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Belgium: Returns to Sudan violated principle of *non-refoulement*

In September 2017, Belgian authorities in Brussels detained 99 Sudanese nationals, whom they believed to be irregularly present in the country. When authorities initiated proceedings for their repatriation, they invited Sudanese state officials to interview over 60 detained migrants and confirm their nationality. The Sudanese authorities issued 43 *laissez-passer* travel documents. Between October 2017 and December 2017, Belgium returned the first 10 Sudanese people to Khartoum.

According to testimonies from some of those returned to Sudan, as collected by the Tahrir Institute for Middle East Policy, reported in December 2017,¹ returnees were ill-treated by Sudanese officials upon arrival in Khartoum.² In response to these allegations, the Belgian government suspended further returns to Sudan and requested Belgium's Commissioner General for Refugees and Stateless Persons to conduct an inquiry into the allegations, which is currently ongoing.

On the basis of available evidence, recent returns to Sudan appear to have been realized in breach of international law, and in particular of the principle of *non-refoulement on both substantive and procedural grounds*. Current inquiries into the lawfulness of the returns constitute a welcome development to ensure accountability, which should be followed by adequate reforms to guarantee that return procedures are brought in line with Belgium's international obligations.

Detention, identification and expulsion of Sudanese people in Brussels

Parc Maximilian, a park close to the Brussels' North railway station, has been for many years a gathering place and camping site for refugees and migrants, many of African origin, who had crossed the Mediterranean Sea in search of protection and a better life in Europe. In early 2017 their numbers increased to several hundred, most likely at least in part due to the dismantling of camps in Calais, France. People staying in Parc Maximilian are widely perceived as people "in transit", since many of them do not wish to remain in Belgium but hope to reach the United Kingdom. Even those with protection needs sometimes refrain from submitting an asylum request in Belgium for this reason. Throughout September 2017, the Belgian police conducted large scale operations to verify refugees and migrants' identity and legal status. NGOs criticized police actions targeting migrants, because of allegations of excessive use of force and other abuses.³

¹ <https://www.hln.be/de-krant/teruggestuurde-soedanezen-opgepakt-en-gefolterd-bij-aankomst-a41bb49b>

² <https://www.hln.be/de-krant/teruggestuurde-soedanezen-opgepakt-en-gefolterd-bij-aankomst-a41bb49b>

³ Médecins du Monde, an international medical NGO that provides health care to the people in the park, reported on 18 January 2018 that – since it started operations in September 2017 – its doctors had received an average of two testimonies per day of

Between 4 September and 4 October 2017, the police conducted 30 round-ups in the area, leading to the apprehension of 653 people considered to be irregularly present in the country, 215 of whom claimed to be Sudanese.⁴ Ninety-nine of the Sudanese were placed in detention centres for irregular migrants pending deportation. The Belgian government aimed to return 47 of them to their country of origin, and the remaining 52 to the European country where they had been first registered.⁵ The State Secretary for Asylum and Migration said those detained explicitly stated they did not intend to claim asylum in Belgium.⁶

At the same time, since the Sudanese nationals whom Belgium sought to return to Sudan held no identification papers, the Belgian government invited a delegation of Sudanese officials to visit Belgium and the detained returnees, to confirm their nationality and provide them with travel documents. No bilateral readmission agreement was drafted nor were any arrangements agreed to in written form.⁷ Between 18 and 27 September, a three-person delegation travelling from Sudan for that purpose, together with representatives from the Sudanese embassy in Belgium, interviewed 61 individuals in different Belgian detention centres.⁸ Media reported that members of the delegation were agents of Sudan's National Intelligence and Security Service (NISS),⁹ a state agency that Amnesty International considers responsible for serious and widespread human rights violations.¹⁰ While the Belgian authorities claim that a Belgian official was present during the interviews, the official did not understand what was said (the language used for the interviews was Arabic and there was no interpreter present) and no recordings appear to have been made of the interviews.¹¹ Subsequently, the Sudanese authorities issued 43 *laissez-passer* travel documents.¹²

