



Représentation permanente du Royaume de Belgique
à **GENEVE**

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La Mission permanente de la Belgique auprès des Nations-Unies et des autres organisations internationales à Genève présente ses compliments au Service des procédures spéciales et a l'honneur de se référer à son courrier du 15 octobre 2018 (votre ref AL BEL 1/2018) concernant une communication conjointe des procédures spéciales envoyée par le Groupe de travail sur la détention arbitraire; la Rapporteuse spéciale sur les exécutions extrajudiciaires, sommaires ou arbitraires; le Groupe de travail sur la question de l'utilisation des mercenaires comme moyen de violer les droits de l'homme et d'empêcher l'exercice du droit des peuples à disposer d'eux-mêmes; la Rapporteuse spéciale sur la promotion et la protection des droits de l'homme et des libertés fondamentales dans la lutte antiterroriste; et le Rapporteur spécial sur la torture et autres peines ou traitements cruels, inhumains ou dégradants.

La Mission permanente de la Belgique a l'honneur de soumettre, en pièces jointes, les observations de la Belgique à propos de cette communication, accompagnés de ses annexes.

La Mission permanente de la Belgique auprès des Nations-Unies et des autres organisations internationales à Genève saisit cette opportunité pour renouveler au Service des procédures spéciales les assurances de sa haute considération.

Fait à Genève, le 21 décembre 2018



Service des procédures spéciales
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JOINT COMMUNICATION OF THE SPECIAL PROCEDURES OF 15 OCTOBER 2018
RESPONSE OF THE KINGDOM OF BELGIUM

Reference : AL BEL 1/2018

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GENERAL INFORMATION

I. Belgium and its CT approach

The terrorist threat is increasingly diverse and geographically diffuse. It remains significant, complex, and very unpredictable. Since 2014, several terrorist attacks were planned or carried out in Belgium: the attack against the Jewish museum in Brussels (24/05/2014), the plot in Verviers (disrupted on 15/01/2015), the disrupted Thalys attack (21/08/2015), the Paris attacks (13/11/2015), the Brussels bombings (22/03/2016), attacks against police officers in Charleroi (06/08/2016) and attacks against police officers in Liège (29/05/2018).

In order to contextualize the Belgian position, this first part gives an overview of the internal Belgian CT approach. In recent years, **the Belgian authorities have reinforced the legal and institutional framework in order to prevent radicalisation, violent extremism and terrorism and to bring to justice those involved in or supportive of acts of terrorism. The Belgian counter terrorism approach is comprehensive, including preventive and repressive measures as well as efforts for rehabilitation and reintegration. Information sharing and inter-service coordination has been reinforced, and international cooperation is being enhanced. The Belgian CT policy is pursued with due regard for human rights, fundamental freedoms and the rule of law.**

Like many other countries targeted by terrorism, Belgium is an open and democratic society with Human Rights and Fundamental freedoms at its core. Committed to protecting our citizens and all those who have chosen Belgium as their home, the Belgian Government remains firmly resolved to protect those values in our response to terrorism.

Belgium has always stood ready to take up its responsibility while respecting its international commitments with regard to human rights and will continue to do so in the future. The Belgian authorities have decided for a resolutely holistic approach to combatting violent extremism and terrorism, where prevention, repression and duty of care go hand in hand.

Since the creation of the United Nations, Belgium has been at the forefront with regards to Human Rights commitments as illustrated by its active engagement in the work of the Human Rights Council, the Universal Periodic Review, as well as its unwavering support for special procedures and treaty bodies. Belgium also plays a very active role, in both the Human Rights Council (Belgium is at the time of writing member until end of 2018) and the 3rd Committee of the UN General Assembly, with regard to the promotion of initiatives which underline the Human Rights obligations of States when combatting terrorism. This commitment to Human Rights is implemented in our national policies where Human Rights, Democracy and Rule of Law remain the ultimate benchmarks to which all policies and actions are measured. Belgium supports firm multilateral action against terrorism and recognizes the central role of the UN.

