Brussels, 3 April 2015

The European Ombudsman's own-initiative inquiry concerning the means through which Frontex ensures respect of fundamental rights in joint return operations

The Belgian Federal Migration Centre's contribution

I. Introduction and presentation of the Belgian Federal Migration Centre

The Federal Migration Centre (hereafter the "Centre") is a public service, independent in the accomplishment of its missions established by an Act of Parliament in 1993. One of its legal missions on migration is to ensure the respect for the fundamental rights of foreigners. In this context, it has been entitled to visit detention centres for irregular migrants (based on the Royal Decree of 02/08/2002) and INAD ('inadmissible') detention centres located in the airports and created to detain aliens in the international transit zone of the airports in order to avoid their irregular entry to the territory (Royal Decree of 08/06/2009).

The Centre works on several strategic priorities regarding detention of migrants, among which the access to legal aid for detained migrants. It has visited these detention facilities and has held discussions with their respective Directions in order to improve the efficiency of the pro bono lawyers mechanism and thus the right for detainees to appeal a measure of deprivation of liberty. It has facilitated a better collaboration between the representatives of Legal Aid Office and the detention centres.

The Centre also provides information and gives legal advice to migrants who seek for assistance. In this context, the Centre is frequently in contact with detainees and their lawyers in order to inform them on the legal proceedings.

As preliminary remark, the Centre emphasizes that a State's fundamental obligation not to send a person to a country where there are substantial grounds for believing that he/she would run a real risk of being subjected to torture or inhuman or degrading treatment or punishment

(i.e. the "non refoulement principle") must be kept in mind by every single actor involved in the context of JRO[1].

II. Answer to the different questions

Question 1

> Are you aware of concrete violations of returnees' fundamental rights or cases of ill-treatment during JROs (pre-departure; in flight; hand-over of the returnees in the country of destination), or in the post-return phase (the reception of returnees in the country of destination)?

Between 2010 and 2013, the Belgian authorities organized 3 joint return operations in collaboration with Frontex.[2] During the same period, Belgium participated in 10 joint return operations organized by other Member States.[3] In total more than 150 migrants have been deported from the Belgian territory by a joint return operation coordinated by Frontex.

The Centre does not receive any information from the authorities (neither from the Aliens Office nor from the General Inspection of the police) before and after the organization of or participation in these flights. We are thus not aware of the preparation of such a flight and do not get any information afterwards on how it happened concretely.

Through its first line service and its participation in the 'Transit Group' (platform of Belgian NGO's visiting detention centres), the Centre has gathered information on (pre and post) forced removal operations and individual cases. According the our information, the irregular migrants detained in detention centers (and their lawyer) are not informed whether a JRO is planned or if she/he will be part of it. The migrant might assume –according to different elements[4]- that he/she will be removed with a *'special flight'*[5] but is not specifically informed on which kind of *special flight* it will be (Belgian special flight, special flight in collaboration

[1] CPT, Report to the Government of the Netherlands on the visit from 16 to 18 October 2013, CPT/Inf (2015) 14, 5 February 2015, § 7.

[2] It has organized in 2011 one JRO to the Democratic Republic of Congo and Nigeria where 12 irregular migrants from Belgium have been deported and in 2013, two JRO to the Democratic Republic of Congo in which a total of 41 irregular migrants from Belgium have been deported. (*Aliens Office's Annual Report 2011 p. 168 and 2013, p. 197*).

[3] Belgium participated :

- in 2010 in 2 JRO organized by the Netherlands to Nigeria and Nigeria/ Cameroun where a total of 73 migrants were deported from the Belgian territory (*Aliens Office's Annual Report 2010 p. 148)* ;
- in 2011, in 2 JRO organized by Germany to Serbia and 1 organized by the Netherlands to the Democratic Republic of Congo (*Aliens Office's Annual Report 2011 p. 168)*;
- in 2012 in 1 JRO organized by Germany to Serbia in which 5 irregular migrants were deported *(Aliens Office's Annual Report 2012, p. 181)*;
- in 2013 in 3 JRO organized by Ireland, Island, France to Albania where in total 15 migrants were deported and in 1 JRO organized by Spain to Pakistan where 4 migrants were deported (*Aliens Office's Annual Report 2013 p. 197).*

[4] Being transferred with other compatriots from a detention center to the detention center '127 bis' (close to the airport), being placed in an isolation cell, etc.

