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 Haut-Commissariat aux Droits de l'Homme et a l'honneur de se référer à la communication conjointe urgente *UA BEL 1/2017* datée du 30 novembre 2017 et transmise à la Belgique par le Rapporteur spécial sur les droits de l'Homme des migrants, M. Felipe González Morales, le Rapporteur spécial sur la torture et autres peines ou traitements cruels, inhumains et dégradants, M. Nils Melzer, ainsi que l'Expert indépendant sur la situation des droits de l'Homme au Soudan, Aristide Nononsi.

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 deux annexes. L'annexe en néerlandais relative au respect du principe de non-refoulement dans l'organisation du retour des personnes vers le Soudan est en cours de traduction et sera communiquée à un stade ultérieur. La Mission permanente de la Belgique saurait gré au Haut-Commissariat de bien vouloir transmettre ces documents aux auteurs de ladite communication.

La Mission permanente de la Belgique auprès des Nations-Unies et des autres organisations internationales à Genève saisit cette opportunité pour renouveler au Haut-Commissariat aux Droits de l'Homme les assurances de sa haute considération.

Fait à Genève, le 2 mars 2018

Haut-Commissariat aux Droits de l'Homme

.be

Federal Public Service Home Affairs
General Directorate Immigration Office

Your Excellency,

The Belgium Government refers to the Joint urgent appeal of 30 November 2017 sent by the Special Rapporteur on the human rights of migrants ; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Independent Expert on the situation of human rights in Sudan.

While acknowledging work undertaken by the Committee to ensure that the voices of the organizations and individuals who submitted the allegations were heard, the Government strongly disagrees with these allegations.

Chapter I includes a description of the Belgian legislation on the detention and forced return of migrants residing illegally on the Belgian territory. The Government's responses to the questions in the urgent appeal are given in Chapter II, as well as an account of the steps that have been taken to fully ensure the rights and obligations in this regard. Concluding remarks are given in Chapter III.

The Government answers the questions in general terms. It regrets not being able to discuss details of an individual case. Information on specific cases is subject to duty of confidentiality, and therefore the Government is not in the position to comment on it.

However, in answer to question 9, a table is attached to this report regarding the whereabouts of the 103 Sudanese migrants arrested by the police in the Park Maximilian, as referred to in the Joint Urgent Appeal, as well as more detailed information on the number of Sudanese citizens that have been forcibly returned to their home country.

The Government underscores that the national legislation has established complaint mechanisms and appeals for judicial review by independent actors for cases of irregular migrants finding themselves in detention or to be forcibly returned. Anyone whose rights have been violated may submit a complaint or seek redress under the law. According to the information provided in this report, these national complaint mechanisms and/or courts have not found that unlawful detention and/or forced return have taken place. Moreover, it shows that in the majority of the cases presented before the Government national remedies have not been fully employed.

The Government holds that its policies and practices fulfill the obligations as set out in domestic and international law, for the following reasons.

Chapter I : Preliminary observations

1. International commitments

The Government urges its ambition to promote respect for human rights and fundamental freedoms.

In this regard, the Government has fully committed itself on an international level to, amongst others, the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the International Covenant on Civil and Political Rights (ICCPR), the International Convention on the Elimination of All Forms of Racial Discrimination, the Universal Declaration of Human Rights, as well as several other United Nations declarations, resolutions and conventions. The Government is entirely aware that the enjoyment of these rights must be available to all individuals, regardless of their nationality or statelessness, who find themselves in our territory.

The Government is also bound by its obligations set out by the European Union, being in this particular case the European Convention on Human Rights (ECHR), as well as the European Return Directive 2008/115/EG and the Dublin Regulations. The Member States of the European Union work closely together in order to set out a coherent migration policy in the fight against irregular migration. To this end, the Government conforms its actions to the European case-law, including case-law on the interpretation and application of article 3 ECHR.

More specifically, article 1 ECHR imposes a requirement for the State to protect human rights in accordance with Section 1, which includes prohibition of torture (article 3), right to liberty and security (article 5), freedom of expression (article 10), right to an effective remedy (article 13) and prohibition of discrimination (article 14). These are the rights that are allegedly violated according to the Joint Urgent Appeal.