Human rights, the rule of law and democracy are principles that lie at the basis of Belgian society and are guaranteed by the Constitution.

To this end, laws and federate laws guarantee among others “the rights and freedoms of ideological and philosophical minorities”.

Following the rising threat from Daesh and the issue of the foreign fighters, **multilateral, regional and bilateral cooperation specifically dedicated to countering terrorism and extremist violence** increased substantially in recent years at different levels and within different international institutions and fora. Belgium, as a member of the Coalition Against Daesh, supports in this framework the capacity building within Iraq (cfr infra).

On a regional level, important work is done within the **Council of Europe** towards legal standard setting to address the various forms of terrorism and extremist violence as well as preventive work through education initiatives, as well as projects to address radicalization on the internet or in prisons. During the **Belgian presidency of the Committee of Ministers of the Council of Europe in 2015**, a number of initiatives were adopted or launched in this regard, including the **Additional Protocol to the Convention of the Council of Europe for the Prevention of Terrorism**, referred to in the Communication by the 5 Special Procedures. This shows Belgium’s commitment to human rights and fundamental freedoms while countering terrorism, and Belgium’s willingness to take responsibility in its role as president of the Committee of Ministers and to confront the difficult questions – including on multilateral level - regarding complex and politically sensitive issues states are faced with.

The EU also provides an important framework to enhance cooperation and engage with third countries to counter radicalization and violent extremism, including Iraq, through its CT Coordinator Gilles de Kerchove, who has the Belgian nationality.

Furthermore, Belgium plays an active role in the Global anti-Daesh Coalition, through military action, humanitarian/stabilization contribution and participation in all WGs (military, FTF, counter narrative, counter finance).

Belgium also takes its responsibility **when it comes to countering financial flows of terrorist entities on a national, European and global level**. At national level, the Belgian Financial Intelligence Processing Unit (CTIF-CFI) is the most important instrument used to control money laundering and terrorism financing. At international level, two tools cannot go unmentioned, i.e. the 5th Anti-money laundering Directive (5AMLD) at European level and the Financial Action Task Force (FATF-GAFI). The Belgian expertise with its balanced approach in counter-terrorism is widely recognized, as is demonstrated by the appointments of Belgians at key international positions regarding counter-terrorism.

II. Death Penalty – position of Belgium and active engagement to fight for its abolition

Belgium has a principled position against the death penalty, in line with Belgium's international obligations under the European Convention on Human Rights and in line with the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. **Belgium has not applied the death penalty since a long time:** the last execution during peacetime took place in 1863. After the First and Second World War, some executions took place for crimes during the war. Belgium abolished the death penalty by law on 10th of July 1996 – this change was subsequently reflected in the Constitution (article 14bis – 2nd of February 2005). The abolition of the death penalty in Belgium is absolute and applies to all crimes, committed in all situations, including war time. Belgium ratified the Second Facultative Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty (6 December 1998) as well as Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the Abolition of the Death Penalty (in peacetime) (10 December 1998) and Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances (including wartime) (13 June 2003).

The fight for the abolition of the death penalty is a priority for Belgium and the EU.

The EU holds **a strong and principled position against the death penalty in all circumstances and for all cases**. The universal abolition of the death penalty is **one of the key priorities of its human rights policy**. Belgium fully supports this position: capital punishment is inhumane, degrading and unnecessary. As a matter of fact, there is no valid scientific evidence to support that the death penalty deters crime more effectively than other punishments. Furthermore, any miscarriage of justice, which is a possibility in any judiciary no matter how advanced it is, could lead to the intentional killing of an innocent person by state authorities.

