

BELGIUM

Correspondence with the government concerning the alleged ill-treatment of detained asylum-seekers

Semira Adamu, a Nigerian national, died on 22 September 1998 within hours of an attempt to deport her forcibly from Brussels-National airport. She had physically resisted five previous attempts to deport her following the rejection of her asylum application. It was alleged that gendarmes who escorted her onto a plane subjected her to verbal abuse and that one of them pressed a cushion against her face. Within days of her death the Ministry of the Interior stated that she was handcuffed and shackled during the deportation operation and that for a “certain”, unspecified length of time a gendarme used the so-called ‘cushion technique’. This method of restraint, authorized by the Belgian authorities at the time of the incidents but since suspended, allowed gendarmes to press a cushion against the mouth, but not the nose, of a recalcitrant deportee, to prevent biting and shouting. When Semira Adamu lost consciousness medical assistance was immediately sought and she was transferred to hospital where she died later that day. An initial autopsy indicated that she died of asphyxia.

The Brussels Public Prosecutor’s office immediately ordered a judicial investigation into the circumstances and cause of Semira Adamu’s collapse and death and two gendarmes were placed under formal investigation in connection with a possible crime of manslaughter (*coups et blessures volontaires ayant entraîné la mort sans intention de la donner*). In December 1998 the media reported statements apparently emanating from the Public Prosecutor’s office indicating that a third officer had been placed under investigation on the same charge, and that a second autopsy and various forensic tests had confirmed that Semira Adamu had died of asphyxia. A disciplinary investigation was opened in September but then suspended pending the outcome of the judicial investigation. The Minister of the Interior, Louis Tobback, resigned following the revelation, within days of the death, that one of the escorting gendarmes had been sanctioned in January 1998 for ill-treating a detained asylum-seeker.

On 25 September 1998 Amnesty International wrote to the authorities expressing concern about the death of Semira Adamu and the use of the ‘cushion technique’ and seeking precise details on its application. The full text of the letter was made externally available in September 1998¹ and is also included in the current document. The organization asked to be informed of the eventual outcome of the judicial inquiry and of any further criminal or disciplinary proceedings arising from it. In view of allegations that gendarmes had used excessive force during a number of recent forcible deportations, Amnesty International also urged the government to conduct a full and impartial investigation into alleged ill-treatment by gendarmes during such deportations, together with a full review of restraint techniques to subdue recalcitrant deportees and of the training of officers required to deal with such deportees.

¹ See AI Index: EUR 14/01/98 (Amnesty International News Service 187/98)

In October 1998 the government announced an “evaluation” of asylum procedures. The measures included a ban on the use of the ‘cushion technique’, pending the outcome of an in-depth analysis of regulations governing methods of restraint during forcible deportations, to be carried out by a newly-created independent commission presided over by a professor of moral philosophy (the ‘Vermeersch’ Commission). Additional training for gendarmes involved in forcible deportations was also announced.

In October 1998 the new Minister of the Interior, Luc Van den Bossche, assured Amnesty International of the government’s “sincere intent to collaborate” with the organization regarding the case of Semira Adamu in particular and “Belgian forced repatriation policy in general”.

In December 1998 the Minister supplied information in response to some of the requests made in the organization’s September letter, explaining that this was an initial response. With regard to a query concerning medical examinations prior to forcible deportations, the Minister indicated that to date such examinations had not been carried out systematically prior to forcible deportations. In response to Amnesty International’s request to receive information about any tests conducted by the multi-disciplinary team which the Ministry of the Interior had reportedly commissioned in previous years to study the use and potential risks of the ‘cushion technique’, the Minister confirmed that a “multidisciplinary study group ... inquired into the use of the cushion. However, this evaluation did not happen on the basis of preliminary tests, except for the conclusion of the fact that the cushion had been repeatedly used without any problems since 1990.” Amnesty International noted that in October 1998 the government’s representatives indicated to the UN Human Rights Committee that Semira Adamu’s death was not the first to occur following use of the cushion during forcible deportations. They referred to the death of a Moroccan national in 1982 and a Zairean in 1987 (it appears likely, however, that the first case involved use of adhesive tape, rather than a cushion, to cover the mouth).

The Minister did not enclose a copy of the directives relating to the ‘cushion technique’ which were in force at the time of Semira Adamu’s death, which Amnesty International had requested. However, a copy of the apparently relevant directives² subsequently came into the organization’s possession. Amnesty International sought the expert opinion of three prominent forensic pathologists based in Denmark and the United Kingdom, on the use of the ‘cushion technique’. All have carried out numerous autopsies into various types of asphyxial deaths.

They commented that: “Although it is recommended in the November 1997 guidelines issued to gendarmes on the execution of repatriations ... that officers practise caution when applying a cushion, in our experience it is much too dangerous a procedure that may easily have a fatal outcome. Firstly, as a matter of practicality there are great difficulties in covering only the mouth but not the nasal passages” of a person resisting officers. “Secondly, the method is vulnerable to complications such as presence of vomitus or other mechanical blockage of the

²*Directives concernant l’exécution de repatriements, as issued in French translation from the original Dutch by the Gendarmerie, Détachement de Sécurité, Aéroport National, Section Contrôle Frontalier, dated 17 November 1997*

airways". They concluded that "under no such circumstances should a cushion or other object be used to obstruct the mouth and/or nose. It is an extremely dangerous procedure and can occasionally result in a fatality".

In February 1999 Amnesty International wrote again to the Minister of the Interior. The full text of the letter is reproduced in the current document. No acknowledgement or reply has been received at the time of writing. In addition to seeking news of any further developments in the judicial investigation into the death of Semira Adamu, the organization drew the Minister's attention to the opinions of the forensic pathologists it had consulted on the use of the 'cushion technique'. It also recalled the concern about the 'cushion technique' expressed by the UN Human Rights Committee in November 1998 and the concern about the gagging of people being forcibly deported which was expressed by the Council of Europe's Committee for the Prevention of Torture (CPT) in 1997. Amnesty International underlined its own opposition to the use of materials or methods which could block the airways of a deportee or any other detainee and stated that it shared, therefore, the great concern of the forensic pathologists over the use of the 'cushion technique'.