2. Domestic law

Under article 191 of the Constitution "the State provides security for all citizens and residents on its territory except for the exceptions provided by law".

The Government wishes to underline the importance of the principle of non-discrimination, evenly endorsed in article 2 of the Universal Declaration on Human Rights, article 2 and 26 of the ICCPR and article 5(a) and 6 of the International Covenant on the Elimination of All Forms of Racial Discrimination. The Law on Combat of Discrimination is a reflection of this international commitment on a national level. Violations of the principle of non-discrimination are forbidden and give rise to criminal sanctions. To this end, national remedies are foreseen in domestic law.

It is regrettable that the allegations suggest the Sudanese migrants did not have equal and effective access to remedies for the vindication of their rights and freedoms. All citizens and residents may enjoy and practice their freedoms under the law, without discrimination, and no category of citizens of whatever description has precedence over others in the enjoyment or practice of rights and freedom. Anyone whose rights have been violated may submit a complaint and seek redress under the law. This also applies to the rights of migrants detained in immigration detention centres, which will be further discussed in Chapter II.

As to the right of access to information, embodied in article 19 ICCPR, which is a necessary condition to make an informed decision and to fully ensure the exercise of the freedom of expression, the Government has made tremendous efforts to make sure the Sudanese migrants were duly informed about their rights, given the precarious situation in which they found themselves.

Generally, the situation of migrants is regulated by the Law on entry into the territory, residence, settlement and removal of foreign nationals ("Alien Act") and a Royal Decree in execution of this Act.

With regard to this report, specific legislation has to be mentioned as well, for example the Royal Decree indicating the places as referred to in article 74/5 §1 of the Alien Act and the Royal Decree regarding the regime and the operational measures in the immigration detention centres (here after: Royal Decree on Immigration Detention Centres).

Article 5 ECHR stipulates "no one may have their movements restricted or to be arrested or imprisoned except in accordance with the law". This means no person may be arrested, searched, detained or imprisoned except in cases decreed by law and only in places designated for such purposes and for the period stipulated by the competent authorities.

In this connection article 7 of the Alien Act describes the possibility to detain every person residing on the territory without being in possession of the necessary documents, as described by article 2 of the Alien Act (being either any document required by an international treaty, a Law or a Decree; or a valid passport or an equivalent travel title, provided with a visa or a visa statement, valid for Belgium). According to article 21 of the Law on the Police Force, the police services supervise compliance with the legal provisions of the Alien Act. Thereto, they can arrest every foreign citizen who's not in possession of the above mentioned documents, as mentioned in article 34 §3 of the Law on the Police Force. The police services will then, in accordance to article 44/11/9 of the same Law, contact the Immigration Office in order to allow them to carry out their duties as set out in the Alien Act. It is the Immigration Office that, based on the information available on the individual and a consideration of the circumstances, decides on the further steps to be taken in each case, which can eventually lead to detention in an immigration detention centre. The detention places designated for immigration purposes are established in a separate Royal Decree indicating the places as referred to in article 74/5 §1 of the Alien Act. Limitations on the detention period are mentioned in article 7 of the Alien Act.

With regard to the removal, article 74/17 of the Alien Act explicitly states that "removal shall be temporarily suspended if the decision to return […] to the borders of the territory exposes the third-country national to a violation of the non-refoulement principle." The removal can also be postponed on the basis of specific circumstances, taking into account the physical or mental condition of the third-country national and/or technical reasons, such as the lack of identification.

3. Conclusion

As already mentioned above, national remedies are foreseen in domestic law, which will be discussed in more detail in Chapter II.

As regards to the right to liberty and security, international instruments allow exceptions as so far as it is embedded in the law and occurs according to the procedures. The decisions to arrest and detain the Sudanese migrants have been made in accordance with the procedures provided for this purpose. In the given circumstances each decision was duly motivated. Therefore the Immigration Office acted in compliance with the law.

In view of the effective removal of the Sudanese migrants, the Government has included article 3 ECHR in the evaluation of the individual assessment. This is further discussed in answer to Question 5.