[5] A *special flight* is a secured flight during which several migrants are deported at the same time with a police escort.

with other Member States including Belgium, JRO organized with Frontex). Sometimes the removal of a person foreseen on a *special flight* is cancelled last minute (due to the introduction of an appeal or of an asylum request, for example). In this situation, it regularly happens that another detainee – who was not supposed to be removed on that flight and not prepared to it- is designated to replace the person. The uncertainty of this situation is particularly stressful for the detainees.

This lack of transparency and information has at least two important consequences. On the one hand, it is difficult for the different actors (the lawyer, the NGO and the Centre) to give proper information to the migrant about the specific procedures applying on JRO and his specific rights (i.a. the right to complain to Frontex). On the other hand, the Centre is therefore not able to differentiate within the information it has, what specifically concerns JRO.

In its last parallel report to United Nation Committee Against Torture (CAT), the Centre reported the testimony of a woman complaining about ill-treatment during the strip search before entering a the '*special flight*' to Kinshasa in 2013.[6] As Belgium has organized 2 JRO and at least one national *special flight* to Kinshasa that year, we are not able to identify if this happened - or not- during a JRO.

From the information the Centre could gather, it seems that 38 irregular migrants deported from Belgium with a *special flight* to Kinshasa in June 2013 have been arrested and detained by the 'National Intelligence Agency' in the Municipally of Gombe after their arrival at the airport. Presumably, they were several hours under arrest without the possibility to eat and to drink.

Question 2

> According to Frontex, no complaint has yet been made in relation to a JRO coordinated by Frontex. Which actions should Frontex take, in your view, to promote awareness among persons subject to a JRO of the possibility to lodge a complaint with Frontex and to ensure that problems are indeed brought to Frontex's attention?

Frontex should explain clearly its specific roles and missions (including the possibility to lodge a complaint) at the beginning of the operation to each migrant in a language she/he understands. This would definitely help the returnees (1) to understand the specific mandate of Frontex at all stages of the JRO, (2) to be able to analyze the situation themselves and (3) to identify potential problems. This would also ensure that each returnee is given the same information.

Furthermore, Frontex should give this information to each returnee at the beginning of the operation in a written document in a language she/he understands. This document should at least include clear and concrete information about :

- *how* to lodge a complaint (the modalities), *to whom* (the exact contact information), *when, regarding what kind of problems* ;
- *who* will handle the complaint and according to *which procedure*;

[6] Centre for Equal Opportunities and Opposition to Racism, *Rapport parallèle du Centre pour l'égalité des chances sur le troisième rapport périodique soumis par la Belgique au Comité contre la torture*, August 2013, Annex n°4.

- *what* can the returnee expect as a concrete result of his complaint.

It is important to provide written information because the JRO is a particularly stressful moment for the returnees who are therefore less willing to remember oral information. It might also be helpful for the returnee after the JRO. If the returnee speaks about his experience during the JRO to a third person in the return country (lawyer, organization, NGO, friend, family) and mentions a problem, this person will -thanks to the document-, be able to help him properly to lodge a complaint. The document could also somehow prove that the person has been indeed returned on a JRO.

Frontex could for instance prepare a **common information leaflet** for returnees including at least the following information:

- The purpose and context of the JRO
- An explanation about conditions and limits to the use of coercive measures
- The presence of a doctor and a monitor on board and the possibility to report them any incident
- The role of the monitor and the possibility to get access to the report and, if applicable, the film of the JRO
- The possibility to file a complaint and to get compensation in case of Human rights violation or any illegal behaviour including negligence (inadequate medical care…)

This common leaflet should be filled with specific information of each JRO:

- Contact details of the competent authorities of the OMS
- Contact details competent authorities of the PMS
- Contact details of the monitor
- Contact details of the competent national authorities -other than the monitor- where a complaint can be lodged
- Contact details of organisations or authorities in the country of destination which accept to be mentioned in order to support the returnee to lodge a complaint (local or international NGO's, international organisations…)

That leaflet should use clear and simple language and avoid technicalities. The common leaflets for asylum seekers based on the Eurodac and Dublin III could be cited as good practice (see: annexes of the Commission implementing regulation No 118/2014 of 30 January 2014). The leaflet should be available in all languages of the returnees and Frontex should provide or finance the translation.

