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# France:
## Briefing to the Human Rights Committee

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## 1. Introduction

Amnesty International submits this briefing for consideration by the Human Rights Committee in view of its forthcoming examination of France's fourth periodic report on measures taken to implement the provisions of the International Covenant on Civil and Political Rights (ICCPR). This briefing summarizes some of Amnesty International's main concerns on France, as documented in a number of the organization's reports.

This briefing summarizes Amnesty International's concerns about the failure of the French authorities to take adequate measures to prohibit torture and other ill-treatment, including by ensuring the prompt, independent, impartial and effective investigations into allegations of torture and other ill-treatment and bringing those responsible to justice, as required by Articles 7 and 2 of the ICCPR, respectively. The organization considers that these continuing failures, culminate in a failure to provide an effective remedy to victims of human rights violations and have created a climate of impunity, which fosters further such violations.

This briefing also highlights Amnesty International's concerns about violations of the absolute prohibition against returning individuals to countries where there is a real risk of torture or other ill-treatment, which is inherent in the prohibition of torture and other ill-treatment in Article 7 of the ICCPR.

## 2. Torture and other ill-treatment by law enforcement officials (Article 7)

When it last reviewed France's implementation of the ICCPR in 1997, the Human Rights Committee said it was "seriously concerned" at the number and grave nature of the allegations it had received of ill-treatment by law enforcement officials of detainees and other persons "who come into conflictual contact with them", and at the fact that "in most cases there is little, if any, investigation of complaints of such ill-treatment by the internal administration of the police (*police nationale*) and the *gendarmerie nationale*, resulting in virtual impunity".[1]

Since that time Amnesty International has continued to research and document allegations of torture or other ill-treatment, including possible unlawful killings, by law enforcement officials. The majority of cases brought to Amnesty International's attention have involved allegations concerning excessive use of force, particularly resulting from identity checks.

[1] Concluding observations of the Human Rights Committee: France, UN Doc. CCPR/C/79/Add.80 (hereinafter: HRC concluding observations), 4 August 1997, para 16.

One case that Amnesty International raised with the French authorities in August 2007 involved the case of Albertine Sow. According to the official complaint submitted by Albertine Sow, supported by various witness statements, on 17 August 2006 three police officers in civilian clothes (from the police station in rue Erik Satie, Paris) arrived at 19 rue Clovis-Hugues, in response to an altercation between a young man and a young woman. According to eye-witnesses, when the police violently handcuffed a young man who did not have his identity documents to produce to the police as they had requested, the young man's cousin, Albertine Sow, who was six months' pregnant at the time, intervened to ask what was happening. As Albertine Sow insisted on understanding the situation, one of the police officers allegedly began shouting at her and acting in an aggressive and threatening manner, telling her to leave or he would hit her. When she asked him to calm down, witnesses state that the police officer punched her in the mouth.

When Albertine Sow's brother, who had witnessed her being hit, tried to intervene, both were sprayed with tear gas. As more police officers arrived, Albertine Sow and her brother, Jean-Pierre Yenga Fele, were allegedly hit with batons. Jean Pierre Yenga Fele was hit on the head and Albertine Sow was hit on the thigh. Albertine Sow then fell down and lost consciousness. When she regained consciousness she claims she was lying on her stomach, being handcuffed. As she had injured her head in the fall a police officer asked for the handcuffs to be removed, and she was taken to the Lariboisière hospital, where she was admitted. She remained in the hospital for 24 hours under police surveillance because the police officers had presented a complaint against her for "group assault" ("*violences en réunion*").

Albertine Sow presented a complaint of ill-treatment against the police officers to the General Inspectorate of Services (*Inspection Générale des Services, IGS*) on 28 August 2006, supported by numerous witnesses. On 30 August 2006, the Paris prosecutor opened a preliminary investigation into the charges brought against Albertine Sow by the police.

On 21 September 2006, Albertine Sow presented a criminal complaint to the Tribunal de Grande Instance, Paris, alleging police ill-treatment. However, despite the numerous witness testimonies and medical reports presented to support her complaint, on 27 November 2006 the case was closed without further investigation by the prosecutor on the grounds that there was no evidence of a crime ("l'examen de cette procédure n'a pas permis de caractériser suffisamment l'infraction"). Amnesty International wrote to the Public Prosecutor in August 2007 to raise concerns about the "early closure" of Albertine Sow's criminal complaint.

## 2.1 Discrimination and ill-treatment by law enforcement officials (Article 7 in conjunction with Article 26: prohibition of discrimination)

Racism is a major element in many of the cases of ill-treatment by law enforcement officials examined by Amnesty International. Almost all the cases which have come to the organization's attention involve persons of non-European ethnic origin, most commonly of North African or sub-Saharan extraction.

In its third report on France, published on 15 February 2005, the European Commission against Racism and Intolerance (ECRI) of the Council of Europe also expressed concern about identity checks with a racial bias.[2] It noted that the complaints about discriminatory identity checks were persisting. ECRI was "especially concerned about information from NGOs to the effect that when someone lodges a complaint against a law enforcement official, the latter almost invariably retaliates with a charge of insulting an officer of the law or malicious accusation, which weakens the position of the civil plaintiff".