In the opinion of the Government, the measures and safeguards in domestic law are compatible with international standards.

Chapter II : Response to the report findings

Please note that, throughout this report, a distinction must be made between the claimed and the real nationality. The arrests made by the police have taken place without any discrimination or prejudice, regardless the alleged nationality of the persons concerned. However, among these persons the number of alleged Sudanese nationals was rather high, although not all of them claiming to have the Sudanese nationality were eventually identified as being a Sudanese national. On the other hand, a small percentage of people denying to be Sudanese citizen were officially identified as such. Therefore the information and statistics on the so-called Sudanese population have to be put in perspective. However it may be, of all the migrants arrested in the Park Maximilian – whatever their alleged nationality - only 61 persons have been subjected to an interview with the Sudanese delegation, from which 43 have been confirmed as having Sudanese citizenship.

Question 1 ("Please provide any additional information and any comment you may have on the above-mentioned allegations.")

Before the police intervened, the Belgian Immigration Office together with Fedasil (the federal agency for the reception of asylum seekers)[1] organised repeatedly targeted information campaigns for the migrants residing in the Park Maximilian, as well as other interest groups who were very active in the field. Information brochures on the asylum procedure and on voluntary return available in their languages were distributed. So they received information in an oral and written way in their language about the possibilities of claiming asylum in Belgium, about the possibilities of assisted voluntary return and about the dangers wanting to go irregularly to the UK. Many of these persons chose not to apply for asylum.

In order to provide an answer to the general feeling of insecurity, problems of public health, safety and nuisance for local residents and commuters that had arisen in the vicinity of the North Station and the Park Maximilian, it was decided in collaboration with the police to arrest these persons, according to article 74/7 of the Alien Act, awaiting a decision of the Immigration Office. Each decision to detain a person is based on the examination of each individual case. Consequently, they were transferred to the immigration detention centres, as stipulated in article 74/5 of the Alien Act and regulated by the Royal Decree on Immigration Detention Centres.

Upon arrival in the immigration detention centre, every alleged Sudanese citizen, as well as all persons in detention in a closed detention centre, received again information about the possibilities of applying for asylum, and about the possibilities of appeal, as described in article 17 of the Royal Decree on Immigration Detention Centres. They were also requested to put their potential fears in writing, so that violations of article 3 ECHR could be verified.

While being in detention, the alleged Sudanese residents received information via the social workers and the direction of the detention centres, as well as possibilities to obtain this information in writing (translation in Arabic or other languages was foreseen, as well as documents about the procedures available in different languages). To this regard, brochures and leaflets were also available and could be consulted. None the less, none of the returnees claimed asylum (except for one, but he renounced from his application – this will be discussed later on).

[1] This agency is a public interest organisation created by the Program Law of 19 July 2001 and operational since May 2002. Fedasil is responsible for the reception of asylum seekers and other target groups and guarantees high-quality reception and conformity within the various reception structures. Fedasil coordinates the various voluntary return programmes.

Of the 207 alleged Sudanese citizens detained since 1/08/2017 only 33 claimed asylum (statistics up to and including 31st of January). This will be discussed in more detail in answer to question 7.

Question 2 ("Please provide information about any measures taken to guarantee the psychological and physical integrity of those Sudanese migrants returned to their home country.")

The Immigration Office made arrangements to provide support and follow-up for the returned Sudanese citizens. They are free to benefit from these arrangements, if they express the wish to do so, because this is on a voluntary basis.

In this regard the Immigration Office is a partner to the ERIN program (European Reintegration Network) whereby reintegration support and follow-up after forced return is possible. ERIN is a joint initiative, subsidized by the EU Commission, of various European countries (including the Netherlands, Germany, France, etc.) to enable reintegration support in the countries of origin (both after voluntary and forced return). The Immigration Office provides reintegration support and monitoring options after forced return in Afghanistan and Pakistan, among others.