In addition to the information leaflet, **a complaint form** should be available to all returnees to strengthen their right to an effective remedy. This form could contain both precise and open questions about different aspects of the JRO (use of force, medical care…). A source of inspiration can be found in the complaint form for air passengers which should of course be adapted to the context of JRO's (under Regulation (EC) 261/2004 http://ec.europa.eu/transport/themes/passengers/air/doc/complain_form/eu_complaint_form_en.pdf).

In addition to this, the Centre emphasizes that actors involved in the forced removal operations (national police services, private escorts, monitoring body, external observers, interpreters, medical staff, etc.) should wear a distinctive sign identifying their role[7] and should be individually identifiable by name or by an identification number.[8] The lack of identification of the Belgian monitoring body has already been pointed out by the Centre.[9]

Question 3

> Frontex co-ordinates relatively few JROs, with Member States carrying out the vast majority of forced return operations. Given its co-ordinating role, however, what more do you think Frontex could do to promote among the Member States minimum standards and good practices that ensure respect for human rights and the dignity of returnees? Do you consider that the Frontex *Code for joint return operations* and its *Best Practices for JROs* are sufficient in this respect, specifically as regards standards on fitness to travel and medical examination, the use of coercive measures and the return of vulnerable people, in particular families with children?

Please note that in the following section, the Centre comments only on the *Code of conduct* given the fact that the *Best practices* seem to be not available.

Firstly, it is not clear to the Centre whether the *Code of conduct* is legally binding to all participants of the JRO. Although, it has been adopted by the Executive director of Frontex on the basis of art. 9 of the Frontex regulation, it remains unclear whether escort members can be sanctioned for the violation of those provisions of the Code which are not part of the national law of their MS. The Centre recalls one of the fundamental principles of the rule of law that requires that the protection of human rights must take the form of a guarantee and not of a mere statement of intent or a practical arrangement[10]. If the protective provisions of the *Code of conduct* are not binding and its violations can remain unpunished, it cannot be considered as a sufficient instrument to guarantee to protection of human rights.

Secondly, the Centre agrees with the Consultative forum that the Code of conduct is still insufficient[11] in particular in respect to the following aspects:

- Absence of individual identification of all participants, which is required by the European Court of Human Rights, which considers it as a violation of the interdiction of torture and inhumane and degrading treatments (procedural aspect)[12];

[7] See CPT, Report to the Government of the United Kingdom on the visit from 22 to 24 October 2012, CPT/Inf (2013) 14, 18 July 2013, § 22.
[8] This has already been recommended by the Consultative Forum on the Code of conduct (*Frontex Consultative Forum on Fundamental Rights: Annual Report 2013, pp. 21-23*)
[9] Centre for Equal Opportunities and Opposition to Racism, *Rapport parallèle du Centre pour l'égalité des chances sur le troisième rapport périodique soumis par la Belgique au Comité contre la torture*, August 2013, p.8.
[10] ECtHR, Conka v. Belgium, 5 february 2002, § 83 ; ECtHR, M.A. v. Cyprus, 27 July 2013, § 137.
[11] See Frontex Consultative forum, Annual Report 2013, pp. 21-23.
[12] See ECtHR, Hristovi v. Bulgaria, 11 october 2011.

- The doctor of the JRO does not have the medical information of the returnees and is thus not able to perform a correct medical assessment of the fitness to fly[13]
- Information about the complaint mechanism, which is totally insufficient.

In addition to this, the Centre observes that some provisions of the Code can jeopardise the respect of human rights and need to be removed or revised:

- Recording and filming the entire JRO can be crucial to an effective and independent monitoring and must not be subjected to any authorisation (art. 10 must be revised).
- The presence of external representative from PMSs can also be part of an independent and effective monitoring and thus not be subjected to prior agreement of the OMS.

Finally, the Centre considers that JROs should not be used for any child under 18 since the coercive nature of this kind of operation, which involves a lot of escort members, is contrary to the best interest of the child.