ECRI also expressed doubt about the full effectiveness so far of certain laws introduced in France to combat racism and discrimination. In February 2003 the so-called *"Loi Lellouche"* had introduced an aggravating factor into sentencing policy on certain violent acts which were proved to be racially motivated.[3] However, the effectiveness of such laws in addressing racist violence by police officers has arguably been very limited to date. Amnesty International is not, so far, aware of any case in which aggravating factors have been taken into account in a police officer's sentence, despite the frequency of allegations of police ill-treatment with a racist element.

In its third report ECRI noted that: "Law enforcement officials and members of the judicial service are not always sufficiently alert to the racist aspect of offences, and the victims are not always adequately informed or assisted with the formalities." It recommended that: "the French authorities duly implement the provisions stipulating that racist motivation constitutes an aggravating circumstance in the case of the specified offences, and take the necessary steps to monitor the implementation of these new provisions". In its 2005 report ECRI also "noted with anxiety that complaints persist concerning ill-treatment inflicted by law enforcement officials on members of minority groups. The complaints implicate police and *gendarmerie* officers, prison staff and personnel working in the ZAPI (*zones d'attente des personnes en instance*; zones specially designated for persons awaiting clarification of their legal status). They allege acts of physical violence, humiliation, racist verbal abuse and racial discrimination." ECRI recommended the adoption of measures to "put a stop to all police misconduct including ill-treatment of minority groups".

## 2.2 Police custody (Articles 7 and 10)

According to French legislation, detainees in police custody (*garde à vue*) must be informed at once of their rights in a language they understand; of the provisions relating to police custody; of the reasons for their arrest and of any charge against them. Detainees have the right to inform relatives, partners or employers that they are being held in custody within a period of three hours at the most, unless this is held to jeopardize the inquiry; they also have the right to be examined by a doctor.

[2] ECRI, Third Report on France, adopted on 25 June 2004, CRI (2005) 3.

[3] Loi no. 2003-88 du 3 février 2003 visant à aggraver les peines punissant les infractions à caractère raciste, anti-sémite ou xénophobe, published in the Journal officiel (JO) no. 29 of 4 February 2003. An earlier law of 1 July 1972 ("Loi Pleven") criminalized "instigation of" racial discrimination, hatred and violence and increased penalties for racial defamation or abuse.

However, Amnesty International considers that in practice, the ill-treatment of detainees is facilitated by the failure to ensure that all detainees are granted immediate access to legal assistance, including having a lawyer present during interrogations; by the prolonged period of police custody without access to a lawyer for some categories of detainees; by the failure to provide detainees with prompt medical examinations when required; and by the failure of police officers to properly implement regulations governing police custody.

On 11 March 2003 a ministerial circular was sent to the headquarters of the national police force and of the *gendarmerie nationale*, and to the Prefect of Police, with respect to improving material conditions in police custody. The Interior Ministry circular stated that body searches should be exceptional and called, among other things, for improved access for detainees to telephones and confidential communication with lawyers, as well as for hot meals to be served to detainees. The practice of tying detainees to radiators was criticized. In its above-mentioned report, the CPT urged the Government to accord a high priority to the implementation of the circular. However, it should be noted that this circular did not refer to problems of ill-treatment by police and did not refer to the existence of disciplinary sanctions for officers who did not respect the rules governing police custody.

Continuing allegations of ill-treatment in police custody lead Amnesty International to conclude that there is a continuing lack of respect for internal guidelines or rules, as well as for international norms. As a result of the very same conflicts which have often led to detainees sitting in police stations in the first place, they may be treated with suspicion by police officers, who, apart from refusing them medical care, or contact with a relative in some cases, may not inform them fully of their rights, or may not properly or fully fill in the reports they must draw up in relation to each police custody. Police officers are obliged to maintain a custody record (*procès verbal*) containing information about the conditions of police custody: for example, total duration of police custody; length of periods of questioning; times of breaks; hours of eating, and so on. The custody record has to be signed by the person being held in police custody before this is brought to an end. However, such a record will not necessarily be a full account of the relevant facts and detainees desperate to get out of police custody may be tempted to sign it without reading it properly, or be threatened with an extension of police custody if they show signs of refusing to sign.

Amnesty International considers that the failures to properly administer police custody, either as a consequence of apathy or of bad faith, not only violate the rights of detainees and facilitate torture and other ill-treatment, but can also impede full investigation of allegations of ill-treatment and can foster impunity. The absence of a medical report, if a detainee has been injured either during or after arrest; an inadequate rendering in the custody record the conditions in which police custody has been carried out, omitting possible improprieties; the reluctance of some officers to register a complaint against colleagues by the victim of police ill-treatment, or the bringing of a counter-complaint against someone who tries to register such a complaint; the obstruction of a lawyer trying to carry out his or her professional duty, are among factors which contribute towards the obstruction of a judicial inquiry from the outset, and make it more difficult in practice than it is in principle for justice to be done.