The Immigration Office activated the ERIN module Sudan in October 2017 as to provide support to the Belgian returnees after their arrival. This support (such as airport pick-up, travel guidance, schooling, shelter facilities, social support) is provided in Sudan by IOM. The Sudanese citizens who qualify for the ERIN program are informed about this possibility in the closed centre as of 26/10/2017. They receive a personal letter to join IOM Sudan – located near the airport in Khartoum. The three persons who returned after 26/10/2017 were given the contact details of IOM Sudan, so that they could receive the necessary support after returning and could report any problems. None of these three persons made use of this.

The IOM unit in Sudan was likewise informed that six persons had already returned before the official activation of the ERIN contract on 26/10/2017. Two of these six persons turned to IOM for support. If these persons would present themselves at the IOM office, they could still claim ERIN support after approval of the Immigration Office. One person returned with IOM and subsequently also turned to IOM for support. In total three persons claimed assistance from IOM after return.

It was not opted to carry out on–the-spot monitoring by the Immigration Office or an Embassy (there is no Belgian Embassy in Sudan), since there were no indications of abuse or torture practices. Furthermore, other countries also return to Sudan and no reports of these returns confirm abuse. However, following the report of the Commissioner General for Refugees and Stateless persons, the Immigration Office has only just sent a liaison officer to Khartoum to check how monitoring mechanisms can take place.

Question 3 ("Please provide further information on standard procedures concerning information on all rights to be shared with migrants, including ensuring that migrants understand the grounds on which removal orders are based, the execution of removal orders, and remedies available.")

As mentioned above (Response to Question 1), in application of article 17 of the Royal Decree on Immigration Detention Centres, information is provided, upon arrival in the detention centre, to all new residents about:

- the reasons why they have been detained

- the appeal procedures against the return decision and the detention
- the "house rules" in the detention centres
- access to free legal counselling
- the right to an attorney
- the right to obtain medical and psychological care
- the right to express their own cult
- the possibilities to apply for asylum and the procedures linked to these applications
- the possibilities on assisted voluntary return with reintegration scheme as well as reintegration assistance after forced return (ERIN)
- the Dublin procedure
- the return procedures and how these are organized (a DVD is available to show to the resident how the returns are organized).

This information is given orally (translation is available) and in writing (brochures and leaflets are available). Moreover, every resident can, taking into account the operational management of the centre and in accordance with the house rules, contact the social service to ask information or to express concerns or to file a complaint.

Specifically for the needs of the alleged Sudanese residents information sessions were organised in every detention centre to inform them about their situation and possibilities.

After 26/10/2017 the Sudanese residents that were forced to return received leaflets with the information of the ERIN project and the contact information of the IOM Sudan office.

Question 4 ("Please provide further information on whether migrants, regardless of their status, are entitles to legal aid and interpretation, and how this is applied in the cases outlined in this communication.")

According to article 62 of the Royal Decree on the Immigration Detention Centres every detainee has the right to legal assistance. Free legal counselling is provided and is organized for all residents of the detention centres.

Just as all the residents, the alleged Sudanese citizens had the opportunity to benefit from existing front-line and second-line legal assistance. In the centre of Vottem, the Legal Aid Office gave an information session specifically to the Sudanese citizens on 06/10/2017.

The Royal Decree on Immigration Detention Centres arranges the use of this right in practice, including :

- the right to call an attorney free of charge;
- the right for the attorney to visit his client in the centre;
- the right to have confidential correspondence with an attorney.

In two detention centres the Legal Aid Office is at least one day a week present in the centre to offer legal aid. In the other detention centres a list of lawyers who can be contacted to provide legal aid is made available. Every detainee can ask a pro bono lawyer to represent him.

Question 5 ("Please inform us as to how individual assessments are carried out in each case, to accurately identify the protection needs of the 43 Sudanese migrants for whom travel documents were issued.')

Based on the information available to the Government at the time being, there was no risk in forcibly returning Sudanese citizens to Sudan.

The Government is aware of reports of independent international human rights organizations, such as Amnesty International, reporting problems in certain regions of Sudan, in particular the Blue Nile, Darfur and Southern Kordofan. Nevertheless, there is no information that people returning to Khartoum are facing a real risk of being exposed to torture or some other form of ill-treatment for the sole reason of having been in Europe and/or having applied for asylum and/or being in possession of a laissez-passer. On the contrary, statistical data illustrate that returns to Sudan (Khartoum), forcibly or on a voluntary basis, were still taking place, without problems occurring. For this reason, the situation in Khartoum is thus not considered of such a nature that there is a violation of article 3 ECHR, irrespective of the specific region the Sudanese citizens were originating from. .