Question 4

> Do you consider that the *Code* and *Best Practices* provide for sufficient safeguards in terms of respect for human rights, dignity and the welfare of returnees on board when applied to so-called "Collecting JROs"[1]?

All remarks made about JROs apply also to so-called "collecting JRO's".

As far as the Centre knows, the EU legal framework does not explicitly foresee these "collecting JROs". The possibility that Frontex and MSs coordinate or organize forced return operations that are executed by third states authorities operating from the EU territory could jeopardise the human rights protection of the returnees. This practice should be suspended and be subject to a large debate among the European and national parliaments and the civil society. If "Collecting JROs" are not suspended, their application requires certainly additional safeguards. It must be clear that all relevant human rights provisions under the EU and national law of the MS must apply, as to other "classical" JROs. Under no circumstances MS and Frontex could use these "collecting JRO" to circumvent their accountability and obligation to compensate damages caused by human rights violation, including those occurred during the flight operated by the third country's authorities involved. The Centre recalls that state responsibility remains valid even for acts committed by third country law enforcement agents[14].

[13] From the contribution of the FRO, it can be understood that the doctor does generally not know the general health status of the returnees (see FRO contribution of 15 january 2015, p 3)

[1] In these JROs, the third country to which migrants are returned provides the plane, escorts and medical staff for the operation. The handing over of migrants by national authorities/escorts takes place in an airport in the EU. Frontex provides training to third country escorts.

[14] See for instance EctHR (GC), El-Masri v. the former Yugoslav Republic of Macedonia, 13 december 2012, § 206.

Question 5

> Should JROs be monitored by one monitor designated by the country hosting the operation (the country returning the biggest group), or it is better that each country participating in the operation designates one monitor to be present during the JROs?

Firstly, the Centre considers that Frontex should not coordinate or finance any JRO without the physical presence of at least an independent monitor. Otherwise, the obligation of an effective monitoring imposed by the return directive becomes purely theoretical and illusory.

Since the conditions for the use of force by escorts and the national complaints mechanism can vary widely from one MS to another, the presence of an independent monitor from each PMS seems necessary.

The one-monitor-per-flight principle can only be applied if the monitor has an expert knowledge of all relevant national legal frameworks applicable to the JRO. In this respect, the analysis and presentation of all national legislation and practice of the MS by Frontex (see our proposition in question n° 6) can be considered as a prerequisite the one-monitor-per-flight principle.

The Centre considers that **an effective monitoring requires the following minimal conditions** (non-exhaustive list):

- the monitor must be fully independent in law and practice
- the monitor must have an expert knowledge of the international, European and national legal framework regarding the use of force and the effective remedy
- the monitor must receive the list describing the authorised constraint measures during the JRO prior to the JRO (*Code of conduct*, art. 6 §4).
- the monitor must be effectively present at all phases of the return process from the very moment the door of the cell/room of the person to be removed is opened[15] (pre- departure, transfer from the detention centre to the airport, boarding, flight, including hand over procedures at the airport of arrival), must be able to speak to the returnees with the support of an interpreter if needed, and must report about all incidents, including the possibility to film every incident
- the monitor must be able in law and practice to collect information from persons alleging being victim of an incident even during the post return phase
- the monitor must be able to identify individually each member of the escort at least by an identification number
- all reports of the monitor must cover all phases of the JRO[16] and must be available to the persons concerned and to the public (after depersonalisation of personal data if necessary).

[15] The CPT notes that the presence of the monitor at this moment is essential "as several deaths occurred in Europe at this initial moment of the removal procedure (i.e. when the person concerned had to be put under control in his/her cell and the means of restraint applied)".See CPT, Report to the Government of the Netherlands on the visit from 16 to 18 October 2013, CPT/Inf (2015) 14, 5 February 2015, § 48.

[16] See CPT, Report to the Government of the United Kingdom on the visit from 22 to 24 October 2012, CPT/Inf (2013) 14, 18 July 2013, § 30.

The monitor cannot be considered fully independent in one of the following situations (non-exhaustive):

- it functions under the direct or indirect control or supervision of the national authorities or government;
- it is not entitled to film the entire operation or only under agreement ;
- it is not able to report or file a complaint to all administrative and judicial authorities of all member states
- it is not authorised to bring all kinds of incident to the attention of the public by the most appropriate way (including by posting information and video or audio recordings online).