The letter raised several recommendations contained in the report published by the Vermeersch Commission on 21 January 1999. One of these recommendations (Recommendation 3) was for certain restraint methods to be definitively banned during forcible deportations in the future, including "in particular, anything obstructing normal respiration (for example, adhesive tape, cushion on the mouth)...". Amnesty International urged the government to adopt the recommendation in its entirety at the earliest opportunity.

Amnesty International expressed the view that another of the commission's recommendations (Recommendation 7) required detailed examination. This recommendation argued that consideration should be given to the use of "a special plane", such as a business jet, rather than a regular public flight, to carry out deportations in instances where all other methods to induce recalcitrant deportees to leave the country without resistance have failed. Amnesty International urged the government to carry out in-depth consultations with relevant non-governmental organizations and other experts in the field before taking any decision to implement this recommendation. It was concerned therefore, by reports that deportations by private jet began in March 1999 without any such consultations apparently taking place.

Amnesty International fully endorsed the commission's recommendation (Recommendation 4) that infringements of directives on the use of coercive measures should be dealt with speedily and appropriately sanctioned. However, it noted and shared the concerns expressed by the commission and also by the CPT, the Belgian Permanent Monitoring Committee of Police Services (Committee P) and the UN Human Rights Committee about a lack of transparency and vigour hitherto displayed in the investigation of and reaction to complaints of alleged ill-treatment by law enforcement officers, not only in the specific context of allegations arising out of forcible deportations, but also in the general context of their work. The organization sought clarification of the investigation process, referred to by the Minister of the Interior in his December 1998, which had been used to deal with certain complaints of

unnecessary and excessive use of violence by law enforcement officers in the execution of deportations.

Amnesty International shared the Vermeersch Commission's view of the importance of addressing the question of excessive force and ill-treatment by law enforcement officers in its full context and not only in the context of forcible deportations. It expressed interest in receiving information on any initiatives already taken or envisaged by the government in order to address the concerns expressed by and the recommendations made to the Belgian Government in this area by Committee P, the CPT and the UN Human Rights Committee.

In its February 1999 letter Amnesty International also summarized the reports which it had received concerning allegations of ill-treatment made by **Fatimata (Fatmata) Mohamed**, an 18-year-old asylum-seeker from Sierra Leone (at that time detained in Berkendael Prison, Brussels), and the response of the authorities. It sought the government's cooperation in providing information about the steps being taken by the Ministry of the Interior to investigate fully and impartially the allegations which had been made publicly and via formal complaints lodged with the court. Fatimata Mohamed claimed that she was physically ill-treated by gendarmes both during an incident which occurred on 30 November or 1 December 1998, while she was detained at the Sint-Andries Centre for Illegal Aliens in Bruges, and during an unsuccessful attempt to deport her forcibly to Guinea on 25 January 1999. The organization expressed concern that the attempt to deport her took place apparently before any judicial investigation had been completed into a criminal complaint of ill-treatment which she had lodged in December 1998, relating to the incidents in Bruges. It invited the Minister's comments on this and any other aspects of the allegations made by Fatimata Mohamed. Amnesty International also sought assurances from the government that Fatimata Mohamed would not be deported before judicial and administrative investigations into her allegations had been completed and the findings made public.

In addition Amnesty International drew attention to a criminal complaint of ill-treatment lodged on 26 November 1998 by **Blandine Kaniki**, a 20-year-old asylum-seeker from the Democratic Republic of Congo. She made the complaint while detained in Steenokkerzeel Detention Centre 127-bis (near Brussels National Airport) with her five-year-old son Christian, where she was still held in February 1999. She alleged that she and other detainees were subjected to a physical assault by gendarmes in the centre on 31 October 1998. She was three months pregnant at the time of the incidents and claimed that the treatment she received at the centre was the cause of a miscarriage on 24 November 1998. Amnesty International also indicated that it had received copies of statements made by other detainees in the centre who claimed to have been victims of and/or witnesses to ill-treatment by gendarmes on 31 October 1998. It expressed concern about reported irregularities in the conduct of an internal inquiry opened into the alleged incidents. The organization expressed particular concern at unconfirmed reports which it had received claiming that detainees who were victims and/or witnesses to the violent incidents of 31 October 1998 had been deported or ordered to leave the country, even though relevant internal and judicial investigations were still under way. Amnesty International sought assurances, therefore, that neither Blandine Kaniki and her son, nor any other alleged

victims of or witnesses to the violent incidents of October 1998, would be deported or ordered to leave the country before the judicial investigation into Blandine Kaniki's criminal complaint had been completed.

Amnesty International sent a copy of its letter to the Minister of Justice, drawing his attention to the organization's requests relating to the judicial investigations into the death of Semira Adamu and into the alleged ill-treatment of Fatimata Mohamed and Blandine Kaniki.

Fatimata Mohamed was released from detention in March 1999, following a decision by the Minister of Interior to suspend expulsions and deportations to Guinea of all citizens of Sierra Leone, in addition to the already existing suspension of deportations to Sierra Leone itself in view of the prevailing situation in the country. An order to leave the country with which she was issued cannot be implemented until the suspension is lifted.

Blandine Kaniki was also released from detention but issued with an order to leave the country in March. She did not comply with the order and remains in the country. She faces the possibility of deportation at any time.

In a letter dated 23 April 1999 the Ministry of Justice confirmed that the judicial investigation into the death of Semira Adamu was still under way and stated that Fatimata Mohamed had been released. The Ministry informed Amnesty International that two judicial dossiers had been opened concerning "her violent resistance" (*"sa rébellion"*) during several attempts to deport her but that on 7 April 1999 the Brussels Public Prosecutor's office had closed the dossiers, deciding that no further action should be taken. The Ministry also confirmed that a judicial investigation was still under way into the allegations of ill-treatment made by Blandine Kaniki but said that the relevant judicial authorities had stated that, although Blandine Kaniki was still in Belgium, they could give no assurance that she, her son, or any other person involved in the affair would not receive an order to leave the country. Amnesty International was concerned to note that they also indicated that they were taking no steps to prevent this from happening.