## 2.3 Recommendations made by Amnesty International related to treatment of detainees

Amnesty International has made a series of recommendations to the French authorities with a view to the eradication of torture and ill-treatment of persons held in custody. Among other things, Amnesty International recommended that the French government introduce 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. The organisation noted the coming into force on 1 June 2008 of the provisions of the law of 4 March 2007, which make it compulsory to video- and audio-record interrogations by investigating judges and in police custody. However, Amnesty International considers that this step forward does not go far enough to ensure the protection of the rights of detainees in custody from torture and other ill-treatment, and that the video- and audio- surveillance of detainees should be extended to all areas where detainees may be present (except where this would violate the right to consult with a lawyer or doctor in private) including individual cells and communal areas of police stations, and for such measures to apply to all detainees regardless of the nature of the charges against them.

Amnesty International has also recommended that the authorities ensure that police officers are identifiable by members of the public at all times via individual identity number badges and that police officers be obliged to state their identity number to members of the public on demand.

## 2.4 Access to a lawyer (Articles 7, 9 and 14)

Article 63-4 of the penal code, as amended by law number 2004-204 of 9 March 2004, guarantees the right to access to a lawyer from the first hour of police custody in most cases. An individual also has the right to a lawyer from the start of any extension of police custody, beyond the initial 24-hour period.

There exists a separate custody regime for persons suspected of various crimes, considered to be particularly serious. The 2004 law extends the types of serious crimes governed by a separate custody regime from those initially only relating to terrorism-related or drug trafficking offences to now include other serious 'organised' crimes. In addition, law number 2004-204 delays access to a lawyer for individuals suspected of serious organised crimes to once after 48 hours, and then once again after 72 hours.

Under a law passed in January 2006 (*Loi du 23 janvier 2006*), individuals detained on suspicion of having committed a terrorism-related offence and whose police custody is extended to six days, have access to a lawyer once after 96 hours, and once after 120 hours. Amnesty International is concerned that this legislation, along with the 2004 law, violates the right of detainees to effective assistance of legal counsel. Such delay in access to counsel can facilitate torture or other ill-treatment and undermine the right of a detainee who is later charged to a fair trial.

In its December 2007 report relating to its visit to France in September-October 2006, the European Committee for the prevention of Torture and Cruel, Inhuman or Degrading Treatment

or Punishment (CPT) reiterated its concern about French legislation that denies detainees prompt access to a lawyer, stressing that all detainees should have access to a lawyer from the outset of police custody, and also be granted the right for a lawyer to be present during police questioning. The CPT criticized the fact that the 2004 law had retained the deviation from the norm on access to a lawyer for a whole range of criminal offences. It urged the French authorities "to grant all persons deprived of their liberty by the forces of law and order – for whatever motive – access to a lawyer (though not necessarily a lawyer of their own choice) from the outset of their deprivation of liberty".[4]

Amnesty International has recommended that the French government amend its legislation with a view to ensuring all detainees' rights to prompt and effective legal assistance, including the right to consult with a lawyer from the outset of police custody, during all questioning and throughout the period of detention.

## 3. The duty to investigate allegations of torture and other ill-treatment and to ensure effective redress (Articles 7 and 2)

In 1997, when it last examined France's implementation of the ICCPR, the Human Rights Committee raised concerns about the existing procedures for investigating human rights abuses committed by law enforcement officers and recommended that appropriate measure be taken to bring these procedures into compliances with articles 2, 9 and 14 of the Covenant.[5]

Since that time Amnesty International has continued to record a large number of cases in which ineffective internal police investigations, coupled with discretionary powers of the prosecution, result in judicial investigations of alleged torture or other ill-treatment being closed by the judicial or prosecutorial authorities without coming to trial, notwithstanding the existence of evidence which Amnesty International deemed to be credible, that such ill-treatment had occurred. In addition, Amnesty International's research indicates that when individuals suspected of ill-treatment were brought to trial, convictions were relatively rare, and in the event of a conviction, sentences have mainly been nominal.

Amnesty International considers that the continued failure of the French government and prosecuting authorities to address allegations of torture or other ill-treatment effectively has led to a climate of *de facto* impunity for law enforcement officials, which facilitates future torture and ill-treatment.

[4] "…le CPT en appelle aux autorités françaises afin qu'elles reconnaissent aux personnes privees de liberte par les forces de l'ordre, pour quelque motif que ce soit, l'acces a un avocat (sans qu'il s'agisse necessairement d'un avocat de leur choix), des le tout debut de leur privation de liberte ». Rapport au Gouvernement de la République française relatif à la visite effectuée en France par le Comité européen pour la prévention de la torture et des peines ou traitements inhumains ou dégradants (CPT) du 27 Septembre au 9 Octobre 2006, 10 Decembre 2007, CPT/Inf (2007).

[5] CCPR/C/79/Add.80 HRC concluding observations, para 15.