In Belgium, the General inspection of the police cannot be considered as sufficiently independent because it lies within the hierarchical responsibility of both ministers of Interior and Justice[17]. The minister of Interior is in charge for the return policy with the Secretary of State of Asylum and Migration.

Question 6

> What more could be done to improve the exchange of good monitoring practices between national monitors? What more could Frontex do in this regard? [In its opinion, Frontex mentions that it invites national monitoring bodies to the meetings of Direct Contact Points in Return Matters and supports the project run by the International Centre for Migration Policy Development to create a European pool of independent forced return monitors.]

As standards of behaviour in the use of force can differ between MS, Frontex should collect and make a **compilation of all national legislations and practices of the MS about the use of force** in the context of a forced return operation, **including national complaint procedures and the national implementations of the principle of the effective remedy**. Frontex should translate all relevant legal provisions (at least into English) and should present the result of this compilation in an accessible language for each MS (country sheets). The **country sheets** and the legal background must be available to the national monitors and to the public and must be used for trainings. All this information should be published on the website of Frontex and should be regularly updated by every modification by a MS.

Question 8

> Do you consider that the information provided by Frontex on its website as regards JROs is sufficient to ensure their transparency? Do you consider that reports of monitors observing JROs should be submitted to national authorities or to Frontex or both? Should reports be published or not? If so, should they be published on Member States' or Frontex's website?

[17] Belgian Law of 15 May 2007 regarding the General inspection of the police, article 3. See also, annex: Parallel report of the Centre for Equal oportunities and Opposition to Racism sur le troisième rapport périodique soumis par la Belgique au Comité contre la torture, pp. 8-10.

Transparency to allow public scrutiny on the JRO's is crucial to ensure the respect of the fundamental rights of the returnees, including the right to an effective remedy[18], and also the right of the public to be informed.

In this respect, the Centre considers that the at least the following information and documents must be published on Frontex's website:

- The calendar of planned JRO's as soon as they are confirmed
- The list describing the authorised constraint measures during the JRO (*Code of conduct*, art. 6 §4)
- Reports of all monitors, including video recordings of the operation
- Full Final Return Operation reports by Frontex
- All information received by Frontex regarding the conduct and results of the investigation by Frontex of MSs[19] (*Code of conduct*, art. 17).

The right to privacy of police personal or returnees cannot be used to avoid any form of public scrutiny, for instance by not allowing to film the operation (as foreseen by art. 10 of the *Code of conduct*). The respect for privacy can be guaranteed by the depersonalisation of personal data or of images if necessary. According to the Centre, this broad transparency is needed to respect the freedom of expression of monitors, the right of the public to be informed and the right of access to documents whatever their medium[20]. The right to an effective remedy can become illusory if monitors, returnees and social workers and legal representatives assisting them in case of human rights violation, cannot get access to the relevant legal and factual information.

The current information sheets about each JRO contain interesting information but is not sufficient. For example it is impossible to know precisely which constraint measures are permitted for each JRO.

The "Best practices for JRO's" are currently not available online.

As far as both EU and national law apply to JRO, it is necessary that reports of the monitors are sent to the national authorities and to Frontex.

Question 9

Do you have other comments on Frontex opinion? Please be as concise and concrete as possible.

[18] About the link between effective remedy and public scrutiny and "the right to the truth", see for instance EctHR (GC), El-Masri v. the former Yugoslav Republic of Macedonia, 13 december 2012, § 191-192.

[19] Transparency of the complaint procedures seems to be crucial for an effective monitoring (See CPT , Report to the Government of the United Kingdom on the visit from 22 to 24 October 2012, CPT/Inf (2013) 14, 18 July 2013, § 40).

[20] Charter of fundamental rights of the EU, art. 11 and 42.

In its opinion, Frontex seems to consider that an "effective monitoring" does not systematically require the physical presence of monitor on the JRO and that the practical implementation of the monitoring depends on the national law of the MSs[21].