Amnesty International still awaits a response from the Ministry of the Interior to its letter of 17 February 1999.

Ref.: TG EUR 14/98.08

Monsieur Louis TOBBACK
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et Ministre de l'Intérieur
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25 September 1998

Dear Minister,

We are writing in connection with the death of Semira Adamu, a 20-year-old Nigerian woman, on the evening of 22 September 1998, and her treatment by gendarmes during an attempt to forcibly deport her from Brussels-National airport earlier that day.

Amnesty International understands that Semira Adamu arrived at Brussels-National airport on a flight from Togo in March 1998 and sought asylum on the stated grounds that she feared being forced into a polygamous marriage with a man over 40 years her senior in her home country of Nigeria. We understand further that, following the rejection of her asylum application and exhaustion of the appeals procedure, there were five unsuccessful attempts to expel her from Belgium before the sixth attempt which took place on 22 September.

According to the reports which have reached Amnesty International, on the morning of 22 September Semira Adamu was taken by van from Steenokkerzeel Detention Centre 127-bis for Aliens, in the proximity of the airport, where she had been held since her March arrival, to a Sabena airlines plane scheduled to fly to Togo at around 10am. She was apparently escorted by some 11 gendarmes, three of whom accompanied her inside the plane: she was seated between two of them while the third video-taped the proceedings, apparently according to a standard practice in cases of forcible deportation where recalcitrance is anticipated, in order - *inter alia* - to provide evidence in the event of a complaint of ill-treatment being made against accompanying gendarmes. There have been allegations that the gendarmes pressed a pillow against Semira Adamu's face and subjected her to blows and verbal abuse. According to statements made after her death and attributed to you by the press, Semira Adamu was handcuffed and shackled during the deportation operation. In addition, for a "certain", unspecified, length of time ("*un certain temps*") while she was seated inside the plane, gendarmes used the so-called 'cushion technique', pressing a small cushion against her mouth to prevent her biting them and shouting: she afterwards lost consciousness and medical assistance was sought immediately.

We understand that she was admitted to St Luc Hospital, Brussels, at around noon, that the emergency services initially diagnosed a cerebral haemorrhage and cardiac arrest and that she was pronounced dead at approximately 9.30pm.

Amnesty International welcomed the news of the immediate opening of a judicial investigation by the Brussels Public Prosecutor's Office into the circumstances and cause of Semira Adamu's collapse and death, as well as reports that the investigating magistrate assigned to the case proceeded promptly to the questioning of the gendarmes involved in the deportation operation and of fellow passengers on the Sabena flight to Togo and confiscated the gendarmes' video of the deportation operation. We also welcomed the news that an autopsy was begun on 24 September to try to establish the exact cause of death and, therefore, any direct link between her treatment by the gendarmes and her death. We note that the results are not expected to be published for up to two months to allow further examination of the brain and further forensic tests.

We understand that on 23 September the judge of instruction placed two of the gendarmes who accompanied Semira Adamu onto the plane, under formal investigation in connection with a possible crime of manslaughter (*coups et blessures volontaires ayant entraîné la mort sans intention de la donner*). We also note that on 24 September the president of the National Union of Gendarmes stated that in January 1998 one of the gendarmes had been disciplined for kicking a Zairean national, bound hand and foot, during a forced deportation. The officer was apparently sanctioned to one month's suspension from service and a one month cut in his salary. We have noted your public statement last night in which you acknowledged that the gendarmerie was at fault in allowing the officer in question to continue to serve in a division responsible for carrying out forcible deportations.

Amnesty International urges that in their investigations the authorities pay special heed to the principles established in international human rights instruments regarding the use of force by law enforcement officials. These include Principle 4 of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials which stipulates that: "Law enforcement officials in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force..." Principle 5 states that: "Whenever the lawful use of force ... is unavoidable, law enforcement officials shall ... exercise restraint in such use and ... [shall] minimize damage and injury". Finally, the UN Code of Conduct for Law Enforcement Officials stipulates (in Article 3) that: "Law Enforcement Officials may use force only when strictly necessary and to the extent required for the performance of their duty".

We would be grateful for your government's cooperation in providing us with a copy of the video of the deportation operation and of the final autopsy report, when available, and for further cooperation in informing us of the eventual outcome of the judicial investigation and of any further criminal or disciplinary proceedings arising from it.

The Belgian Government is responsible for ensuring that deportations are carried out - in accordance with international standards - in a manner which respects the human rights of the individual being deported. Amnesty International is particularly concerned at allegations that the mouth of the deportee was covered by a cushion, thus restricting her breathing. It is further concerned by statements attributed to the Ministry of the Interior indicating that during the first eight months of this year this technique was used 12 times to subdue individuals resisting deportation.

It is relevant to note that the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), in its 7th General Report, published in 1997, "recognizes that it will often be a difficult task to enforce an expulsion order in respect of a foreign national who is determined to stay on a State's territory. Law enforcement officials may on occasion have to use force in order to affect such a removal. However, the force used should be no more than is reasonably necessary. It would, in particular, be entirely unacceptable for a person subject to an expulsion order to be physically assaulted as a form of persuasion to board a means of transport or as a punishment for not having done so. Further, the committee must emphasize that to gag a person is a highly dangerous measure".

Amnesty International is not in possession of the guidelines and directives governing the circumstances in which the 'cushion technique' may be used by Belgian gendarmes nor of the instructions on its application in practice. However, in principle, Amnesty International would recommend that any mouth restriction should only be used in extreme circumstances and under medical supervision.