Next to this principled position, Belgium dedicated special efforts on the fight for the abolishment of the death penalty. Since 2013, Belgium is member of the **support group of the International Commission against the Death Penalty (ICDP)**. This Commission exists since 2010 and consists of 20 independent persons who are internationally acknowledged in the field of Human Rights. The commissars are politically and logistically supported by the cross-regional support group to which Belgium belongs. The Belgian Commissar is Professor Marc BOSSUYT, who was one of the drivers behind the Second Optional Protocol at the International Covenant of Civil and Political Rights, aiming at the abolition of the death penalty.

Belgium is also member of the **'Friends of the Second Optional Protocol to the International Covenant on Civil and Political Rights'**. Together with other States and NGOs, Belgium advocates for the ratification of the Second Protocol to the International Covenant of Civil and Political Rights aiming at the abolition of the death penalty that currently counts 86 ratifications.

Finally, Belgium is a member of the '**Global Alliance to end trade in goods for torture and capital punishment**', launched by EU Trade Commissioner MALMSTROM – this alliance encourages and supports countries to adopt measures to control and restrict exports of such products. The Alliance also monitors trade routes and exchange information in order to put an end to this trade.

In line with these policies, Belgium will co-host the World Congress Against the Death Penalty in February 2019 together with the European Union. An invitation for a high-level delegation to attend the Congress has been extended to Iraq.

Belgium has maintained and discussed this principled position in its contacts on all levels with states who have not yet abolished the death penalty, including Iraq.

ANSWERS TO THE SIX QUESTIONS OF THE JOINT COMMUNICATION OF THE 5 SPECIAL PROCEDURES

1. Quelle est la position du Gouvernement de votre Excellence sur les poursuites engagées à l'encontre de ses ressortissants en Iraq en vertu de la loi anti-terrorisme n. 13 de 2005, y compris pour des crimes qui prévoient la peine de mort ?

Le Gouvernement est-il intervenu, ou va-t-il l'intention d'intervenir, afin de protéger les droits de ses ressortissants et d'assurer en particulier le respect du droit à un procès équitable lorsque ces derniers sont poursuivis en Iraq, et risquent de subir des mauvais traitements et la peine capitale ?

Currently, the Government of Belgium is aware of two adult males that are held in detention in Iraq who have also the Belgian nationality next to another nationality. Both are or were presumably prosecuted for membership of Da'esh under the Iraqi Law No.13, as the Government of Belgium has not received any formal communication relating to the charges.

While this has not been formally communicated to the Government of Belgium by the Government of Iraq, one person a first individual (further: person A) has been convicted to the death penalty, presumably under article 4 of Law No. 13, in May 2018. A second person (further person B) is believed to be held in presumably pre-trial detention. However, it is not known whether he is already charged and if so, what he has been charged with and it remains unclear what timeline, if any, for trial is foreseen.

Despite repeated formal requests, the Government of Belgium has not received precise details about the charges brought against the two individuals who also have the Belgian nationality next to a second nationality, the particulars of the specific cases including charges as well as the legal timelines and state of play of appeal procedures nor the precise basis of the conviction in the one case where the sentence is pronounced.

Different actions on all levels are taken in order to convey the Belgian concerns regarding the challenges faced by the Iraqi judiciary, the application of the death penalty and the legal basis for counterterrorism policy in Iraq.

On the level of the United Nations, Belgium actively participated in **Iraq's two UPR cycles**. Belgium made recommendations to Iraq relating to the death penalty: Belgium **recommended the abolition of the death penalty** (inviting Iraq to become a state party to the Second Facultative Protocol to the International Covenant on Civil and Political Rights) and in an intermediate phase, the immediate installation of a **moratorium on the death penalty with a view to abolition** in the future. Iraq noted these recommendations on both occasions.