The Centre strongly disagrees with Frontex's interpretation. The obligation to organize an "effective monitoring" is based on the return directive and is therefore a State's obligation under the EU law. This obligation should be interpreted in the light of the EU and international instrumentarium regarding the protection of human rights, including recommendations of the CPT. In the context of a JRO, where lots of national escort members are involved, the risk of a disproportional use of force is real. The monitoring of a JRO cannot be effective without the physical presence of a monitor from the very beginning of the procedure (opening of the detainee's cell) to the hand-over in the country of destination.

As the CPT pointed out, the Centre considers that Frontex in its coordinating role of JRO should pay attention to measures taken in order to avoid professional exhaustion syndrome and the risks related to routine of escorts, and to ensure that staff maintain a certain emotional distance from the operational activities in which they are involved[22]. Team debriefings, where Frontex can play an important role, can be crucial in this context, as well as the provision, on request, of specialised psychological support for staff.

III. Annex

1. Centre for Equal Opportunities and Opposition to Racism, *Rapport parallèle du Centre pour l'égalité des chances sur le troisième rapport périodique soumis par la Belgique au Comité contre la torture,* August 2013.

[21] See Frontex'response, 29 january 2015, p 5..
[22] CPT , Report to the Government of the United Kingdom on the visit from 22 to 24 October 2012, CPT/Inf (2013) 14, 18 July 2013, § 38.

Annexe 4

Dossiers individuels « droits fondamentaux des étrangers », violences et/ou traitements dégradants en centre fermé et lors de tentatives d'éloignement (2012-2013)

Centre pour l'égalité des chances et la lutte contre le racisme

Dossiers individuels « droits fondamentaux des étrangers », violence et/ou traitement dégradants en centre fermé et lors de tentatives d'éloignement (2012-2013)

1. Madame D.

C'est une visiteuse du centre de Bruges qui a informé le Centre de la situation de Madame. Celle-ci a été rapatriée vers la RD Congo le 23 juin dernier à bord d'un vol sécurisé. Avant de monter dans l'avion et à l'aéroport de Zaventem, elle aurait été soumise à une fouille à nu ainsi qu'à une fouille corporelle intime (parties génitales) particulièrement humiliante. Le Centre a pris contact avec l'AIG pour avoir plus d'information sur les faits. Des membres de leur personnel auraient été présents mais n'auraient relevé aucun « dérapage ».

2. Monsieur M.

Détenu au centre fermé de Bruges, Monsieur aurait fait l'objet de violences le 2 juillet dernier. Refusant de descendre au réfectoire pour le petit déjeuner, il aurait été jeté sur le sol du dortoir et roué de coup par 8 agents de sécurité. Blessé à la figure et sur le corps, il a été placé en isolation. Devant faire l'objet de soins médicaux (points de suture au genou, notamment), il a été emmené au service médical avant d'être replacé en isolation. Depuis lors, Monsieur aurait introduit une plainte à la Commission des plaintes.

3. Monsieur K.

C'est une visiteuse du centre de Bruges qui, le 28 mai, a informé le Centre de la situation de Monsieur. Devant faire l'objet d'une cinquième tentative d'éloignement et les précédentes ayant été relativement violentes, celle-ci craignait un abus de violence. Ayant pris contact avec l'AIG, le Centre a été informé que celle-ci avait été présente lors de deux des quatre tentatives et que la dernière avait été interrompue. A son retour au centre fermé de Bruges, il aurait participé le 23 mai à une action de protestation suite à laquelle la direction du centre aurait appelé la Police. Celle-ci serait intervenue en force et avec un nombre élevé de policiers. Monsieur aurait été emmené au commissariat de police, aurait passé 24h dans un cachot avant d'être transféré vers le centre fermé de Merksplas. Monsieur a finalement été libéré le 14 juin 2012.

4. Madame M.et Madame A.

Le Centre a été contacté le 15 juillet en ce qui concerne la situation de deux personnes détenues au centre 127bis. Il a été rapporté que ces deux dames souffrent de plusieurs pathologies qui requièrent des soins appropriés, ce qui a été constaté par un médecin, et que leur état général a également des répercussions sur la situation des autres détenus dans le centre, qui se voient contraints de leur fournir une assistance permanente.