either police violence or confiscation of personal goods. The Minister of Interior downplayed the allegations. See: Radio 1 – De Ochtend interview with Belgium's Minister of Interior, 19 January 2018, <http://radioplus.be/#/radio1/herbeluister/c283ad79-8f4d-11e3-b45a-00163edf75b7/b1391cde-fcf0-11e7-92d6-02b7b76bf47f/>. See also: <https://www.doktersvandewereld.be/maximiliaanpark-vrees-voor-toename-geweld-bij-bepaalde-politie-eenheden> and <https://www.medecinsdumonde.be/migrants-en-transit-peu-de-migrants-%C3%A9conomiques-et-des-violences-polici%C3%A8res-persistantes>

⁴ Other sizable groups were reported as Eritrean (172) or Syrian (59) nationals, while the nationality of the remaining 207 individuals is unknown to Amnesty International.

⁵ These figures are for the period between 4 September and beginning of October and are sourced from: Belgian House of Representatives, Interior Affairs Committee, *Compte rendu - Commissions - Législature 54*, 4 October 2017, available at: <https://www.dekamer.be/doc/CCRI/html/54/ic742x.html>

⁶ Belgian House of Representatives, Interior Affairs Committee, *Compte rendu - Commissions - Législature 54*, 4 October 2017, available at: <https://www.dekamer.be/doc/CCRI/html/54/ic742x.html>

⁷ Belgian House of Representatives, Interior Affairs Committee, *Compte rendu - Commissions - Législature 54*, 4 October 2017, available at: <https://www.dekamer.be/doc/CCRI/html/54/ic742x.html>

⁸ This group of 61 individuals included self-declared Sudanese who had been in administrative detention pending return following arrests in other areas of the country.

⁹ See for example: <https://www.hln.be/nieuws/binnenland/-soedanees-identificatieteam-bestaat-volledig-uit-geheim-agenten-a3084e12/>. The Prime Minister responded that Belgium's security agencies and the Ministry for Foreign Affairs had screened the members of the delegation and that they were employees of Sudan's Ministry of Interior. Belgian House of Representatives, Interior Affairs Committee, *Compte rendu - Commissions - Législature 54*, 26 September 2017, available at: <https://www.dekamer.be/doc/CCRI/pdf/54/ic729x.pdf>

¹⁰ See for example: Amnesty International, *Courageous and resilient: Activists in Sudan speak out*, 20 September 2017, available at: <https://www.amnesty.org/en/documents/afr54/7124/2017/en/>

¹¹ Belgian House of Representatives, Interior Affairs Committee, *Compte rendu - Commissions - Législature 54*, 25 October

After the Immigration Office, Belgium's administrative body responsible for returns, conducted a "summary review" of the risks upon return,¹³ nine of the individuals identified by the Sudanese delegation were forcibly removed, returned to Khartoum by airplane between October and December 2017.¹⁴ One additional man was returned in the same period, having accepted, according to the government, what is known as an "assisted voluntary return" after having withdrawn his asylum claim.¹⁵

On 20 December 2017, the Tahrir Institute for Middle East Policy (TIMEP) published information and extracts from interviews with individuals who had been returned from Belgium, alleging that shortly after their arrival in Khartoum they were detained in a police station nearby and beaten by Sudanese authorities.¹⁶ TIMEP shared their report of the interviews and allegations with the Belgian authorities. It includes information that at least some of the returned Sudanese claim to come from conflict-affected areas of Sudan.

In response to these allegations, the Belgian government requested the Commissioner General for Refugees and Stateless Persons – Belgium's central asylum authority – to conduct an inquiry into the matter. It also announced a moratorium on returns to Sudan pending the outcome of the investigation.

