

# France

## Amnesty International Submission to the UN Universal Periodic Review

Second session of the UPR working group, 5-16 May 2008

**Key words:** asylum, *refoulement*, counter-terrorism legislation, torture, impunity, violence against women

In this submission, Amnesty International provides information under sections B and C (as stipulated in the *General Guidelines for the Preparation of Information under the Universal Periodic Review*<sup>1</sup>):

In section B, Amnesty International raises outstanding ratifications of international human rights standards and shortcomings in France's reporting to the UN treaty bodies;

In section C, we describe human rights concerns, including impunity for human rights violations committed by law enforcement officers, *refoulement*, asylum and migration issues, and violence against women.

In each section Amnesty International makes a number of recommendations in the areas of concerns listed.

### B. Normative and institutional framework of the State

#### Ratification of international human rights standards

1. *Amnesty International calls on France to sign and ratify the Optional Protocol to the Convention on the Rights of Persons with Disabilities and the International Convention on the Rights of All Migrant Workers and Members of their Families.*
2. *Amnesty International calls on France to ratify without delay the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention for Protection of All Persons from Enforced Disappearance, and the Convention on the Rights of Persons with Disabilities.*
3. *Amnesty International calls on France to withdraw its reservations to the Convention on the Elimination of All Forms of Discrimination against Women.*

#### Reporting to UN Treaty Bodies

4. *Amnesty International calls on France to submit without further delay all outstanding reports to the Treaty Monitoring Bodies, specifically to the Committee for the Elimination of Discrimination against Women, and the Committee on the Rights of the Child.*

#### Asylum procedure and *refoulement*

5. Amnesty International is concerned at continuing reports of individuals being deported from France to countries where they may be at risk of serious human rights violations including torture, in violation of France's obligations under international human rights treaties and refugee law. In particular, the organization considers that the appeals procedures for asylum claims made at the border or claims being heard under the accelerated procedure, do not meet international standards for full and fair review with suspensive effect by an independent body, despite the modifications introduced by the law on immigration, integration and asylum (*loi relatif à la maîtrise de l'immigration, à l'intégration et à l'asile*) introduced in November 2007.

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<sup>1</sup> Contained in Human Rights Council Decision 6/102, Follow-up to Human Rights Council resolution 5/1, section I, adopted 27 September 2007.

*Refoulement at the border: Asebeha Gebremedhin<sup>2</sup>*

6. On 26 April 2007 the European Court of Human Rights ruled that France had violated Articles 3 and 13 of the European Convention on Human Rights in the case of Asebeha Gebremedhin, an Eritrean asylum-seeker who arrived at the Charles de Gaulle airport on 29 June 2005. On arrival, and without leave to enter France, Asebeha Gebremedhin made a claim for asylum at the airport, known as an “application for asylum at the frontier”. His application was rejected a week later and he was refused entry to the state territory. He made an appeal against the decision while held in a transit area, which was rejected. He then made an application to the European Court of Human Rights for Interim Measures. As a result of Interim Measures ordered by the European Court of Human Rights Asebeha Gebremedhin was able to gain access to the territory of France and issued with a temporary residence permit. He appealed to the government body which determines refugee status (*Office français de protection des réfugiés et apatrides, OFPRA*), while the European Court’s decision was pending and was granted refugee status by the OFPRA on 7 November 2005.
7. The European Court of Human Rights ruled that under the European Convention on Human Rights there exists an obligation to provide a right of appeal with suspensive effect against a decision to return an individual to a country where he or she may be at risk of torture or other ill-treatment. The appeal against the refusal of leave to enter the French territory was non-suspensive and did not allow, but for the Interim Measures, for the proper consideration of the asylum claim by the OFPRA. The Court held that there had been a violation of Article 13 of the European Convention on Human Rights taken in conjunction with Article 3 of the European Convention on Human Rights. The law adopted in November 2007 created a suspensive right of appeal at the borders but includes substantial restrictions, including a 48-hour time limit on lodging the appeal, which must be written in French.

*Refoulement under the accelerated asylum procedure (“procédure prioritaire”): Houssine Tarkhani<sup>3</sup>*

8. On 3 June 2007 Tunisian asylum-seeker Houssine Tarkhani was forcibly returned from France to Tunisia. Amnesty International considers that there were, at the time of his forcible return to Tunisia, substantial grounds to believe that Houssine Tarkhani would face a serious risk of torture or other serious human rights violations on return, and therefore that the act of returning him constituted a violation by the French authorities of the principle of *non-refoulement*.
9. Houssine Tarkhani was arrested at the French-German border on 5 May 2007, as an irregular migrant. On 6 May 2007, he was brought before a judge and informed that he was being investigated by the French police on suspicion of involvement in terrorism-related offences. When he discovered the nature of the suspicions against him he immediately made a claim for asylum. On 7 May he was taken to the regional administrative detention centre (*centre de rétention administrative, CRA*) at Mesnil-Amelot, to be detained while his asylum claim was processed under the accelerated procedure. At no stage was Houssine Tarkhani charged with any terrorism-related criminal offence.
10. On 25 May he was told that his asylum application had been rejected by the OFPRA. An appeal against this decision was lodged with the Refugee Appeals Commission (*Commission des Recours des Réfugiés, CRR*)<sup>4</sup> but this appeal was non-suspensive and as a result he was forcibly returned to Tunisia on 3 June 2007.