## 3.1 Definition of Torture in the French Penal Code

Although the French Penal Code criminalises the act of "torture" it does not define the meaning of this term. The lack of a legal definition of torture (in accordance with that set out in Article 1 of the UN Convention against Torture) is an obstacle to effective prosecution and prevention of this crime. The Committee against Torture raised similar concerns when examining France's implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 2005, and recommended that France "consider incorporating into its criminal law a definition of torture that is in strict conformity with article 1 of the Convention, so as to draw a distinction between acts of torture committed by or at the instigation of or with the consent or acquiescence of a public official or any other person acting in an official capacity, and acts of violence in the broad sense committed by non-State actors" and also recommend that torture be made an imprescriptible offence.[6]

## 3.2 Discretionary powers of the public prosecutor

When it last examined France's implementation of the ICCPR, in 1997, the Human Rights Committee raised concern about "existing procedures of investigating human rights abuses committed by the police. It is also concerned at the failure or reluctance of prosecutors to apply the law on investigating human rights violations where law enforcement officers are concerned."[7]

The Committee against Torture (CAT) raised similar concerns when examining France's implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 1998 and in 2005. It expressed concern about the system of "appropriateness of prosecution", ("*l'opportunité des poursuites*") which, in the words of the CAT, "gives State prosecutors the option of not prosecuting the perpetrators of acts of torture and ill-treatment in which police officers are implicated, or even of not ordering an investigation, which is clearly contrary to article 12 of the Convention". The CAT urged France to "pay maximum attention to allegations of violence by members of the police forces, with a view to instigating impartial inquiries and, in proven cases, applying appropriate penalties". It also urged France to abrogate the current system of "appropriateness of prosecution", thus removing "all doubt regarding the obligation of the competent authorities to institute systematically and on their own initiative impartial inquiries in all cases where there are reasonable grounds for believing that an act of torture has been committed".[8]

[6] See Concluding observations of the Committee against Torture: France, adopted on 24 November 2005, UN Doc. CAT/C/FRA/CO/3, 3 April 2006 (hereinafter: CAT concluding observations) para 5.

[7] HRC concluding observations, para 15.

8 See CAT concluding observations 2005; and Concluding observations of the Committee against Torture: France, UN Doc. A/53/44, 27 May 1998, paras. 143(b); 146; 147 respectively.

Amnesty International continues to be concerned about the power given to public prosecutors when deciding whether to pursue complaints of human rights violations by police officers, and their reluctance to prosecute in a number of such cases. The organization notes that the system of "appropriateness of prosecution", which CAT recommended be abrogated in 1998 and in 2005, is still in operation.

In a number of the cases of concern to Amnesty International, and which involve fatal police shootings or deaths in custody, Amnesty International considers that public prosecutors have, in reality, played the role of counsel for the defence, often when acting as *avocats généraux* before the assize courts. However, prosecutors in the correctional courts have also effectively acted on behalf of the police defence team.

Amnesty International's report, *France: The Search for Justice – The effective impunity of law enforcement officers in cases of shootings, deaths in custody or torture and ill-treatment* (AI Index: EUR 21/001/2005) highlighted the case of Yacine, in which the correctional court concluded that acts of police violence had been "well in excess of a reasonable use of force", but the prosecutor had nonetheless requested the acquittal of the police officers.

In the case of the death of Riad Hamlaoui, who, while sitting unarmed in a car, was shot dead at point blank range by a police officer in 2002, the public prosecutor's office (*parquet)* decided not to appeal against the assize court's decision to apply a three-year suspended sentence for involuntary homicide, which had been criticized by a former French government minister as unlikely to inspire confidence in the French justice system. This decision not to pursue the case was taken despite the fact that a prosecutor, acting as *avocat général* at the assize court, had requested a six-year prison term, to reflect the gravity of the crime, which he believed had been the result of a deliberate decision.

It has been a matter of concern that, even in some extremely serious and controversial cases of police ill-treatment or apparent excessive use of force, prosecutors have abandoned the prosecution role altogether and effectively taken the role of the defence, thus leaving the prosecution entirely in the hands of the lawyer acting on behalf of the family, or civil party.

## 3.3 Delays in judicial proceedings

In 1997 the UN Human Rights Committee expressed concern "at the delays and unreasonably lengthy proceedings in investigation and prosecution of alleged human rights violations involving law enforcement officers".[9] A number of cases which Amnesty International has researched and documented illustrate the real problem of lengthy delays and failure to show due diligence in judicial proceedings in cases involving complaints against law enforcement officers.

On 28 July 1999, the European Court of Human Rights found that France had violated the prohibition of torture, as well as the right to "a fair and public hearing within a reasonable time" in the case of Ahmed Selmouni. Although France had argued that Ahmed Selmouni's

[9] HRC concluding observations, para 15.

case was inadmissible because he had not exhausted all domestic remedies, the Court rejected the argument and held that "the existence of such remedies must be sufficiently certain not only in theory but also in practice, failing which they lack the requisite accessibility and effectiveness".[10]

Ahmed Selmouni had been arrested for a drug trafficking offence in November 1991 and held in police custody for three days at Bobigny (Seine-Saint-Denis). An inquiry had opened into Ahmed Selmouni's allegations of torture and other ill-treatment in March 1993 – after he had become a civil party to the case. Police officers had not been placed under investigation by an investigating judge until 1997. When the European Court of Human Rights gave its decision in July 1999, the proceedings were still in progress before the Court of Cassation on points of law and had already lasted more than six years and seven months.

The cases of Youssef Khaïf (fatal police shooting) and Aïssa Ihich (death in custody following an asthma attack) are among others which strikingly illustrate this failure. The case of Youssef Khaïf, who died in 1991, took 10 years to come to court. Equally, that of Aïssa Ihich, who died in 1991, took 10 years. For further information about these cases please see *France: The Search for Justice – The effective impunity of law enforcement officers in cases of shootings, deaths in custody or torture and ill-treatment* (AI Index: EUR 21/001/2005).