Thus, only information about a real and personal risk of the individual by virtue of his own situation can possibly make this assessment shift to another conclusion. In this regard, the Government considers that it is mainly the responsibility of the individual to provide information or, to the extent possible, evidence of a risk, irrespective of his status (asylum-seeker or not). None of the Sudanese citizens has made an attempt to establish serious reasons and/or specific allegations he would face a real and personal risk upon return to his country of origin. On the contrary, the Sudanese citizens were repeatedly informed and advised by the Immigration Office and different NGO's to claim asylum if they feared torture, and other cruel, inhuman or degrading treatment or punishment upon return to Sudan, since the appropriate procedure for examining the need for protection is the asylum procedure.

In the end, only one of the persons removed to Khartoum applied for asylum but eventually he has withdrawn his request. None of the other returnees claimed asylum. Since these persons explicitly refused to apply for asylum, and given the fact that no specific detailed elements in relation to their individual situation were cited which made it possible to investigate and evaluate a potential violation of article 3 ECHR for the individual concerned, no thorough or extensive examination could take place.

Please note that the Sudanese citizens, even in the absence of an asylum application, were invited to share any information on their situation at any time. In this respect, as all the other residents in the centres, they had access to procedural safeguards (see answers to question 3 and 4) and possibilities for judicial review (Aliens Appeals Board) foreseen in domestic law. In the absence of individual elements only the general circumstances which were known to the Government at that point in time could be taken into account for the assessment.

The Government concludes that the assessment made a real risk of violation of article 3 ECHR not foreseeable, bearing in mind the general situation in Sudan and since there were no special distinguishing features in the case of the Sudanese migrants. For this reason the Government is of the opinion it has met his international legal obligations and commitments, including the principle of non-refoulement embodied in article 3 CAT.

In support of the above mentioned opinion, the report of the Office of the Commissioner General for Refugees and Stateless persons states that no evidence has been found of violations of article 3 ECHR for those who have been forcibly returned. Moreover, it has become clear that certain allegations were not truthful or manifestly contrary to other findings.

In the case of an asylum application, the assessment of article 3 ECHR is being investigated by the Office of the Commissioner General for Refugees and Stateless persons, who has proper means and resources to conduct this investigation. In the absence of an asylum application, it is in principal the responsibility of the Immigration Office to conduct the investigation, based on the information available. In this regard, the report states that article 3 ECHR poses an obligation to the state to have a more in depth-investigation

This has to be countered by the fact that an investigation of the elements is a shared responsibility, whereas the investigation can only take place if every party contributes. If there are no concrete elements, yet only little elements or brief answers, an investigation is obstructed. Moreover, many of the Sudanese citizens have not been completely honest about their personal details, in particular their nationality. The report evenly recognizes the possibility that declarations of persons are sometimes to be considered as opinions instead of facts, which makes it often very difficult to assess the potential risk. Thus, extreme caution is required. Although the situation in Sudan is alarming, it does not mean that every Sudanese national is at risk and in need for protection.

In line with the approach of the Commissioner General, the Government ensures that article 3 ECHR will be examined more thoroughly, in collaboration with experts specialized in this field. This would lead to a more profound decision, especially in the absence of an asylum application. Another possibility would be to consider statements that possibly give rise to concern as an implicit asylum application, in the case where the person concerned manifestly refuses to submit an asylum application himself. This pertinent refusal is often motivated by the fact that their final destination lays outside the Belgian territory (almost all of them want to travel to the UK). They want to avoid being sent back to Belgium in the context of a Dublin procedure if Belgium becomes the responsible state.[2]

Following the report of the Commissioner General, other minor adjustments will similarly implement the suggested recommendations. The Government is ambitious to fine-tune its current practice.

Question 6 ("Please inform us about measures taken to respect the rights and dignity of the 8 individuals who were allegedly forcibly returned.")