Another recommendation of Belgium was about the **respect for the international minimum standards on its application as long as the death penalty is maintained**, as laid out in the United Nations **Economic and Social Council Safeguards Guaranteeing Protection of Rights of those Facing the Death Penalty, ECOSOC Res. 1996/15, UN Doc E/CN.15/1996/15 (1996)**. Iraq supported this recommendation. Belgium is awaiting an update from Iraq on the implementation of this recommendation. Also at the United Nations, Belgium underlined its attention to questions of accountability with respect for fundamental freedoms and human rights by organizing a side event together with Iraq and the UK on "*The fight against impunity for atrocities: bringing Daesh to justice*" in relation to the crimes committed by Daesh, during UNGA71. Speakers included the UNHCHR, the UN Special Advisor on the Prevention of Genocide, and Salil SHETTY of Amnesty International delivered a statement.

As an **EU member state, Belgium evidently is at the basis of, and supports the EU human rights policy conducted in Iraq**. Given Iraq's third place in terms of use of the death penalty according to reports from 2014 (latest information available) from the UNAMI Human Rights Office and the report of OHCHR on the Death Penalty in Iraq that was also mentioned in the Joint Communication, the EU advocates the immediate establishment of a moratorium on the use of the death penalty with a view of abolition. The EU maintains an active engagement and works with the Government of Iraq on improving the rule of law, and the full respect of human rights and fundamental freedoms. This happens through capacity building in order to improve the human rights situation in Iraq. Projects supported by the European Union include work to the Iraqi Council of Representatives in Human Rights committees; support to CSOs; specific projects of support to those in detention and their families; ICMP for missing persons. Support for Rule of Law is amongst the highest priorities and translates into improvement of detention conditions, judiciary and policing methods). The EU Advisory Mission also works on the civilian aspects of Iraq's Security Strategy, including specific human rights expertise.

Concerns that are raised systematically by the Government of Belgium with the Government of Iraq, on bilateral level and including through the contacts of the EU, are the lack of transparency, information, due process and accountability. Particular areas of concern include absence of safeguards for the rights of those facing the death penalty, the **lack of guarantees to a fair trial and due process in proceedings, the allegations of the use of torture to obtain confessions, the broad application of article 4 of Law No. 13, the lack of distinction being made for the severity of the crimes, the detention conditions**, failure at times for access of lawyers and failure to notify embassies in a timely manner of arrest and detention of nationals.

The Government of Iraq does not share statistics relating to the death penalty with the Government of Belgium. This relates to general statistics on the use of death penalty in Iraq as well as specific information on Belgian nationals. The **Government of Belgium is opposed to the death penalty in all circumstances and is actively engaged in the campaign for the abolition of the death penalty globally** (cfr. supra). The same position is being systematically communicated both on European and Belgian bilateral level in contacts with the Government of Iraq.

In line with the Belgian position regarding counterterrorism policy (cfr supra), Belgium pleads internationally for a comprehensive approach to counterterrorism where repression and duty of care go hand in hand, **while respecting human rights and fundamental freedoms in line with the international human rights obligations, obligations that Iraq also subscribed to**. Belgium systematically defends this position in multilateral and bilateral settings, including with the Government of Iraq. In particular, Belgium is following with interest the announced reform of Law No. 13 as included in the Iraqi National Action Plan on Human Rights of 2011. The Plan foresees both *“the reduction of the death penalty causes across the legislation”* as well as the amendments of the Law No. 13 to *“guarantee the protection of basic rights and judicial control”*.

Focusing on the bilateral contacts, it is important to note **that Belgium is represented in Iraq by an accredited non-resident Ambassador** who is stationed in Amman, Jordan (since 2009). There has been a gap in diplomatic representation on the level of Ambassador between 1991 (when the then-residing Belgian Ambassador left Bagdad) and 2006. Belgium is not represented on a permanent basis in Iraq on the diplomatic or consular level, and neither has an honorary consul. This makes the organization of visits somewhat challenging.