## 3.4 Nominal sentencing or "token penalties"

Apart from a number of highly controversial acquittals in criminal cases brought against police officers, Amnesty International considers that another factor contributing to the climate of effective impunity is the pattern of nominal sentencing. Token penalties are often requested by prosecutors, and handed down by the courts, despite the gravity of the offence.

In most of the cases of fatal shootings which have resulted in conviction of law enforcement officials examined by Amnesty International in its report covering the period from 1991 to 2005, the penalties imposed rarely exceeded a suspended prison term. Although it is not unheard of for a police officer who kills a suspect in a shooting incident to receive a relatively long prison term, it has been highly unusual and the circumstances require evidence that the officer acted in an exceptionally blatant manner, or that he or she had a previous conviction or a tarnished disciplinary record.[11] In most cases examined by Amnesty International however, prosecutors, judges and - in the case of assize courts - juries, have fought shy of an actual prison term.

[10] Selmouni v France, Judgement of 28 July 1999, Application no. 25803/94

[11] In December 1997 Fabrice Fernandez was shot dead by an officer while being interrogated, in handcuffs, in a police station. The officer, who had previously been suspended from the police force for assault, was sentenced for murder ("*violences volontaires avec arme ayant entraîné la mort sans intention de la donner"*) to 12 years' imprisonment in December 1999. In August 1998 Eric Benfatima, who had been begging cigarettes, was shot dead by an officer, who fired at him four times while chasing him down a street. The officer, who was portrayed by both prosecutor and defence as a 'good officer' but suffering from a nervous crisis, was found guilty of the same charge and sentenced to 10 years' imprisonment in June 2000.

Under Article 734 of the Code of Penal Procedure a judge may take into account a good service record and other factors, such as remorse or acknowledgement of fault, but is not obliged to account for his or her decision when handing down a suspended sentence. In practice, officers convicted of unlawfully killing a suspect have almost always benefited from a suspended sentence under the terms of Article 734.

The bulk of the cases documented by Amnesty International in its report *France: The Search for Justice – The effective impunity of law enforcement officers in cases of shootings, deaths in custody or torture and ill-treatment* (AI Index: EUR 21/001/2005) involve either controversial acquittals or token sentencing, even when courts have admitted that the case was an extremely serious one. In the case of Riad Hamlaoui (above), who was shot dead by a police officer subsequently convicted of involuntary homicide, the court argued that, although the crime was serious, it served no purpose to imprison the officer and that his action could be attributed to "insipid" training.

## 3.5 Problem of identification

Amnesty International is concerned by cases which end in the acquittal, or failure to proceed against police officers because of the difficulty of identification of the individual law enforcement officers responsible.

In the cases reviewed by Amnesty International, the problem of identifying police officers who may have been involved in a human rights violation arose mainly when the only witnesses were police officers and the complainant; when officers refused to testify against their colleagues or when testimonies were not sought by those conducting the inquiry. The problem also arose, in cases in which the officers were not in uniform, or were not wearing clear identifying numbers on their uniform.

In January 2005 the Court of Appeal of Paris closed an inquiry into police ill-treatment of Abdelhamid Hichour and Abdassamad Ayadi at l'Hay-les-Roses on 30 September 1999. The court accepted that the police use of force was "illegal" (*"illégitime"*) and "inexcusable" (*"inexcusable"*) but could not identify the officers responsible among the many who were present. According to reports, up to 25 police teams took part in a police operation following a burglary and a car chase. There was a difficult arrest. Some police officers who had succeeded in restraining the two young men reported that, after this had happened, another group of (unidentified) officers rained blows on the two, particularly Abdelhamid Hichour, who lost consciousness. Abdelhamid Hichour and Abdassamad Ayadi were subsequently signed off work completely (*incapacité totale de travail* – ITT) for 10 and nine days respectively. Despite an inquiry carried out by an investigating judge at Créteil, in which the officers were methodically confronted with one of the victims of the ill-treatment, identification was not possible, reportedly owing to the large numbers of police involved in the incident. The case was therefore closed (*ordonnance de non-lieu*) on 22 October 2002, a decision confirmed in January 2005.

In its 2003 annual report the National Commission for Ethics in Security (*Commission nationale de déontologie de la sécurité*, CNDS) referred to the case of two brothers, Samir and Mounir Hammoudi, both students of Moroccan origin, who were severely beaten by police officers in July 2002, both before, and while being held at the police station of Saint-Denis (Seine-Saint-Denis). While being held in police custody they had to be taken to three different hospitals for treatment to their injuries. The internal affairs unit of the Paris police force (*Inspection Générale des Services*, IGS) confirmed that police officers had wrongfully inflicted violence on them. A judicial inquiry was opened at the court of Bobigny, and the CNDS transmitted documentary evidence both to the public prosecutor and to the Minister of the Interior. The CNDS referred to a response it had received from the Minister of the Interior in 2002, according to which it would be "premature" to consider disciplinary measures, because no definite personal responsibility had been established, given the number of officers involved in the attacks.