Violations of the principle of *non-refoulement*

All states are entitled to regulate access and residence of foreigners on their territory and return people who are irregularly present on their territory to their country of origin. However, like any other state, Belgium is bound by the principle of *non-refoulement*, which is the cornerstone of refugee law, enshrined in customary international law and codified in different international treaties ratified by Belgium, as well as in EU law.¹⁷ Under this principle, all states are prohibited from sending anyone to a country where they would be at risk of serious human rights violations. The principle of *non-refoulement* must be observed in respect of anyone in removal, expulsion or extradition procedures, irrespective of whether a person has formally requested or obtained international protection. The principle applies to every country

2017, available at: <http://www.dekamer.be/doc/CCRI/pdf/54/ic758.pdf>

¹² Belgian House of Representatives, Interior Affairs Committee, *Compte rendu - Commissions - Législature 54*, 4 October 2017, available at: <https://www.dekamer.be/doc/CCRI/html/54/ic742x.html>

¹³ <https://www.hln.be/nieuws/binnenland/-de-verdediging-van-theo-francken-is-verbijsterend~a6e6dec3/>

¹⁴ Belgian House of Representatives, Interior Affairs Committee, *Compte rendu - Commissions - Législature 54*, 17 January 2018, available at <http://www.dekamer.be/doc/CCRI/pdf/54/ic797.pdf> and 22 December 2017, available at: <http://www.dekamer.be/doc/CCRI/pdf/54/ic791.pdf>

¹⁵ The man was not arrested near the Brussels North station and had been in migration detention since August 2017. The voluntary nature of the return has been questioned by local NGOs <http://www.levif.be/actualite/belgique/asile-et-soudan-un-retour-volontaire-force/article-normal-742231.html>. See also: De Morgen. 23 December 2017. "Teruggestuurde Sudanese: "Ik wist niet dat ik mijn eigen uitwijzing tekende" <https://www.demorgen.be/nieuws/teruggestuurde-sudanees-ik-wist-niet-dat-ik-mijn-eigen-uitwijzing-tekende-be0f1c20/>. See also: Belgian House of Representatives, Interior Affairs Committee, *Compte rendu - Commissions - Législature 54*, 25 October 2017, available at: <https://www.dekamer.be/doc/CCRI/pdf/54/ic758x.pdf>

¹⁶ <https://www.vrt.be/vrtnws/nl/2017/12/20/groep-teruggestuurde-soedanezen-bij-aankomst-daar-opgesloten-en/>

¹⁷ See, for example, Article 33(1) of the Convention Relating to the Status of Refugees; Article 3 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and Article 19.2 of the Charter of Fundamental Rights of the European Union. See also Article 3 of the European Convention on Human Rights and relevant jurisprudence, including *Hirsi Jamaa and Others vs Italy* (27765/09), European Court of Human Rights, Grand Chamber Judgement of 23 February 2012.

and protects every individual, whatever their country of origin: no country can be considered safe for repatriation in general, without an individualized assessment of the risks upon return. Collective expulsions, without an individualized assessment of personal circumstances, are also prohibited by Article 4 of Protocol 4 to the European Convention of Human Rights and Article 19.1 of the Charter of Fundamental Rights of the European Union. Both substantive and procedural safeguards must be put in place by States Parties in order to comply with these obligations. These include laws and procedures to be in place and to be enforced at all times to ensure that the individual circumstances of any individual subject to an expulsion are taken into account.

There is ample reason for concern when considering returns to Sudan, given that widespread and systematic human rights violations persist in the country, as documented by Amnesty International and other organizations. Armed conflicts persist in Darfur, Blue Nile and South Kordofan and the humanitarian situation in the three states remains dire, as conflicts continue to cause mass displacement and civilian casualties, and violations of human rights and humanitarian law have been perpetrated by all parties. The Sudanese President Omar al-Bashir is wanted by the International Criminal Court on charges of genocide, war crimes and crimes against humanity allegedly committed in Darfur from 2003 to 2008. Evidence gathered by Amnesty International indicates that, during the first eight months of 2016, Sudanese government forces committed at least 30 likely chemical attacks against civilians, including very young children, in Darfur.¹⁸

