problem.

77. The Special Rapporteur underscores that the institutional complexity and multivariant approach to counter-terrorism and preventing violent extremism/radicalization towards violence should make use of rigorous, systematic and independent monitoring and evaluation mechanisms. Doing so would enhance the effectiveness of ongoing and successor policies and demonstrate the impact of deployed measures. Such mechanisms are also key to ensuring accountability and transparency of public decision-making and use of resources.

H. Human rights obligations towards Belgian citizens abroad

78. Belgium is engaged in a continued dialogue at all levels of government aimed at finding the optimum approach to addressing challenges related to returning Belgian foreign

[52] Ibid.

fighters and their families. Belgium is also deeply and positively engaged on these issues at the international level. The Special Rapporteur welcomes these efforts and urges the authorities to ensure that related responses are in line with Belgium's human rights obligations and considerate of long-term security interests. Meaningful action towards rehabilitating and reintegrating returning foreign fighters and, if applicable, members of their families is consistent with the spirit of international solidarity and cooperation as required by Security Council resolutions 2178 (2014) and 2396 (2017) and is in the long-term interest of international peace and security.

79. The Special Rapporteur contends that Belgium has a positive obligation to take necessary and reasonable steps to intervene in favour of their nationals abroad, should there be reasonable grounds to believe that they face treatment in flagrant violation of the human rights standards accepted by Belgium. This would include flagrant denial of justice, the death penalty, torture or cruel, inhuman or degrading treatment, including sexual violence; or deprivation of liberty in grave violation of human rights standards (such as incommunicado detention putting them at risk of enforced disappearance).

80. The Special Rapporteur recognizes the difficulties faced by Belgium in this respect, including the lack of consular representation in some areas where Belgian nationals are present and the shortage of information on the whereabouts of and conditions faced by nationals in conflict zones who frequently find themselves in the power of armed groups operating as de facto authorities. She nonetheless expresses concern regarding the recent modification of the Consular Code[53] resulting in the loss of the right to claim consular assistance for persons who have travelled to an area of armed conflict or to a region for which authorities have issued a notice discouraging travel, or are deemed to take "disproportionate risks" without adequate insurance arrangements.[54] The Special Rapporteur wishes to emphasize the important role that effective consular assistance plays as a preventive tool when faced with a risk of flagrant violations or abuses of human rights, while also noting that the remedial nature of diplomatic protection proceedings[55] frequently means that they cannot effectively prevent an irreparable harm from being committed.

81. The Special Rapporteur draws attention to the fact that many of those returning may be victims of terrorism, trafficking and/or armed conflict as well as perpetrators of criminal offences. She emphasizes the need for comprehensive, multi-agency and multidisciplinary approaches for addressing the needs of these persons. She also encourages continued engagement with and support to the families of persons who have travelled to conflict zones and a recognition of the stigma, exclusion and challenges they face in society.

Child returnees

82. Reports indicate that an estimated 162 children linked to Belgium were in Iraq and the Syrian Arab Republic in May 2018,[56] with the great majority of these children[57] reportedly having been born there. Twenty-six children have been identified in camps run by the Syrian Democratic Forces. The position of the Belgian Government is to allow for the return of children under the age of 10 and to take a case-by-case approach with respect to children between the ages of 10 and 18. The Government does not seem to have instituted a policy to proactively facilitate the return of children under 10.

83. The Special Rapporteur notes this declaration of intent as a positive step towards addressing the human rights obligations that accrue to Belgium with respect to underage citizens overseas. She notes that children enjoy special protection in accordance with the Convention on the Rights of the Child and its Optional Protocols as well as international humanitarian law norms, if and when applicable. She highlights the International Standards

[53] L 2018-05-09/06.

[54] L 013-12-21/52, art. 83.

[55] International Law Commission, draft articles on diplomatic protection, art. 1 (A/61/10, chap. IV.E.1).

[56] T. Renard and R. Coolsaet, "Children in the Levant: insights from Belgium on the dilemmas of repatriation and the challenges of reintegration", *Security Policy Brief*, No. 98, July 2018, p. 4.

[57] Ibid.

for Action on Children in Armed Conflict[58] in this respect. The Special Rapporteur further emphasizes the obligation to consider the child's best interest in all actions concerning children and to protect them against "all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members".[59]

84. The Special Rapporteur urges the Government to work out the modalities of repatriating children as a matter of priority, including the applicable procedure for the determination of citizenship and adequate rehabilitation and reintegration programmes.[60] She in particular urges the Government to extend repatriation policies to all returnees under 18 years of age. She believes this to be in the interest of the children affected but also in the long-term security interests of Belgian society and the international community.