It has been reported that directives on the use of the 'cushion technique' indicate that a small cushion should be applied to the mouth for the purpose of preventing the individual from shouting or biting accompanying gendarmes and that officers must ensure that the nose is not covered. We would be grateful to receive copies of the directives and instructions on the use of the 'cushion technique' and on other authorized methods of restraint during forcible deportations from Belgium. We would also be grateful for details of the training which gendarmes attached to the airport division receive in the use of the 'cushion technique' and other methods of restraint. We understand that the judge of instruction in charge of the current inquiry into the death of Semira Adamu confiscated from the gendarmerie division attached to Brussels-National airport a training video on restraint methods during forcible deportations. We would be most interested in receiving a copy of this video.

It has been reported that in previous years the Ministry of the Interior commissioned a multi-disciplinary team to study the use and potential risks of the 'cushion technique' and approved it as a safe method of restraint. We would be grateful, therefore, to receive

information about any tests conducted or commissioned into potential dangers associated with the 'cushion technique'.

We would also like to be informed as to whether detainees who are due to be forcibly deported are subject to a medical examination prior to deportation and, if so, to be informed which authority carries out the examination and whether the authority which carries out such an examination is in possession of all the available information on the detainee's previous medical history.

Amnesty International is also concerned by a number of recent cases of alleged ill-treatment during forcible deportation which have been publicized over the last week by domestic non-governmental organizations, including the *Ligue Belge des Droits de l'Homme* and by the Belgian media. Our concern about the allegations is exacerbated in the light of the findings of the CPT following its periodic visit to places of detention in Belgium, including Detention Centre 127-bis, in September 1997.

As you will be aware, in the CPT's report on its visit, published in June 1998, the CPT said it had received allegations of physical ill-treatment - such as blows and excessive recourse to physical means of restraint - concerning foreigners being forcibly expelled from the country: the majority concerned foreigners being escorted onto aeroplanes at Brussels-National airport by gendarmerie officers. The Committee cited the example of a man it had interviewed in a holding centre for foreigners who alleged that, because he refused to get on a plane, gendarmes had kicked him and beaten him with a baton, while his ankles were bound together with velcro strips and his arms were similarly bound together behind his back. Another foreign detainee alleged that during a forcible expulsion operation his ankles and arms had also been bound together with wide velcro strips while his wrists, bound behind his back, were also tightly secured with plastic handcuffs. He said that, after refusing to get on a plane, he had been put in a cell at Brussels-National airport and kicked and punched on the neck and back. Both men had sustained injuries which supported their allegations.

As you will also be aware, the CPT emphasized that it was totally unacceptable for people subject to expulsion orders to be physically attacked in order to force them onto transport or in order to punish them for not complying. It underlined that the force employed should be limited to the minimum amount of restraint necessary to reach the required objective.

We have noted that on 24 September, following a request from Sabena airlines, the Belgian Government announced the indefinite suspension of all forcible deportations in order to evaluate the situation.

In the light of the death of Semira Adamu, the allegations that gendarmes have used excessive force during a number of recent forcible expulsions, and the findings of the CPT, we

would be grateful to be informed of any steps envisaged by the government to conduct a full and impartial investigation into alleged ill-treatment by gendarmes during forcible expulsions, together with a full review of restraint techniques to subdue recalcitrant deportees and of the training of officers required to deal with such deportees.

If no such steps are envisaged then we urge the Belgian Government to open such investigations and reviews immediately and to make the findings public.

A copy of this letter is being sent to the Minister of Justice, for his information.

Yours sincerely,

Pierre Sané
Secretary General

Ref.: EUR 14/99.01

Mr Luc VAN DEN BOSSCHE
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and Minister of Internal Affairs
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17 February 1999

Dear Minister,

Thank you for your acknowledgment of 14 October 1998, sent in response to our letter of 25 September 1998 concerning the death of Semira Adamu on 22 September 1998, her treatment by gendarmes during the attempt to deport her forcibly from Brussels-National airport earlier that day and the use of the so-called 'cushion' technique of restraint. We welcomed your assurances of the Belgian government's sincere intent to collaborate with Amnesty International concerning the case of Semira Adamu in particular and "Belgian forced repatriation policy in general".

We also wish to acknowledge receipt of your letter dated 4 December 1998, which reached us on 29 December 1998, and which you indicate is "a first answer" to the various questions posed in our letter of 25 September 1998.

We note that, as you indicate in your letter, the common rules applying to the secrecy of the instruction under Belgian criminal procedure mean that, until the judicial investigation into the circumstances of Semira Adamu's death has been completed, the judicial authorities will not release the confiscated videotapes of her attempted deportation and the reports of the autopsies carried out on her body. However, we are aware of media reports indicating that on 28 December 1998 the Public Prosecutor's office in Brussels publicly confirmed that the second autopsy report and relevant forensic tests, carried out at its request, had established definitively that Semira Adamu's death was caused by asphyxia. We also note that at the same time the Prosecutor's office reportedly stated that a third gendarme had been placed under formal investigation in connection with a possible charge of manslaughter (*coups et blessures volontaires ayant entraîné la mort sans intention de la donner*), that the judicial investigation was likely to be completed within two to three months and that it was also examining the legality of the content of the November 1997 directives authorizing the use of the 'cushion' technique which were in force at the time of Semira Adamu's death. We would be grateful for the

government's confirmation of these media reports and for any further details which may now be available about the contents of the second autopsy report and any further developments.

In our letter of September 1998 we stated that in principle Amnesty International would recommend that any mouth restriction should only be used in extreme circumstances and under medical supervision. We explained that Amnesty International was not in possession of the directives and instructions governing the use of the 'cushion' technique and other authorized methods of restraint in Belgium and requested copies of such documents in order to assess the potential dangers of the 'cushion' technique, as applied in Belgium.