People coming from conflict areas are also at particular risk of persecution by Sudanese authorities. In 2017, the security forces targeted opposition party members, human rights defenders, students and political activists for arbitrary arrest, detention and other abuses, and the rights to freedom of expression, association and peaceful assembly were arbitrarily restricted.¹⁹ NISS officials maintain the power to detain any individual for up to four-and-a-half months without judicial review, which is often used to arbitrarily arrest and detain individuals, and to subject them to torture and other forms of ill-treatment. NISS agents are provided with protection from prosecution for any act committed in the course of their work, which has resulted in a pervasive culture of impunity.²⁰

In view of the conflicts and grave human rights abuses in Sudan, and of the specific risk of persecution of those originating from conflict-affected states – such as Darfur, South Kordofan and Blue Nile – Amnesty International considers that Sudanese individuals from those areas should not be returned to Sudan, where they would be at real risk of serious human rights violations.²¹ People coming from other areas of Sudan must not be sent back to Sudan either, if they are at risk of serious human rights violations, for instance by being

¹⁸ Amnesty International, Sudan: Credible evidence of the use of chemical weapons to kill and maim hundreds of civilians including children in Darfur revealed, 29 September 2016, <https://www.amnesty.org/en/latest/news/2016/09/sudan-credible-evidence-chemical-weapons-darfur-revealed/>

¹⁹ Amnesty International Report 2016/17, Sudan, available at: <https://www.amnesty.org/en/countries/africa/sudan/report-sudan/>

²⁰ See for example: Amnesty International, Courageous and resilient: Activists in Sudan speak out, 20 September 2017, available at: <https://www.amnesty.org/en/documents/afr54/7124/2017/en/> .

²¹ The specific need for international protection of people coming from these conflict-affected regions is acknowledged by Belgian authorities, which in general recognize either refugee status or subsidiary protection to virtually all Sudanese asylum-seekers coming from these areas. See letter from CGRS to Theo Francken, Secretary of State for Asylum and Migration, 24 October 2017, on file. See also <https://www.hln.be/nieuws/binnenland/-de-verdediging-van-theo-francken-is-verbijsterend-a6e6dec3/>

accused of being members of the opposition. In any case, the individual circumstances of any person subject to repatriation, and the specific risk each may be exposed to upon return, must be thoroughly assessed before issuing an expulsion order.

The recent returns to Sudan appear to have been realized in breach of the principle of *non-refoulement*, on substantive and procedural grounds.

Regarding substantive grounds, TIMEP reports that those returned to Sudan may have included people from conflict-ridden Darfur and that individuals returned to Khartoum were subsequently detained and ill-treated by Sudanese security officials. While Amnesty International has not been in a position to independently verify the testimonies collected by TIMEP, the organization wishes to highlight that such testimonies are consistent with others gathered by Amnesty International on the occasion of previous returns to Sudan from other countries. In January 2016, Amnesty International interviewed 12 Sudanese individuals, mostly from Darfur, who had been repatriated from Jordan the previous month: they alleged that upon return, they were arrested by NISS officials, interrogated about their tribal affiliation, accused of being “rebels” who “defamed Sudan’s reputation”, and tortured.²² Similarly, in August 2016 Amnesty International interviewed two Sudanese men – part of a group of 40 who had been forcibly returned to Sudan by Italy earlier that month. While both stated having been interrogated by national security agents upon arrival, one alleged having witnessed officials beating another returnee.²³ Some of the returnees, assisted by lawyers from Italian NGOs ASGI and ARCI, later submitted a legal case against Italy before the European Court of Human Rights, arguing that the expulsion was conducted in violation of the principle of *non-refoulement*. The Court considered the case admissible.²⁴

Secondly, in processing the return of the Sudanese nationals, Belgian authorities have disregarded key procedural guarantees against *refoulement*. In particular, although the individuals apparently did not express an intention to claim asylum in Belgium, the authorities still had an obligation to carefully analyse the individual circumstances of each of them to ensure that no person would be returned to face a risk of serious human rights violations, before making a decision to return them. Instead, while the Immigration Office, the administrative body responsible for returns, conducted a “summary review” of the risks upon return,²⁵ this did not appear to constitute the careful assessment required by international law. Having reviewed a form filled in regarding one of the 10 returns, Amnesty International notes that the form only includes a few generic questions about the risks the returnee may face, but it lacks any reference or question concerning the region of origin, ethnicity and reasons for leaving the country. These are all crucial elements for any assessment of the risks upon return. Statements given by the Secretary of State for Asylum and Migration before the Belgian Parliament confirm that the relevant authorities did not adequately investigate the region where the people originated from – in fact this was mostly unknown by the Belgian