In general it can be stated that Belgium always works within the framework of the European Return Directive 2008/115/EG and his own strict national rules. Randomized checks are executed to see whether the outlined framework is followed. This is done by an independent service within the Federal Police, as mentioned in article 9/1 until article 9/4 of the Law on the Police Force, in accordance with article 74/15 §3 of the Alien Act. No additional measures were taken, since there are enough safeguards guaranteeing the respect of the rights and dignity of the individuals forcibly returned. Moreover, the members of the Federal Police responsible for the execution of the removal have not reported any incidents either.

Furthermore, other European countries, subjected to the same international and European legal framework, also return irregular migrants to Sudan and no reports of these removals confirm abuse.

[2] Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast)

	Voluntary return	Forced return
Bulgary	X	
Germany		X
France	X	X
Greece	X	X
Hongary	X	
Malta	X	
The Netherlands	X	X
Norway		X
Austria	X	
Romenia	X	X (not in 2017)
UK	X	X
Sweden	X	
Switzerland	X	X
Italy		X

In February and March 2016, Denmark and the United Kingdom carried out a joint fact-finding mission to Sudan, referring to the report "Sudan - Situation of Persons from Darfur, Southern Kordofan and Blue Nile in Khartoum - Joint Report of the Danish Immigration Service and UK Home Office Fact finding missions to Khartoum, Kampala and Nairobi Conducted February - March 2016."

This mission was carried out, among other things, to check the complaints of ill-treatment at the airport after return. This document includes testimonies from IOM, UNHCR and other international organizations. From the report it can be concluded that there is no general problem when returning to Sudan after a long absence or after an asylum application abroad.

Furthermore there is the IOM statement: "Based on past assistance records, IOM has not received any specific information on the treatment of voluntary or forcibly returned Sudanese nationals by the Sudanese authorities at Khartoum International Airport. The Organization closely monitors returns and will review and change/amend any measure within the AVRR procedures to countries where mistreatment of voluntary or forcibly returnees are reported. IOM did not receive any complaint by Sudanese returnees and IOM is not aware of specific profiles being deliberately targeted."

Summarizing: given that there were no indications of ill-treatment, no special measures were taken.

However, as a result of a great public interest in this matter, on the 20th of December, the Government has decided to temporarily suspend all forced returns to Sudan. An independent investigation by the Belgian Commissioner General for Refugees and Stateless Persons was ordered.

The results were published on 8th of February. Taking into account the recommendations of this research, the Government has decided to resume the execution of forced returns to Sudan on 13th of February, but only for the Sudanese nationals whose asylum application turned out negative. For persons who did not apply for asylum, an additional and more thorough investigation of article 3 ECHR will take place before a possible removal.

Question 7 ("Please inform us about the number of those that have applied for asylum, including those ordered to leave the country.")

The self-proclaimed Sudanese citizens were advised to claim asylum by the Immigration Office and different NGO's if they feared torture, and other cruel, inhuman or degrading treatment or punishment upon return to Sudan. At that time, only one of the persons removed to Khartoum applied for asylum but eventually he has withdrawn his request.

Meanwhile, 33 of the identified Sudanese citizen have decided to apply for asylum. Of those 33 applications, 22 led to a request in the framework of the Dublin agreement. Eleven asylum applications were handled on a national level by the Commissioner General for Refugees and Stateless Persons. Three persons have received status as refugee and 3 other persons received a final negative decision. As already mentioned above, one person withdrew his request. With exception of those inflicted in a Dublin procedure, none of the other Sudanese citizens, for whom a return to their country of origin is intended and who are still detained on 31st of January, have a pending asylum procedure.

For more details on this matter, reference is made to question 9.

There are no statistics available for asylum seekers who previously received a return decision but have not been detained. Overall, 143 persons claiming to be Sudanese citizen have applied for asylum between first of January and 30th of November 2017 (of whom 90 since August). This is an increase of the number of asylum requests in comparison to previous years (137 in 2015, 83 in 2016).