IV. Conclusions and recommendations

85. **Belgium has experienced a number of terrorist attacks on its territory and faces security challenges from foreign fighters returning from conflict zones as well as a rising threat of right-wing extremism. The Government is conscious of its obligation to take all reasonable and feasible measures to ensure the safety of its population from terrorism and other violent manifestations of extremism, in line with the right to security as protected by international human rights law and practice. In this regard, the Special Rapporteur stresses that human rights-compliant counter-terrorism responses are the bedrock of effective and sustainable security policies. It is therefore essential to ensure that all measures taken to prevent and counter terrorism and violent extremism are in full compliance with the State's obligations under international law, in particular international human rights law, refugee law and, if and when applicable, international humanitarian law. The Special Rapporteur appreciates the measured, intentional and deliberative approach shown by Belgium in responding to the terrorist threat and welcomes the continued dialogue at all levels of government and beyond. Belgium has much good practice to share, and its commitment to human rights is an essential dimension of its leadership in this regard.**

86. **With a view to ensuring improved compliance with Belgium's human rights obligations in the context of countering terrorism, the Special Rapporteur makes the following recommendations. She recommends that the Government:**

(a) **Establish a national human rights institutions that is compliant with the Paris Principles;**

(b) **Establish an independent, adequately resourced, overarching expert oversight body to undertake review of the overall operation of all counter-terrorism and national security powers, laws and policies;**

(c) **Ensure that terrorism-related offences are defined in line with the principle of legality and restricted to covering conduct that is terrorist in nature. She recommends that the offences of support to terrorist organizations and travel with terrorist intent be interpreted in line with human rights standards, limiting the resulting restrictions on human rights to what is necessary in a democratic society and proportionate to the social danger exposed by the conduct in question;**

(d) **Make victims of terrorism an absolute priority in addressing the consequences of terrorist attacks and continue working towards the elimination of persistent barriers to the realization of victims' human rights. The Special Rapporteur emphasizes the importance of meaningful cooperation with established victims' representative organizations in this regard;**

[58] See www.unicef.org/emerg/files/HSNBook.pdf.

[59] Convention on the Rights of the Child, arts. 3 and 2.

[60] See also CRC/C/BEL/CO/5-6, para. 50.

(e) **Ensure that policies and programmes aimed at preventing violent extremism are evidence based and scientifically sound. The Special Rapporteur recommends establishing rigorous, systematic and independent monitoring and evaluation mechanisms for such policies and programmes to serve as key tools in measuring effectiveness and enhancing transparency and accountability;**

(f) **Set up a clear legal framework governing professional secrecy and other confidentiality obligations in the context of countering terrorism and radicalization towards violence;**

(g) **Ensure that subjecting persons deprived of their liberty to individual security regimes or measures, placing them in D-Rad:Ex wings or flagging them for showing signs of radicalization is based on individual assessments against clearly established, scientifically sound criteria and a transparent process with particular emphasis on the right to an effective review;**

(h) **Design and implement specialized and individually tailored disengagement and reintegration programmes in prisons to serve persons convicted of terrorism-related offences, including persons subject to security regimes/measures or held in D-Rad:Ex wings, and engage Justice House capacities and expertise in this respect;**

(i) **Ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment without delay and set up an effective national preventive mechanism in compliance with the standards set up by the Protocol;**

(j) **Ensure that deprivation of nationality is non-arbitrary, non-discriminatory and in line with human rights standards;**

(k) **Amend the Immigration Act to ensure its compliance with the principle of legality and limit the scope of legal discretion conferred on implementing authorities; set up a meaningful and effective appeal process that automatically suspends the execution of decisions terminating residence rights pending appeal;**

(l) **Ensure that measures addressing advocacy of hate are compliant with articles 19 (3) and 20 of the International Covenant on Civil and Political Rights. The Special Rapporteur recommends that authorities be guided by the Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence;**

(m) **Ensure independent, effective and comprehensive oversight of powers related to data gathering, processing, sharing and retention in the counter-terrorism context and ensure that oversight bodies are adequately resourced;**

(n) **Set up adequate procedural safeguards and oversight of interception of communications and ensure that such measures are subject to prior authorization, ideally with a judicial component;**

(o) **Ensure that intelligence-sharing practices are underpinned by a sufficiently foreseeable and accessible domestic legal basis that provides for adequate safeguards against abuse and that such practices are subject to full oversight by the Standing Intelligence Agencies Review Committee;**

(p) **Strengthen the independence of the Standing Police Monitoring Committee by ensuring that it is composed of independent experts recruited from outside the police who are trained in human rights and equality standards;**

(q) **Assess and monitor discrimination based on racial, ethnic, national or religious stereotypes in the context of countering terrorism, including through systematic collection of relevant data;**

(r) **Ensure that public officials engaged in preventing and countering terrorism, including relevant oversight bodies, are trained in human rights and benefit from institutionally embedded human rights expertise;**

(s) **Take necessary and reasonable steps to intervene in favour of nationals abroad, should there be reasonable grounds to believe that they face treatment in flagrant violation of the human rights standards accepted by Belgium;**

(t) **Work out the modalities of repatriating children as a matter of priority, including the applicable procedure for the determination of citizenship and adequate rehabilitation and reintegration programmes.**