Your letter of December 1998 did not enclose a copy of the directives on the 'cushion' technique which were in force at the time of Semira Adamu's death. However, a copy of what we understand to be the relevant directives - *Directives concernant l'exécution de rapatriements*), as issued in French translation by the *Gendarmerie, Détachement de Sécurité, Aéroport National, Section Contrôle Frontalier*, dated 17 November 1997, is now in our possession. We have also noted the information you supplied in response to a query in our September 1998 letter concerning medical examinations prior to forcible deportations, namely that hitherto such examinations have not been carried out systematically prior to forcible deportations.

Similarly, we have noted that, in response to our request to receive information about any tests conducted by the multi-disciplinary team which the Ministry of the Interior had reportedly commissioned in previous years to study the use and potential risks of the 'cushion' technique, your letter confirms that a "multidisciplinary study group ... inquired into the use of the cushion. However, this evaluation did not happen on the basis of preliminary tests, except for the conclusion of the fact that the cushion had been repeatedly used without any problems since 1990." We have also noted that in October 1998 the government's representatives informed the Human Rights Committee that two deaths - of a Moroccan national in 1982 and a Zaïrian in 1987 - had, however, occurred following use of the 'cushion' technique by Belgian gendarmes during forcible deportations.

We have sought the expert opinion of three prominent forensic pathologists³ on the provisions relating to the ‘cushion’ technique contained in the November 1997 Directives. All three have carried out numerous autopsies on various types of asphyxial deaths.

They have commented that “Although it is recommended in the November 1997 guidelines issued to gendarmes on the execution of repatriations (*Directives concernant l’exécution de repatriements*) that officers practise caution when applying a cushion, in our experience it is much too dangerous a procedure that may easily have a fatal outcome. Firstly, as a matter of practicality there are great difficulties in covering only the mouth but not the nasal passages” of a person resisting officers. “Secondly, the method is vulnerable to complications such as presence of vomitus or other mechanical blockage of the airways”.

They conclude that “under no such circumstances should a cushion or other object be used to obstruct the mouth and/or nose. It is an extremely dangerous procedure and can occasionally result in a fatality”. We understand that they have recently written to you directly to express this view and to underline their alarm about the ‘cushion’ technique as a method of control. Amnesty International opposes the use of materials or methods which could block the airways of a deportee or any other detainee and shares their great concern, therefore, over the use of the ‘cushion’ technique in Belgium.

We also note that, following its examination of Belgium’s third periodic report on its implementation of the International Covenant on Civil and Political Rights (ICCPR), the Human Rights Committee, in its Concluding Observations issued in Geneva in November 1998, stated that “Procedures used in the repatriation of some asylum-seekers and in particular the method of placing a cushion on the face of an individual to overcome resistance entails a risk to life”.⁴

In our September 1998 letter we quoted an extract from the Seventh General Report of the Council of Europe’s Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) which we considered relevant to the question of the ‘cushion’

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⁴ CCPR/C/79/Add.99. See paragraph 15 - Section C - Principle subjects of concern and recommendations

technique. The extract stated, *inter alia*, that "... the committee must emphasize that to gag a person is a highly dangerous measure". Your letter of December commented that "It is not unlikely that, in using this expression, the Committee meant 'taping' a person". We have since received clarification from the Secretary of the CPT that "The term 'to gag a person' found in paragraph 36 of the Seventh General Report of the CPT's Activities is to be understood in its normal dictionary meaning - that is 'to stop the mouth of (a person) to prevent speech or outcry' (The New Shorter Oxford Dictionary, 1993 Edition, Volume I)".

We welcomed the Council of Ministers' decision, of 4 October 1998, to implement the proposal which was contained in the official Note relating to the *Évaluation de la politique d'asile en Belgique*, to suspend the use of the 'cushion' technique as a restraint method during forcible deportations, pending the outcome of an evaluation of the instructions and techniques relating to forcible deportations. This was to be carried out by an independent commission presided over by the moral philosopher Professor em. E. Vermeersch. As you are aware, the Vermeersch Commission published the report of its findings on 21 January 1999. We welcome the Commission's Recommendation 3, that in future certain restraint methods should be definitively banned during forcible deportations. These include measures involving risks to the health and personal safety of the individual, "in particular anything obstructing normal respiration (for example adhesive tape, cushion on the mouth), and all forced administration of pharmacological products (except by doctors in urgent situations which would naturally mean the termination of the attempted deportation)."⁵ We note that such measures are already banned under the temporary directives issued in October 1998, an extract of which you attached to your December 1998 letter.

Amnesty International urges you to adopt the Commission's Recommendation 3 in its entirety, at the earliest opportunity.

We note that Recommendation 7 of the Vermeersch Commission's report argues that in instances where all other methods to induce recalcitrant deportees to leave the country without resistance have failed, then consideration should be given to the use of "a special plane", such as a business jet, rather than a regular public flight, to carry out the deportations. The Commission argues further that this "would allow a restricted number of people to be repatriated" under proper surveillance and would remove the need to subdue shouts and "other forms of provocation" as no members of the public would be present⁶.

⁵"... notamment toute obstruction de la respiration normale (p.ex. ruban collant ou coussin sur la bouche) et toute administration forcée de produits pharmacologiques (sauf par des médecins en cas d'urgence, entraînant évidemment la fin de la tentative d'éloignement)".

⁶"... permettrait de rapatrier un nombre restreint de personnes sous surveillance suffisante et d'éviter la répression des cris et autres formes de provocation, étant donné qu'il n'y a pas de public."

Under Recommendation 2, the Commission states that there should be “regular evaluation” of coercive measures during forcible deportations to ensure that they are carried out in line with the various criteria indicated in the Commission’s report. It also states that such evaluations should not only be carried out by the services directly engaged in executing the deportations, but also by the competent authority, that is, the Minister of Interior. It adds that “regular checks carried out by an external body would also appear to be useful”.⁷ However, the Commission’s report does not appear to address the need to make specific provision for safeguards against possible ill-treatment and excessive use of force during the proposed ‘special’ flights, in order to assuage deportees’ fears of ill-treatment by gendarmes, whether well-founded or not, and in order to protect gendarmes from any unfounded allegations of ill-treatment, nor does it appear to address other problems which might arise regarding the safety of rejected asylum-seekers arriving in the receiving state on special flights.