The Government stresses that this high number of asylum applications proves in itself that the Sudanese migrants have properly been informed about their rights and were sufficiently aware of the possibility to claim asylum, even though the allegations indicate the opposite (lack of adequate information, lack of assistance to file the claim, and so on). In the most cases the absence of an asylum application is the result of an individual choice, for example motivated by the will of the person concerned to travel to the UK, to evade the Dublin procedure or hesitation to file a claim for a personal reason.

Question 8 ("Please provide information on the legal framework of the collaboration by your Excellency's Government with the Government of Sudan with a view to facilitate the return of Sudanese migrants to their home country.")

There is no legal framework of collaboration between Belgium and Sudan. The interview delegation has been invited via a written statement. The practical organisation was taken care of by the Belgian Immigration Office; it used therefore the same modus operandi as for previous interview delegations of other third countries. The use of interview delegations, coming from central authorities of third countries, is a common practice in the EU and is already used since several years by many EU member states, which is encouraged by the EU in its Action Plan on Return[3]. Several other EU member states also organised identification missions from Sudan in recent years.

Despite the absence of an Agreement between the respective Governments, the collaboration was supervised by the Consular officer of the Embassy of Sudan in Brussels in close collaboration with members of the Belgian Immigration Office.

[3] Communication from the Commission to the European Parliament and the Council, COM(2015)453.

Given the high number of alleged Sudanese citizens in the immigration detention centres and in respect of the limitations on the detention period, according to article 7 of the Alien Act, in order to avoid unnecessary long detention, both parties have put a great deal of effort into organizing the identification mission as quickly and efficiently as possible and managing it properly, taking into account the safety of everyone concerned.

The report of the Office of the Commissioner General for Refugees and Stateless persons recommends, especially when the use of an identification mission is required, two precautionary measures. In the first place, it is recommended to have the presence of a representative of the Belgian authorities and an interpreter during the interviews to make sure no irregularities occur. Second, it has been advised to inform the persons concerned that an interview will take place with representatives (diplomats, delegation members or others) of a certain country. This does not have to be the country of his alleged nationality, especially if there are doubts about the credibility of his declared nationality, the sole purpose of the interview being to verify whether he is in fact a national of that country.

The Government wishes to underline once more that none of the interviewees has filed a complaint to address irregularities during the interview, although various possibilities are available to do so. Moreover several of the migrants who were interviewed by the Sudanese delegation and were later contacted by the Office of the Commissioner General for Refugees and Stateless Persons stated that they did feel neither pressured nor threatened by the identification mission.

Question 9 ("Please provide information about the whereabouts of the 103 Sudanese nationals who were arrested.")

For this information reference is made to the table in attachment. Please note that this information has been updated up to and including 31st of January.

Chapter III : Conclusions and response to recommendations

Against the above background, the Government fails to see how, in the given circumstances, it could have fulfilled his international obligations in a more rigorous way, taken into account all the measures already taken to ensure the protection of the human rights of the Sudanese migrants in this respect.

Nevertheless, following the allegations at the base of this Urgent Appeal, on 22nd of December the Government has requested the Office of the Commissioner General for Refugees and Stateless persons to make a thorough and in-depth research on the situation in Sudan regarding a risk assessment for Sudanese migrants to be returned to Sudan as a result of a decision of the Government.

Meanwhile, awaiting the results of this research, the Government refrained from executing forced returns to Sudan and continues to ensure to fully protect and adequately inform the identified Sudanese migrants who still remained in detention in the immigration detention centres.

As mentioned above, on 8th of February the Office of the Commissioner General for Refugees and Stateless persons has rendered the results of its research, which is included in attachment. Taking into account the recommendations of this research, the Government has decided to resume the execution of forced returns to Sudan on 13th of February, but only for the Sudanese nationals whose asylum application turned out negative. For persons who did not apply for asylum, an additional and more thorough investigation of article 3 ECHR will take place before a possible removal.

The Government assures to follow up on the recommendations in this research and take the appropriate measures as to fully comply with its international obligations.

Please accept, Excellency, the assurance of our highest consideration.

26 February 2018

Attachments :

- Table concerning whereabouts of the (alleged) Sudanese nationals
- Report of the Commissioner General for Refugees and Stateless persons