²² Amnesty International, Hotspot Italy. How EU’s flagship approach leads to violations of refugee and migrant rights, November 2016, p. 45. <https://www.amnesty.org/en/documents/eur30/5004/2016/en>

²³ Amnesty International, Hotspot Italy: How EU’s flagship approach leads to violations of refugee and migrant rights, October 2016, pp.43-46. Available at <https://www.amnesty.org/en/documents/eur30/5004/2016/en/>

²⁴ <http://www.statewatch.org/news/2018/jan/italy-sudan.htm>

²⁵ “Maar voor wie geen asielaanvraag heeft ingediend gebeurt dat een stuk minder uitgebreid. Het gaat dan om een summiere toetsing.” Freddy Roosemont quoted in Het Laatste Nieuws on 26 December 2017 <https://www.hln.be/nieuws/binnenland/-de-verdediging-van-theo-francken-is-verbijsterend-a6e6dec3/>

authorities²⁶ and that when returnees volunteered relevant information it was not fully taken into consideration.²⁷ In not one single case the “summary review” conducted by the Immigration Office led to the conclusion that returning the individual to Sudan would put them at risk of serious human rights violations.²⁸ Some of the Sudanese people still in Belgium are appealing against their forced removal or detention before Belgian courts²⁹ or have since applied for asylum. In one case, concerning the detention pending return of a Sudanese national apprehended in Brussels, the Brussels Court of Appeal ruled on 4 January 2018 that the Belgian authorities had failed to assess the risks that the returnee would face upon repatriation in Sudan, in violation of Article 3 of the European Convention on Human Rights.³⁰

In addition, it is problematic that Belgian authorities allowed Sudanese officials to interview and identify Sudanese nationals potentially in need of international protection, at a time when they had not analyzed the risks to which those individuals would be exposed upon return. Indeed, official documents reviewed by Amnesty International indicate that Belgian authorities enabled Sudanese officials to access those individuals even before engaging in the “summary review” of risks upon return. Furthermore, in at least two cases Sudanese officials were granted access to individuals although the Belgian authorities were aware that those individuals had already submitted asylum claims in other EU countries.³¹ The Belgian government therefore appears to have shared highly sensitive information – i.e. the identity of people potentially in need of international protection – with the very authorities whose human rights violations these people were fleeing, which might result in exposing those individuals and their relatives to heightened risks. On top of this, Belgium made no adequate effort to effectively monitor the interviews conducted by the Sudanese officials, for example by ensuring the presence of a Belgian official able to understand the conversation. Identification missions are not *per se* in breach of human rights law – a state seeking to repatriate a foreign national may request the cooperation of the government of the relevant country of origin. However, the Belgian government could request foreign officials to confirm the nationality of the individuals it is seeking to return, and to provide them with the travel documents that may be necessary, only *after* any need of international protection and risks upon repatriation have been excluded. Solid monitoring systems must be put in place to ensure that foreign agents have no access to the identity of people who need or may need international protection. This

²⁶ Belgian House of Representatives, Interior Affairs Committee, *Compte rendu - Commissions - Législature 54*, 5 December 2017, available at: <http://www.dekamer.be/doc/CCRI/pdf/54/ic774.pdf>

²⁷ Belgian House of Representatives, Interior Affairs Committee, *Compte rendu - Commissions - Législature 54*, 17 January 2018, available at: <http://www.dekamer.be/doc/CCRI/pdf/54/ic797.pdf>

²⁸ Belgian House of Representatives, Interior Affairs Committee, *Compte rendu - Commissions - Législature 54*, 17 January 2018, available at: <http://www.dekamer.be/doc/CCRI/pdf/54/ic797.pdf>