## 3.6 Complaints mechanisms and oversight bodies

Amnesty International is concerned that the CNDS, the independent police and prison oversight body, has no independent powers of sanction and cannot be directly accessed by complainants. Anyone who has suffered from or witnessed unethical acts by public security officials must lodge their with the CNDS indirectly, by forwarding their complaint through the Prime Minister, the Ombudsperson for Minors, a senator or member of the National Assembly, National Ombudsperson, High Authority against Discrimination, or Inspector of Detention Centres. This process acts as a filter which may result, on the individual decision of the intermediary, in an individual's complaint not being transmitted to the expert body for assessment. The CAT has recommended that France "take the necessary measures to allow the CNDS to accept cases referred to it directly by any person who claims to have been subjected to torture [or other ill-treatment]".[12]

Amnesty International is further concerned that current legislative proposals to create a new Public Ombudsperson (*Défenseur des droits des citoyens*) which would integrate various existing bodies, including the CNDS, could have a negative impact on the successful fulfilment of its role due to a decrease in specialism and public visibility, and possible reduction in dedicated resources. Amnesty International has called for the new body, if created, to ensure that the role of the CNDS is continued with at least the same powers and mandate as at present.

The CNDS was set up by a law of 6 June 2000, in the wake of a sequence of police shootings, and began to function on 14 January 2001[13] with powers to investigate cases of alleged abuses by law enforcement officials.

[12] CAT concluding observations 2005, para 21.

[13] The CNDS was set up in 2000 by Loi 2000-494 du 6 juin, with powers to investigate cases of alleged abuses by law enforcement officials.

### 3.7 Recommendations made by Amnesty International aimed at ensuring effective investigations and redress in cases of ill-treatment by law enforcement officials

Amnesty International has made a number of recommendations to the French authorities which the organization believes would help to prevent ill-treatment and ensure that cases of alleged ill-treatment are effectively investigated and perpetrators are brought to justice. Among other things, Amnesty International has recommended that the French government take immediate action to create a fully resourced independent mechanism to investigate all allegations of serious human rights violations by law enforcement officials. This mechanism should ultimately replace the investigative functions of the existing internal investigation units (*Inspection Générale des Services*, *Inspection Générale de la Police Nationale* and *Inspection de la Gendarmerie Nationale)* in cases of serious human rights violations, and should be directly accessible to individual complainants. The mechanism should also have the power to direct that disciplinary proceedings be instigated against law enforcement officials and have the power to remit a case directly to the prosecuting authorities in order that they pursue criminal charges in appropriate cases.

## 4. Use of evidence obtained under torture (Article 7)

Amnesty International is concerned that, in the case of M'hamed Benyamina, the French authorities may have used information obtained under torture or ill-treatment as the basis for arresting people.

M'hamed Benyamina and his nephew Madjid Benyamina were detained at Oran airport on 9 September 2005 by Algeria's security forces while boarding their flight back to France after spending a month's holiday visiting family. Madjid Benyamina was separated from his uncle and was reportedly told by Algerian security forces that they had a warrant for M'hamed Benyamina's arrest on suspicion of his involvement in arson of buildings housing African immigrants near Paris in August 2005. Madjid Benyamina stated that he was questioned about his uncle's life in France during his four-day detention and was also told that French authorities had requested the arrest of M'hamed Benyamina in connection with his alleged involvement in "terrorist" activities in France. Madjid Benyamina was released on 13 September 2005 and returned to France.

M'hamed Benyamina was subsequently detained at an undisclosed location without charge or trial, and without access to the outside world, for five months. He was denied access to legal counsel and to a court to challenge his detention, kept in conditions amounting to torture and cruel, inhuman and degrading treatment, and only allowed to speak to his interrogators during his five months of detention. His interrogators accused him of having participated in an international network sending Muslim fighters to Iraq and of plotting bomb attacks on the headquarters of the French counter-espionage services (*Direction de la surveillance du territoire*, DST), and Orly airport and the metro in Paris.

M'hamed Benyamina was first brought before an examining judge on 6 February 2006. He was not given access to a lawyer even at that time, and the judge reportedly failed to inform him of his right to legal counsel and to a medical examination. Despite complaining to the examining judge that he had been ill-treated and forced to sign the interrogation report without reading it, no investigation is known to have been opened into these allegations.

He was remanded in custody on charges of "belonging to a terrorist group operating abroad" and "joining a terrorist group operating in Algeria". He was released on 4 March 2006 in the context of "national reconciliation" measures. He was arrested again on 2 April and, after three days of secret detention by the DRS, transferred to prison. On 21 November 2006, the UN Working Group on Arbitrary Detention (WGAD) adopted the opinion that the detention of M'hamed Benyamina was arbitrary as it was in violation of article 14 of the ICCPR (Opinion No.38/2006, Algérie). He was due to be brought to trial in July 2007, but the trial was postponed, as prison authorities apparently "forgot" to transfer him from prison to court.

In December 2007, M'hamed Benyamina was sentenced by a criminal court to three years imprisonment for belonging to a terrorist group abroad. He was said to have admitted before the court that he had travelled to Syria with the intention of going to Iraq and that he met a recruiter of foreign fighters in Syria. When M'hamed Benyamina's lawyer presented the court with the UN WGAD's opinion, the prosecutor accused him of tarnishing the reputation of Algeria. The defendant is serving his sentence and did not appeal the court's decision as he was afraid his sentence could be increased.