On the **bilateral level**, the **issues of the death penalty and counterterrorism** are raised **at all levels, including the Ministerial level** with the Iraqi counterparts. The Deputy Prime Minister and Minister of Foreign Affairs has raised Belgium’s principled position regarding the death penalty on multiple occasions. The Deputy Prime Minister and Minister of Foreign Affairs has met bilaterally in person with his former Iraqi counterpart Ibrahim AL-JAFAARI in person regularly, twice on bilateral grounds and in the framework of the ministerial meetings of the International Coalition against Daesh. Detention circumstances, safeguard to due process as well as the death penalty have been discussed in relation to the individual cases, and Belgium has noted the position of the Government of Iraq on this matter.

In April 2016 the Minister of Interior Affairs, the Minister of Defense together with the State Secretary for Asylum and Migration brought a visit to Bagdad and Erbil where they met PM ABADI and Minister of Migration MOHAMED. During the visit, declarations of intention were signed in the domain of security and migration policy – these included provisions of information sharing regarding foreign terrorist fighters who are arrested in Iraq or who have the intention to travel back to Belgium. At that time, the aforementioned cases A and B were not yet known to Belgium as presumably the individuals were not yet arrested by Iraqi security forces.

The most recent bilateral meeting between Belgium and Iraq took place in October 2018 on level of Director General Bilateral Affairs of the Federal Public Service on the Belgian side, and vice-minister of Foreign Affairs Nazar AL-KHAIRLULLA from the Iraqi side. The concerns of Belgium regarding the application of the death penalty, the challenges Iraq faces in the judiciary domain as well as the fight against terrorism with respect for human rights & fundamental freedoms in line with Iraq’s international obligations were part and parcel of the discussions. Iraq also informed Belgium of its position in these matters.

Belgium also contributes financially in the framework of the initiatives of the United Nations for the stabilization and the political solution to the conflict in Iraq, including a focus on the judiciary system. Iraq received 4.5 mio EUR for humanitarian aid, 3 mio EUR for stabilization and 500.000 EUR through the ICRC – in total 7.7 mio EUR in aid was announced at the donor conference in Kuwait in February 2018. The reconstruction efforts in the liberated areas, together with the overall political, social and economic consolidation of the Iraqi society remains a gigantic challenge. While the improving economic situation and the growing oil incomes will help the Iraqi authorities in assuming this role, Belgium, together with other the international partners, stands ready to continue its contribution, in particular to the stabilization of those regions, which are most vulnerable to radicalization and insurgencies, identified by UNDP in cooperation with the Coalition against Daesh, in particular via ongoing and planned contributions to the UNDP Stabilization Fund for Iraq in 2018 and 2019. Belgium, as a Member of the Coalition, is still present with a significant military contribution in Iraq in order to advise and assist the Iraqi Security Forces, including assisting in increasing their preparedness against ongoing insurgencies by Daesh or possible other extremist forces (training, advising, assisting).

Turning to the specifics of the individual cases of the two men held in presumably (pre-trial) detention in Iraq, the Government of Belgium has responded to all the formal requests of the Government of Iraq related to the two individuals in detention, either through the Federal Public Service of Foreign Affairs in Brussels via the Iraqi Embassy or through our Embassy in Amman to the Iraqi authorities directly, between end of 2014 to date.

While providing the requested information to the Government of Iraq, **the Government of Belgium has at every such occasion systematically and formally asked information** about the individual case (charges, substance of conviction if applicable) and **systematically and formally indicated Belgium's principled position against the death penalty**: *"... seizes the opportunity to draw the attention of the Iraqi authorities on Belgium's long-standing position regarding the death penalty. It would like to underline that it is opposed to the death penalty being applied on Belgian nationals."*¹ This systematic communication was coordinated and the same messages were sent from the Federal Public Service of Foreign Affairs to the Embassy of Iraq in Brussels and from the Embassy of Belgium in Amman to the Iraqi authorities. See also the annex for an example of a Verbal Note. While the Iraqi authorities shared some information, some of the questions have not yet received an answer.