²⁹ On 5 December 2017, the Secretary of State for Asylum and Migration stated that in 17 cases a legal proceeding was ongoing which would have to be concluded before the removal of the person involved could be enforced. This figure may also include individuals that Belgium wishes to remove to European states rather than Sudan. Belgian House of Representatives, Interior Affairs Committee, *Compte rendu - Commissions - Législature 54*, 5 December 2017, available at: <http://www.dekamer.be/doc/CCRI/pdf/54/ic774.pdf>

³⁰ Brussels Court of Appeal, case 2018/25, *Arret de la Cour d'Appel de Bruxelles : Chambres des mises en accusation*, 4 January 2018, available at: http://www.adde.be/index.php?option=com_joomdoc&task=document_download&path=newsletters-2018%2F138-janvier-2018%2F1382-jurisprudence%2FCA+K2818+040117.pdf

³¹ Official case documents from Belgium's Foreigners' Office, on file.

applies equally to information about people who have not sought asylum, or whose asylum application has been rejected, but in respect of whom Belgian authorities have not yet assessed risks upon return.

Conclusions and recommendations

In returning Sudanese nationals to Sudan without first carefully assessing risks they may incur upon repatriation, Belgium showed disregard for both substantive and procedural obligations under the principle of *non-refoulement*. The allegations made by returnees to TIMEP are similar to testimonies Amnesty International collected in 2016 from individuals returned from Jordan and Italy to Sudan, who also alleged that Sudanese security officials detained, interrogated and ill-treated returnees shortly after their arrival at Khartoum's airport. Worrying reports that some of those returned originated in conflict-affected areas of Sudan show that even basic personal details – crucial in determining whether a person may be exposed to harm upon return – were not adequately investigated and assessed by the Belgian authorities before the expulsion, or even before granting Sudanese officials access to the returnees, which may have increased the risks for certain individuals.

While the Belgian government acknowledged the importance of abiding by the principle of *non-refoulement* – Prime Minister Michel referred to it as ‘sacred’³² – at the same time it appears to have made little effort to abide by its obligations. Indeed, it is likely that Belgium returned people to Sudan despite a real risk of serious human rights violations, in breach of the state's obligations under international and European law.

The inquiry by the CGRS provides a welcome opportunity to review the lawfulness of the Belgian authorities' handling of this case, to provide redress to those who may have suffered human rights violations as a result of the actions of the Belgian government, and to ensure return procedures are brought in line with Belgium's international obligations.

In particular, Amnesty International calls on Belgium to:

- Scrupulously observe the principle of *non-refoulement*, by not forcibly returning any person, in any manner whatsoever, to any country where they may face serious human rights violations. To comply with this, Belgian authorities should refrain from returning any Sudanese people originating from conflict-affected areas – such as Darfur, South Kordofan and Blue Nile State – or coming from other areas of Sudan but at risk of serious human rights violations for other reasons, including because Sudanese authorities consider them to be members of the opposition.
- Review and amend expulsion procedures, to ensure that no individual can be issued with an expulsion order without an adequate, individualized assessment that the person will not be at real risk of serious human rights violations upon return. Procedures must ensure that the circumstances of each person for whom authorities seek an expulsion are adequately assessed on an individual basis, and duly recorded, *whether the person is seeking asylum or not*. These procedural guarantees need to be in place before returns can be resumed.
- Ensure that consular or other authorities of any country of origin are not granted access to the returnees, or any personal information about them, *before* such

³² Belgian House of Representatives, Plenary meeting, *Compte rendu - Commissions - Législature 54*, 21 December 2017, available at: <http://www.dekamer.be/doc/PCRI/pdf/54/ip208.pdf>

individualized assessment has been satisfactorily concluded. Solid monitoring mechanisms should also be put in place to ensure effective oversight of interviews and any identification proceedings by foreign agents. Potential returnees must be informed that they may be visited by authorities of their countries of origin and fully informed of their right to seek international protection.

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