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<sup>2</sup> See *Europe and Central Asia: Summary of Amnesty International’s Concerns in the Region, January – June 2007* (AI Doc EUR 01/010/2007).

<sup>3</sup> See *Tunisia: Secret detention/fear of torture: Houssine Tarkhani* (AI Doc MDE 30/004/2007, UA 141/07).

<sup>4</sup> Now replaced by the National Court on Asylum (*Cour nationale du droit d’asile*).

11. Amnesty International has since learnt that Houssine Tarkhani was detained by officers of the Tunisian State Security (*Sûreté de l'Etat*) on his arrival in Tunisia. According to the information available he was taken to the State Security Department of the Ministry of Interior in Tunis, where he was reportedly tortured and threatened with death. He was then held in incommunicado detention for a period of nine days – longer than is permitted by Tunisian law. He has reportedly now been charged with a number of broadly-defined offences under Tunisian counter-terrorism legislation.

*Refoulement under emergency deportation procedure: Adel Tebourski<sup>5</sup>*

12. In May 2005 Adel Tebourski was sentenced by a French Court to six years' imprisonment for providing false identity documents to two alleged al-Qa'ida operatives involved in the killing of a leader of the Northern Alliance coalition group in Afghanistan. Adel Tebourski was released from prison in Nantes on 21 July 2006. On the same day, he was stripped of his French nationality and moved to the Mesnil-Amelot administrative detention centre. This followed an order by the French Minister of Interior to have him expelled from France under the terms of an emergency deportation procedure which denies individuals the right to have their removal suspended while they appeal. On 28 July, the OFPRA rejected Adel Tebourski's request for political asylum. His lawyer argued that, if returned to Tunisia, Adel Tebourski could be charged under anti-terrorism legislation, and would be at grave risk of torture and other serious human rights violations, and submitted an appeal against the decision. However, this appeal did not have suspensive effect and Adel Tebourski was forcibly deported to Tunisia on 7 August 2006.

13. On his arrival at Tunis airport he was questioned by Tunisian border police, and then released. Amnesty International does not have information on what has happened to Adel Tebourski subsequently.

14. *Amnesty International urges the authorities to respect their obligations not to send a person to a place where they face a real risk of serious human rights violations, including torture or other ill-treatment;*

15. *Amnesty International recommends that the government urgently review its asylum legislation and procedures in order to ensure that they comply fully with international human rights law and the recommendations of the relevant international and regional human rights mechanisms. In particular, the authorities should ensure that all asylum seekers receive a full and fair individualized determination of their claim, including a right of appeal by an independent body with suspensive effect. The authorities should ensure that applicants for international protection have adequate time and facilities to benefit effectively from the procedures.*

**Counter-terrorism legislation<sup>6</sup>**

16. In January 2006 a law was passed (*Loi du 23 janvier 2006*, Article 17) granting custodial judges (*juge des libertés*) the authority to order up to two additional 24-hour extensions of police custody in terrorism-related cases in addition to the two 24-hour extensions already permitted. Under this law, individuals detained on suspicion of having committed a terrorism-related offence have only limited access to a lawyer (once after 72 hours in custody, once after 96 hours, and once after 120 hours).

17. *Amnesty International recommends that the French government amend this legislation with a view to ensuring detainees' rights to effective legal assistance, which includes the right to consult with a lawyer from the outset of police custody and throughout the period of detention.*

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<sup>5</sup> See France: Fear of forcible return/Fear of torture: Adel Tebourski (AI Doc: EUR 21/005/2006, UA 204/06).

<sup>6</sup> See France in Amnesty International Annual Report 2007 (AI Doc POL 10/001/2007).

### **Torture legislation<sup>7</sup>**

18. The French Penal Code does not contain a definition of torture which corresponds to the definition set out in Article 1 of the UN Convention against Torture. Such an absence is a possible hindrance to an adequate protection from torture.
19. *Amnesty International recommends that the government incorporate a full definition of torture into the Penal Code which is in conformity with the full definition of torture as set out in the UN Convention against Torture.*

### **C. Promotion and protection of human rights on the ground**

#### **Effective impunity of law enforcement officials for human rights violations<sup>8</sup>**

20. For many years Amnesty International has documented the authorities' response to allegations of torture or other ill-treatment and excessive use of force, including possible unlawful killings, by law enforcement officials. The vast majority of cases suffer the same fate: internal police investigations, coupled with the discretionary powers of the prosecution, result in many ineffective prosecutions of perpetrators of human rights violations. Many cases have been filed away before coming to court, even when there was credible evidence that a violation had occurred. Even when such cases have come to court, convictions have been relatively rare, or, when they occurred, sentences have mainly been nominal. Amnesty International has concluded that the government's continued failure to address these violations has led to a climate of de facto impunity for law enforcement officials.
21. Racism is a major element in many of the cases examined by Amnesty International. Almost all the cases which came to the organization's attention involved persons of non-European ethnic origin, most commonly of North African or sub-Saharan extraction.