In case of person A, when it became clear that he was held in pre-trial detention, the messaging as described above (concerns regarding lack of respect for fair trial and due process standards under Iraq's international human rights obligations) through different levels continued. The Embassy in Amman nor the Federal Public Service of Foreign Affairs received a formal or informal notification of the start of the trial or at the moment the judgement was delivered. Through the public domain, it became clear that person A was sentenced to death in May 2018. In order to confirm the news, the Government of Belgium through the Consular Department in the Federal Public Service of Foreign Affairs, established contact with the Embassy of Iraq in Brussels.

¹ See annex 1 – example of a Verbal Note at the attention of the Iraqi Government

During this phone conversation, Belgium reiterated immediately its principled position regarding the death penalty, the Belgian opposition to the death penalty being applied to Belgian nationals as well as the call to commute the sentence given to person A to life imprisonment.

The Deputy Prime Minister and Minister of Foreign Affairs personally contacted his Iraqi colleague Minister Mohamed A. ALHAKIM regarding this case, conveying the same three key messages, including calls for ensuring fair trial and due process during the proceedings. The Deputy Minister and Minister of Foreign Affairs also spoke publicly about this contact with his Iraqi counterpart in the Belgian press.

The Belgian Embassy in Amman was instructed to immediately reach out to the Government of Iraq in order to bring the same messages relating to the death penalty, the call for the sentence to be commuted to life imprisonment and the opposition to the application of the death penalty to Belgian nationals.

Belgium has continued to plead to commute the death penalty into life imprisonment for person A through the different channels at our disposal.

As for more specific information on assistance, please also see the answer to question 4 where the framework of consular assistance is being contextualized in relation to the questions under reference.

2. Est-ce que le Gouvernement belge demande l'extradition de ses ressortissants qui pourraient être poursuivis pour terrorisme en Iraq ?

Le gouvernement ne demande d'extradition que s'il est saisi en ce sens par les autorités judiciaires belges compétences. Le gouvernement belge n'a à ce jour pas été saisi d'une demande d'extradition visant des ressortissants belges actuellement localisés en Irak.

Belgium has a strict treaty-based requirement for extradition with non-European Union countries. With EU-member states, the matter is regulated through the system of the European Arrest Warrant.

At this point in time, a legal basis for cooperation on extradition with Iraq has not been established. Without the basis of a treaty, extradition cannot be permitted according to Belgian internal law, even if all formal and material requirements are met. According to information from the European Commission, no European Union member state signed an extradition treaty with Iraq.

3. Veuillez indiquer si le Gouvernement de votre Excellence est intervenu auprès des autorités irakiennes afin d'obtenir des informations officielles quant au nombre et à l'identité des ressortissants français en instance de procès ou condamnés à mort en Iraq pour association ou appartenance à « l'Etat Islamique ». Nous saurions gré au Gouvernement belge de partager ces informations avec nous, afin que nous puissions effectuer un suivi auprès des autorités irakiennes.

On the EU level, contacts between the EU CT Coordinator and the Iraqi President of the High Judiciary Council as well as the Advisor on National Security of Iraq earlier in 2018, might lead to more clarity on the subject of the precise number of foreign fighters, listed per nationality, in detention in Iraq, whether condemned or awaiting trial. At the moment of writing these statistics had not been transferred as far as Belgium is aware.

According to the EU-wide General Data Protection Directive (May 2018), the Federal Public Service of Foreign Affairs is not in a position to pass on personal data to third parties given it cannot fulfill the requirements needed for such sharing. The information the FPS can share is therefore general in nature.

At the moment, the Government of Belgium disposes of a minimum of formally confirmed information relating to two male adults, who also have a second nationality other than the Belgian.

The Government of Belgium has answered to formal questions from the Government of Iraq – these questions related to the confirmation of the Belgian nationality of the two individuals in presumably (pre-trial) detention in Iraq. Person A has presumably been sentenced to death in May 2018 and awaits execution at the time of writing, person B is presumably currently held in pre-trial detention.

This being said, the names of both persons have been in the public domain (press articles, tv documentaries...).