Following her husband's arrest in Algeria, Nadia Benyamina was detained in France from 23 to 25 September 2005. She has told Amnesty International that she was questioned about her husband's activities and that French authorities told her that, while in custody in Algeria, her husband had admitted to being part of a group which was planning violent attacks on targets in France. Nadia Benyamina told Amnesty International that she did not believe her husband was involved in any such activity. According to Nadia Benyamina, the Benyaminas' apartment was searched by French security forces, who seized the hard drive of Nadia Benyamina's computer, and told her that her telephone would be tapped.

In a related development Amnesty International received information that the arrest of nine people in Trappes (Yvelines) and Evreux (Eure) on 26 September 2005, suspected of being members of a group planning acts of violence in France, may have been the result of statements elicited from M'hamed Benyamina by Algerian authorities, during the period in which he was held incommunicado and claims to have been tortured. According to reports in the French press, a confidential note -- that may have been transmitted by Algerian security forces to the French DST, -- played an important role in the arrests.[14]

[14] See also Amnesty International's briefing to the Committee against Torture, Algeria, 2008 (AI index MDE 28/001/2008).

## 5. Refoulement (Articles 7 and 13)

Amnesty International is deeply concerned at continuing reports of individuals being forcibly deported from France to countries where they face the risk of serious human rights violations including torture and other ill-treatment, particularly in the case of detainees held in relation to terrorist offences. The organisation has repeatedly urged the French authorities to respect their obligations under international law and cease the practice of forcibly returning individuals to countries where they may be at risk of torture or other serious ill-treatment. The Committee against Torture has also called on the French authorities to "take all necessary measures to guarantee that no person is expelled who is in danger of being subjected to torture if returned to a third State".[15]

The following cases are illustrative of Amnesty International's concerns.

**Adel Tebourski – Tunisia**
[16]

Amnesty International is concerned that Adel Tebourski was forcibly returned to Tunisia from France on 7 August 2006, despite a pending asylum appeal claim and a request from the Committee against Torture to suspend his expulsion while it examined his case.

Adel Tebourski was detained in France since 2001, spending more than three years in prison before being tried. In May 2005 he was sentenced to six years' imprisonment for providing false identity documents to two alleged al-Qa'ida operatives involved in the killing of Commander Massoud, leader of the Northern Alliance coalition group in Afghanistan, on 9 September 2001.

Adel Tebourski was released from a prison in Nantes on 21 July 2006. On the same day, he was stripped of his acquired French nationality and moved to the Mesnil-Amelot 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 French government body which determines the status of refugees, the Office français de protections des réfugiés et apatrides (OFPRA), rejected Adel Tebourski's request for political asylum. His lawyer is taking action to stop the deportation.

On his arrival at Tunis airport he was met by his father and sister. He was questioned briefly by Tunisian border police, but was released. The police took some of his personal belongings and asked him to return to retrieve them later.

On 11 May 2007, the UN Committee against Torture (CAT) issued a decision on the case of Adel Tebourski. It found that France had not acted in good faith when it expelled Adel

[15] CAT concluding observations 2005, para 10.
[16] http://daccessdds.un.org/doc/UNDOC/DER/G07/420/04/PDF/G0742004.pdf?OpenElement).

Tebourski, and that his expulsion constituted a violation of Articles 3 and 22 of the Convention Against Torture – that is, respectively, the obligation of non-refoulement and the obligation on states who have recognized a right of individual complaint to the CAT to respect that right. The CAT has invited France to make submissions to the Committee on how it plans to make reparation for this violation.

Amnesty International is concerned that, despite this decision by the CAT, France has continued to forcibly return individuals to countries, including Tunisia, where they may be at risk of human rights violations.

**Houssine Tarkhani – Tunisia**
(See AI Index: MDE 30/004/2007)

Amnesty International is concerned that Houssine Tarkhani, a Tunisian asylum-seeker was forcibly returned from France to Tunisia on 3 June 2007, despite having an appeal in progress concerning his asylum claim.

Houssine Tarkhani was, according to information received by Amnesty International, arrested at the French-German border on 5 May, as an irregular migrant, and held in a local administrative detention facility (local de rétention administrative) in Metz, pending the execution of a prefectoral removal order (arrêté préfectoral de reconduite à la frontière). On 6 May Houssine Tarkhani was brought before a judge (Juge des libertés et de la detention), who authorized his detention for a further 15 days, and informed him that he was being investigated by the French police on suspicion of providing logistical support to a network which assists individuals to travel to Iraq to take part in the armed conflict there – an allegation which he denied. The same day, having discovered the nature of the suspicions against him, he 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.

On 10 May Houssine Tarkhani was taken from the CRA by officers from the DST, to be questioned by a judge in relation to suspected terrorism-related activities. He was questioned in particular about his relationship with Mohamed Msahel, a Tunisian national currently imprisoned in Morocco on terrorism charges, with whom Houssine Tarkhani had, on Houssine Tarkhani's account, become acquainted when they attended the same mosque in Milan. At no stage was Houssine Tarkhani charged with any terrorism-related criminal offence.