En ce qui concerne **Madame M.**, âgée de 71 ans, il a été constaté par le médecin que celle-ci « *est une patiente âgée avec un diabète très déséquilibré (…). Son état est inquiétant et demande une mise au point en milieu hospitalier afin de décider ou non d'un traitement par insuline et afin de lui permettre d'être opérée de la cataracte (…)* » Ainsi, il a été estimé par

le médecin que Madame n'était pas en état de voyager en avion avant que son diabète ne soit correctement équilibré sous peine de risquer un malaise ou un coma hyper glycémique. Par ailleurs, il a également été constaté que l'intéressée souffre d'une *« polyurie majeure avec une incontinence pour laquelle il n'y a aucune moyen de protection (…) ».* De ce fait, il nous a été indiqué que les autres détenus n'ont régulièrement d'autres choix que celui de nettoyer ses déjections en l'absence d'une prise en charge adéquate par le centre 127 bis et d'une disponibilité suffisante du personnel eu égard à son état de santé.

Pour ce qui est de la situation de **Madame A.,** âgée de 54 ans l'attestation dressée par un médecin précise que l'intéressée présente « *un handicap important du membre inférieur droit (…) »* ainsi que « *suite à son arrestation*, *une douleur et une impotence fonctionnelle de l'épaule droite*». LE médecin estime dès lors qu' « *un examen radiologique ou échographique de l'épaule devrait être réalisé et l'avis d'un orthopédiste demandé afin de lui rendre de l'autonomie après la thérapeutique. Elle ne peut voyager actuellement en avion à cause de cette pathologie de l'épaule et jusqu'à la fin du traitement.*»

Le Centre est intervenu auprès de l'Office des Etrangers pour mettre en évidence la vulnérabilité particulière de ces deux personnes (liée à la combinaison de leur âge, de leur état de santé et des effets de la détention sur celle-ci) et inviter l'administration à envisager, comme le préconise le texte de la Directive 2008/115/CE ('Directive retour'), des alternatives à la détention. Le 31 juillet, l'OE a informé le Centre de sa décision de libérer Madame M. pour le temps nécessaire à la stabilisation de son état de santé et à la réalisation de l'intervention chirurgicale qu'elle devait subir, ensuite de quoi un retour volontaire sera réalisé. Le 2 août, l'OE a confirmé que Madame A. avait été rapatriée vers la Turquie.

5. <u>Monsieur D.</u>

Monsieur D., détenu au centre fermé de Merksplas est décrit par les visiteurs des centres fermés comme « psychologiquement fragile ». Ce sont ces deniers qui ont interpellé le Centre suite à entretien avec Monsieur alors qu'il revenait d'une troisième (et en principe dernière) tentative d'expulsion vers son pays d'origine. Après plus d'une heure de vol et suite à un problème technique, l'avion est contraint de faire demi-tour et le vol est annulé. Monsieur revient alors au centre fermé, il est examiné par le service médical qui constate des traces de coups au visage et au bras. Lors de son entretien avec les visiteurs, Monsieur - qui était résolu à s'opposer à son éloignement- explique ce qui s'est passé. La veille de son départ, il aurait été placé en cellule d'isolement et aurait souillé ses vêtements pour tenter d'échapper à son éloignement. Le lendemain, refusant de changer de vêtements, il est transféré vers l'aéroport en sous-vêtements. Il monte à bord de l'avion habillé et escorté. Il dit avoir été cogné à plusieurs reprises contre l'accoudoir et avoir reçu des coups sur le bras. Inopinément, l'avion fait demi-tour après une heure de vol. Monsieur est reconduit dans les structures de l'aéroport (y aurait été examiné par un médecin) et ensuite vers le centre fermé.

A son retour au centre de Merksplas, Monsieur est hospitalisé pendant deux jours et subi une opération chirurgicale pour une blessure à son bras (résultant selon les visiteurs d'actes de violence subies tant au centre de Merksplas qu'au cours de la tentative d'éloignement). Il

restera plâtré pendant plusieurs semaines. Comme souvent dans ce genre de situation, Monsieur est transféré à son retour de l'hôpital vers un autre centre fermé, en l'espèce celui de Bruges. Il continue néanmoins à être visité par les ONG faisant le suivi de sa situation. Interpellé, le Centre a pris contact avec les services de l'AIG pour porter à leur connaissance les risques liés à une nouvelle tentative d'expulsion et leur suggérer d'être présent le cas échéant. Le Centre a également cherché à obtenir la date prévue pour la prochaine tentative auprès de l'Office des étrangers mais celui-ci a refusé de transmettre l'information. Entre temps, Monsieur a déposé une plainte à la Commission des plaintes pour les violences subies, actuellement sans suite. Tant pour son avocat que pour les visiteurs, il semble difficile d'obtenir la copie des attestations médicales.