#### *Ahmed Selmouni*

22. Following his detention in police custody at Bobigny (Seine-Saint-Denis) in November 1991 Ahmed Selmouni complained to the internal police oversight body (*Inspection Générale de la Police Nationale*, IGPN) that he had been threatened and tortured. As a result of the ill-treatment he virtually lost the sight of one eye.
23. In July 1999 the Grand Chamber of the European Commission of Human Rights found France to have violated the prohibition against torture as well as the right to fair trial within a reasonable time.<sup>9</sup> The criminal case against the officers involved only reached the French courts several years later. The appeal against the conviction, at which the public prosecutor protested on behalf of the "honour" of the perpetrators, resulted in the reduction of the seriousness of the offences and enabled the officers to continue in their police careers.
24. Amnesty International's research indicates that the existing complaints investigation mechanisms and criminal courts are still failing to deal with complaints of human rights violations perpetrated by law enforcement officials with the thoroughness, promptness or impartiality which international law requires.

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<sup>7</sup> See *France: The search for justice (AI Doc: EUR 21/001/2005)*.

<sup>8</sup> See *France: The search for justice (AI Doc: EUR 21/001/2005)*.

<sup>9</sup> *Selmouni V France*, Judgment of the European Court of Human Rights, (July 1999), Application no. 25803/94, <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=Ahmed%20%7C%20Selmouni%20%7C%20France&sessionid=5267910&skin=hudoc-en>  
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25. *Amnesty International recommends that the government take immediate action to create a fully resourced independent mechanism to investigate all allegations of serious human rights violations by law enforcement officials, staffed by competent and impartial personnel fully independent of the law enforcement bodies and prosecuting authorities. This mechanism should be directly accessible to individual complainants and its findings and recommendations in individual cases should be presented to the prosecuting authorities in order that they pursue criminal charges in appropriate cases.*
26. *Amnesty International further recommends that the government introduce safeguards against human rights violations in police custody, including the video- and audio-recording of all custody areas of police stations and any other places where detainees may be present, except where this would violate their right to consult with a lawyer or doctor in private.*

#### **Violence against women<sup>10</sup>**

27. Amnesty International has repeatedly highlighted the problem of violence against women in France. Official data from 2006 recorded 127 women killed by their partner, resulting in an average of more than one woman killed every three days. Almost one in 10 women in France has been the victim of domestic violence. The procedures for women trying to access justice are slow and complex and migrant women face additional difficulties.
28. *Amnesty International recommends that the French government design and implement appropriate legislation specifically focusing on prevention, prosecution, punishment and compensation, to eradicate gender-based violence against women on French territory, both domestically and in the context of trafficking for the purpose of prostitution.*
29. *Amnesty International further recommends that the French government ensure that professionals from the health, legal, policing and educational sectors receive on-going sensitization and training, helping them to identify and assist women affected by gender-based violence.*

#### **Implementation of human rights obligations and voluntary commitments**

30. Amnesty International welcomes France's commitment to increase its voluntary contribution to the Office of the High Commissioner for Human Rights in order to facilitate technical assistance and its pledge to double its contribution to the United Nations Voluntary Fund for the Victims of Torture, and requests confirmation that such contributions have already been made or that a timeline is in place to do so.
31. Amnesty International welcomes the pledges made by France in the context of its election to the Human Rights Council in 2006. Amnesty International encourages France to publicly report on the state of implementation of these pledges.

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<sup>10</sup> See *France: Violence against women - a matter for the state (AI Doc EUR 21/001/2006)*.

**Appendix: Amnesty International documents for further reference**

**Asylum and Refoulement**

*Europe and Central Asia: Summary of Amnesty International's Concerns in the Region, January – June 2007 (AI Doc EUR 01/010/2007).*

*Tunisia: Secret detention/fear of torture: Houssine Tarkhani (AI Doc MDE 30/004/2007, UA 141/07).*

*France: Fear of forcible return/Fear of torture: Adel Tebourski (AI Doc: EUR 21/005/2006, UA 204/06).*

**Effective impunity of law enforcement officials for human rights violations**

*France: The search for justice (AI Doc: EUR 21/001/2005).*

**Violence against women**

*France: Violence against women - a matter for the state (AI Doc EUR 21/001/2006).*

**General**

*France in Amnesty International Annual Report 2006-2005.*