4. Veuillez indiquer si la protection consulaire a été accordée à des ressortissants belges et les mesures adoptées afin d'assurer que leur droits humains soient pleinement respectés. Si cette protection n'a pas été accordée à ces personnes, veuillez indiquer les raisons et en quoi cela est compatible avec les obligations internationales en matière de droits de l'homme qui incombent à la Belgique en vertu des Conventions internationales et régionales qu'elle a ratifiées.

Concerning consular assistance, it is important to note that consular activities in Belgium are legally coded in the Consular Code. The Code goes beyond the Treaty of Vienna on Consular relations and creates a right to consular assistance for Belgian nationals in its article 75. This right is however not absolute.

Relative to Article 5 of the Vienna Convention on Consular Relations, in which consular functions are "inter alia" identified, Belgium does offer consular assistance and defines the situations in which it constitutes a right in article 78 of the Consular Code.

Article 78 : *L'assistance consulaire concerne les situations suivantes:*

1. *le décès d'un Belge;*
2. *l'accident grave survenu à un Belge;*
3. *le crime grave dont est victime un Belge;*
4. *la disparition inquiétante d'un Belge*
5. *l'arrestation ou la détention d'un Belge;*
6. *la situation de détresse extrême dans laquelle se trouve un Belge;*
7. *la crise consulaire majeure;*
8. *l'enlèvement international d'enfants lorsque l'enfant et/ou un des parents de celui-ci sont Belges.*

The right conferred in article 78 is however limited by the circumstances explicitly listed in article 83 and article 79:

Article 83 : *Ne peuvent pas prétendre à l'assistance consulaire dans le cadre des situations décrites à l'article 78, les Belges qui:*

1. *se sont rendus dans une région pour laquelle un avis de voyage du Service public fédéral Affaires étrangères, Commerce extérieur et Coopération au Développement déconseille tout voyage;*
2. *se sont rendus dans une région où sévit un conflit armé;*
3. *n'ont pas donné suite à l'appel du Service public fédéral Affaires étrangères, Commerce extérieur et Coopération au Développement de quitter la région où ils séjournent ;*
4. *prennent des risques démesurés, sans s'assurer en conséquence*

For sake of completeness, article 79 of the Consular Code excludes the right to consular assistance to Belgians with another nationality in case they find themselves in the country of this second nationality.

Article 79: *Ne peuvent prétendre à l'assistance consulaire les Belges qui possèdent aussi la nationalité de l'Etat dans lequel l'assistance consulaire est demandée, lorsque le consentement des autorités locales est requis. »*

This article does not apply to individuals A and B that are the subject of this document, since the second nationality, next to the Belgian nationality, is not the Iraqi one.

Both articles 79 and 83 of the Consular Code limit the right to consular assistance, but this limitations do not exclude the possibility that a type of assistance can be granted by the Belgian state, for example on humanitarian grounds.

The articles limiting the right to consular assistance are explicitly written with the aim to **request and encourage responsible behavior of Belgians traveling or living abroad**, as is explained in the explanatory memorandum to the law. The memorandum explicitly states that this approach has been adopted with a view to encourage responsible behavior and it is not an instrument for exclusion from consular assistance².

The application of the provisions of the Consular Code to the specific individuals who have a double nationality of which one is Belgian, held in (pre-trial) detention in Iraq, means that both individuals lost their *right* to consular assistance from Belgium according to article 83 1st, and possibly the 2nd and 4th paragraph of the Consular Code. At the same time, the explanatory memorandum to the Consular Code differs **between the right to consular assistance and the possibility to be granted a type of assistance** - despite the fact the citizen cannot claim the right anymore in the latter situation.