On 11 May Houssine Tarkhani was returned to the CRA at Mesnil-Amelot. On 15 May he was interviewed by officials from OFPRA. On 25 May he was told that his asylum application, which had been assessed under the accelerated procedure (*procédure prioritaire*), had been rejected. An appeal against this decision was lodged with the Refugee Appeals Commission (*Commission des Recours des Refugiés*, CRR). Nonetheless he was, on 3 June, forcibly returned to Tunisia.

Amnesty International has since learnt that Houssine Tarkhani was, as he feared, detained by officers of the Tunisian state security (Sûreté de l'Etat) on his arrival in Tunisia. According to information available to the organization he was, on arrest, 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 – without being allowed to contact his family. Amnesty International has been informed that he has been charged with a number of broadly-defined offences under Tunisian counter-terrorism legislation.

Amnesty International is concerned that Houssine Tarkhani was returned to Tunisia before the CRR was able to determine an appeal which he had made against the decision to refuse his claim for asylum in France.

**Rabah Kadri – Algeria**
(See AI Index: MDE 28/003/2008)

Amnesty International is concerned that, given the ongoing documentation by human rights organizations of allegations of torture and other ill-treatment of people detained by the Algerian Department for Information and Security (*Département du renseignement et de la sécurité*, DRS), and the recent concluding observations of the UN Human Rights Committee (CCPR/C/DZA/CO/3, 12 December 2007) that "The Committee takes note with concern of the information regarding cases of torture and cruel, inhuman or degrading treatment in the State party, for which the Intelligence and Security Department reportedly has responsibility", the French authorities violated the principle of *non-refoulement* by forcibly returning Rabah Kadri to Algeria on 14 April 2008.

On 16 December 2004 Rabah Kadri was convicted by the Paris Criminal Court (Tribunal Correctional de Paris) of involvement in a terrorist plot to bomb the Strasbourg Christmas market. He was sentenced to six years' imprisonment, followed by a permanent ban from French territory.

On 14 April 2008 Rabah Kadri was released from Val de Reuil prison and taken into police custody. He was transferred first to Marignane airport and then to Marseille sea port where he was forcibly boarded onto a boat for Algeria, *La Méditerrannée*, due to arrive in Algiers the following day.

Upon his arrival in Algiers on 16 April, Rabah Kadri was taken into detention and held incommunicado for 12 days by plain clothes security officers. He did not know where he was detained. He is believed to have been in the custody of the DRS in one of the unofficial detention centres operated by the intelligence agency in Algiers. His family had no news of him. He was released without charge on the 27 April.

Amnesty International was able to speak with Rabah Kadri after his release. He said that he was treated correctly during his detention. He was interrogated about the activities which had led to his conviction and prison sentence in France. He also said that he signed a statement

saying that he was treated well in detention before his release. Amnesty International notes that, in its experience, the fact that someone has just been released from DRS custody will weigh heavily on their mind when they speak about their treatment in detention, in case this exposes them to possible retribution.

**Kamel Daoudi – Algeria**

On 15 March 2005 Kamel Daoudi, an Algerian national, was convicted in France of criminal association in relation to a terrorist enterprise and falsification of official documents. He was sentenced to nine years imprisonment (reduced to six on appeal) followed by a permanent prohibition of entering French territory (*interdiction définitive du territoire français*). Kamel Daoudi had naturalised French citizenship but on 27 May 2002, he was stripped of his French nationality even though the criminal case against him was still in progress. He appealed against his prohibition from French territory to the Expulsion Committee on the grounds of his family ties in France (he has lived in France since the age of five), but on 3 March 2006 the Committee ruled in favour of the prohibition on "national security" grounds.

Kamel Daoudi was released from La Santé prison on 21 April 2008 and immediately taken to the administrative detention centre at Vincennes pending deportation. However, following his successful petition for interim measures to the European Court of Human Rights, the latter ordered France to suspend the deportation until it could review the case fully and decide whether he would be at risk of torture or other ill-treatment if returned to Algeria. Kamel Daoudi is now living under a compulsory residence order in France pending the decision of the European Court.

Amnesty International is concerned that, given the risks of torture and other human rights violations Kamel Daoudi would face if returned to Algeria, the attempts by the French authorities to forcibly expel him are a violation of the principle of *non-refoulement.*

## 5.1 Asylum legislation

On 26 April 2007 the European Court of Human Rights found that France had violated the principle of *non-refoulement* and the right to an effective national remedy by ruling to return Asebeha Gebremedhin, an Eritrean asylum-seeker, to Eritrea from the French border in 2005 before his asylum appeal had been heard. The Court underscored the obligation under the European Convention on Human Rights for states to provide a right of appeal with suspensive effect before returning someone to a country where they may be at risk of torture or other serious ill-treatment.

Following this ruling, a new immigration law introduced in November 2007 creates a suspensive right of appeal but includes substantial restrictions, including a 48-hour time limit on lodging an appeal and the possibility for the judge to reject the appeal without interviewing the asylum-seeker in person if the appeal is considered "manifestly ill-founded".

Amnesty International has recommended that the French 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 international and regional human rights mechanisms. The organization has called on the authorities to 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 and that applicants for international protection have adequate time and facilities to benefit effectively from these procedures.