Amnesty International is of the view that Recommendation 7 requires detailed examination and urges the government to carry out in-depth consultations with relevant non-governmental organizations and other experts in the field before taking any decision to implement this recommendation.

We fully endorse the Commission’s Recommendation 4, that infringements of directives on coercive measures should be dealt with speedily and appropriately sanctioned. However, we also note in particular the concern expressed by the Vermeersch Commission about a lack of transparency and vigour hitherto displayed by the relevant law enforcement agencies in their investigation of and reaction to complaints of alleged ill-treatment by law enforcement officers, not only in the specific context of allegations arising out of forcible deportations, but also in the general context of their work. The Commission indicates concern about a frequent failure to pursue guilty officers via disciplinary or judicial action and to impose adequate sanctions.

These concerns, as the Commission points out, are shared by the CPT, as reflected in its report on its visit to Belgium between 31 August and 12 September 1997, published in June 1998, and by Committee P (*Comité permanent de contrôle des services de police/Vast comite van toezicht op de politiediensten*) in its annual reports, including its *Annual Report 1998*, presented to the government and parliament in October 1998. As you will be aware, following its examination of Belgium’s third periodic report on its implementation of the ICCPR in October 1998, the Human Rights Committee also underlined “its grave concern over the reports of widespread police brutality against suspects in custody. It regrets the lack of transparency in

⁷“Des contrôles réguliers menés par une instance externe semblent aussi utiles”

the conduct of investigations on the part of police authorities and the difficulty in obtaining access to this information”.⁸

Amnesty International shares the concerns expressed by these international and domestic bodies and also the Vermeersch Commission’s view of the importance of addressing the question of excessive force and ill-treatment by law enforcement officers in its full context and not only in the context of forcible deportations. We would be interested, therefore, in receiving information on any initiatives already taken or envisaged by the government in order to address the concerns expressed by and the recommendations made by Committee P, the CPT and the Human Rights Committee in this area.

Our letter of 25 September 1998 made reference to the statement made by the CPT, in its June 1998 report, that it had received allegations of physical ill-treatment concerning foreigners being forcibly expelled from the country, the majority concerning foreigners being escorted onto aeroplanes at Brussels-National airport by gendarmes. As our letter recorded, the CPT cited two illustrative cases concerning two individuals it had interviewed and medically examined during its 1997 visit to Belgium. We have duly noted the information given in your December 1998 letter, that in the first case described by the CPT “No contradictory inquiry could be made because of the lack of any information about the time or identity”⁹. In the second case we note that the information you supplied quotes frequently from “written reports”. However, the information does not make clear whether these reports were written by the escorting officers themselves, on what date(s) the reports were written, whether any investigation was conducted into the allegations in this case, and, if so, by what body. We would appreciate, therefore, clarification on these points.

Your letter states that since 1996 the General Inspectorate of the State Police¹⁰ has been responsible for regularly checking the execution of deportations for unnecessary use of violence and that all complaints are thoroughly examined and that up to the time of your letter, no abuse had been found by the General Inspectorate. You also state that “in the period between 1996 until September 1998”, 10 complaints regarding repatriations were examined by the Security Detachment of Brussels-National airport and that in “some of these complaints it could

⁸ CCPR/C/79/Add.99 - See paragraph 13, Section C - Principle subjects of concern and recommendations

⁹ June 1999 - Updated information: Amnesty International notes that in its interim response to the CPT, issued on 31 March 1999, the Belgian Government identifies the individual as a Moroccan national who lodged a formal complaint (*a porté plainte*) about his treatment. The interim report also indicates the opening of a disciplinary inquiry into the conduct of one officer and an order suspending the officer from duty for three weeks.

¹⁰ *Inspection générale de la gendarmerie/Algemene inspectie van de rijkswacht*

be proven not only that they were unfounded but also that the lawyers of the persons concerned, by filing a complaint and thus starting an inquiry, were actually hoping to provoke the postponement of the attempted expulsions until the settlement of the inquiry”.

Your letter suggests that the 10 complaints made between 1996 and September 1998 were examined only by the gendarmerie detachment in which the gendarmes accused of misconduct were employed. Amnesty International has noted with concern the conclusion reached by Committee P in its *Annual Report 1998*, indicating that discussion of police violence remains a “taboo topic” within the Belgian police forces, that officers commonly turn such incidents into accusations of violent resistance on the part of detainees in order to justify the violence they themselves have used and that the police hierarchy and internal monitoring services are “ostensibly” satisfied by such explanations. Further, the Committee points out that such an attitude carries serious consequences for police officers who wish to carry out their jobs correctly.¹¹

Amnesty International is concerned that allegations concerning the ill-treatment of deportees by gendarmerie officers should be subject to full, prompt and impartial examinations, in line with the provisions of international standards, including article 8 of the UN Declaration against Torture and article 12 of the UN Convention against Torture, which Belgium signed in 1985 and for which the government, according to the statements its representatives made to the Human Rights Committee in October 1998, has drawn up a draft act of ratification to be submitted to parliament in the near future. Amnesty International believes that such investigations, with the methods and findings made public, serve to protect the reputation of law enforcement officers who are the subject of unfounded accusations of ill-treatment as well as to safeguard the interests of genuine victims of ill-treatment. We would welcome, therefore, clarification of the investigation process indicated in your letter.

¹¹Chapter V - Conclusions and general recommendations: section 1.1. Use of violence

“Le débat sur la violence policière (propre) reste un sujet tabou au sein des corps de police. Les incidents se traduisent habituellement par des accusations de rébellion visant à justifier la violence don’t il est fait usage. Ostensiblement, la hiérarchie et les services de contrôle interne s’en satisfont.

Cette attitude entraîne de graves conséquences pour les fonctionnaires de police qui veulent jouer correctement leur rôle”.