Plusieurs questions se posent: Pourquoi Monsieur a-t-il effectué le voyage du centre fermé à l'aéroport en sous-vêtements ? Pourquoi l'AIG n'a-t-elle pas été présente lors du transfert du centre fermé vers l'aéroport (déjà problématique) et lors du vol? Ces risques particuliers (fragilité psychologique connue de l'intéressé et opposition ouverte à son éloignement) sont pourtant des critères sérieux dans l'analyse des risques? Pourquoi est-il difficile pour Monsieur, son avocat et les visiteurs d'obtenir une copie des attestations médicales ? En quoi les contusions et la violence des coups peuvent-elles être justifiées ? N'est-il pas interpellant que cet incident advienne lors d'une ultime tentative (qui en principe doit être concluante) et qu'il n'ait été dévoilé que par l'interruption technique du vol ? Comment se fait-il que la Commission des plaintes n'ait toujours pas réagit ? Pourquoi Monsieur ne bénéficie-t-il toujours pas d'un soutien psychologique adéquat ?

6. Madame et Monsieur S.

La situation de Madame et Monsieur S., récemment détenus au centre fermé de Bruges, mérite également d'être mentionnée. Arrivés à la frontière en septembre 2012, ils y demandent l'asile. Après plus de six mois de détention et l'issue négative de leur demande d'asile, ils font l'objet de tentatives d'éloignement (ou plutôt de refoulement) vers la Turquie, pays de transit et de provenance de l'avion par lequel ils étaient arrivés à l'aéroport de Bruxelles-National. Le Centre est alors interpellé par la famille des intéressés sur le déroulement de ces tentatives. Sur l'espace d'un week-end (premier weekend de février 2013), les intéressés auraient fait l'objet de quatre aller-retours Bruxelles-Istanbul. Les autorités turques refusant de les accepter sous prétexte qu'ils n'ont fait que transiter par la Turquie, les ont remis à bord d'un avion pour Bruxelles. Contraints d'attendre quelques heures dans la zone de transit de l'aéroport de Bruxelles- National, ils ont ensuite été remis à bord d'un avion à destination d'Istanbul qui les a, à nouveau, renvoyé vers la Belgique. Deux week-end plus tard, les intéressés font l'objet de nouvelles tentatives et font à nouveau huit aller-retours entre Bruxelles et Istanbul. Les intéressés disent avoir été violentés par les autorités turques à leur arrivée et lors de l'attente à l'aéroport d'Istanbul. Informé de la situation, le Centre a pris contact avec l'Office des étrangers (ci-après : OE) pour obtenir des explications. D'après les informations reçues, les autorités turques n'appliqueraient plus la convention de Chicago[1]. Ces personnes ont finalement été libérées dans le courant du mois de mai sur injonction du Directeur de l'Office des étrangers, après plus de sept mois de détention et avec un ordre de quitter le territoire de sept jours.

[1] Convention relative à l'aviation civile internationale signée à Chicago, le 7 décembre 1944.

Dans ce cas-ci, plusieurs questions se posent également: Pourquoi l'OE s'est-il borné à continuer de refouler les intéressés sans prendre les précautions préalables quant à la reprise des personnes éloignées par les autorités du pays tiers? Pourquoi avoir poursuivi les tentatives alors que des traitements violents avaient déjà été commis par les autorités turques? Suite à ces évènements, pourquoi l'OE a-t-il maintenu ces personnes trois mois en détention alors que leur éloignement était vraisemblablement irréalisable et la détention dès lors illégale ? Notons qu'un cas similaire, celui de Madame L., Irakienne devant être refoulée vers la Turquie (6 allers retours Bruxelles-Istanbul pendant le weekend du 15 février 2013) nous a été transmis par une visiteuse.