The two individuals who also have Belgian nationality in Iraq, were granted assistance through actions described supra. The Government of Belgium is monitoring their cases closely, requesting the Government of Iraq for details regarding the charges, the substance of conviction and the timelines of trials. In addition, there has been formal, written and spoken, direct communication to the Government of Iraq up to Ministerial level to voice the Belgian principled opposition against the use of the death penalty and for it to applied to Belgian nationals. By doing so, Belgium recognizes the rights applicable to the Belgians under the ICCPR art 6 (1) to which Belgium and Iraq are state parties. At the same time, Belgium has made recommendations in the UPR related to the minimum safeguards guaranteeing protection of the rights of those facing the death penalty – sharing the concern regarding the compliance of Iraq with art 6 (2) of the ICCPR. Belgium remains in general engaged with countries that apply the death penalty through the outreach described earlier. Through its role in the Coalition Against Daesh Belgium advocates a human rights based approach to CT and supports capacity building in Iraq related to the security sector. The different messages (as explained supra) on Belgian's position on the death penalty and counterterrorism, both in general as in relation to the individuals have been transferred on multiple occasions, including in direct relation to these cases.

There have not been visits to either of the individuals in (pre-trial) detention at this point in time due reasons of capacity and security concerns, and the fact that Belgium does not maintain an embassy in Iraq at the moment.

² Explanatory Memorandum - <http://www.dekamer.be/FLWB/pdf/54/2989/54K2989001.pdf>

5. Veuillez indiquer si le Gouvernement de votre Excellence a fourni des informations aux familles des ressortissants belges en attente de procès ou d'exécution, ou condamnés à mort pour terrorisme en Iraq concernant leur conditions de détention, les procès ou l'exécution.

In the case of person A, the Government of Belgium was contacted through the individual's lawyer. The Government of Belgium has responded to a written request of information by the lawyer of person A.

In the case of person B, who is presumably held in pre-trial detention, the Government of Belgium is in contact with B's father. The father expressed the wish to travel to Iraq to visit his son in detention and requested support from Belgium for the visa application at the Iraqi Embassy. While Belgium is not in a position to formally support the visa application, the services have been in contact with the father during his application process. The matter is still under consideration, at the time of writing it is not clear whether the father will receive the permission to travel to Iraq.

6. Veuillez indiquer quelles mesures ont été adoptées pour défendre des droits et assurer la protection des femmes et des enfants belges qui sont détenues en Iraq ou en attente de procès pour des infractions liées au terrorisme.

There are no known cases at the moment of Belgian women and children in detention in Iraq, or Belgian women or children who are prosecuted under Law No. 13 in Iraq. There are known Belgians in other territories.

Belgium is also funding the redaction of a **Handbook aiming to assist States in taking the human rights based approach to the treatment of children accompanying individuals suspected of being “foreign terrorist fighters”**. This Handbook is being drafted within the United Nations Counter-Terrorism Centre (UNCCT), the capacity-building arm of the United Nations Office of Counter-Terrorism. It is part of a project included in the CTITF Capacity Building Implementation Plan for Countering the Flow of Foreign Terrorist Fighters. It is still being drafted and foreseen publication is planned for 2019.

Belgian foreign policy has been traditionally attentive to children’s rights, and specifically to children’s rights in the context of the death penalty. In 2013, Belgium took an initiative for a resolution in the Human Rights Council on the **rights of children of parents who have been sentenced to death or were executed**. The resolution was adopted by consensus. This thematic work relating to the death penalty in the Human Rights Council is regular and part and parcel of Belgian foreign policy. In 2014, Belgium, together with France and Switzerland, launched another resolution about the death penalty. This happened with support of a cross-regional core group consisting of Benin, Costa Rica; Mexico, Moldova; Mongolia and Namibia. In 2015 the resolution treated the possible consequences of the death penalty on the enjoyment of human rights, and more specifically the right not to be tortured or other cruel, inhumane or degrading treatment while in 2017 the resolution treated the subject of the death penalty and the right to equal treatment and non-discrimination. The death penalty resolution is an initiative of Belgium to bring the death penalty to the agenda of the Human Rights Council every two years, in uneven years.