“Binnen de politiekorpsen is de discussie over het (eigen) politiegeweld nog steeds taboe. Incidenten worden steevast herleid tot aanklachten wegens weerspanningheid om het gebruikte geweld te rechtvaardigen. De hiërarchie en de diensten van intern toezicht stellen zich daar zichtbaar mee tevreden Deze attitude heeft ernstige gevolgen voor die politieambtenaren die het korrekt willen spelen”.

We would also welcome information about the progress of any investigations opened into the allegations made by Fatmata Mohamed, an 18-year-old asylum-seeker from Sierra Leone who has been held in detention since her arrival at Brussels-National airport on 16 June 1998 and is currently held in Berkendael Prison for women, Brussels. She has alleged ill-treatment by gendarmes both during an unsuccessful attempt to deport her forcibly to Guinea on 25 January 1999 and during an incident which occurred on 30 November or 1 December 1998, while she was detained at the Sint-Andries Centre for illegal aliens in Bruges.

In a criminal complaint (*plainte*) lodged with the Brussels Public Prosecutor's office in December 1998 she accused four gendarmes of assault and battery and threats (*coups et blessures volontaires et menaces*). She alleged that on 30 November or 1 December 1998, the four gendarmes, in the presence of the deputy director of the centre, subjected her to blows, knocking her to the floor, "suffocated" her with a blanket, handcuffed and manacled her and that she was then placed in an isolation cell for six days. She claimed that the gendarmes' actions were prompted by the apparent discovery of a tract calling on the centre's inmates to carry out a strike and/or other protest action and the suspicion that she was the author of the tract, which she denies.

Her complaint further alleges that the centre's inmates are unable to communicate freely with their lawyers, specifically that the centre's personnel listen to the detainees' telephone conversations and monitor their correspondence with their lawyers and that her own lawyer was unable to reach her while she was held in isolation but was not informed of her whereabouts.

We would welcome the government's cooperation in providing Amnesty International with confirmation of the steps taken by the judicial authorities to investigate Fatmata Mohamed's complaint. We are, however, concerned that an attempt was made to deport Fatmata Mohamed forcibly on 25 January 1999, apparently before any judicial investigation had been completed into her complaint. We would welcome your comments on this and any other aspects of the allegations relating to the 1998 incidents.

Fatmata Mohamed has also indicated her intention of shortly lodging a supplement to her complaint, following the attempted deportation of 25 January 1999. It has been alleged that, during the attempt to deport her forcibly to Guinea on 25 January, the gendarmes who accompanied her onto the plane at Brussels-National airport handcuffed and manacled her, dragged her along the stairs of the aircraft by her handcuffs, kicked and applied heavy pressure to her sternum in an attempt to force her into her seat, "strangled" her to stop her shouting out and applied heavy pressure to the back of her neck and pulled a lock of hair from her head. She alleges also that gendarmes threatened to kill her if she resisted on the next attempt to deport her, telling her that she would 'end in the same way as Semira Adamu' with whom she shared a room during a period of detention in Steenokkerzeel Detention Centre 127-bis. After the

intervention of fellow passengers, the pilot's refusal to carry her on the flight and the gendarmes' abandonment of the attempt to deport her, Fatmata Mohamed was returned to the Sint-Andries Centre where she said a doctor gave her medication to treat injuries to her neck. She claimed she was held in an isolation cell for several days.

As you are aware, on the night of 28 January 1999, several days after the incidents, Dr Philippe Stévenne participated in a visit made to Fatmata Mohamed by the parliamentary deputy Vincent Decroly. In a medical report issued on 29 January 1999, he recorded the findings of a medical examination he carried out on Fatmata Mohamed at 11.30pm on 28 January 1999. The injuries recorded included swelling to the back of the neck and the right foot and a superficial cut to the right wrist. The report stated that the injuries were consistent with allegations of an assault suffered on 25 January 1999. It also indicated that there was evidence that Fatmata Mohamed had been issued with pain-killers and anti-inflammatory drugs.

We are aware of a press release which your office issued on the case of Fatmata Mohamed on 29 January 1999, stating that she had resisted the attempt to deport her to Guinea-Conakry with extreme violence, shouting out, hitting out and kicking out wildly and that when she bit one of the accompanying gendarmes it was decided to abandon the attempt to deport her. The press release also stated that since her return to the Sint-Andries Centre in Bruges she had at no time made any request for medical assistance and had not been held in an isolation cell. The Ministry stated that it therefore "emphatically denies that there is any question of serious ill-treatment" and "likewise emphatically denies that the person concerned has at any time been held in an isolation cell and that "Reports alleging the contrary are, therefore, manifestly untrue".

The press release also referred to the visit made by the parliamentary deputy Vincent Decroly, in the company of a doctor, on the night of 28 January 1999 and stated that "he was clearly able to establish that there is no question of serious ill-treatment" and that "he was also able to establish that she was with the other occupants and not, therefore, in an isolation cell and that she returned to the group after his visit".

We are also aware of a further medical examination of Fatmata Mohamed, carried out on 29 January 1999 by Dr D. Wynsberghe, a doctor attached to the General Directorate of the Aliens Bureau¹² who was apparently asked to examine Fatmata Mohamed by the Centre for Illegal Aliens in Bruges. The medical report which he issued the same day recorded, *inter alia*, pain and restriction of movement around the neck, swelling to the right ankle, discolouration of an area at the front of her scalp where a lock of hair was missing, and slight grazing to her right wrist. He also recorded that Fatmata Mohamed had informed him that the injuries were the result of use of force during the deportation attempt of 25 January and that she had been

¹²*Algemene Directie van de Dienst Vreemdelingenzaken/Direction générale de l'Office des étrangers*

dragged along, supported under the armpits or pulled by handcuffs, controlled by a knee pushed into her chest and that heavy pressure was applied to her neck and that she lost consciousness. The report stated that she had requested medical attention for her injuries on 25 and 27 January and was given painkilling and anti-inflammatory medication. The report concluded that the connection between Fatmata Mohamed's injuries and the acts she alleged was "probable"¹³.

We are aware that Deputy Decroly subsequently addressed a parliamentary question to you regarding the case of Fatmata Mohamed. We would be grateful to receive details of your response and information about the steps taken by the Ministry of the Interior to conduct a full and impartial investigation into the allegations. We would also welcome your assurances that Fatmata Mohamed will not be deported before the judicial and administrative investigations have been completed and the findings made public.

Blandine Kaniki, a 20-year-old asylum-seeker from the Democratic Republic of Congo lodged a criminal complaint on 26 November 1998 while detained in Steenokkerzeel Detention Centre 127-bis with her five-year-old son Christian. The complaint alleges offences of assault and battery, abuse of authority and failure to assist a person in danger (*coups et blessures, abus d'autorité, non assistance à personne en danger*).

In her complaint, in which she constituted herself a civil party, Blandine Kaniki stated that on her arrival and detention in Brussels with her son in October 1998 she was three months pregnant. She alleged that on the morning of 31 October 1998, while held in Centre 127-bis with her son, she was subjected to a physical assault by gendarmes which resulted in a miscarriage on 24 November 1998. She also said that she witnessed an assault on a Nigerian national, Frank Kakulu by gendarmes and employees of Centre 127-bis and the assault by gendarmes of a number of other detainees in the centre, including one known as "Baby", described as "*un ami congolais*".

Blandine Kaniki said that at around 8am on Saturday, 31 October 1998, four members of the centre's personnel came to collect Frank Kakulu (No 4779160), in order to hand him over to gendarmes to be put on a flight to Nigeria. He refused to leave the centre and Blandine Kaniki claims that the four men then assaulted him, putting his head between the bars of the ladder of a bunk bed and then dragging him along the floor. Other inmates then intervened to protest and delayed Frank Kakulu's removal for a few hours. At around 11am the inmates were gathered in the dining-room, grouped around Frank Kakulu, when a number of gendarmes entered the room, wearing helmets and armed with batons and shields. Blandine Kaniki alleged that they started to hit the inmates indiscriminately and that she herself received a blow to the stomach. Thereafter she suffered repeated intense stomach pains and for an initial period vomited every time she attempted to eat. She alleged that on numerous occasions she

¹³“*Het verband tussen de letsels en de aangehaalde feiten is waarschijnlijk*”

complained about these severe pains to a female doctor attached to Centre 127-bis but was told the pains were a normal consequence of her pregnancy. On Sunday, 22 November 1998 the pains became worse and were accompanied by bleeding. The doctor and a nurse examined her the following day, apparently noting the bleeding and giving her medication for intestinal pain. However, the next day the pains and bleeding doubled in intensity and in the evening of 24 November 1998 she was transferred to Vilvoorde hospital but miscarried at the moment she left the vehicle transporting her. Forty-eight hours later she was returned to Centre 127-bis where she apparently remains at the time of writing.

In her complaint Blandine Kaniki indicated that in the immediate aftermath of the incidents of 31 October, an internal inquiry was opened into them, at the express request of your office. She also claims that the inmates were assured, apparently by your office, that none of the detainees injured during the incidents of 31 October would be deported until the inquiry had been completed. However, she alleges that a few days after the incidents the inmate known as "Baby", whose jaw - reportedly - had been fractured by gendarmes on 31 October, was deported and that an attempt was also made to deport her on 6 November 1998.

Amnesty International has received photocopies of handwritten statements signed by two other individuals who were detained in Centre 127-bis at the time of the incidents of 31 October 1998 and who claim to have suffered injuries themselves, as well as witnessing others being injured by gendarmes. In a statement written in French, Bruno Vanju Phoba (No 477962), supports the allegations made by Blandine Kaniki regarding the events of 31 October, adding that on the morning of 31 October 1998 he heard Frank Kakulu protesting against the forcible administration of an injection during the first attempts to remove him from the centre, that gendarmes subsequently injured Frank Kakulu in the area of his neck, that the officers hit out indiscriminately, that he saw Blandine Kaniki being struck, that he also saw 'Baby' suffer an injury to his jaw and bleeding profusely and that he himself received several blows to the stomach, inflicted by a gendarme. In a statement written in English, Kinsley Onaiwu (No 4770056) also supports the allegations of indiscriminate assault by the gendarmes, the injuring of Frank Kakulu by gendarmes, and claims that he himself was hurt by a baton blow to his back and briefly lost consciousness.

We have also received unconfirmed reports that in the intervening months several more detainees who were victims of and/or witnesses to the violent incidents of 31 October 1998 have been deported or ordered to leave the country. We are concerned by such reports in view of further claims that in the course of the internal investigation, apparently carried out under the auspices of the Ministry of the Interior, several inmates were asked to sign statements written in Dutch, a language they did not understand, which they believed related to the incidents of 31 October 1998 and which, therefore, they refused to sign. We would appreciate any comments or information you might be able to provide on these reports.

We understand that the version of the events of 31 October 1998 described above has been disputed by the gendarmes who intervened in the events in the centre on 31 October 1998 and in a public statement made by your office on 10 December 1998, apparently while the internal investigation was still under way. We understand that the internal investigation may now have ended and, if so, we would be grateful to receive a copy of the report.

We have been informed that a judicial investigation into Blandine Kaniki's criminal complaint is still under way (Dossier 150/98). We would welcome, therefore, your assurances that neither Blandine Kaniki and her son, nor any other alleged victims of, or witnesses to, the violent incidents of 31 October 1998 will be deported or ordered to leave the country before the relevant Brussels judge of instruction (judge Coumans) has completed his investigation.

We are sending a copy of this letter to the Minister of Justice, drawing his attention to Amnesty International's requests relating to the judicial investigations into the death of Semira Adamu and the alleged ill-treatment of Fatmata Mohamed and Blandine Kaniki.

Yours sincerely,

Derek Evans
Deputy Secretary General